

Real Enforcement with Practical Answers for Immigration Reform (REPAIR) Proposal
AILA Summary

On April 29, 2010, Senators Reid, Durbin, Schumer, Leahy, Feinstein, and Menendez announced the REPAIR proposal, a 26-page “framework of concrete bipartisan ideas” for immigration reform. This document summarizes the REPAIR proposal.

CONTENTS

- I. Achieving Operational Control of America’s Borders to Prevent Future Illegal Immigration (Border Enforcement)
- II. Detection, Apprehension, and Removal of Unlawfully Present Persons in the United States (Interior Enforcement)
- III. Ending Illegal Employment through Biometric Employment Verification (Biometric Identification and Employment Verification)
- IV. Reforming America’s Legal Immigration System to Maximize American Economic Prosperity (High Skilled Immigration, Immigration of Lower-Skilled Workers , Promoting Family Immigration)
- V. Mandatory Registration, Acceptance of Responsibility, and Administration of Punishment for Unauthorized Aliens Presently in the United States (Registration and Legalization Plan)
- VI. Reforms to Enhance Efficiency and Effectiveness in America’s Immigration System (Miscellaneous)

I. Achieving Operational Control of America’s Borders to Prevent Future Illegal Immigration

The proposal states that the following major benchmarks must be met to secure the border during the eight years between the initial registration period and when the 10.8 million undocumented persons in the United States are able to adjust:

- Increased numbers of Customs and Border Patrol (CBP) officers;
- Increased numbers of Immigration and Customs Enforcement (ICE) agents to combat smuggling; ICE worksite enforcement inspectors; and ICE document fraud detection officers;
- Increased personnel to inspect for drugs, contraband and illegal immigrants;
- Improved technology, infrastructure, and resources to assist CBP and ICE;
- Increased resources to prosecute smugglers and unauthorized border crossers; and
- Increased immigration court resources

In addition to these benchmarks, the proposal increases the number of CBP inspectors at ports-of-entry and the resources available to them including vehicles and surveillance; weapons and armor; and training on fraud, vulnerable populations, and the avoidance of racial-profiling. The proposal authorizes an auxiliary unit and use of the National Guard when needed at the border. The proposal abandons the costly and ineffective SBInet satellite program and replaces it with a high-tech ground sensor system.

The proposal increases the number of ports-of-entry and forward operating bases. ICE, Drug Enforcement Administration and Bureau of Alcohol Tobacco and Firearms will have more agents to stop the smuggling of all contraband.

Finally, the proposal creates a bipartisan commission to investigate the state of security on the borders and to issue recommendations on what is necessary to ensure complete border control within a year. Congress is required to vote to enact the recommendations. Once complete border control is established, state and local governments will be barred from enacting their own immigration laws. To minimize impact on cities and local communities, the proposal establishes a Communities Liaison Office and provides measures to support wildlife regions, local communities, and Native American reservations impacted by unauthorized immigrants. The proposal also establishes alternatives to detention and custody standards at border stations.

II. Detection, Apprehension, and Removal of Unlawfully Present Persons in the United States

The proposal increases capacity to identify, detain, and remove individuals who entered unlawfully or overstayed temporary visas. It will also implement an entry-exit system to monitor overstays, including full deployment of the US-VISIT screening system at ports of entry. The proposal increases screening of criminals in federal state and local prisons for immigration status. The Visa Waiver Program (VWP) will be more closely evaluated and monitored, and VWP will be suspended for countries with high overstay rates.

The proposal implements several measures to prevent future illegal immigration, including heightened measures against illegal entry and reentry and a prohibition on the entry of “dangerous individuals such as convicted gang members.” Those convicted of sexual offense will be severely limited in their ability to petition bring relatives to the United States. The Department of Homeland Security (DHS) will also have greater authority seize property used in trafficking activities. The proposal creates new crimes for passport fraud, passport trafficking, and other document fraud, and also increases the immigration consequences for fraud and misrepresentation. The proposal says laws will be amended to encourage voluntary departure. Criminal penalties will also be imposed on those who evade border authorities, engage in human smuggling or trafficking activities or sell guns to undocumented persons. Those released from detention who willfully fail to comply with orders of supervision will also be punished.

The proposal imposes sanctions on countries that delay repatriation of their citizens and ensures DHS has the necessary authority to detain dangerous criminals pending deportation. The proposal will facilitate reimbursement to states that detain and transport aliens (likely through the State Criminal Alien Assistance Program).

