SUMMARY OF SENATE IMMIGRATION REFORM LEGISLATION

June 9, 2006

The Senate immigration bill (S. 2611) was passed by a vote of 62-36 on May 25, 2006. This document is a summary based on one read of the bill text and will be modified as we study the bill further. Please send your questions and corrections to Shoba Sivaprasad Wadhia at: ssivaprasad@immigrationforum.org

Title I ("Border Enforcement")

- Increases border and other enforcement personnel (including but not limited to inspectors, investigators and border patrol officers).
- Provides for technology and border infrastructure enhancements, including construction of border fencing along the Southern border.
- Requires the DHS Secretary to develop a national strategy for border security (to include assessment of threat posted by terrorists, a risk assessment for all US ports of entry and all portions of the border, a description of roles and missions of law enforcement entities at the international, federal, state, and local levels, etc.) and a plan for border surveillance (to include assessment of existing technologies, a description of the technology to be deployed, an estimate of related costs, etc.).
- Requires other border security initiatives, including biometric data enhancements, training to CBP officers on document fraud detection and identification, and a schedule for full implementation of the US-VISIT exit-entry monitoring program.
- Requires the Secretary of State to submit a report to Congress on improving the exchange of information on security within North America.
- Requires the US government to work with countries south of the border to address human smuggling, gang activity, among other things.
- Requires the US government to work with the Mexican government on issues related to border security, human trafficking, drug trafficking, gang activity, etc., and also to encourage circular migration.
- Requires the US government to work with the Mexican government to educate citizens and nationals of Mexico about eligibility for immigration status in the US to ensure that such citizens and nationals are not exploited while working in the United States.
- Amends the Enhanced Border Security and Visa Entry Reform Act to require that every document issued by the DHS Secretary which may be used as evidence for the alien's immigration status be machine readable, tamper resistance and incorporate a biometric identifier.
- Authorizes the DHS Secretary to require departing aliens to provide biometric data and related information and authorizes immigration officers to collect biometric data from any applicant for admission, those seeking transit through the US, or certain LPRs.
- Creates a new ground of inadmissibility for withholders of biometric information, and new criminal penalties for evading inspection.
- Authorizes the Governor of a State (with the approval of the Department of Defense) to order the National Guard of a State to engage/be trained to perform authorized activities along the

Southern border. The DHS Secretary must coordinate the performance of activities by the National Guard. This subsection expires in January 2009.

- Requires DHS and DOD to submit a report to Congress on the feasibility of offering incentives to certain members and former members of the Armed Forces to serve as Customs and Border Protection officers.
- Extends the Western Hemisphere Travel Initiative implementation deadlines; authorizes the Secretary of State to develop a "passport card" for US citizen travelers to Canada, Mexico, and countries located in the Caribbean and Bermuda; requires an outreach program about the Western Hemisphere Travel Initiative.
- Creates new penalties for the unlawful construction of border tunnels; penalties escalate if such tunnels are used to unlawfully smuggle an alien, drugs, weapons or terrorists.
- Inserts the "Border Law Enforcement Relief Act," which among other things authorizes the DHS Secretary to award grants to law enforcement agencies to address criminal activity along the border. Includes a savings clause that nothing should be construed in this section to authorize state and local law enforcement to enforce federal immigration laws.
- Requires the detention of certain undocumented immigrants located at or between ports of entry, with specific exemptions.[1] Includes an interim period during which an alien can be released after undergoing background checks and paying a mandatory minimum bond of $5,000.

Title II ("Interior Enforcement")

- Expands the criminal code to include additional passport, visa, and document-related offenses, with a limited exemption for certain vulnerable populations who may rely on false documents to flee abuse.[2]
- Makes the newly defined document-related offenses crimes under the criminal code and grounds of inadmissibility and/or deportability under the immigration code. These provisions apply primarily to prospective conduct. Notably, the manager's amendment modified the application of some of these new document related penalties by exempting people who are otherwise eligible for a benefit under traditional legalization, DREAM Act, or AgJOBS from such penalties for a limited time period. This protection runs from the date of the bill's enactment through the date that the Department of Homeland Security begins accepting applications. (see Title VI)
- Expands the types of offenses that can be classified as an "aggravated felony," an immigration label for criminal conduct that leads to mandatory detention, deportation and ineligibility for most forms of immigration relief.[3] For example, an immigrant who omits factual information in her visa application can be later prosecuted and classified as an aggravated felon. These provisions apply to conduct after enactment.

