

Democratic Senators Put Forth Immigration Reform Proposal

Senators Harry Reid (D-NV), Richard Durbin (D-IL), Charles Schumer (D-NY), Patrick Leahy (D-VT), Dianne Feinstein (D-CA), and Robert Menendez (D-NJ) have announced their Real Enforcement with Practical Answers for Immigration Reform (REPAIR) Proposal, a 26-page framework for immigration reform.

The main themes of the proposal announced April 29 include improving control of the borders to prevent illegal immigration, using biometrics employment verification, and requiring registration of unauthorized aliens presently in the U.S.

Achieving Operational Control of Borders to Prevent Future Illegal Immigration

The proposal outlines major benchmarks to be met to secure the border before any action can be taken to adjust the status of the estimated 10.8 million people in the United States illegally. These benchmarks include increased customs and border patrol agents, Immigration and Customs Enforcement ("ICE") officers, agents and work-site enforcement inspectors; improved technology, infrastructure, and resources to assist Customs and Board Patrol ("CBP") and ICE; increased resources to prosecute smugglers and unauthorized border crossers; and increased immigration court resources.

The Senators also have proposed the creation of a bipartisan commission to investigate the state of security on the southern and northern borders of the country and, within 12 months, issue recommendations on additional resources, technology, manpower, and infrastructure that must be implemented to ensure complete operational control of those borders.

Detection, Apprehension, and Removal of Unlawfully Present Persons in U.S.

The proposal would increase the federal government's capacity to promptly identify, investigate, and initiate removal proceedings against aliens who overstay their visas. The government would complete the implementation of an entry-exit system by equipping all ports of entry with the United States-Visitor and Immigrant Status

Indicator Technology ("US-VISIT") system. In addition, the proposal would implement measures to prevent future illegal immigration, including heightened strategies against illegal entry and reentry and a prohibition on the entry of "dangerous individuals such as convicted gang members."

Ending Illegal Employment through Biometric Employment Verification

In order to prevent the hiring, recruitment, or referral of unauthorized aliens in America's workplaces, the framework contains the following proposals:

Mandate the Social Security Administration to begin issuing biometric social security cards no later than 18 months after the date of enactment. Cards would be fraud-resistant, tamper-resistant, wear resistant, and machine-readable social security cards and will contain a photograph and an electronically coded micro-processing chip that has a unique, biometric identifier for the authorized card-bearer. Only possession of a fraud-proof social security card would serve as evidence of lawful work-authorization. Prior to issuing an individual a new fraud-proof social security card, SSA would be required to verify the individual's identity and employment eligibility by asking for production of acceptable documents to be provided by the individual as proof.

Create a new employment eligibility verification system (Biometric Enrollment, Locally-stored Information, and Electronic Verification of Employment (BELIEVE) System) to replace E-Verify. There would be strict employer penalties for failure to participate in the BELIEVE system. Prospective employees would present a machine-readable, fraud-proof, biometric social security card to their employers, who would swipe the cards through a card-reader to confirm the cardholder's identity and work authorization. The BELIEVE system would become fully operational after six years. Within five years of the date of enactment, the fraud-proof social security card would serve as the sole document acceptable for employment verification purposes. The proposal

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allows employers to use government-certified private companies to perform employee employment verification. The U.S. Post Office or other government offices would serve as alternative verification providers for employers who do not possess electronic scanning capability.

Reforming Legal Immigration System to Maximize Economic Prosperity

High-skilled Immigration. The proposal aims to reform the current program to permanently attract the world's best and brightest while preventing the loss of American jobs to temporary foreign labor contractors. Measures proposed include:

- Making green cards immediately available to foreign students with an advanced degree from a U.S. college or university in a field of science, technology, engineering, or mathematics (SMART), and who possess an offer of employment from a U.S. employer in a field related to the degree. The doctrine of dual intent would be extended to foreign students pursuing degrees in a SMART field. In addition, the proposal would eliminate per-country employment immigration caps;
- Amending current law regarding H-1B employer application requirements to: (1) revise wage determination requirements; (2) require Internet posting and description of employment positions; (3) lengthen U.S. worker displacement protection; (4) apply certain requirements of all H-1B employers rather than only to H-1B-dependent employers; (5) prohibit employer advertising that makes a position available only, or gives priority, to H-1B nonimmigrants; and (6) limit the number of H-1B and L-1 employees that an employer of 50 workers or more in the United States may hire; and
- For L-1 visas, the proposal would prohibit employers from hiring an L-1 nonimmigrant for more than one year who would: (1) serve in a capacity involving specialized knowledge; and (2) be stationed primarily at the worksite of an employer who is other than the petitioning employer. The proposal also specifies: (1) employer petition requirements for employment of an L-1 visa holder at a new office; (2) wage rates and working conditions; and (3) employer penalties. The Department of Homeland Security would be authorized to initiate investigations of L-1 employers suspected of being non-compliant with the law.

