

Draft Summary of The Comprehensive Immigration Reform Act of 2010 (S. 3932)

On September 29, Senator Menendez (D-NJ) and Senator Leahy (D-VT) introduced the Comprehensive Immigration Reform Act of 2010 (S. 3932). This document summarizes the bill. Note that this summary was prepared under extremely short time constraints and may have inaccuracies or omissions.

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Title I — Border Enforcement

A. Additional Assets and Resources

Border Enforcement Triggers: The bill sets conditions that must be met before undocumented individuals can adjust status under the legalization program. The triggers the following:

- ICE has a total force of 6,410 agents to investigate crimes, 185 worksite enforcement auditors, and immigration fraud task forces in each field office
- CBP has a total force of 21,000 Border Patrol Agents, 21,500 Field Officers, and additional surveillance equipment
- DOJ has 300 Assistant US Attorneys and 275 Immigration Judges (IJs)
- ICE has established benchmarks for expansion of a nationwide community-based alternatives to detention program and has implemented civil detention standards, the employment verification system is fully operational, and legalization applications are being processed.

Personnel, Equipment, Infrastructure, and Technology:

• **Enforcement Personnel:** The bill provides that by 2013 there will be 2,500 CBP officers at points of entry on both the Northern and Southern borders, increases the number of ICE immigration law violation investigators by 1,000 per fiscal year for four years, and authorizes at least 50 additional DHS personnel to investigate alien smuggling.

- **Ports of Entry:** The bill provides \$300 million towards infrastructure improvements, expansion, and new construction at high-volume ports of entry. The bill authorizes construction of additional ports of entry along the Northern and Southern borders but requires consultation with other agencies, state/local governments, and property owners to minimize adverse impacts.
- Additional Immigration Court Personnel: The bill increases the number of immigration litigation attorneys by 50 per year, Immigration Judges by 20 per year, support personnel by 80 per year for four years, and the number of staff attorneys and support personnel by 10 per year for four years.
- Improved Training and Standards of Professional Conduct: The bill ensures that immigration officers will receive training in conducting border enforcement without engaging in racial profiling or violating civil and constitutional rights and requires DHS to establish standards of professional conduct for agents. Requires reporting to Congress.
- **Inventory of Assets and Personnel:** The bill requires DHS to identify and inventory DHS's assets, current personnel, and human resources devoted to border security and enforcement. It outlines the types of equipment and protective gear that will be issued to CBP agents and possible increases in CBP vehicles.
- Technological Assets: The bill details requirements for DHS surveillance technology
 programs, including criteria for assessing changes and improvements to surveillance
 technologies. It directs DHS to procure additional unmanned aerial systems and other
 technologies to control borders, and to assess the impact on privacy and civil liberties
 before deployment.

B. Enhanced Coordination and Planning for Border Security

Cross-Border Security or Cooperation Initiatives: The bill requires the Secretary of State to submit an annual report to Congress on the status of improvements to information exchange related to North American security. It outlines steps for increasing cooperation with Mexican officials to reduce border violence/criminal activity and enhance understanding of U.S. immigration laws, assigns ATF agents to assist Mexican law enforcement in the investigation of criminal enterprises, and authorizes the CBP Commissioner to develop a plan to expand the Customs-Trade Partnership Against Terrorism programs.

Border Enforcement Programs:

- **Reimbursement for Drug Prosecutions:** The bill provides for reimbursement of states/counties in border states for prosecuting federally initiated and referred drug cases.
- **Project Gunrunner:** The bill expands resources for the ATF Project Gunrunner initiative targeting the trafficking of firearms between the U.S. and Mexico.
- **Operation Streamline:** The bill requires the DHS Secretary to submit a report to Congress on Operation Streamline, including goals, oversight, costs, impact on border

violence and other federal prosecutions, conviction data, and other topics. It also requires a reevaluation of the program's viability six months later.

- **Border Relief Grant Program:** The bill creates a DHS grants program for law enforcement agencies and institutes of higher education to address drug-related criminal activity.
- **Report on Deaths at Border:** The bill requires the CBP Commissioner to (1) collect statistics on deaths at the US-Mexico border for quarterly publication, (2) submit a report analyzing trends and offering recommendations to reduce border deaths, and (3) conduct a study on border enforcement operations since 1994 and their relationship to death rates.
- **Border Enforcement Commission:** The bill establishes the independent Immigration and US-Mexico Border Enforcement Commission to study border enforcement strategies, strengthen border community-DHS relations, and ensure federal programs protect civil and human rights.
- **Preemption and Inherent Authority:** Clarifies current law which states that state/local laws that discriminate based on immigration status or target alleged violations of immigration law are preempted by federal law. Clarifies that the authority to enforce violations of the INA rests with DHS officers or employees.
- **Border Protection Strategy:** Provides for collaboration among the Secretaries of DHS, Interior, Agriculture, Defense, and Commerce to develop a land border strategy.
- Liaison Officers: Establishes a Border Community Liaison Office at every border patrol sector on the Southern and Northern borders.