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[1] Exempted from mandatory detention are the following: Mexicans, Cubans, people who withdraw applications for admission and depart immediately, and those paroled in for urgent humanitarian reasons or significant public benefit.

[2] Many of these new "document" offenses are written in such a broad way that immigrants can be punished for less offensive conduct than what one would ordinarily consider to be "document fraud," such as omitting immaterial information from an immigration application.

[3] Crimes need not be "aggravated" nor "felonies" to be classified "aggravated felonies" under the immigration code.

- As taken up on the floor, the Senate immigration bill included a provision that makes three DUI convictions an "aggravated felony" for immigration purposes and also applied retroactively. The manager's amendment to the bill eliminated the retroactive application of this provision which means that people cannot be punished for and labeled as an "aggravated felon" based on past conduct.
- Expands the definition of "criminal alien smuggling," but offers an exception for certain religious entities, or groups or individuals not previously convicted of a violation under this section who provide humanitarian assistance including medical care, housing, counseling, victim services, and food, or who transport the alien to a location where services can be rendered.
- Restates the obligation of any alien ordered deported to cooperate with DHS' attempts to deport him; undercuts two Supreme Court decisions by also allowing DHS to indefinitely detain foreign nationals with final orders of deportation who cannot be deported through no fault of their own.[4] Allows for habeas review in any US district court.[5]
- Includes new penalties for failure to file a change of address form with DHS in a timely manner. For example, it modifies the penalties for failure to file a change of address by providing for an increase in fines and by providing for imprisonment up to 6 months. If the alien has not been inspected or admitted or if the alien has failed to submit an address on more than one occasion, he or she shall be presumed a flight risk.[6]
- Restores access to temporary stays of removal for immigrants who are appealing their cases to the federal courts.[7]
- Mandates expedited removal (quick deportations by immigration officers without an opportunity for review or to go before a judge) of non-legal permanent residents who have committed certain crimes.
- Mandates expedited removal of undocumented aliens located within 100 miles of the border who cannot prove they have been in the US for more than 14 days. This provision applies only to individuals who are not nationals of Mexico, Canada, or Cuba.[8]

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[4] The US cannot deport individuals to countries where we lack diplomatic ties, or if their home countries refuse to accept their return, or the individuals are stateless.

[5] As taken up on the floor, the Senate immigration bill limited such review to the district court for the District of Columbia. This was modified in a manager's amendment to enable such review in any US district court.

[6] Currently, the immigration code already makes failure to file a change of address a deportable offense for which an immigrant can be detained and fined. These penalties are unnecessary and incommensurate with the offense. This bill increases the already unfitting punishments -- labeling immigrants as "flight risks" based on the number of times they failed to file a change of address form is extreme and removes the ordinary discretion that judges use to determine true flight risks and dangers to the community. It is worth noting that INS acknowledged that it had failed to record hundreds of thousands of change of address notices that were filed by immigrants.

[7] An amendment to restore access to a temporary stays of removal passed during the Senate floor debate. This is significant because it ensures that asylum seekers and other immigrants waiting to hear from a federal court about their cases will not be deported back to their persecutors or country of origin. As amended by the Senate Judiciary Committee, the Senate immigration bill eliminated the immigrants' access to a temporary stay of removal.

[8] This section seeks to codify what DHS is currently doing as a matter of administrative policy.

- Authorizes 20 additional detention facilities that have the capacity to detain a combined total of not less than 20,000 immigrants pending removal or a decision on removal. Authorizes the DHS Secretary to consider using military installations approved for realignment or closure to accommodate such detainees.
- Several provisions limit judicial review on decisions made by the Department of Homeland Security without regard to whether the decision is based on factual or legal errors.
- Dramatically expands the entry of civil immigration law violators into the National Crime Information Center (NCIC), a national criminal database accessed by state and local police.
- Clarifies the "inherent authority" of state and local police to assist in enforcing criminal immigration laws.