All individuals appearing at borders and ports of entry will be required to provide biometric information, and passenger carriers will be required to provide advance manifests of passengers for screening. The proposal will establish uniform standards governing when individuals must be detained prior to removal. DHS will be required to file a notice to appear with the immigration court closest to the place of apprehension within 48 hours of detention. The proposal requires the enactment of and compliance with minimum detention facility standards developed in consultation with experts. The proposal also prevents transfer of detainees away from their children and requires consideration of the child’s best interest in transfer and release decisions.

The proposal imposes penalties, including civil and criminal sanctions, on unscrupulous employers who exploit unauthorized labor and offers incentives to victims of labor exploitation for cooperating with law enforcement actions against employers. The proposal requires states and municipalities that participate in the state and local 287(g) program to improve their data collection and reporting to ensure

compliance with federal policy. The proposal makes a technical fix to the law to prevent the unnecessary detention of refugees and asylees by admitting them as lawful permanent residents when they receive the grant of refugee or asylee status. The proposal also improves the processing of child asylum claims and the claims of vulnerable refugees.

III. Ending Illegal Employment through Biometric Employment Verification

This section establishes a new biometric identification and employment verification system to prevent the employment of unauthorized workers. Within 18 months of the proposal's enactment, the Social Security Administration (SSA) will be ready to issue fraud and tamper resistant, social security cards that include a photograph and biometric data. The card will only contain the cardholder's name, date of birth, social security number, and unique biometric identifier. The proposal calls for sophisticated technology that will protect information about the cardholder and will not store any of the biometric data contained in the card on any government database. The proposal does not state where the data will be stored. The proposal will make it unlawful for anyone or any private or government entity to use the card for any other purpose than employment verification.

The SSA, in partnership with DHS, will verify work authorization and issue the new social security cards to those deemed eligible. Those found ineligible can seek review through an administrative review process and federal court review. Any fraudulent use or procurement of the cards will carry stiff penalties. Any willful and knowing use of the information stored on the cards for an unlawful purpose will be punished.

Employers must verify employability of all new employees with the new Biometric Enrollment Locally-stored Information, and Electronic Verification of Employment (BELIEVE) System. Failure to use BELIEVE will carry penalties. The proposal anticipates a six (6) year graduated transition period for the full mandatory implementation of BELIEVE. During that time, existing employment verification laws will remain in effect though employers can voluntarily use BELIEVE. The following employers will be required to expedite use of BELIEVE (and also re-verify their existing workforce): a) those that DHS knows or has reason to believe have a high rate of employment unauthorized workers; b) those related to national security; and c) those who engaged in material violations of law. The federal government must use BELIEVE within three (3) years of enactment, and federal contractors must use it within four (4) years. Five years after enactment the new social security card will be the only valid document for employment verification purposes, even if the employer is not yet using the electronic verification component of the BELIEVE system.

The proposal allows employers to use government-certified private companies to perform the employment verification of employees. Those private providers will be required to post a \$150,000 bond and will be audited annually and subject to investigation. The U.S. Post Office or other government offices will serve as alternative verification providers for employers.

The proposal describes in some detail how an employee will be verified with the new card. The BELIEVE system will respond in no less than 24 hours after receiving a verification inquiry, and employers must notify employees within 24 hours of receiving the response from BELIEVE. If there is a denial, employers will provide employees with a notice explaining the reasons for denial and of the employee's right to contest the denial within 10 days of the initial denial. Employees have 30 days to file for an administrative review of a denial under DHS and SSA procedures. The proposal states that employees will be provided lost wages if a denial was made by a system error (not caused by the employee). Employees will also have a private right of action against employers that issue wrongful denials out of negligence or an intentional act. Employees may seek restitution for financial loss due to improper disclosures of information through the BELIEVE system. The proposal will impose civil fines upon

employers that engage in unfair immigration-related employment practices related to the new card or the BELIEVE system. Such unfair practices include taking any of the following actions without DHS authorization: terminating or taking adverse action against an employee, screening an employee prior to an offer of employment, requiring an individual to self-verify, or using the system on current employees.