Title II — **Interior Enforcement**

A. Prevention of Unauthorized Entries and Removals

U.S. Visit: Requires DHS to implement the "exit" component of the U.S. Visit program to track the departure of noncitizens.

Visa Waiver Program and Enforcing Entry/Exit Reporting Requirements: The bill requires visa waiver countries to enter into an agreement with the U.S. for reporting lost and stolen passports. It requires the reevaluation of and reporting on all visa waiver programs (VWP) within one year; countries with over 2% overstays will be suspended. The bill sets requirements for collecting, tracking, and reporting entry/exit data. It sets the maximum overstay rate for VWP at 2% and specifies requirements for DHS to develop an accurate way to calculate visa overstay rates. The bill requires the Secretary to submit a schedule to equip all ports with US Visit technology and to deploy a system to record nonimmigrant departures in 18 months.

Illegal Entry and Reentry: The bill increases civil penalties for illegal entry and criminal penalties for illegal reentry to up to 25 years imprisonment.

Voluntary Departure: The bill revises voluntary departure (VD) procedures, conditions of VD, and penalties for failing to comply. Period to depart: 180 days before removal proceedings, 90 days during.

Mandatory Address Reporting: The bill amends address notification and registration requirements under INA § 265 and permits DHS to cross-reference address information with certain information relating to the address under other federal programs.

State Criminal Alien Assistance Program: The bill authorizes reimbursement to states for costs incurred for the imprisonment of illegal aliens convicted of felonies.

ICE Detainers: The bill requires DHS to determine alienage before issuing a detainer and to confirm removability only through lawfully obtained information. Requires data collection on detainers issued under INA § 287(d).

Biometric Screening: Aliens who do not comply with lawful biometric information requests are inadmissible.

Changes to Immigration-Related Crimes

- **Reform of Passport, Visa, and Immigration Offenses:** The bill amends criminal penalties for crimes involving passport and immigration document fraud, misrepresenting oneself as an attorney, and drug trafficking and terrorism crimes (18 U.S.C 1541-1547). It creates a 10-year statute of limitations for crimes related to: nationality and citizenship; passports, visas, and immigration; and peonage, slavery, and trafficking in persons.
- **Prosecution of Asylum Seekers and Others:** The bill requires the AG to create binding prosecutorial guidelines to ensure that entry fraud prosecutions are consistent with U.S. treaty obligations related to asylum seekers. Prohibits prosecutions of asylum seekers and U-visa, T-visa, SIJ, or VAWA applicants for certain crimes.
- Conveyance/Criminal Forfeiture: The bill expands conveyances subject to forfeiture and crimes for which the penalty of criminal forfeiture can be imposed
- **Stowaway Penalties:** The bill increases civil penalties related to alien stowaways.
- **Firearms Prohibition:** The bill amends 18 U.S.C. 922 to prohibit LPRs from buying firearms or engaging in commerce related to firearms.
- **Unlawful Flight:** The bill provides penalties for people who knowingly flee or evade a federal law enforcement checkpoint or disobey the lawful commands.

Advance Delivery of Passenger Manifests: The bill amends INA § 231 to ensure that lists of passengers coming and going are provided at every U.S. airport or seaport.

Reducing Illegal Immigration and Alien Smuggling on Tribal Lands: The bill authorizes grants to Indian tribes whose land is adjacent to a U.S. border and who have been adversely affected by illegal immigration.

Diplomatic Security Service: Permits DOS and Foreign Service special agents to conduct certain types of investigations including document fraud and human trafficking.

Sex Offenders: The bill states that aliens convicted of an offense under 18 U.S.C. 2250 (related to sex offender registration) are inadmissible under INA § 212(a)(2)(A)(i) and deportable under INA § 237(a)(2)(A)(i).

Aggravated Felony: The bill amends INA § 101(a)(43) to state that the term "aggravated felony" applies to any offense which is a felony described in this paragraph, whether in violation of Federal or State law, for which the individual served one year of imprisonment and to such a felony offense in violation of the law of a foreign country, for which the term of imprisonment was completed within the previous 15 years.

