

ANALYSIS OF DRAFT WHITE HOUSE BILL

Title I: Border & Interior Enforcement

FEBRUARY 20, 2013

BORDER ENFORCEMENT

Title I begins with an acknowledgement that the borders are more secure than at any time in history in terms of technology, fencing, and Border Patrol staffing. Apprehensions and crime rates have dropped, while removals and worksite enforcement have increased.

➤ **Funding/increase in border enforcement.**

- If appropriations are available, technology will continue to be used to secure the borders.
- People/private/public entities can give money to U.S. Customs and Border Protection (CBP) for CBP-related services.
- Authorization to hire full-time active-duty port-of-entry inspectors and provide appropriate training and equipment for them is included in the proposal.
- Donations from private parties and state and local governments can be accepted for constructing, altering, operating, or maintaining a new or existing land port-of-entry facility.

➤ **Monitoring.** This title takes some steps towards addressing human rights violations at the border. However, it remains to be seen how effective these procedures will be.

- Establishes a border communities liaison office in each Border Patrol sector and at some ports of entry, and a Border Communities Liaison Officer in Washington, DC. The purpose of the liaison offices include consulting with border communities on policies, directives, and laws affecting them and receiving their concerns and complaints.
- Establishes a procedure for filing, tracking, and addressing complaints about Border Patrol actions.
- Seeks to ensure that U.S. Department of Homeland Security (DHS) officers will be trained in immigration law and procedures, which would include training in protections for victims of crime or persecution, civil rights and civil liberties, and use of force policies and procedures.
- Authorizes the collection of statistics about the number of deaths occurring on the U.S. -Mexico border and the publication of these statistics on a quarterly basis. CBP

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will submit a report analyzing these statistics and recommending actions to reduce and prevent deaths.

INTERIOR ENFORCEMENT

➤ Exclusions/removals.

- Creates an administrative removal process for B visa holders if they are subject to deportation based on criminal or national security grounds. B visa holders may not appeal a finding that they are removable and can bring only limited defenses to challenge their deportation.
- Creates a new ground of inadmissibility for a person who, through his or her own fault, fails to comply with a biometrics request.

➤ Increased criminal penalties.

- Increases the maximum imprisonment for people who flee or evade a DHS checkpoint from 5 years to 30 years, depending on the circumstances, or for life if the violation resulted in a death.
- Adds penalties for damaging, altering, etc. monitoring equipment issued to people released under supervision.
- Adds penalties for trafficking in passports, trafficking in immigration documents, and engaging in marriage fraud or immigration schemes to defraud.
- *Notario* fraud provision creates penalties for people misrepresenting themselves as attorneys.

➤ Changes to current crime definitions. This title makes positive changes to the 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. for relatively minor offenses. However, other grounds of removability, including deportation for possession of a minor quantity of drugs, are not addressed.

- Narrows the definition of “aggravated felony” for crimes of violence and theft offenses by changing the required term of imprisonment from “at least one year” to “more than five years.”
- Narrows the definition of “aggravated felony” for crimes relating to commercial bribery, counterfeiting, forgery, and perjury from a term of imprisonment of “at least one year” to “more than five years.”
- Changes the definition of conviction to exclude adjudications or judgments of guilt that have been dismissed, expunged, deferred, annulled, invalidated, withheld, or vacated. Orders or probation without entry of judgment are also excluded.
- Suspended sentences no longer count toward the term of imprisonment or sentence. With this change, people who are given long suspended sentences but never serve any actual time in jail will not face mandatory deportation.

- **Changes to relief from removal.** People facing deportation often have no chance to defend themselves in immigration court because, even if they have strong ties to the U.S. and many equities, it is extremely difficult for them to qualify for one of the defenses from removal. This title makes changes that will enable more people to defend themselves in immigration court.
 - Removes the quota (4,000) on the number of cases that can be granted “non-permanent resident cancellation of removal” each year.
 - Changes the hardship standard for these cases, allowing a person to show an immigration judge that s/he should be given an opportunity to remain in the U.S. if removal would result in “extreme hardship”
 - Allows the immigration judge to consider the hardship of deportation to the immigrant him/herself when making a decision in non-LPR cancellation cases.

DETENTIONS AND DEPORTATIONS

While this bill takes some steps to protect the rights of people in detention, it does not incorporate additional ways to fix aspects of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), which has led to the mass deportation of immigrants. “Fix ’96” provisions that should be included in an immigration reform bill include restoring judicial discretion, ending mandatory detention, and creating a broad waiver for people facing deportation. This bill also does not address other needed changes to the detention system, such as setting up screening systems and procedures to ensure that vulnerable populations are not detained, limiting detention to no more than 90 days, and reducing spending on unnecessary detention.

- **Detention.**
 - Allows asylum-seekers who have been found to have a credible fear of persecution to be released on bond, with conditions, or on their own recognizance. This will allow asylum-seekers to fight their cases outside of detention, where they have greater access to counsel and other forms of necessary support.
 - Creates a secure alternatives program for people facing removal, though it does not mandate its use.
- **Detainers.** There is some positive language with respect to detainers (“holds” issued by U.S. Immigration and Customs Enforcement, or ICE), including the requirement that DHS provide notice of the detainer to the person detained and his or her attorney. However, this title fails to make clear that detainers are voluntary requests issued only for the purpose of notification. Additionally, an evidentiary requirement (probable cause) for issuing detainers is missing.
- **287(g).** Minor changes are made to the 287(g) program, which make very little difference. We call for repealing section 287(g) altogether.

➤ **Preemption.**

- Reaffirms the principle (as set out by the Supreme Court in *Arizona vs. U.S.*) that the federal government has the sole power to regulate immigration. But it does not explicitly prohibit state show-me-your papers laws, which have furthered racial profiling and threatened basic civil rights.
- Limits the instances when DHS shall provide information in response to a federal, state, or local government agency's request to verify the immigration status of a person by providing the requested information only when (1) the request is made for a purpose authorized or required by federal law; or (2) the request is made for the purpose of cooperating with the attorney general and DHS secretary in their enforcement of federal immigration laws.

➤ **Access to counsel.**

- Adds very important language stating the government may, in some cases, provide and pay for counsel to represent immigrants in removal proceedings. Currently, immigrants are not provided government-appointed counsel in immigration proceedings.
- Establishes pilot programs to provide counsel for unaccompanied minors and mentally incompetent immigrants. Similarly, this is a very important step, but it should go beyond a pilot program and expressly provide for the right to counsel for unaccompanied minors.
- Creates safeguards for mentally incompetent immigrants. An immigration judge must terminate proceedings if the proceedings cannot be made fundamentally fair; otherwise, the government must provide counsel for the immigrant.