Immigration of Lower-Skilled Workers. The proposal would significantly modify America's lower-skilled worker programs:

- for agricultural workers (H-2A visa), the proposal incorporates the Agricultural Job Opportunities, Benefits and Security Act ("AgJOBS"), a 2003 bi-partisan agreement of interested stakeholders in the agricultural industry;
- for non-agricultural seasonal workers, the H-2B program would be reformed to add protections to

eliminate fraud and abuse within the program. The Department of Labor would be given the authority to impose penalties and seek injunctive relief to assure employer compliance with the H-2B rules. Aggrieved workers would have a right to file a civil action against the employer; and

- creates a provisional visa (H-2C) for non-seasonal, non-agricultural workers to enter the U.S. Employees on H-2C visas would have portability to change employers after one year. The annual cap for H-2C visas would be adjusted each year based on unemployment and relevant economic indicators. In all cases, no H-2C worker could be hired before an employer takes steps to recruit and hire American workers, including through America's Job Bank and recruiting through State Workforce Agencies. H-2C workers would be entitled to the same labor protections and would have the same causes of action afforded to American workers. Any qualified American worker displaced by an H-2C worker or who applies for a job that was filled by an H-2C worker would have redress for being unlawfully displaced.

Commission. The proposal authorizes the creation of the Commission on Employment-Based Immigration to study America's employment-based immigration system to recommend policies that promote economic growth and competitiveness while minimizing job displacement, wage depression and unauthorized employment.

Immigrant Visas. The proposal would authorize the recapture of immigrant visas not used in prior years because of processing delays. To promote family reunification, the family-immigration backlog would be cleared over a period of eight years after which the current numeric caps on the family-preference categories would remain the same. Spouses and children of lawful, permanent residents would be classified as "immediate relatives" to promote the efficient reunification of families. To address the fact that some countries face unreasonably long backlogs, the per-country-family immigration limits would be amended from 7 percent to 10 percent of total admissions.

Mandatory Registration, Acceptance of Responsibility, and Administration of Punishment for Unauthorized Aliens

The proposal would create a broad-based registration program that would require the estimated 10.8 million illegal immigrants living in the U.S. to come forward to register, be screened, and, if eligible, complete other requirements to earn legal status, including paying taxes.

The proposal creates a two-phase implementation plan:

Phase 1: eligible applicants would be registered, fingerprinted, screened, and considered for an interim "Lawful Prospective Immigrant" (LPI) status that allows them to work and travel outside of the U.S.

Phase 2: LPIs who have fulfilled all additional statutory requirements would be permitted to petition for adjustment to Lawful Permanent Resident (LPR) status. This phase would take place in eight years after current visa backlogs have cleared.

The registration/application process would be characterized by rigorous security checks and verification of eligibility and would be designed to encourage maximum participation in the legalization program as well as enhance law enforcement capabilities and protect U.S. national security.

Reforms to Enhance Efficiency and Effectiveness

Finally, the proposal would enact various technical reforms to enhance the efficiency and effectiveness of America's immigration system. It would, among other things:

- Establish a new program to provide visas to promote property ownership by foreign nationals for the enhancement of America's housing market.
- Make the Conrad 30 J-1 visa program permanent.
- Make the H-1B and J-1 visas more easily obtainable by foreign doctors.
- Create new paths for nurses and physical therapists to enter the U.S.
- Establish a Department of Justice grant program for state courts to assist persons with limited English proficiency in state court proceedings.
- Create a nationwide integration program.