Increased Penalties for Gang Violence: The bill states that members of gangs are inadmissible and deportable, are ineligible for TPS, and are subject to imprisonment for up to 5 years for failing to depart after a removal order or up to 10 years for violating an order of supervision.

B. Detention Reform

Protections for Vulnerable Populations: The bill outlines protections afforded to vulnerable populations detained in an immigration-related enforcement activity. It provides that members of vulnerable populations are to be released within 72 hours of detention and are not subject to electronic monitoring unless DHS demonstrates that they are suspected terrorists, pose a risk to public safety, or are flight risks; includes IJ review. Decisions to remove or release such aliens will be made in writing by DHS or the Attorney General.

Children and Families

- Apprehension Procedures for Activities Relating to Children: The bill outlines procedures for immigration enforcement actions in which children are involved, including prior notification of state/local officials, provision of social workers, provision of phone calls related to child care arrangements, and consideration of the best interests of children in decisions about detention, release, or transfer.
- **Detentions of Families:** The bill outlines procedures for parents apprehended with one or more of their children. Families are only taken into custody in exceptional circumstances and are to be held in specialized familial facilities, with IJ review of custody status every 30 days.
- Access to Children and Courts: The bill ensures that parents have, among other rights, the right to (1) have daily calls/regular visits with their children; (2) participate fully in family court; (3) obtain travel documents for their children; (4) share travel information with their children.
- **Memoranda of Understanding and Training:** The bill requires DHS to implement MOUs with child welfare agencies and NGOs. Requires mandatory training for DHS, state, and local personnel in regular contact with children/ parents due to immigration enforcement actions.

Alternatives to Detention: The bill establishes secure programs that provide alternatives to detention, available to all aliens except those detained under INA § 236A.

Detention Reforms:

- **Detention Conditions:** The bill ensures that all individuals detained pursuant to this act are treated humanely and granted certain protections. Includes detention personnel trainings, requirements for short term detention facilities, requirements for vulnerable populations and unaccompanied alien children, imposition of fines or contract termination for facilities failing to comply, and establishment of a detention commission to investigate facility compliance.
- **Medical Care:** The bill ensures detainees receive prompt and adequate medical care/medical screenings, implements a medical care administrative review and appeals process, requires discharge planning for certain detainees, and requires maintenance of confidential medical records and transfer of those records.
- **Transfers:** The bill provides that detainees will not be transferred if doing so negatively affects: an existing attorney-client relationship, the detainee's legal rights, or the detainee's health. If transferred, detainees will receive 72 hour written notice with notification within 24 hours to detainee's legal representative.
- **Rights:** The bill provides that detainees shall be free of physical abuse, sexual abuse or harassment, or arbitrary punishment, and use of solitary confinement, shackling, and strip searches is limited to emergencies when others are at imminent risk. Includes provisions for recreation, religious visits, and language access.
- Access to Legal Information: The bill requires that by January 2012, all detention facilities are located within 50 miles of free or low cost legal services, ensures detained access to telephones, legal libraries, and private meeting space for attorney visits.
- **Death in Custody Reporting Requirements:** The bill requires that the death of a detainee will be immediately reported to the DHS Secretary, and within 48 hours to the DHS Office of the Inspector General and the DOJ. Includes investigation and annual report requirements.

Access to Counsel: The bill permits appointment of counsel to represent aliens in removal proceedings.

Group Legal Orientation Presentations: The bill establishes a National Legal Orientation Support and Training Center for groups providing presentations to detained aliens.

ICE Ombudsman: The bill establishes the position of ICE Ombudsman, charged with inspecting detention facilities, conducting audits, investigating and resolving complaints, creating a public advisory group, recommending personnel actions, among other responsibilities.

Refugees and Asylees/Asylum Seekers

- Lawful Permanent Resident Status of Refugees and Asylees: The bill provides that refugees and their derivatives are LPRs as of the date of their admittance, that spouses/children of asylees can apply for derivative status at anytime, that derivatives of asylees outside the U.S. are LPRs as of date of admittance to the U.S., that derivatives of asylees inside the U.S. can apply for LPR status at any time, and that DHS or the AG can waive inadmissibility or deportability grounds.
- Elimination of Time Limit: Eliminates the one-year time limit for filing for asylum
- Asylum Process for Arriving Aliens: Grants the asylum office initial jurisdiction over an asylum case after a positive credible fear determination and provides that asylum seekers who have established their identification will be released within 7 days, unless DHS can show they are a flight or public safety risk; parole denials are reviewed by an IJ.
- **Protection of Stateless Persons:** The bill enables de jure stateless individuals to become permanent residents.
- Authority to Designate Certain Groups of Refugees for Consideration: Authorizes the Secretary of State, when necessary and appropriate for humanitarian reasons, to designate certain groups eligible for expedited refugee processing.
- Admission of Refugees in the Absence of the Annual Presidential Determination: The bill provides that if the executive branch does not determine the annual allocation of refugees, admission of refugees will not be delayed but will continue as allocated in the prior year.

