

Overview of the Comprehensive Enforcement and Immigration Reform Act of 2005 (Cornyn-Kyl)

Based on section by section summary, 7/19/05

Treatment of Current Undocumented Workers and Family Members

The bill sets up a new immigration benefit called “mandatory departure” for current undocumented workers.

Mandatory Departure Requirements

- Continuous unlawful presence in the US for twelve months as of 7/19/05
- Current employment
- Pass a health screening and background check
- Plead guilty to being unlawfully present and deportable
- Report any Social Security number used without authorization
- Turn in any fraudulent documents in possession
- It appears that spouses and children can be considered as derivatives on the application if they meet the same conditions (with possible exception of employment requirement – unknown)

Mandatory Departure Features

- “Amnesty” for those who choose immediate departure – can leave the country and apply to come back in legally if they qualify for a visa (unclear whether inadmissibility bars related to unlawful presence will be waived)
- Those who want to stay and keep working will have to pay a fine after year one that begins at \$2000 and increases annually to year five
- They will receive evidence of status/documentation
- They will be ineligible to obtain permanent residency while in the US
- They will be held to the strictest standards for administrative or criminal violations that could make them deportable (unclear whether plea of being unlawfully present and/or turning in false or fraudulent documents triggers removal grounds)
- After five years, they will have to have left the country. If not, they will revert to undocumented status and will be ineligible for any form of immigration relief (except asylum/protection claims) for ten years

Future Family and Employment-Based Immigration

The bill does not include an overhaul of the family-based immigration system that currently results in the separation of close family members for years and even decades. This means that individuals who have waited years to immigrate legally will be short-changed, as new temporary workers find a quicker path to legal entry than those who are already “in line.”

The bill does include the following provisions:

- “Recapturing” immigrant visas that go unused at the end of a fiscal year due to processing delays

- Ending the diversity visa program and reallocating those numbers to existing immigration categories
- “Restructuring” the number of visas available to unskilled workers (currently the quota is 5,000 annually)

It is not clear from the summary how the authors propose to reallocate the 55,000 visas that would be made available by terminating the diversity visa lottery. We do know that this number is insufficient to address the existing family immigration backlogs and employment-based immigration needs.

Temporary Worker Visas

The bill creates a new nonimmigrant visa category, a W visa, for temporary workers.

“W Visa” Program Requirements (Employers)

- “Conduct” a labor market test (unclear if the employer has to actually conduct the test or submit to one)
- Offer the job to any “qualified, willing” US worker first
- Attest that there are no qualified and willing US workers, that the employer will pay the minimum wage “for the position,” and that the working conditions provided to the W visa holder will not adversely affect those of similarly-situated workers
- Verify that the W visa-holder or alien with “mandatory departure” status is work authorized through an electronic program similar to Basic Pilot

“W Visa” Program Requirements (Temporary Workers)

- Clear background checks and health screening
- Enter the US and find work with an employer who is authorized to hire W visa-holders (unclear how the job match takes place)

“W Visa” Program Features

- Worker will receive secure evidence of status/work authorization for up to two years at a time
- After two years are over, worker has to return home for one year before coming back to the US on the W visa
- Visa can be renewed twice for a total of six years’ work authorization (over a period of eight years)
- Family members can visit for up to thirty days (aggregate) annually
- It is not clear whether the W visa holder can apply to adjust status to permanent residency or another nonimmigrant visa category once inside the US
- Establishes a W Nonimmigrant Investment Fund to capture the W visa-holders FICA contributions and hold them in an investment account until the temporary worker returns home permanently

Workers’ Rights and Labor Law Enforcement

Instead of lifting the floor for all workers by making undocumented immigrants and future workers full legal participants in our economy with bargaining power, the bill establishes two subclasses of

vulnerable foreign workers. In addition to the design deficiencies that fail to put employment-based immigration on solid legal footing, the bill is tough on enforcement but soft on real labor protections.¹

The bill mandates:

- DHS and DOL audits of employers who hire *W* visa-holders
- Hiring 10,000 new DHS investigators dedicated to worksite enforcement
- Increased penalties for false citizenship claims for purpose of obtaining employment, as well as for the misuse of social security numbers
- Universal employer participation in the new electronic work authorization system within twelve months of the bill's enactment, including a requirement that every worker obtain a new social security card in order to participate
- Penalties for employers who fail to comply with the weak wage and working condition provisions of the bill
- Some semblance of whistleblower protections
- A task force to evaluate the *W* visa program and eventually recommend a program cap

Obligations of Sending Countries

Before individuals can obtain either *W* visas or “mandatory departure,” their country of nationality must have entered into an agreement with the US government.

The agreements would include the following requirements:

- Participating country must agree to accept its nationals who have been ordered deported within 3 days (unclear what the time frame refers to)
- Must work with the US government to control illegal migration, human trafficking and smuggling, and gang activity
- Must provide the US government access to information on its nationals' travel histories and criminal records
- Must provide health insurance (unless secured by the alien himself or through the employer)
- Encouragement to provide housing for “returning workers” (unclear if this is housing in the US or housing at home)

Immigrant Integration

The bill includes no provisions to encourage immigrants' integration into US society. In fact, the bill appears to discourage assimilation by its very design.²

¹ This bill lacks the broad menu of worker protections in the Secure America Act, including: a requirement for employers to provide pay and benefits comparable to what side-by-side US workers receive, the inability for employers to hire temporary workers during a union strike or lockout, the application of anti-discrimination and other laws to new temporary workers, a ban on treating these workers as labor contractors and therefore affording them diminished rights in the work place, key non-retaliation and employment rights provisions, and millions of dollars for Labor Department enforcement.

² The bill virtually ensures that current undocumented immigrants will remain underground, instead of folding them into the fabric of our society. It also effectively bars them and future temporary workers from getting on a path to

A couple of provisions in the bill at least hint at the prospect of helping immigrants participate in the limited new programs:

- Authorizing grants for qualified community groups to do public education and outreach about the temporary worker and mandatory departure programs
- Targeting unlicensed law practitioners who would defraud potential applicants, both by specifying who is authorized to represent individuals in immigration matters and by hiring 100 additional DHS agents to investigate immigration benefits fraud

Enforcement

The bill's enforcement proposals range from interesting to highly objectionable. The most egregious proposals recycle bad ideas from earlier enforcement debates, attempt to circumvent key court decisions, and propose massive increases in enforcement funding without any tangible payoff in reduced unauthorized migration.

Some of the enforcement provisions include:

- Significant ramping up of DHS and other federal agency staffing, to include the hiring of 10,000 additional Border Patrol agents, 1,250 Customs and Border Protection officers, 1,000 DHS investigators, 500 DHS trial attorneys, 250 DOJ immigration judges, 250 attorneys for the DOJ Office of Immigration Litigation, and 250 Assistant US Attorneys to litigate immigration cases.
- Significant increases in appropriations for border security technology and physical structures, including \$5 billion for border facilities and additional money for 10,000 new detention beds
- Permitting the Border Patrol to establish additional checkpoints on roads "close to the borders"
- Expanding expedited removal along all land borders
- Authorizing state and local police to enforce federal immigration laws
- Improving security features of immigration documents and expanding training in fraudulent document detection for immigration inspectors
- Canceling visas of nonimmigrants who stay beyond their authorized time limit
- Barring entry to aliens who have failed to submit biometric data when seeking to enter, exit, transit through, or be paroled into the US
- Mandatory bond minimums for certain aliens from non-contiguous countries apprehended at or between the ports of entry along the land borders
- Increased penalties for drug trafficking, alien smuggling, document fraud, and gang violence
- Coerced repatriation of deportable foreign nationals
- Authorizing money to reimburse states under the State Criminal Alien Assistance Program
- Additional detention and removal powers that violate basic due process rights

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permanent status. Lacking such a commitment that they are welcome in the US long-term, these workers will be less likely to invest in skills training and to learn English.