The proposal calls for procedures to ensure the integrity, efficiency, accuracy, and privacy protections of the system. Starting two years after BELIEVE is fully implemented SSA will issue annual reports to Congress that provide an assessment of the privacy and security of the system and employer compliance. The reports will indicate the percentage of inquiries to BELIEVE that result in accurate and sustained disapprovals. If that percentage is less than 99 percent, the SSA must explain how it will raise the accuracy to a rate of 99 percent or better. There will be an advisory panel of experts and representatives of key stakeholder groups that will advise the government on implementation of BELIEVE. The Government Accountability Office will review the BELIEVE system every two years. The new federal system will preempt all state and local immigration and verification laws.

Knowing violations of the employment verification system, such as employment of an unauthorized worker will carry enhanced civil fines of 300 percent. Employers will be protected from liability for employment-related actions taken in response to information received from the BELIEVE system. The proposal allows for mitigation of penalties for small employers or those acting in good faith, as well as safe harbor provisions for employers who employ unauthorized workers through a subcontractor unless the employer did so knowingly or with reckless disregard.

SSA and DHS as well as other relevant federal agencies shall establish a national birth and death registration system to prevent fraud and ensure uniformity nationally as well as abroad. Employers who hire unauthorized workers will be prohibited from deducting their wages.

Payment of the BELIEVE system will be made partly through fees and fines of the following activities: 1) an employment authorization fee charged only to non-citizens; 2) a system fee paid by all employers who seek to employ a non-citizen worker; 3) fees for businesses that seek pre-certification as employment eligibility screeners; 4) fines for persons or entities that fail to comply with this law; and 5) fees charged to U.S. citizens for replacement cards. The proposal also provides that backpay and other monetary remedies for unlawful employment practices, workplace injuries or other causes of action shall be denied to an employee on account of: 1) the employer's or employee's failure to comply with the requirements of the policy in establishing or maintaining the employment relationship; 2) the employee's violation of the provisions of federal law related to the employment verification system; or 3) the employee's continuing unauthorized status during and after termination of employment.

IV. Reforming America's Legal Immigration System to Maximize American Economic Prosperity

A. High Skilled Immigration The proposal provides for an immediate green card to foreign students with an advanced degree from a U.S. institution of higher education in the field of science, technology, engineering or mathematics, and who have an offer of employment in the field related to their degree, from a U.S. employer. The proposal would also eliminate per country employment caps.

The proposal creates new requirements on H-1B visas including: 1) revising how wages are determined; 2) requiring web posting of job openings; 3) lengthening U.S. worker displacement protection; 4) applying certain dependent employer rules to all H-1B employers; 5) prohibiting "for H-1B only" job ads; and 6) limiting the number of H-1B and L-1 employees that an employer of over 50 workers in the U.S. may hire. The proposal also authorizes the Department of Labor (DOL) to investigate application fraud and conduct H-1B compliance audits. The proposal increases penalties for employers violating the law.

The proposal also creates new requirements on the L-1 visa prohibiting the hiring of an L-1 for more than one (1) year who will: serve in a role involving specialized knowledge and be located at a worksite other than that of the petitioning employer. The proposal specifies L-1 visa employer petition requirements for a new office; wage rates and working conditions; and employer penalties. The proposal authorizes DHS to initiate investigations and requires DHS to report to Congress on the L-1 blanket process.

B. Immigration of Lower-Skilled Workers To address agricultural needs, the proposal incorporates the AgJOBS bill. The proposal gives DOL authority to impose penalties and injunctive relief against H-2B employers. Workers will have a right to file civil actions against an employer. The proposal requires employers to notify DOL within 30 days of an H-2B worker's termination and provide payroll records showing that the employer was in compliance with wage and other expense rules. H-2B employers will also be required to conduct advanced recruiting of U.S. workers and pay the wage set forth in a collective bargaining agreement or, if no such agreement exists, the higher of 1) wage determined under Davis-Bacon; 2) wage under the Services Contract Act; 3) the median rate of the highest 50% of the wage published in the OES Survey; or 4) 133% of the minimum wage. Employers are required to reimburse for transportation costs to job site and return home. Returning worker are not counted against the H-2B cap when the national unemployment rate is at or below 8% or if a metropolitan statistical area has an unemployment rate below 6%.

The proposal creates a new provisional H-2C visa for non-seasonal, non-agricultural workers which is valid for 3 years and is renewable once. The H-2C visa provides for dual intent and if the holder can meet certain requirements, he/she can earn LPR status. After one year, the H-2C shall have portability, and the annual cap shall be adjusted each year based on unemployment and economic indicators. If the cap is hit, an employer can still get an H-2C worker if the employer can show need for the worker and pay higher wage and fees. No H-2C can be hired until efforts to recruit U.S. workers have been made. Any qualified U.S. worker displaced by or passed over for an H-2C will have redress.