Title III — Worksite Enforcement

Unlawful Employment of Aliens: The bill establishes a mandatory national employment verification system. It includes provisions regarding the employment of unauthorized aliens, the verification of employee work authorization, the requirements and protocols for a national employment verification system (currently, E-Verify), and protections against discriminatory immigration-related employment practices.

The bill provides a graduated timeframe for employers to register based on several factors, such as how many employees work for the employer; whether the employer has violated immigration law; or whether the employer is a government entity, a federal contractor, or an employer (or industry) which the Secretary determines is part of the critical infrastructure or related to national security or homeland security. All employers must participate within five years. Employers may also register on a voluntary basis. Failure to register creates a rebuttable presumption that the employer has hired unauthorized aliens. It outlines the requirements that employers participating in the system must implement, including training requirements and privacy and due process protections.

The bill updates the documents that employees can present for verification of identity and employment authorization including the use of biometric data or other identifying information,

an enhanced drivers' license with additional security features or certain other passports. It creates stricter requirements for the recordkeeping of employment authorization documentation.

The bill defines the "confirmation" and "non-confirmation" process and defines how a notice will be issued requiring an individual to submit additional information, the process for contesting a determination, employee protections, and notice requirements. Individuals who improperly receive non-confirmations will be compensated for lost wages. An individual may file for judicial review in a civil action in federal district court. If the non-confirmation was caused by the employer's negligence or misconduct, the employee can file a civil action against the employer. The bill ensures that employees will not be denied backpay or other monetary remedies for unlawful employment practices by an employer, workplace injuries or other causes of action giving rise to liability.

The bill makes it unlawful for an employer to knowingly or with reckless disregard hire, continue to employ, or use a contract to obtain the labor of an alien who is unauthorized to work. The bill also makes it unlawful for employers to require a potential employee to post a bond or security or to provide a financial guarantee against any potential liability related to hiring that individual. Employers with federal grants, contracts, or cooperative agreements who are deemed repeat violators of the employment verification provisions are subject to disbarment procedures for up to 5 years.

Increasing Security and Integrity of Social Security Cards and Immigration Documents:

The bill requires that within 2 years, only fraud-resistant, tamper-resistant, and wear-resistant Social Security cards will be issued. Any request for a replacement card will be subject to a SSA determination that there is a legitimate purpose behind the request. Additionally, the bill adds criminal penalties related to the fraudulent use, sale, alteration or counterfeiting of social security cards or numbers. Within one year after the bill's enactment, the DHS Secretary will issue only machine readable, tamper-resistant employment authorization documents that use biometric identifiers.

Program Management: DHS will manage the employment verification system. The Secretary of State will provide access to passport and visa information. The bill establishes an annual study and audit each to be conducted respectively by the U.S. Comptroller General and the DHS Office for Civil Rights and Civil Liberties. The Social Security Administration will be responsible for creating a reliable, secure method of verifying Social Security numbers and preventing fraud and identity theft.

Preemption: The bill clarifies that under current law state or local laws that establish verification requirements or otherwise regulate the field of employment verification are preempted.

Tax and IRS Components: The bill provided additional confidentiality safeguards by limiting DHS contractors' access to information disclosed in tax returns. The bill also repeals the current reporting requirements on earnings of aliens who are authorized to work and on fraudulent use of Social Security account numbers. The bill also establishes an IRS Criminal Investigation unit to investigate the employment of individuals who are not authorized to work.

Antidiscrimination Protections: The bill adds several practices to the list of unfair immigration-related employment practices related to the misuse of the employment verification

system and revises the type of relief granted in discrimination actions. The bill revises the Office of Special Counsel's (OSC) responsibilities.

Enhanced Verification System: The bill authorizes the creation of a voluntary Enhanced Verification System that includes a biometric element with various employee self-verification features and privacy protections.

