



Common Questions about the STRIVE Act of 2007

The STRIVE Act (The Security Through Regularized Immigration and a Vibrant Economy Act, H.R. 1645) is a bipartisan comprehensive immigration reform bill that was introduced in the House by Rep. Jeff Flake (R-AZ) and Rep. Luis Gutierrez (D-IL) on March 22, 2007. This document responds to some common questions asked about the STRIVE Act.

Enforcement

Can you explain the “triggers” in the STRIVE Act? Won’t these triggers prevent or unreasonably delay the implementation of the legalization and new worker programs? The triggers in the bill state that DHS may not implement the new worker and legalization programs until DHS certifies that: 1) a report to Congress on the implementation of the border surveillance technology improvements, including target dates has been submitted; (2) the systems and infrastructure necessary to improve immigration document security have been tested and are ready for use; and (3) the first phase of the Electronic Employment Verification System for critical infrastructure employers has been implemented.

A general estimate for implementation of this section is one to three years. The bill specifies that a report to Congress on the border (trigger 1) must occur within six months of the bill’s enactment; the first phase of the Electronic Employment Verification System (trigger 3) must occur within one year of the bill’s enactment. It is important to note that it will take at least one year to begin the implementation of the new worker and legalization programs, even without triggers. The STRIVE Act mandates that regulations for the new worker program be issued within six months after the bill’s enactment and the program be implemented one year after bill’s enactment. It is likely that implementing the legalization program will take at least this amount of time. In addition, federal agents responsible for administering the new worker and legalization programs will need to acquire related training and resources. Finally, prospective immigrant workers and their families will need to be educated about the new programs and prepare their applications and necessary documentation for legal status. Together, these important steps could eliminate or reduce any perceived delays caused by the above triggers. Nevertheless, amending the bill to include a statutory timeframe for the “trigger” provisions may be necessary to ensure a reasonable timeframe for implementation of the new worker and legalization programs.

Does the STRIVE Act authorize military on the border? Not exactly, but the bill does permit the Governor of a State to order the National Guard to temporarily assist with select enforcement activities along the border, such as ground reconnaissance activities, provision of translation services, emergency medical assistance services, the rescue of aliens in peril, and the construction of roadways, patrol roads, fences and barriers.

Does the STRIVE Act increase the number of border patrol agents? We have increased border patrol personnel for more than 20 years but this has not stemmed illegal immigration. What is the point of beefing up border patrol under this bill? Yes. The bill requires DHS to increase the number of border patrol agents and to assign at least a 20% net increase in border patrol agents to the Canadian border over the next five years. The reason why border enforcement has been unsuccessful in the past is because it has been done in isolation,

without addressing the economic and human reasons of why people come to the United States in the first place. By moving immigrant workers through legal channels, providing immigrants already here with a path to citizenship, and reducing the backlog in family visas (like what is done in the STRIVE Act), immigration will become manageable, and border enforcement will become more effective.

Does the STRIVE Act authorize state and local police to enforce immigration laws? The STRIVE Act reaffirms that state and local police possess the inherent authority to enforce *criminal* immigration laws. It has been historically recognized that state and local police are legally authorized to work with federal agents on criminal matters. This is much narrower and different from the “CLEAR Act” which would have required state and local police to enforce *civil* immigration laws.

How does the STRIVE Act expand the aggravated felony definition? The STRIVE Act expands the aggravated felony definition by adding to the definition alien smuggling cases where the offense is part of an ongoing commercial organization or enterprise that involved multiple aliens and the aliens were transported in a way that presented a danger to the aliens’ lives or the aliens posed a life-threatening health risk to the U.S. people.

Can you explain the new immigration penalties in the STRIVE Act? For example, what does the bill say about gang members and drunk drivers? The bill creates new immigration penalties for people *convicted* of gang crimes as defined under federal law. With significant safeguards, the bill also creates new immigration penalties for aliens convicted of three DUI offenses, including at least one felony for which the alien was sentenced to more than one year of prison time.