Title III ("Unlawful Employment of Aliens")

- Spells out the employer's requirement to attest that a prospective employee's identity and work authorization has been verified; the worker has similar attestation requirements.
- Identifies a menu of acceptable identification documents based on whether the worker is a US national, LPR or worker authorized under this bill or by the Secretary.
- Requires employers are required to retain copies of select documents, including those related to a worker's identity and work eligibility.
- Mandates a new Electronic Employment Verification System (EEVS) for employers to use to evaluate the work authorization of individual employees. Requires full employer participation in the program within 18 months of funds being appropriated for the system.
- Establishes a process where registered employers must seek confirmation of the prospective employee's identity and eligibility for employment in the US not later than 3 days after the date of hiring.
- Not later than 10 days after the employer submits this information, the DHS Secretary must provide a confirmation notice or if the system is unable to confirm such information (and after a secondary manual verification has been conducted) a tentative non-confirmation notice (meaning it appears that the individual is not authorized to work).
- If the employer receives a tentative non-confirmation, the employer shall inform the prospective worker on the appropriate form. If the worker does not contest the non-confirmation within 10 days, the notice becomes final.
- DHS has 30 days to respond if the worker contests the tentative non-confirmation. If DHS fails to respond within 30 days, the worker is granted default confirmation. This process remains in effect until DHS can confirm that its data is accurate 99% of the time, after which time DHS will issue default non-confirmation when a definitive answer is not possible within 30 days.
- Provides the worker with the right to administrative and judicial review if terminated as a result of a final non-confirmation notice; compensation for lost wages are required if non-confirmation was issued as a result of government error.
- Limits the collection and use of information and makes it a felony to use such information for an unauthorized purpose, including identity fraud.
- Includes antidiscrimination protections.
- Authorizes funding for 11,000 new Immigration and Customs Enforcement (ICE) agents; increases the number of hours ICE personnel must devote to compliance with employer and employee requirements under this section.

- Increases penalties and evidentiary burdens on employers who are alleged to have hired unauthorized aliens, or who have failed to comply with the documentation, record-keeping, and other requirements included in Title III.
- Bars noncompliant employers from receiving federal contracts, grants, or cooperative agreements.

Title IV ("Nonimmigrant and Immigrant Visa Reform")

Temporary Worker Program ("H-2C" Visa): The bill creates a temporary worker program ("H-2C" visa) for up to 200,000 workers annually[9] with a potential path to legal permanent residence (including family members), subject to the following conditions:

- Employers seeking to hire foreign workers through this program would first have to undergo recruitment efforts to find an available US worker, including advertising the job at prevailing wage. If no appropriate US worker is found, the employer would then have to attest to his recruitment and hiring efforts, as well as several other requirements, in his application for a foreign worker.
- Worker must pay a $500 fee plus application costs, and undergo background, security, and medical checks.

Path to Permanent Residency: The bill provides qualified H-2C workers and their families with two avenues to apply for permanent residency:

- Employer Sponsored: At any time the employer may file an immigrant visa petition on behalf of an H-2C worker, and his family.
- Self-Petition: the worker may self petition for himself and his family if she has been in H-2C visa status for at least four years, the employer attests that he (the employer) will hire the alien in the offered job position, and the Secretary of Labor certifies that there exists insufficient US workers to fill the job, among other requirements.

In both cases, the H-2C worker who applies for LPR status must be physically present in the United States and meet the English and civics requirements identical to what is required for Naturalization.

H-2C Program – IN DETAIL

- Establishes many worker protections for the H-2C visa holder and US workers, including requiring the same benefits and working conditions as similarly situated workers, workers' compensation insurance, a provision that no H-2C worker may be treated like an independent contractor, whistleblower safeguards, and other protections.
- The Secretary of DHS may not approve any employer's petition for an H-2C worker if the work is not agriculture-based and is located in a metropolitan or micropolitan statistical area in which the unemployment rate for workers who have not completed any education beyond high school is more than 9 percent.
- H-2C applicants must pay a $500 fee plus application costs, and undergo background, security, and medical checks. In addition to information required by the Secretary, the applicant must fill

[9] As brought to the floor, the Senate immigration bill included a 325,000 visa cap on such visas. During the Senate floor debate, an amendment decreasing this cap to 200,000 passed.

out an application that includes the following: physical and mental health, criminal history and gang membership, immigration history, involvement in terrorism, etc. Applicants must certify the truth of such application and authorize the release of any information in the application and any attached evidence for law enforcement purposes.