The proposal creates a Commission on Employment-Based Immigration for the purpose of studying the employment-based immigration system and to recommend ways to promote economic growth and competitiveness and to minimize job displacement, wage depression and unauthorized employment. The Commission will have the power to declare an emergency in the immigration system where there are too few foreign workers available to meet economic needs or too many foreign workers being admitted leading to job displacement or wage depression for U.S. workers. If emergency declared, the Commission will make recommended changes and Congress is then required to vote on enactment of the recommendations.

Green Card Reforms The proposal authorizes recapture of immigrant visas lost to bureaucratic delays.

C. Promoting Family Reunification The proposal will clear the family immigration backlog over an eight (8) year period. After the eight year period, family caps will return to the current levels. Spouses and children of lawful permanent residents (LPR) will be classified as "immediate relatives". Per country caps in the family immigration system will be raised from 7 percent to 10 percent. The proposal will make technical corrections for widows and orphans of U.S. citizens; allow permanent partners of U.S. citizens and LPRs to obtain LPR status; exempt children of certain Filipino World War II veterans from the numerical caps; provide protection for children and people with special humanitarian considerations; and address technical issues related to stepchildren and adoptive children.

V. Mandatory Registration, Acceptance of Responsibility, and Administration of Punishment For Unauthorized Aliens Presently in the United States

The proposal creates a two-phase implementation plan. Phase I requires all undocumented persons to come forward and register their presence through a rigorous process that includes identity, criminal background and security screening, fingerprinting, and the payment of all applicable fees. Upon completing registration, they will be considered for eligibility for a new interim status: "Lawful Prospective Immigrant" (LPI). In addition to the above requirements, undocumented persons must remain in the country continuously from the date of enactment to be eligible for LPI status. LPI status gives them eligibility for the new biometric Social Security card and authorization to work and travel outside the United States. Phase I is designed to screen out criminals and public safety threats and facilitate maximum participation and integration of those who are undocumented. Spouses and minor children living abroad will be eligible for legalization once their relative receives LPI status. Those found ineligible in Phase I will be placed in removal proceedings. Those who fail to register will remain undocumented and be subject to arrest and deportation. The proposal also includes provisions to protect confidentiality, provide judicial review, and allow consideration of case-specific equities in the processing of applicants.

The following persons are not eligible for Phase I registration: 1) those convicted of three or more misdemeanors or any felony punishable with a prison term of more than one year; 2) those who engaged in persecution of others; 3) those "inadmissible" pursuant to INA 212(a) for national security and criminal grounds; 4) those in the country in an "authorized immigrant or nonimmigrant status"; and 5) those who entered illegally after the bill's introduction date.

Phase II begins eight years after enactment when current visa backlogs are cleared at which time LPIs will be permitted to petition for adjustment to Lawful Permanent Resident (LPR) status. Requirements for eligibility include demonstrating basic citizenship skills, English language skills, and continuous residence in the United States; submitting to additional background and security checks; payment of all taxes, fees and civil penalties; and registration for Selective Service. The proposal allows for some administration and judicial review of denials.

The proposal includes the legalization components in the DREAM Act and AgJobs.

VI. Reforms to Enhance Efficiency and Effectiveness in America's Immigration System

The proposal includes the following miscellaneous reform.

- Establishes a new program to provide visas to promote property ownership by foreign nationals.
- Improves and makes permanent the R-1 religious worker visa.
- Makes permanent Conrad 30 J-1 visa program
- Makes H-1Bs and J-1 visas for foreign doctors more easily obtainable. Foreign doctors will also be given an easier path to LPR status.
- Creates an E-3 visa for Irish nationals like the program in Australia.
- Enables fashion models to enter on O and P visas rather than the H-1B visa.
- Creates new paths for nurses and physical therapists to enter the United States.
- Makes technical fixes to the EB-5 visa program.
- Establishes a Department of Justice grant program for state courts to assist persons with limited English proficiency in state court proceedings.
- Creates a nationwide integration program.
- Creates commissions to review the U.S. government's past treatment of various European Americans and its treatment of Jewish refugees, including the government's refusal to grant entry to those fleeing genocide or persecution during WWII.