Title IV — Reforming America's Legal Immigration System

Creation of a New Worker Program and a Standing Commission on Immigration, Labor Markets, and the National Interest: The bill creates a new independent federal agency to provide recommendations regarding current economic conditions and employment-based immigration. The commission will be comprised of the DHS Secretary, Secretary of State, Attorney General, Secretary of Labor, Secretary of Health and Human Services, Secretary of Agriculture, the Social Security Commissioner, and seven non-governmental members appointed by the President. The Commission establishes the numeric limits for the new worker H-2C nonimmigrant visa program.

New Nonimmigrant Worker Program: The bill establishes a new H-2C nonimmigrant visa category for alien workers and their dependents. An alien must have an employment offer, establish that he or she is qualified, pay a \$100 visa fee, undergo a medical exam and a background check, establish admissibility, and provide other relevant information. The H-2C visa will be issued for three years and can be renewed once for an additional three-year period. The alien can apply for a new H-2C visa if they leave the U.S. for at least one year.

The employer must demonstrate efforts to recruit workers already authorized to work in the U.S. Attestations by the employer will be required. It allows employment only in areas where the unemployment rate is less than 10% for workers who have not completed education beyond a high school diploma. H-2C visa holders cannot be treated as independent contractors, cannot work in the construction field, and they cannot be denied any remedies available to a similarly situated U.S. worker.

Recruited workers cannot be assessed a fee for foreign labor contracting activity. The employer will pay the cost of transporting the alien from his or her home residence to the place of employment. Employers must notify the Labor Secretary of any foreign labor contractors it uses to recruit workers.

The Labor Secretary will establish a public webpage on the DOL website that provides links to each state's workforce agency's statewide electronic job registry.

The H-2C alien's employer can petition for adjustment of status. The alien can also self-petition after four years.

Rulemaking; Effective Date: The Secretary will promulgate rules within six months of this Act's enactment, and the H-2C will take effect one year after enactment.

Increased Penalties for Employers: An employer who is subject to a fine under the FLSA or OSHA for a violation related to the H-2C worker is required to pay double the fine amount.

Ensuring Employment Compliance with Federal Labor and Employment Laws: INA § 274A is amended to prohibit U.S. Immigration and Customs Enforcement officials from misrepresenting information about their employer during any investigation.

Enforcing Workplace Safety for Immigrant Workers: The bill amends OSHA to require that employers provide employees with required personal protective equipment at no cost to the employee.

Family and Employment Based Immigrant Visas Reforms

- Recapture of Immigrant Visas Lost to Bureaucratic Delay: The bill recaptures unused employment-based visas and family-sponsored visas and rolls over future unused visas to the next fiscal year. The bill provides new exemptions for certain aliens from cap on immigrant visas.
- Reclassification of Spouses and Minor Children of Lawful Permanent Residents as Immediate Relatives: The bill reclassifies spouses and children of lawful permanent residents as "immediate relatives" to promote the efficient reunification of families. Spouses and children of immediate relatives who are eligible to "accompany" or "follow to join" the primary applicant may use the same visa petition.
- **Country Limits:** Revises per country immigration limits for family-based immigration from 7 to 15 percent of total admissions and eliminates the employment-based caps.
- **3-Year Unlawful Presence Bar:** The bill creates one 3-year bar of inadmissibility for noncitizens that are unlawfully present for more than one year and exempts additional populations.
- Relief for Orphans, Widows and Widowers: The bill extends the relief given to orphans, widows and widowers in the 2009 DHS Appropriations bill to certain relatives living outside the U.S.
- Children of Filipino World War II Veterans: The bill exempts the children of certain Filipino World War II veterans from the numerical limitations on immigrant visas.
- **Fiancé Child Status Protection:** The bill allows the DHS Secretary or the Attorney General to adjust the status of an individual immigrating to the U.S. on a fiancé visa and any accompanying minor children to conditional permanent residence.
- **Determinations Under the Haitian Refugee Immigration Fairness Act of 1998:** The bill allows applications for adjustment of status and motions to reopen under the Haitian Refugee Immigration Fairness Act of 1998.
- **Affidavits of Support:** The bill changes affidavit of support requirements to require sponsors to provide support at 100% of poverty level instead of 125% of poverty level.
- **Retaining Workers Subject to Greencard Backlog:** The bill allows workers who are eligible for adjustment of status to permanent residence but for whom a visa number is not currently available to apply for adjustment.