- Some grounds of inadmissibility (including the three and ten year unlawful presence bars) may be waived for prior conduct. A separate provision allows the Secretary to waive such grounds for humanitarian purposes, family unity or reasons of public interest. Grounds of inadmissibility that may not be waived: those related to security, most crimes, polygamists, and child abductors.
- Dependents of H-2C workers (spouses and children) may be granted a nonimmigrant visa (by accompanying or following to join the principal) after going through background and medical checks.
- Employers seeking to hire foreign workers through this program would first have to undergo recruitment efforts to find an available US worker, which includes submitting the job opportunity to the State Employment Service Agency (SESA) and authorizing such agency to post the opportunity through the internet, local job banks, unemployment agencies and other sources and to notify labor organizations in the State in which the job is located and if applicable the office of the local union. The employer must also post the job opportunity in visible locations at the place of work.
- The employer's petition to hire an H-2C worker under this section must include an attestation that the employment of an H-2C worker will not adversely affect the wages and working conditions of similarly employed US workers. The employer must also attest that he has posted the employment opportunity at the prevailing wage level, among other things.
- The H-2C worker must be paid not less than the greater of the actual wage paid by the employer or the prevailing wage for the occupational classification taking into account location and experience. In this title, prevailing wage is defined such that it captures for example, union contracts, service contract wage rates, etc.

Other Terms and Conditions of the H-2C Visa

- The work visa would be valid for three years, and could be renewed once for three more years. International commuters are not subject to the time limitations.
- H-2C workers are authorized to travel outside the United States and be readmitted without having to obtain a new visa if the period of authorized admission has not expired.
- If the worker is unemployed for 60 days, she must leave the US and reapply for a new visa if eligible. DHS can waive this requirement in its sole and unreviewable discretion.
- There is an exception to the 60 day unemployment rule for aliens who are: unemployed for reasons caused by a period of physical or mental disability of the alien or the spouse, child or parent of such alien as defined in the Family and Medical Leave Act; a period of vacation, medical leave, maternity leave, or similar leave from employement authorized by the employer or under law; or any other period of temporary unemployment caused by circumstances beyond the alien's control.
- Provides portability for employees as long as new employers have undergone the H-2C program attestation requirements and were unable to locate appropriate US workers.
- H-2C workers who fail to depart the United States within 10 days after the expiration of their authorized period of stay are barred from most immigration benefits and relief.

- Future illegal entries or visa overstays are subject to a ten year bar for many kinds of relief, including cancellation of removal and voluntary departure. There is an exception for certain vulnerable populations, including those who are eligible for VAWA cancellation T or U visa-related relief.
- H-2C workers may not change to another nonimmigrant classification. H-2C workers who violate any material condition or term of their status, are inadmissible, or who would exceed the six year visa limit (except for those who have been physically present outside the United States for one year after the expiration of such status) may not be granted H-2C status or have such status extended.

Other Features of the H-2C Visa Program

- Annually increases (subject to the availability of appropriations) by not less than 2000, the number of positions for DOL compliance investigators devoted to compliance with this title
- DHS (in consultation with DOS, SSA and DOL) must establish an alien employment management system to track the employment of immigrants under this title.
- Regulations implementing the H-2C visa program must be issued no later than 6 months after enactment of the bill.
- Establishes a Temporary Guest Worker Visa Program Task Force whose purpose is to study the impact of the admission of aliens under the H-2C program on the wages and working conditions of US workers and make recommendations to the Secretary of Labor regarding the need for an annual numerical limitation.
- Requires DHS to negotiate bilateral agreements with sending countries. For example, sending countries must agree to accept the return of nationals who are ordered removed from the US within 3 days of such removal, and cooperate with the US government to combat human trafficking and smuggling and control illegal immigration, among other things.
- Prohibits any law that would increase the number of aliens who are eligible for legal status until 90 days after the date on which the Census Bureau submits to Congress a report regarding the impact of the foreign born population on the economy, wage levels, and health care, among others.

Modifications to "S" and "L" visa programs and the visa waiver program. This bill increases the cap on S visas, places a limitation on the L visa program, and expands the visa waiver program. The S visa is available to select immigrants who share information to the government related to a criminal investigation or related matter. The L visa is available to select immigrants who work as intercompany transferees. The visa waiver program allows individuals from select countries to travel to the United States temporarily without obtaining a visa.

"Fairness in Immigration Litigation Act"

These provisions limit relief ordered against the federal government in any civil action related to the administration or enforcement of immigration laws in the US.

