



105 Chauncy St. #901
Boston, MA 02111
www.miracoalition.org
Voice: (617) 350-5480
Fax: (617) 350-5499

Analysis: REPAIR Act

I. ACHIEVING OPERATIONAL CONTROL OF AMERICA'S BORDER TO PREVENT FUTURE ILLEGAL IMMIGRATION

A. Securing the Border First Before any Action can be Taken to Change the Status of People in the United States Illegally

Summary:

- Sets benchmarks for border security, including number of border patrol agents and technology
- Requires that benchmarks be reached before any legalization program can begin

The Good:

- Nothing

Concerns/Criticism:

- Must come with a commitment that these benchmarks will not move and that Congress will fully fund agencies to ensure that these benchmarks are met.
 - How will enforcement be handled for those who are *prima facie* eligible for legalization but can't because govt benchmarks haven't been met yet?
 - What happens if X years pass and benchmarks aren't met?
- Benchmarks must be clearly defined before immigrant organizations can endorse these requirements.
 - How many more agents?
 - What does it mean to "improve[], technology, infrastructure, and resources"?

B. Further Fortification of America's Border Enforcement Capability

Summary:

- Increases border security beyond the benchmarks laid out in Section I(A).
 - Includes personnel and equipment

The Good:

- Focusing ICE and other enforcement programs on criminal activities.
- Border Community Liaison Office



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Concerns/Criticism:

- What is the “border patrol auxiliary unit”? Will they receive the same training as regular CBP agents? Who is responsible for their actions? Will they be pulled from local law enforcement? What qualifications must they meet? Who is responsible for selecting them?
 - Sounds frighteningly like a militia (aka – minutemen)
- “Border Patrol Forward Operating Bases”. Are you kidding me with this language?!?! Is this a war? How can you have a “forward operating base” when it’s on your own sovereign territory?

C. Other Necessary Reforms

Summary:

- Grab bag of proposals, including the creation of a bipartisan commission to monitor border security and make recommendations to Congress

The Good:

- Increased resources for immigration courts
- Environmental protections at the border

Concerns/Criticism:

- What constitutes “undermin[ing] federal policies”?
 - Is this enforcement issues only (ex: Arizona)?
 - Does it include limiting/expanding access to benefits? Would MA be in trouble for allowing immigrants access to housing?
- How do border communities create and implement their own alternatives to detention programs?
 - Why does this only apply to border communities?

II. DETECTION, APPREHENSION, AND REMOVAL OF UNLAWFULLY PRESENT PERSONS IN THE UNITED STATES

Summary:

- Various proposals to improve internal (rather than border) enforcement of immigration law.



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The Good:

- DHS will be required to file NTAs with the immigration court closest to where the person was arrested.
 - **Bad:** could transfer right afterwards though
- Minimum standards of detention
 - **Bad:** need details - what standards, are they enforceable?
- Victims of labor violations will be provided with incentives to cooperate with law enforcement (what incentives?)
- No increase in numbers of detainees or deportees
- Improved data collection and maintenance under 287(g) programs
- Improved protections for those seeking refugee status

Concerns/Criticism:

- What's needed to complete implementation of Entry-Exit system?
 - How many years will this take?
 - Is anything contingent on completion?
- Will people in jails (as opposed to prisons) be subject to checks as well?
- Cannot have a "zero tolerance" policy for illegal entry. Must be able to accommodate SIJs, Asylees, and others
- What does it mean to "encourage individuals here illegally to depart voluntarily"?
 - Are they talking about voluntary departure, or departure outside of the court system?
 - What kinds of incentives are possible?
- While the bill limits transfers, it does not provide a broad enough set of criteria to consider (only have to consider child's welfare)
 - Need to consider legal representation, other family, community, etc.

III. ENDING ILLEGAL EMPLOYMENT THROUGH BIOMETRIC EMPLOYMENT VERIFICATION

Summary:

- Creates a new employment eligibility verification system (the BELIEVE system) that relies on biometric social security cards
 - All American workers would be required to use the new card
 - Estimated national deployment in 6 years
 - Certain industries would be required to begin using BELIEVE sooner
- Extends E-Verify until BELIEVE system is deployed nationwide



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The Good:

- Card can only be used to verify work eligibility. Any other use is unlawful (including the verifying status).
- Employees will have a private right of action against employers when a determination is reached that the disapproval was caused by an act or negligence on the part of the employer.
- Increased civil monetary penalties for violating anti-discrimination protections
- Prohibition against deducting wages paid to unauthorized workers

Concerns/Criticism:

- Use of biometric cards could easily change in the future:
 - Use of SS number has changed over the years, now used as an identifier for nearly everything
 - Bush administration and legislators have tried/are trying to change the purpose of SSA “no match” letters to make evidence of illegal presence despite the letter stating that they are not to be used for that purpose
- Cost for the entire national system is placed on the backs of non-citizens applying for these cards
 - What are the fees set at? What factors will be considered for raising the fees? How makes the decision on when, how much to raise the fees?
- Hard deadline (5 years) doesn't take into account the problems that will be encountered in implementation or the need to correct the problems in the database.
 - Newly created Biometric Enrollment, Locally-stored Information, and Electronic Verification of Employment (BELIEVE) System will be difficult to create, fill with data, and correct errors within only 5 years. E-Verify has been around for over a decade and is still riddled with inefficiencies and incorrect data.
- This proposal allows private sector providers to verify an employee's information if the employer has not acquired the necessary equipment by the 6 year deadline. Why farm this work out to for-profits? The proposal also allows for local government offices to verify this information. Why duplicate this work? Why not just have the local government offices have the capability?
 - Best to have SSA so a person can start to address issues right there and then.



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Concerns/Criticism (cont.):

- What enforcement guarantees are there that employers will comply with the law? Simply not right to make employers enforce immigration law because they are free to abuse the system. Lots of problems already exist with E-Verify and we'll see the same problems here:
 - Verification no sooner than the date the employee starts
 - Selective use of BELIEVE
 - Willfully and knowingly using the information in a manner other than that prescribed by law
 - Termination or taking any adverse employment action unless authorized or required to do so by this Act.
-
- What is the review process? Who are appeals going to?
 - Which court will have jurisdiction to review the final administrative decision?
- 99% accuracy would still negatively impact over 1 million US workers.
 - Naturalized citizens are much more likely to have incorrect information in their social security database. Enacting a law that would disproportionately negatively impact them would be a violation of their equal protection right to work (possibly).
- Immigrant organizations should be included in the Employment Verification Advisory Panel

IV. REFORMING AMERICA'S LEGAL IMMIGRATION SYSTEM TO MAXIMIZE AMERICAN ECONOMIC PROSPERITY

A. High Skilled Immigration

Summary:

- Provides a new immigration path for foreign students studying science, technology, engineering, or mathematics in the United States
- Strengthens anti-fraud provisions in the H-1B temporary workers system

The Good:

- Green cards will be immediately available to foreign students seeking advanced degrees in the US
 - **Bad:** limited to those studying science, technology, engineering, or mathematics.
- Adds increases protections against fraud for H1-B workers

Concerns/Criticism:

- Does not increase protections against abusive employers.



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B. Immigration of Low Skilled Workers

Summary:

- Reforms H-2A and H-2B temporary worker systems and adds a new H-2C category

The Good:

- Incorporates AgJOBS
- Increased protections against employer fraud
- Increased protections against abusive employers
- Adds new H-2C visa for non-seasonal, non-agricultural workers
 - Workers shall be permitted to earn LPR status
 - Same protections as American workers
 - Portable after 1 year
- Switches spouses and children of LPRs to “immediate relative” category
- Eliminate family backlog in 8 years. (would like to see this shorter)
- Raises per country limits from 7 to 10 percent of total admissions
- Broadens family-based immigration:
 - Widows and orphans
 - Permanent partners
 - Stepchildren & adoptive children

Concerns/Criticism:

- Commission on Employment-Based Immigration can only make recommendations, cannot compel action or set caps.
- Includes family in the low skilled worker section??
 - No mention of derivative family benefits
 - Returns to old family-based cap limit after elimination of backlogs
 - No expansion of family-based visas.

V. MANDATORY REGISTRATION, ACCEPTANCE OF RESPONSIBILITY, AND ADMINISTRATION OF PUNISHMENT FOR UNAUTHORIZED ALIENS PRESENT IN THE UNITED STATES

Summary:

- Establishes a legalization program to address the 10-15 million undocumented immigrants in the United States



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The Good:

- The very existence of this provision
- Spouses and children living abroad will be eligible for legalization.
 - **Bad:** no description of when or what the process will be. Will there be caps? Are they added to family based numbers?
- Incorporates DREAM in whole

Concerns/Criticism:

- Places people at the back of the line (have to wait until 8 year elimination of backlog)
- Are those in the legalization process the first to receive biometric SS cards?
- No description of fees or penalties
- No mention of confidentiality
- Do the same citizenship exemptions for language and civics apply to the requirements for adjusting to LPR status?

VI. REFORMS DESIGNED TO ENHANCE EFFICIENCY AND EFFECTIVENESS IN AMERICA'S IMMIGRATION SYSTEM

Summary:

- Grab bag of provisions to expand visa categories and make technical changes

The Good:

- Establishes "extensive nationwide immigrant integration programs"
 - Is this through DOJ?

Concerns/Criticism:

- None