Arizona Tasks Officers with Determining Immigration Status

Less than two years after the enactment of the Legal Arizona Workers Act (LAWA), Arizona Governor Jan Brewer (R) has signed into law the Support Our Law Enforcement and Safe Neighborhoods Act (Senate Bill 1070). The Act requires law enforcement officials to attempt to determine the immigration status of any person that they believe to be an alien unlawfully present in

the United States. The Governor's decision has thrust Arizona into the spotlight of immigration reform debate. Follow legal developments relating to the Act, including the lawsuits seeking to prevent it from going into effect on July 29, on the Jackson Lewis Global Immigration Blog at <http://www.globalimmigrationblog.com/>.

No Thaw in Sight: ICE Workplace Enforcement Trend Continues

The Department of Homeland Security's enforcement arm, Immigration and Customs Enforcement ("ICE"), continues to pressure employers with a workplace enforcement initiative that has radically increased the number of I-9 audits from that seen in the past. The latest barrage was fired in March, when ICE issued 180 I-9 audit notices simultaneously to businesses in Alabama, Arkansas, Louisiana, Mississippi, and Tennessee. The notices informed businesses that ICE would inspect their I-9 records to determine compliance with hiring and employment verification laws and regulations. These actions follow ICE's recent pattern of sending out notices of employer reviews en masse. These totaled more than 1,600 in 2009, triple the number of all I-9 inspections initiated in 2008.

When an employer receives an I-9 inspection notice, it has three days to make the documents requested available. In addition to the actual I-9 forms, these typically will include payroll and social security "no-match"

records. ICE confirmed that it will give employers 10 days to correct technical violations discovered during the inspection, but substantive violations carry no such grace period. ICE assesses civil fines for these violations, taking into consideration the number of identified errors, the size of the employer, a pattern or practice of non-compliance, and any past violations by the employer.

Under current policy, I-9 violations are more likely to move beyond civil fines and risk potential criminal charges. DHS Secretary Janet Napolitano has directed ICE to refocus its investigative resources on prosecuting employers and company officials who knowingly hire illegal workers. It is increasing its scrutiny and prosecution of business owners, hiring managers, and supervisors.

Employers should monitor their I-9 employment eligibility verification practices and policies to remain in compliance with the law and to avoid unwanted attention from ICE inspectors.

About the Jackson Lewis Global Immigration Practice Group

The Jackson Lewis Global Immigration Practice Group is a multi-cultural team of professionals with a command of 15 languages, working together to provide a broad range of immigration law services. Our attorney-paralegal team model leverages more than 100 years of combined corporate immigration experience held by group attorneys with the efficiency and cost-effectiveness of a highly trained paralegal pool. The Practice Group:

- Assists companies in obtaining temporary and permanent employment visas for foreign employees in the United States.
- Counsels recruiting staff and management about the visa system to facilitate strategic planning for key employees.
- Trains and advises employers on I-9 employment eligibility verification, Social Security "no match," and E-Verify practice and requirements.

- Helps establish in-house visa programs and policies to streamline international transfers and visa sponsorship considerations.
- Represents companies in government audits.

For outbound visa assistance, working in concert with a network of leading foreign law firms, the Practice Group offers seamless global coverage for the movement of critical staff.

The Practice Group partners are:

William Manning ManningW@jacksonlewis.com
(Coordinator)

Sean Hanagan HanaganS@jacksonlewis.com
(Coordinator)

Davis Bae BaeD@jacksonlewis.com

Victor Cerda CerdaV@jacksonlewis.com

Minnie Fu FuM@jacksonlewis.com

Raazia Hall HallR@jacksonlewis.com

Harry J. Joe JoeH@jacksonlewis.com

David Jones JonesD@jacksonlewis.com

Pamela Mak MakP@jacksonlewis.com

Otieno Ombok OmbokO@jacksonlewis.com

Robert C. Seiger SeigerR@jacksonlewis.com

Jackson Lewis

Editors:

William Manning, (914) 328-0404, ManningW@jacksonlewis.com

Sean Hanagan, (914) 328-0404, HanaganS@jacksonlewis.com

Roger S. Kaplan, (632) 247-0404, KaplanR@jacksonlewis.com

Mei F. So, (212) 545-4000, SoM@jacksonlewis.com

Editorial Office:

Jackson Lewis LLP
One North Broadway
White Plains, NY 10601
(914) 328-0404
www.jacksonlewis.com

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