Title V ("Backlog Reduction")

- Increases the employment-based immigrant visa cap ("green card") from 140,000 to 450,000 through 2016; after 2016, lowers the cap down to 290,000.
- Limits the total number of aliens, including spouses and children, granted employment-based legal permanent resident status to 650,000 during any fiscal year.[10]
- Stops counting "immediate relatives" (immigrant spouses, parents, and children of US citizens) against the overall family-based immigrant cap of 480,000.
- Redistributes employment and family-based visas among existing preference categories; allows for the re-capture of immigrant visas that go unused due to processing delays (so that those visas may be used the following year). Makes slight adjustments to the per-country immigration limits.
- Reserves a portion of employment-based visas (30%) for immigrants who were unlawfully present in the US before January 7, 2004 (through 2017).
- Provides foreign students with some flexibility to engage in employment and apply for legal permanent residency.
- Creates a new visa for students pursuing advanced degrees in math, engineering, technology or the physical sciences, with a path to legal permanent residency. Such students are not subject to the employment-based visa cap.
- Reserves 2/3 of diversity visas for aliens with an advanced degree in science mathematics, technology, or engineering.
- Includes a provision that would expeditiously process employer petitions for alien of extraordinary artistic ability under the O and P categories.
- Exempts several categories of highly-skilled workers (and their spouses and children) from the employment-based immigrant visa cap.
- Includes the "Widows and Orphans Act," which creates a new visa category for certain children and women at risk of harm.
- Makes modifications to the Haitian Refugee Immigration Fairness Act of 1998. For example, enables children who were under the age of 21 on October 21, 1998 to apply for HRIFA today if they are otherwise eligible.
- Increases the cap on H-1B visas to 115,000 (which can be increased in a subsequent year if the cap is reached during a given fiscal year) and exempts from this cap those who have earned an advanced degree in science, technology, engineering, or math.
- Inserts the "Securing Knowledge, Innovation and Leadership Act of 2006" which makes reforms to the student and work-related visa programs
- Adds a clause that no grant of lawful permanent residence, grant of any other status or relief, or evidence related to such a grant may be made until appropriate background and security checks have been completed and assessed by the adjudicator.

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[10] This provision was added by an amendment during the Senate floor debate and is the subject of much confusion. The literal construction of this statute suggests an absolute 650,000 visa cap on employment based visas (and their immediate family members). There is uncertainty as to whether 650,000 is adequate to accommodate qualified undocumented immigrants already here and those coming in the future.

- Restores visa revalidation (renewal of a visa from within the United States) for certain nonimmigrant visa holders.
- Inserts the "Hurricane Katrina Victims Immigration Benefits Preservation Act," containing a number of protections for victims (including certain surviving spouses and children) of Hurricane Katrina.
- Exempts certain children of Filipino WW II veterans from the family immigrant visa cap.

TITLE VI ("Work Authorization and Legalization of Undocumented Individuals")

UNDOCUMENTED IMMIGRANTS IN THE UNITED STATES FOR MORE THAN FIVE YEARS

The bill provides work authorization and path to legal permanent residence for long-term undocumented immigrants (and their families) who meet the following requirements:

- Resided in the US for at least five years prior to April 5, 2006
- Worked a minimum of three years during the five year period, and continue to work at least six years after enactment (Some exceptions are made for people with disabilities, who leave the workforce as a result of pregnancy, and children).
- Pass national security and criminal background checks.
- Pay all federal and state income taxes owed.
- Bars legalized individuals from receiving tax refunds, Earned Income Tax Credit, or any other tax credit prior to 2006.
- Are admissible under immigration law. Some grounds of inadmissibility do not apply (this includes the three and ten year unlawful presence bars) or can be waived for humanitarian purposes, family unity or on public interest grounds. Certain grounds of inadmissibility may not be waived: those relating to health, crimes, security, polygamists, and child abductors.
- Register for Military Selective Service.
- Meet English and US civics learning standards identical to what is required for Naturalization at the point of obtaining lawful permanent residence. (Some exceptions are made for disabled and elderly people.)
- Pay a $2,000 fine for each adult legalizing, in addition to application fees. In addition to the regular application fees and fines, the principal applicant must pay a $750 state impact fee (spouses and children must pay $100). Total fee for principal: $2750

Features of the Earned Legalization Program

- Spouses and children of the principal applicant may adjust as derivatives but must be admissible, and undergo background and security checks.
- Immigrants who file an application for legalization (and their family members) shall be granted permission to work and travel pending the final adjudication of their applications.
- Individuals who file an application for legalization may not be detained, determined inadmissible or deportable, or removed from the US pending a decision on their applications, unless they commit an act which renders them ineligible.

