



ENFORCEMENT PROPOSALS LIKELY TO BE INTRODUCED IN THE 112TH CONGRESS

In the new Congress, [Lamar Smith](#) (R-TX), the current Ranking Member of the House Judiciary Committee will likely be named chair of that committee. [Steve King](#) (R-IA) is expected to become chair of the House Subcommittee on Immigration. Under their leadership, there will be more support for enforcement-only legislation, increased resources for border and interior enforcement, and greater scrutiny of the Administration's enforcement of immigration laws. In particular, there will almost certainly be proposals that increase penalties for immigration-related crimes and make the removal of immigrants with criminal convictions easier. In addition, both Smith and King have supported proposals that authorize state and local law enforcement officers to enforce immigration laws. Finally, we can expect increased scrutiny of DHS enforcement practices by Congress and increases in funding for both border and interior enforcement. Here are some of the enforcement proposals likely to be introduced in the new Congress:

Criminalization of Immigrants:

- Make unlawful presence a federal crime
- Stiffen criminal penalties for illegal entry and reentry
- Expand Operation Streamline, a zero-tolerance border enforcement program that criminally prosecutes even first-time border-crossers

Restrictions on Due Process:

- Streamline the circuit court review process for removal orders by creating a single-judge certification process
- Shift the burden of proof for establishing whether or not a conviction is an aggravated felony

Increased Border and Interior Enforcement:

- Increase funding for additional personnel, equipment, and technology at the border
- Increase funding for detention and removal beyond the current 400,000 individuals per year
- Create a presumption of detention for individuals arrested by DHS

Increased Role of Local Law Enforcement in Immigration Enforcement:

- Grant state and local governments and law enforcement inherent authority to enforce federal immigration laws. Such legislation would invalidate the argument that SB1070 is preempted by federal law.
- Expand 287(g), the federal program that deputizes local police to enforce immigration laws
- Expand Secure Communities, the federal program that uses fingerprints obtained a booking to check immigration status

Increased Congressional Oversight of DHS Enforcement Practices

- Subpoena DHS officials to explain their enforcement policies and to demand blanket enforcement of immigration laws
- Limit, through legislation, DHS use of humanitarian benefits, such as deferred action and parole

DON'T FORGET IIRIRA AND H.R. 4437

[Illegal Immigration Reform and Immigrant Responsibility Act \(IIRIRA\) of 1996](#)

Representative Lamar Smith was the architect behind [IIRIRA](#), which implemented significant, punitive measures, including:

- Creating expedited removal, which deprives arriving aliens of a hearing before an immigration judge and authorizes immigration officers to issue removal orders
- Greatly expanding the definition of aggravated felonies while at the same time replacing 212(c) with the much more restrictive cancellation of removal
- Creating mandatory detention under 236(c)
- Eliminating 245(i) while at the same time adding the three and ten-year bars to admissibility for unlawful presence
- Replacing suspension of deportation with 10-year, non-LPR cancellation of removal, which requires an anchor relative and a showing of exceptional and extremely unusual hardship
- Greatly restricting judicial review of final orders of removal

[Border Protection, Anti-terrorism, and Illegal Immigration Control Act of 2005 \(H.R. 4437\)](#)

Lamar Smith was also a major force behind [H.R. 4437](#), which passed the house on December 16, 2005. We can expect many of these provisions to reappear in new immigration legislation. Key provisions of [H.R. 4437](#) included:

- Expanding the definition of aggravated felony to include smuggling, illegal entry, and reentry crimes with a sentence of more than one year
- Criminalizing unlawful presence, which was defined to include technical or non-intentional violations of immigration laws
- Declaring that state and local law enforcement authorities have the inherent authority to enforce immigration laws
- Expanding the definition of alien smuggling so as to criminalize the work of social service organizations, churches, attorney, and other groups that assist immigrants
- Requiring DHS to detain all individuals apprehended at ports of entry or along the border until they are removed from the U.S. or a final decision granting them admission has been determined.
- Creating a single-judge certification process for judicial review of removal orders, which would eliminate circuit court review unless the petition has made "a substantial showing that the petition for review is likely to be granted."