- **Return of Talent Program:** The bill permits eligible aliens to return to their country of origin for two years if their home country needs talent to help rebuild after a natural disaster or conflict.
- **Permanent Partners:** The bill defines "permanent partner" and "permanent partnership" as a term of art for inclusion in the INA and incorporates and integrates "permanent partners" into relevant sections of the INA.
- Reforms to Specific Employment-Based Visa Categories: The bill permanently
 authorizes and includes enhancements to the EB-5 program, and permanent authorizes
 the Special Immigrant Nonminister Religious Worker Program, the Nonimmigrant
 Nurses in Health Professional Shortage Areas Program, and the Conrad State 30
 Program. It creates incentives for physicians to practice in medically underserved
 communities.
- **Student Visa Reform:** Permits foreign students to enter the U.S. with immigrant intent if they are a bona fide student.

Protection of H-2B Nonimmigrants and Workers Recruited Abroad

- **Protections for Workers Recruited Abroad:** Requires individuals who contract for foreign labor to disclose at the time of recruitment key information about the position.
- Forest, Conservation, Nursery, and Logging Workers: The bill requires any farming, fishing, or forestry occupation to be considered agricultural labor for the purposes of employing nonimmigrants.
- Enforcement of Federal Labor Laws Relating to H-2B Nonagricultural Guest Worker: The bill allows H-2B workers to bring civil actions against their employers. The Legal Service Corporation may provide legal services on behalf of such workers.
- Recruitment of U.S. Workers: An employer seeking to petition for an H-2B worker is required to first recruit U.S. workers for the position. The bill provides an exemption for 1,000 H-2B visas for employers who can demonstrate that the failure to hire H-2B workers would result in job losses for U.S. workers. The employer must offer the job to any qualified and available U.S. worker who applies for a position 30 days prior to the beginning of the H-2B visa holder's employment. The Labor Secretary will publish online a list of all employers registered in the program, the wage rate, number of H-2B visas sought, period of intended employment, and dates of need.
- **Prevailing Wages:** The bill establishes the prevailing wage levels for H-2B workers.
- Certification Requirement: Requires employers petitioning for H-2B workers to certify that they have not been required under law to provide a notice of a mass layoff during the 12-month period immediately preceding the date on which the alien is to be hired. If, after hiring H-2B nonimmigrants, an employer is required to provide such notice, the authorization for those nonimmigrant workers expires 60 days from the date of the notice.
- **Protections for Workers:** The bill requires employers to pay for or reimburse the cost of the initial transportation to the place of employment and to return to the country or origin

or to go to the next place of employment. Employers will guarantee employment for 100% of workdays in the work contract.

- **H-2B Nonimmigrant Labor Certification Application Fees:** The bill establishes an initial \$800 fee for each employer that submits an H-2B petition and an additional \$300 fee per petition. Employers are prohibited from accepting reimbursement directly or indirectly or any compensation for any part of the petition fee. A violation of that prohibition can result in up to a \$5,000 fine.
- **H -2B Portability:** Authorizes an H-2B visa holder to accept new employment if the new employer files a new petition.
- **H-1B and L-1 Visa Reforms:** The bill adds a requirement that employers who intend to file H-1B visa petitions must first advertise the job opening online for 30 days. A petitioning employer cannot place an H-1B visa holder at another employer's worksite unless the worker is primarily supervised by the petitioning employer and the placement is not a labor-for-hire arrangement

The bill prohibits petitioning employers from recruiting only potential H-1B nonimmigrants for job positions. If the employer has 50 or more employees, no more than 50% can be H-1B workers who are not applying for permanent residency.

The Labor Secretary will maintain a list of applications that have been filed and publish the list on its website.

- Investigation, Working Conditions, and Penalties: The bill increases fines for H-1B employer violations and adds that employers may be liable for lost wages and benefits. The bill prohibits employers from requiring an H-1B worker to pay a penalty for quitting or for not offering an H-1B worker the same benefits and eligibility for benefits as U.S. workers.
- **Initiation of Investigations:** The bill creates a new notice provision, stating that, in the case of an investigation, the Labor Secretary will notify employers of its intent to conduct an investigation and, if necessary, a hearing.
- **Information Sharing:** Requires the Director of USCIS to provide the Secretary of Labor with any information contained in the materials submitted by employers of H-1B nonimmigrants as part of the adjudication process.
- **H-1B Government Authority and Requirements:** Requires employers to provide employees and beneficiaries with the original or certified copy of all petitions, notices, and correspondence with government agencies, upon written request.
- L-1 Employer Petition Requirements for Employment at New Offices: The bill requires that if an L-1 nonimmigrant visa holder will be working at a new office, the L-1 petition may be approved for up to 12 months if the alien has not been the beneficiary of 2 or more such petitions in the past 2 years.
- **Report on L-1 Blanket Process:** Requires DHS to submit to Congress a report on the use of blanket petitions.