- Individuals who are in removal proceedings but who show basic eligibility for legalization under this section shall be entitled to termination of proceedings pending the outcome of their legalization applications, unless the removal proceedings are based on criminal or national security grounds.
- Individuals who have filed a legalization application will have their detention or removal stayed pending a final adjudication of their application unless the removal or detainment of the alien is based on criminal or national security grounds.
- Contains a robust confidentiality provision to protect the information provided by an applicant – this is a key component to the workability of the legalization program because it provides immigrants with an incentive to come forward and apply. There is a clause that requires government disclosure of information if it relates to a criminal or national security related investigations or prosecutions.
- There is a criminal and immigration penalty for filing or assisting with the filing of a legalization application that contains false information.
- Applicants may not obtain legal permanent residency until existing backlogs for immigrant visas are cleared.
- Principal aliens granted adjustment will not count against the normal numerical limitations for immigrant visas.
- The bill includes some protections for employers whose formerly undocumented workers are on the path to legalization.
- The bill includes both administrative and judicial review of denials, including mandatory stays of removal for cases under review.
- The earned legalization program would be fully funded by application fees; the additional $2000 paid by each legalizing worker would be directed to border enforcement and DHS/DOS infrastructure.
- Provisions that relate to reinstatement of a removal order or violation of a voluntary departure order shall not apply with respect to an applicant under this section. Also includes a subsection that preserves eligibility for aliens who are present in the United States and who have been ordered excluded, deported, removed, or to depart voluntarily from the United States, or who are subject to reinstatement of removal under any provision of this act without having to file a separate motion. It remains unclear how these provision interacts with the ineligibility bar (see below).[11]

Individuals ineligible for legalization (Note: there is a waiver available-see below):

- Those ordered removed for reasons that relate to overstaying a period of authorized stay under the visa waiver program; those subject to expedited removal; or those issued a final order of removal under section 240 of the INA
- Those who fail to depart on a voluntary departure order;
- Those subject to reinstatement (illegal entry following a removal order);

[11] While the legislative intent for these clauses is to ensure that individuals who are otherwise eligible to apply for legalization may do so notwithstanding a removal order, reinstatement, etc., the ineligibility bars reflect a contradictory intent by specifically excluding these individuals from the opportunity to regularize.

- Those whom the Secretary of DHS determines have been convicted of a serious crime and therefore a danger to the community;
- Those whom the Secretary of DHS has reasonable grounds for believing the alien has committed a serious crime outside the United States or is a danger to the security of the United States; or
- Those who have been convicted of a felony or 3 or more misdemeanors.

WAIVER: Excepting the crime bars, the ineligibility bar to legalization may be waived in the sole and unreviewable discretion of the Secretary of Homeland Security if the immigrant was ordered removed on the basis that the alien:

- entered without inspection;
- failed to maintain status; or
- was ordered removed under the inadmissibility ground that relates to fraud and misrepresentation prior to April 7, 2006

AND

- the alien demonstrates that the alien did not receive notice of removal proceedings as required by law;
- the alien establishes that failure to appear was due to an exceptional circumstance beyond the control of the alien; or
- the alien's departure from the United States now would result in extreme hardship to the alien's spouse, parent, or child who is a citizen of the United States of an alien lawfully admitted for permanent residence. As such, certain immigrants who have been ordered removed have this waiver option whereas those who are ineligible for criminal or security related reasons as specified in this provision are not eligible for such a waiver.

UNDOCUMENTED IMMIGRANTS FOR LESS THAN FIVE YEARS BUT MORE THAN TWO YEARS (OR WHO DO NOT MEET THE ABOVE REQUIREMENTS)

The bill creates a "Deferred Mandatory Departure" (DMD) status that provides work authorization and an eventual path to legal permanent residency for undocumented immigrants, if they meet the following requirements:

