American Immigration Lawyers Association

Side-by-Side Comparison of *Select Provisions* of the Senate Immigration Reform Proposals, with a Focus on the Architecture for Reform

	McCain/Kennedy (S. 1033)	Cornyn/Kyl (S. 1438)	Hagel (S. 1916, 1917, 1918, & 1919)	Specter (unnumbered draft)
Guest Worker Program for Persons Present in U.S. Without Authorization/ Path to Permanent Residence	• New H-5B temporary nonimmigrant status with an initial period of stay of 6 years. • No change of status permitted during the 6-year period. • Path to Permanent Residence: **YES** — alien may apply for adjustment of status in the U.S. after completing 6-year work requirement and fulfilling additional eligibility requirements.	• New Deferred Mandatory Departure (DMD) status - requires participating undocumented aliens to depart the U.S. before seeking readmission as either temporary or permanent immigrants. • All participants are required to depart within 5 years, with incentives provided for earlier departures. • Path to Permanent Residence: **NO**.	[two-tiered approach, with elements of both McCain/ Kennedy & Cornyn/Kyl] • New earned adjustment program for undocumented aliens who meet certain requirements, including residence in the U.S. for at least 5 years preceding the date of introduction, and a minimum of 3 years employment in the U.S. preceding the date of introduction, and 6 years after the date of enactment. • New Deferred Mandatory Departure (DMD) status for aliens who cannot prove the 5-year residency or 3-year pre-introduction work requirements for earned adjustment. • DMD status valid for 3 years, after which the alien is required to return home	[similar to Cornyn/Kyl] • New Deferred Mandatory Departure (DMD) status -- requires participating undocumented aliens to depart the U.S. before seeking readmission as either temporary or permanent immigrants. • All participants are required to depart within 5 years, with incentives provided for earlier departures. • Path to Permanent Residence: **LIMITED –** employer sponsorship is permitted under the temporary H-5A program (below), but DMD participants must first leave the country and reenter.

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			and be readmitted through legal channels. • Path to Permanent Residence: **YES**.	
Guest Worker Program for Aliens Outside the U.S. (Future Flow)	• New H-5A visa valid for 3 years, and renewable one time for a total of 6 years after which alien must return home or be in the pipeline for a green card. • Portable to any employer in the U.S. • Travel permitted. • Initial annual cap of 400,000, with subsequent adjustments based on usage. • Employers can sponsor H-5As for permanent residence or, after 4 years in H-5A status, the alien can self-petition.	• New W visa valid for 2 years, after which the alien must return home for 1 year. An alien can participate up to 3 times, for a total of 6 years of employment, after which he or she will be ineligible for further participation. • Portable only to those employers authorized to participate in the program. • Travel permitted. • No cap, but the bill sets up a Temporary Worker Task Force, the report from which will form the basis for an annual limitation on the number of W visas. • No path to permanent status.	• New H-2C visa valid for 2 years with one 2-year extension permitted. • Portable after 3 months of employment w/ petitioning employer. • Annual cap of 250,000. • Employers can sponsor alien for permanent residence or, after 3 years in H-2C status, alien can self-petition.	• New H-5A visa valid for 3 years and renewable one time for a total of 6 years after which alien must return home or be in the pipeline for a green card. • Portable to any employer in the U.S. • Travel permitted. • Initial annual cap of 400,000, with subsequent adjustments based on usage. • Employers can sponsor H-5As for permanent residence.
Family Reunification & Backlog Reduction	• Exempts immediate relatives of U.S. citizens from the 480,000 annual cap on family-sponsored immigrant visas and reallocates the family-sponsored numbers. • Increases employment-based numbers from 140,000 to 290,000 per year, reallocates the distribution of those	• No change to family-based preference system. • Reallocates the distribution of employment-based numbers and provides for the recapture of unused numbers. • Eliminates the Diversity Visa Program. • Increases the per-country limits for both family- and	• Exempts immediate relatives of U.S. citizens from the 480,000 annual cap on family-sponsored immigrant visas. • Reclassifies spouses and minor children of LPRs as immediate relatives. • Reallocates the family-sponsored numbers.	[similar to McCain/Kennedy] • Exempts immediate relatives of U.S. citizens from the 480,000 annual cap on family-sponsored immigrant visas and reallocates the family-sponsored numbers. • Increases employment-based numbers from 140,000 to 290,000 per