AgJOBS

• Pilot Program for Agricultural Workers: The bill establishes a program whereby undocumented immigrants who can demonstrate a substantial past commitment to agricultural work in the U.S. may adjust their status to that of an alien in "blue card" status and, if they meet the program's prospective work requirements and other criteria, adjust their status to that of a lawful permanent resident alien. Spouses and minor children residing in the U.S. may receive derivative status from an alien granted blue card status. Applicants must pay a \$100 fine. Those who adjust to blue card status are granted employment authorization to work for any employer and are permitted to travel abroad and reenter the United States. The number of blue cards issued during the 5-year period beginning on the date of enactment shall not exceed 1,350,000.

Aliens who commit fraud or willful misrepresentation on applications for adjustment, or who have committed an act which makes them inadmissible under the INA, or other serious infraction are denied adjustment to lawful permanent resident status. Officials of the government may not use information provided in an application by an applicant or an employer for any purpose other than to make a determination on the application.

• **Regulations, Effective Date and Funding:** Regulations for the program must be promulgated no later than 7 months after the date of enactment. The provision shall take effect on the date regulations are issued – on an interim basis or otherwise. Funding necessary to implement this subtitle is authorized.

Reforms of the H-2A Worker Program

- **Applications to the Secretary of Labor:** Requires the application to include certain assurances. If the job opportunity is not covered by a collective bargaining agreement, the application must also ensure (1) minimum wages, benefits and working conditions, (2) the non-displacement of U.S. workers, and (3) the recruitment of U.S. workers.
- Procedure for Admission and Extension of Stay of H-2A Workers: Allows employers with valid labor certifications from the DOL Secretary to petition the DHS Secretary for approval for the admission of aliens to perform work described on the labor certification.

The debarment provision for unlawful presence in the present INA is waived on a onetime basis for aliens seeking admission as H-2A workers.

- Worker Protection and Labor Standards Enforcement: Provides H-2A aliens with a private right of action regarding the housing, transportation, wage, employment guarantee, motor vehicle safety provisions and discrimination provisions, as well as the written promises contained in the employer's job offer.
- **Regulations:** Requires that regulations of the Labor Secretary, the DHS Secretary, and the Secretary of State shall be issued no later than one year after the date of enactment
- **Effective date:** The effective date is one year after the date of enactment.
- **POWER Act Victims of Serious Labor and Employment Violations or Crime:** The bill expands the U-visa category to also apply to aliens who are victims of certain

Title V — Legalization of Undocumented Individuals

Lawful Prospective Immigrants: The bill creates a provisional legal status, Lawful Prospective Immigrant (LPI), for undocumented immigrants who are present in the U.S. as of September 30, 2010, register with the government, have never committed a serious crime, and are otherwise admissible to the United States. Applicants must submit biometric data and undergo background and security checks and pay appropriate fees. Applications for LPI status will be accepted for one year; persons facing removal proceedings or with final removal orders will be permitted to apply if they are otherwise eligible. LPI status will be initially valid for four years, with the possibility of extensions. LPI status confers work and travel authorization. Spouses and children residing in the U.S. or abroad will be eligible for LPI Dependent (LPID) status. LPI and LPID status may be revoked at any time if the LPI/LPID ceases to be eligible for the program or is absent from the U.S. for more than six months without permission. Information on the LPI program must be widely distributed and available in the top five languages spoken by prospective applicants.

Adjustment of Status for Lawful Prospective Immigrants: After six years in LPI/LPID status, the bill allows an applicant to apply to become a lawful permanent resident (LPR), provided he or she continues to meet all eligibility requirements, including renewed biometrics and background and security checks, and also establishes basic citizenship and English skills, payment of all taxes, and compliance with Selective Service registration. Applicants over the age of 21 will pay a \$1,000 penalty in addition to processing fees. Persons granted LPR status under this Act will be ineligible for means tested benefits in accordance with existing law. Regardless of date of application, no one may receive LPR status for at least 8 years from the date of enactment or 30 days from the date that visas are made available to reduce all backlogs covered by this Act (back of the line provision).