- Physically present in the US on January 7, 2004.
- Employed in the US before January 7, 2004 and continuously employed since (an exemption applies to individuals age 65 or older).
- Pass national security and criminal background checks.
- Are admissible under immigration law and have not assisted in the persecution of others on account of race, religion, nationality, political opinion, or membership in a particular social group. Some grounds of inadmissibility do not apply (this includes the three and ten year unlawful presence bars) or can be waived for humanitarian purposes, family unity, or on public interest grounds.
- Admit under oath to being unlawfully present; turn in any false documents used to obtain work.
- Pay a $1000 fine plus application fees (spouses and children must submit an additional fine of $500 each as well as application fees). In addition to information required by the Secretary, the

applicant must fill out an application that includes the following: physical and mental health, criminal history and gang membership, immigration history, involvement in terrorism, etc. In addition to the regular application fees and fines, the DMD applicant must pay a $750 state impact fee. In addition, there are fines of up to $3000 for aliens who fail to depart in a timely fashion.

- The Secretary shall require the applicant to include in his application a waiver of rights to any judicial review or to contest any removal action (other than refugee-related relief). Provides the immigrant with an opportunity to appeal to an administrative appellate body if the government has mistakenly denied their legalization application.[12]
- An applicant must submit an application for DMD no later than six months after the date on which the application form is first made available. DHS must ensure that applications are processed no later than 12 months after the date on which the application form is first made available.

Features of the DMD Program

- A DMD grantee would receive up to three years work authorization in the US. However, if he has not left the country after one year, he would be subject to additional monetary penalties.
- Failure to depart at the conclusion of three years would make the DMD holder ineligible for most types of immigration benefits or relief for a period of ten years.
- DMD holders could travel outside the US legally and be readmitted if the period of DMD had not expired.
- DMD holders who are out of work for more than 60 days must leave the US and re-enter before obtaining a new job.
- Aliens granted DMD are not subject to the unlawful presence bar to reentry at INA 212(a)(9).
- Contains a robust confidentiality provision to protect the information provided by an applicant – this is a key component to the workability of the DMD program because it provides immigrants with an incentive to come forward and apply. There is a clause that requires government disclosure of information if it relates to a criminal or national security related investigations or prosecutions.[13]
- There is a criminal and immigration penalty for filing or assisting with the filing of a legalization application that contains false information.
- DMD holders could apply for readmission as an immigrant or nonimmigrant while still in the US or from any location outside the US, but would not be granted admission until he or she has actually departed the US This could be an exit for a day or a weekend; a.k.a. a "touch base" exit and reentry. The individual would not have to return to his home country, but rather leave the US and re-enter through a port of entry (undergoing the inspection process typical of

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[12] As brought to the Senate, the immigration bill required DMD applicants in the "2-5 year" category to waive their administrative and judicial right to review. The manager's amendment restored the administrative right to review to DMD applicants in the "2-5" year category. This means that such applicants will have an opportunity to "appeal" to an administrative appellate body if the government has mistakenly denied their legalization application.

[13] This was included in the manager's amendment.

international arrivals). The individual would not be required to be interviewed at the consulate. Family members are not subject to the return requirement.

- The departure requirement could be waived if the DMD holder is granted an immigrant or nonimmigrant visa and can demonstrate substantial hardship on him or an immediate family member if forced to leave the US
- DMD holders cannot obtain legal permanent residency until the earlier of existing backlogs for immigrant visas being cleared or eight years after enactment.
- Numerical limitations for DMD grantees (and their family members) who are returning to the US as nonimmigrants would be waived.
- The DMD program would be fully funded by application fees; the additional fines paid by workers and their family members would be directed to immigration law enforcement.
- Family members may be derivatives on the DMD and subsequent immigration applications.

Individuals ineligible for DMD status (Note: there is a waiver available-see below):

- Those ordered removed for reasons that relate to overstaying a period of authorized stay under the visa waiver program; those subject to expedited removal; or those issued a final order of removal under section 240 of the INA
- Those who fail to depart on a voluntary departure order;
- Those subject to reinstatement (illegal entry following a removal order);
- Those whom the Secretary of DHS determines have been convicted of a serious crime and therefore a danger to the community;
- Those whom the Secretary of DHS has reasonable grounds for believing the alien has committed a serious crime outside the United States or is a danger to the security of the United States; or
- Those who have been convicted of a felony or 3 or more misdemeanors.

