

BRIEF SUMMARY & ANALYSIS

President Obama's Immigration Reform Bill

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Although still only in draft form, recently leaked legislative language for a White House immigration reform bill provides a clearer picture of President Barack Obama's immigration reform priorities than was available previously. The proposed legislation would create a viable road to U.S. citizenship for many immigrants, and it includes much-needed reforms to labor laws affecting immigrants in the workplace. However, the draft legislation also raises significant questions for the bipartisan Senate "Gang of Eight" to answer.

We've analyzed the three draft titles, and we will provide links to these more in-depth summaries/analyses as soon as they are posted. Below is a brief overview of the president's proposal.

Title I: Border security, detention, and deportation

- This title rightly recognizes that enforcement along our borders already receives more federal dollars than any other law enforcement endeavor. As a result, net migration from Mexico is now zero.
 - Nevertheless, the title calls for increased technology at the U.S.-Mexico border.
 - The language also takes some steps towards addressing human rights violations at the border. However, it remains to be seen how effective these procedures will be. This title also fails to provide border communities with the necessary tools to hold abusive Border Patrol agents accountable, nor does it provide border communities with meaningful input into the policies affecting them.
- This title also narrows definitions of "aggravated felony" (a ground of removability under immigration law), "conviction," and "sentence." Narrowing these categories will result in fewer people facing removal from the U.S. However, other grounds of removability, including deportation for possession of a minor quantity of drugs, are not addressed.
- Proposed language allows people facing deportation to be better able to defend themselves in court, and also attempts to address court backlogs by increasing the number of immigration judges.
 - These changes are both necessary and long overdue. Immigration court backlogs can span many months, and immigrants are rarely equipped to defend themselves against deportation, even if they have strong ties to the United States.

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- Although the title establishes that certain individuals should receive access to counsel, much more should be done to protect judicial fairness and due process.
- The title also makes it less likely that immigrants will be subject to mandatory detention. However, much more can and should be done to end the over-incarceration of immigrants who are fighting to remain with their loved ones.

- Read NILC's more-in-depth summary and analysis of the immigration enforcement title at www.nilc.org/document.html?id=850.
- Read the draft language of this title at www.nilc.org/document.html?id=853.

Title II: Legalization

- This title outlines the structure of the road to U.S. citizenship for many of those currently living in the U.S. without proper documentation. The title also lists the restrictions to applying for citizenship.
 - The draft language broadens the road to U.S. citizenship. For example, a U.S. citizen wife and her undocumented husband will now be able to apply for citizenship without being subject to bars keeping spouses outside the U.S. for up to 10 years.
 - However, some of the provisions making immigrants ineligible to apply for citizenship remain too harsh. Proposed language would continue to prevent an immigrant who has been convicted of marijuana possession, for example, from being able to live free from fear of deportation.
- The proposed legislation calls for a 6 to 8-year waiting period before immigrants can apply to become lawful permanent residents. This temporary period is referred to as “lawful prospective immigrant” status, or LPI.
 - During this period, immigrants would not be eligible for health care under the Affordable Care Act, but these immigrants could be subject to the mandate to purchase private insurance, forcing immigrants to choose between costly health care or being fined for failure to purchase insurance. *This glaring contradiction should be remedied.*
 - Furthermore, immigrants may be excluded for up to 11 years from the social insurance programs they help support by paying taxes. This hole in our social safety net should be fixed.
 - Immigrants who arrived in the U.S. as children, have graduated from high school, and are college students or enlisted in the military would not be subject to the same waiting period.
- Immigrants who wish to adjust their status to lawful permanent resident (LPR or “green card”) status would have to pay a fine as well as back taxes. Having paid back taxes should be required only for the adjustment-to-LPR stage rather than for eligibility for the

preliminary LPI status. If the cost of the penalty is too high, the road to U.S. citizenship may not be affordable to many low-income immigrants.

- In total, a person who first applies for LPI status could have to wait at least 11 to 13 years before being eligible to apply for U.S. citizenship. This is too long a wait for immigrants who have decades-long ties in the U.S.

- Read NILC's more-in-depth summary and analysis of the legalization title at www.nilc.org/document.html?id=851.
- Read the draft language of this title at www.nilc.org/document.html?id=854.

Title III: Immigration issues at the workplace

- The proposed language provides for a dramatic increase in interior worksite enforcement by imposing strict new rules upon employers, including a mandate that all employers use an electronic employment eligibility verification system (EEVS; the current federal system is called E-Verify). This will affect *all* workers in the U.S. — U.S.-born and immigrant alike — for decades to come.
 - Our concerns about E-Verify are well documented on our website (see www.nilc.org/concerns.html). Any implementation of an EEVS must include strong due process and worker protections to prevent employers from abusing the system and to protect workers who may be falsely deemed ineligible to be employed in the U.S.
- This title also addresses the myriad issues affecting immigrants in the workplace and restores employer accountability for labor and immigration law violations.
 - The title finally removes the perverse incentive for abusive employers to undercut labor law and exploit immigration law to maximize their profits.
 - The title calls for expansion of U (or crime victim) visas to include victims of labor law violations. This would allow workers to stand up for their labor and civil rights free from fear of deportation.
 - This title also specifies that, if an employer is found to have violated a worker's workplace rights, neither back pay nor any other remedy (except any reinstatement remedy prohibited under federal law) available under the law may be denied to the worker based on his or her immigration status. This is a welcome fix to the results of the Supreme Court's decision in *Hoffman Plastic Compound, Inc. v. NLRB*, 535 U.S. 137 (2002).

- Read NILC's more-in-depth summary and analysis of the workplace issues title at www.nilc.org/document.html?id=849.
- Read the draft language of this title at www.nilc.org/document.html?id=852.

THIS DRAFT LEGISLATION represents a start to a longer discussion about how we as a nation welcome those who have been fellow-citizens-at-heart for many years, and who must soon go down the road of becoming citizens-on-paper. The president's draft language contains some very important advances but also very troubling language that will undoubtedly result in many people being ineligible for this road to citizenship. We are heartened that this is just a draft that can be improved upon. The National Immigration Law Center is committed to work with legislators and the White House to push for legislation that lives up to our societal values of inclusion, equality, and justice. Read more about our principles for a fair and just immigration reform at www.nilc.org/nilcirpriorities2013.html.