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	numbers, and provides for the recapture of unused numbers. • Increases the per-country limits for both family- and employment-based immigrants. • Lowers the income requirements for sponsoring a family member from 125% of the federal poverty guidelines to 100%. • Extends eligibility for the immediate relative category to the accompanying or following to join children of the children, spouses and parents of U.S. citizens. • Provides relief for widows and children.	employment-based immigrants. • Sets up a task force to study the impact of backlogs and delays.		year, reallocates the distribution of those numbers, and provides for the recapture of unused numbers. • Increases the per-country limits for both family- and employment-based immigrants. • Lowers the income requirements for sponsoring a family member from 125% of the federal poverty guidelines to 100%. • Provides relief for widows and children.
Worksite Enforcement	• Establishes a new Employment Eligibility Confirmation System to gradually replace the existing I-9 system. • Establishes a new Employment Eligibility Database to be implemented gradually and to include employment eligibility data for all individuals who are not citizens or nationals of the U.S. but who are authorized or seeking authorization to be employed in the U.S.	• Renames the Basic Pilot Program the Employment Eligibility Verification Program (EEVP) and require all employers to participate within 12 months of enactment. • Reduces type and number of documents used to establish identity and employment authorization. • Requires all persons to present a tamper-resistant, machine-readable Social Security card as evidence of employment authorization.	• Establishes a mandatory electronic worker verification system managed by DHS in conjunction with the SSA, and reduces the number of documents that can be used to verify employment authorization. • Participation phased-in, depending upon size & nature of employer. • Increases penalties for unauthorized employment and claims of false citizenship.	• Requires all employers to participate in the Employment Eligibility Verification Program. • Participation phased-in, depending upon size & nature of employer. • Reduces type and number of documents used to establish identity and employment authorization. • Provides for additional worksite enforcement and fraud detection agents.

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	• Broadens the DOL's investigative authority to conduct random audits of employers. • Includes new worker protections and enhanced fines for illegal employment practices.	• 10,000 new investigators for worksite enforcement. • Establishes minimum standards for federal recognition of state-issued birth certificates.		
Border Enforcement	Focuses on a global strategy for border enforcement, including enhanced intelligence capabilities by, among other things: • Mandating the development and implementation of various plans and reports dealing with information-sharing, international and federal-state-local coordination, technology, anti-smuggling, and other border security initiatives. • Requiring the Secretary of State to provide a framework for better management, communication and coordination between the governments of North America, including the development of multilateral agreements to establish a North American security perimeter and improve border security south of Mexico.	Continues and expands heretofore unsuccessful policies, such as: • Authorizing 10,000 Border Patrol Agents, 1,250 new CBP Officers, $5 billion over 5 years for accompanying technology and infrastructure. • Codifying and expanding the Expedited Removal Program to the entirety of the southern land border as soon as operationally possible. • Authorizing the Border Patrol to maintain temporary or permanent checkpoints on roadways "close to the borders".	• Authorizes funds to pay for the 2,000 border patrol agents Congress added last year and increases the number of CBP officers over a 5-year period. • Codifies and expands the use of expedited removal to all border patrol sectors along the southern border as soon as operationally possible. • Requires the CBP to work with the Army Corps of Engineers on building border fences and closing border tunnels. • Authorizes the construction of new infrastructure along the border.	Similar to the Cornyn/Kyl approach—more agents, assets, infrastructure and money for the border, and expanded expedited removal, etc.

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