WAIVER: Excepting the crime bars, the ineligibility bar to legalization may be waived in the sole and unreviewable discretion of the Secretary of Homeland Security if the immigrant was ordered removed on the basis that the alien:

- entered without inspection;
- failed to maintain status; or
- was ordered removed under the inadmissibility ground that relates to fraud and misrepresentation prior to April 7, 2006

AND

- the alien demonstrates that the alien did not receive notice of removal proceedings as required by law;
- the alien establishes that failure to appear was due to an exceptional circumstance beyond the control of the alien; or
- the alien's departure from the United States now would result in extreme hardship to the alien's spouse, parent, or child who is a citizen of the United States of an alien lawfully admitted for permanent residence. As such, certain immigrants who have been ordered

removed have this waiver option whereas those who are ineligible for criminal or security related reasons as specified in this provision are not eligible for such a waiver.

Notably, a separate provision of section 245C relating to DMD status gives the Secretary discretion to waive any of the ineligibility bars for humanitarian purposes, family unity or on public interest grounds.

UNDOCUMENTED IMMIGRANTS WHO ENTERED THE US AFTER January 7, 2004

- These individuals must depart the US, but would be eligible to apply for a temporary worker visa under Title IV or another type of visa from their home countries.
- Certain inadmissibility grounds, including the three and ten-year re-entry bars, could be waived for these individuals seeking to re-enter as H-2C temporary workers (with an eventual path to legal permanent residence).
- Principal applicants and derivatives would be counted against the numerical limitations on H-2C visa holders.

AgJOBS: Title VI contains a modified version of AgJOBS, creating an agricultural worker program that includes earned legalization for undocumented farm workers.

Strengthening American Citizenship Act of 2006: Title VI contains the Strengthening American Citizenship Act, promoting naturalization among immigrants and codifying the oath of allegiance that is taken by immigrants accessing US citizenship.

DREAM Act: Title VI contains the DREAM Act, providing a path to legal permanent residency for certain undocumented students who have been educated in the US.

Supplemental Immigration Fee: Any alien who receives any immigration benefit under this title, or the amendments made by this title must pay $500, in addition to other applicable fees and penalties imposed. This fee will be credited to accounts providing appropriations that relate to enforcement related initiatives.

"Document Fraud" Fix: The bill modifies the application of some of the new document related penalties by exempting people who are otherwise eligible to apply for a benefit under traditional legalization, DREAM Act, or AgJOBS from such penalties for a limited time period. This protection runs from the date of the bill's enactment to the date DHS begins accepting applications. For example, if a person is working on a false I-9 after the bill is enacted into law and continues to work under this I-9 for several months after, or changes jobs after enactment using a false I-9, the person will not be barred from legalization for the sole reason that his false I-9 use is now an immigration penalty under the new law. In other words, this person could still apply and be eligible for legalization despite having used a false I-9 up until the time DHS starts accepting applications.

Protection from Removal: The bill includes a provision that protects all legalization applicants under Title VI, including DMD applicants in the "2-5 year" category, as well as applicants under the DREAM Act and AgJOBS program from removal if they can show basic eligibility for legalization.

Specifically, it states that such individuals may not be removed until the date that is 180 days after the date DHS starts accepting applications.[14]

Title VII ("Miscellaneous")

- Amends the US codes to declare English as the national language of the United States.[15]
- Increases personnel (immigration judges, trial attorneys, attorneys in the Office of Immigration Litigation, attorneys in the US Attorney's Office, etc.).
- Make some improvements to process and structure at the Board of Immigration Appeals.
- Requires a GAO study on federal court structure, including evaluating the viability of creating a single federal court of appeals to review immigration cases.
- Allows would-be green card holders with pending legal permanent residency applications (as of date of enactment) to apply and pay for a waiver of certain admissibility bars related to unlawful presence and reentry after being ordered removed.
- Creates a grant program for State court interpreters.
- Establishes a grant program within USCIS that provides funding to community-based organizations to develop and implement programs to assist eligible applicants for legalization by providing them with application services.
- Includes other "miscellaneous" authorizations related to citizenship for US military personnel, border infrastructure and technology, foreign athletes, immigration relief for victims of terrorism, and other programs.

Title VIII ("Intercountry Adoption Reform")

Inserts the Intercountry Adoption Reform Act of 2006[16]

[14] This is significant because it means that people who are deportable or inadmissible under the immigration laws (including select new document fraud penalties) will not be removed by DHS officers if they meet the basic requirements for legalization (does not require exhaustive evidence but just enough to show good faith and basic eligibility).

[15] This was added as an amendment during the Senate floor debate.

[16] This was added to the final Senate bill through an amendment