Administrative Review, Removal Proceedings, and Judicial Review for Aliens Who Have Applied for Lawful Prospective Immigrant Status: The bill allows appeals of denials of applications for lawful prospective immigrant status to a special administrative review panel. A denial from the administrative appeal is final and may not be renewed in immigration court, but an applicant may preserve federal judicial review, which may only be considered after the completion of removal proceedings. If an applicant is not already in removal proceedings and wishes to pursue further review, he or she must ask to be placed in removal proceedings. There is no judicial review available for late filing denials. Broader challenges to the implementation of the law may be brought in federal court, with limitations.

Confidentiality of Information: The bill strictly prohibits the release of material about an individual application and subject to disciplinary action and civil penalties, except in circumstances relating to a legitimate law enforcement or national security inquiry or a coroner's request and only when that inquiry is specific or governed by existing information sharing agreements. Confidentiality protections do not apply where fraud is established or all proceedings related to the application have been completed.

Technical Measures: The number of persons granted LPR status under this Title will not be included in calculating annual visa limitations. Information submitted regarding past

employment cannot be used against an employer for purposes of prosecuting immigration or tax laws.

Implementation: Requires regulation to be issued within nine months of enactment. The government is authorized to engage in contracting and hiring (in order to quickly build the program) without following certain requirements. This Subtitle also requires privacy and civil liberties impact assessments and makes it explicit that there are no additional rights of action created by this act.

Miscellaneous: The bill permits LPIs to correct their social security records without penalty and requires the creation of fraud prevention programs.

DREAM Act: The bill incorporates DREAM Act which provides young people who meet all DREAM Act qualifications with an alternate mechanism for pursuing legalization.

Fees: The bill establishes two new fee accounts. The first will use application fees and appropriated funds to operate the LPI program. The second account will distribute penalty fees to repay initial start up funds and benefit immigration programs.

Title VI — Immigrant Integration and Other Reforms

A. Strengthen and United Communities with Civics Education and English Skills

The bill incorporates S. 2998, Senator Gillibrand (NY), which fosters integration through various civics education and English language programs. It provides benefits, such as tax breaks, for teachers who work with immigrants to improve their English skills and businesses that provide English language and financial literacy training for their employees. The bill establishes a Presidential Award for companies and other organizations that make extraordinary efforts in assisting their employees and members to learn English and increase their understanding of United States history and civics.

The bill enhances the functions of the Office of Citizenship to integrate immigrants into U.S. communities, promote instruction and training on citizenship responsibilities, develop better educational materials for immigrants pursuing citizenship, and provide competitive grants to states to form state-based New American Councils dedicated to providing better opportunities for immigrant communities. Awarded grants will be between \$500,000 and \$5 million. The bill also establishes a new citizen award program. The bill authorizes to be appropriated to carry out this title \$100,000,000 for each of the fiscal years 2010 through 2015.

B. Emergency Relief for Certain Populations

Adjustment of Status for Certain Haitian Orphans: The bill incorporates S. 3411, Senator Gillibrand (NY), which provides LPR status to certain Haitian orphans.

Adjustment of Status for Certain Liberian Nationals: The bill incorporates S. 656, Senator Reed (RI), which provides LPR status to Liberian nationals who have been continuously present in the U.S. since January 1, 2009, and their spouse, child, and unmarried sons or daughters.

C. Miscellaneous

Wartime Treatment Study: The bill incorporates S. 564, Senator Feingold (WI), which establishes a commission to study the treatment of European Americans, including German Americans, Italian Americans, and Jewish refugees, by the U.S. during World War II.

Commission on Wartime Treatment of Jewish Refugees: The bill establishes a Commission on Wartime Treatment of Jewish Refugees to review the U.S. Government's refusal to allow Jewish and other refugees fleeing persecution or genocide in Europe entry to the U.S.

State Court Interpreter Grant Program: The bill incorporates S. 1329, Senator Kohl (WI), which provides \$500,000 for each fiscal year to establish a court interpreter technical assistance program to assist states. The bill appropriates \$15 million for fiscal years 2010 through 2014.

Protection for Surviving Family of 9/11 Decedents: The bill incorporates S. 1736, Senator Lautenberg (NJ), which provides LPR status to certain spouses, children, or unmarried sons or daughters of aliens who died as a direct result of terrorist activity conducted against the U.S. on September 11, 2001.

Study of Factors Driving Migration: The GAO will develop a baseline assessment of the factors driving migration in ten countries with the highest rates of irregular migration to the U.S. The State Department, working with USAID, shall submit to Congress a strategy which responds to the identified factors driving high rates of irregular migration from the countries identified.