I am very concerned about the document fraud provisions in the STRIVE Act. Can you explain them to me and how this might affect refugees or those applying for legalization? Whereas last year’s Senate bill created new and stiff immigration penalties and automatic bars to legalization for many hardworking immigrants and their families, the STRIVE Act does not contain these barriers. The STRIVE Act also exempts certain legalization, DREAM Act, and AgJOBS applicants from some of the bill’s new document fraud criminal penalties.

The bill expands the criminal code (there are already extensive penalties in the criminal code for many document fraud offenses) and penalties pertaining to passport, visa and document-related fraud such as trafficking of passports; false statements in an application for a passport; forgery and unlawful production of a passport; misuse of a passport; schemes to defraud aliens; immigration and visa fraud; and attempts or conspiracies to violate any of these offenses. The bill allows the DHS to waive prosecution under this section for certain “vulnerable populations” such as those seeking refugee-related protection, victims of trafficking and criminal activity, juveniles, certain battered spouses and children, among others.

Does the STRIVE Act include additional changes to the criminal law? Yes. The STRIVE Act enhances the already existing criminal penalties/scope of conduct associated with failure to depart after removal; alien smuggling; unauthorized employment of aliens; firearms offenses and money laundering offenses.

Does the STRIVE Act include the same indefinite detention provision that was included in last year's bill? Does the provision included in STRIVE overturn the Supreme Court's decision in Zadvydas? The STRIVE Act does not overturn Zadvydas like last year's bill sought to do. The STRIVE Act allows DHS to extend detention for certain aliens order removed beyond the 90-day removal period but expands the safeguards that apply. It permits an alien to appeal his detention to an immigration judge and requires DHS to establish by clear and convincing evidence that such detention is authorized. The bill also enables detained aliens to seek judicial review.

Does the STRIVE Act increase detention beds? Yes. The bill authorizes DHS to construct and acquire at least 20 additional facilities for the detention of at least 20,000 aliens.

New Worker Program/People Entering in the Future or "Future Flow":

What are the terms of the new worker (H-2C) program? To qualify for a new worker visa, the applicant would have to: 1) provide evidence of a job offer; 2) complete appropriate background checks; 3) pay a \$500 application fee; 4) undergo a medical exam; and 5) be admissible under the immigration laws. The new worker visa would be valid for three years, and could be renewed once for three more years. International commuters are not subject to the time limitations. A limited number of bars to admission related to unlawful status, including the 3 and 10 year bars, would not apply; other bars could be waived for humanitarian reasons. Bars to admission related to crimes and security could not be waived.

Can new workers bring their family members? Yes, new workers may bring their spouses and children.

Isn't the new worker program just like a guestworker program? No. Unlike a traditional "guestworker program," new workers under the STRIVE Act receive many protections, sharply distinguishing this from past programs. The STRIVE Act includes the following protections: portability to another employer and the same labor conditions and benefits as provided to U.S. workers. In addition, new workers may not be hired where there is an ongoing labor dispute; may not be treated as independent contractors; and must be paid *the greater of* the actual wage paid to other similarly-situated workers or the prevailing wage for the occupational classification in the area of employment, taking into account experience and skill levels of employees; among other protections. New workers also receive travel authorization. *Most importantly, the bill provides a path to permanent residency for qualified workers and their families and allows the worker to self petition after five years, so that he is not tied to an employer in order to gain permanent residency.*

Can you explain how the visa cap works? The STRIVE Act sets numerical limitations on the issuance of new worker visas. For the first fiscal year of implementation, 400,000 new worker (H-2C) visas will be made available for use within this program. This number will adjust in accordance with the market.

Can new workers be paid less than US workers? No. The STRIVE Act specifies that new workers must receive the same wages, benefits, and working conditions as similarly employed U.S. workers.

What does the STRIVE Act contain to ensure that new workers will not displace U.S. workers? Employers that seek to employ new workers must first offer the job to any eligible U.S. worker who applies, is qualified for the job and is available at the time of need. The employer must also meet rigorous recruiting requirements. New workers are also prohibited from working in areas with an unemployment rate of 9 percent or more for low skilled workers.

Does the bill include any bars to admission for new workers? What about the 3 and 10 year bars? All workers must show that they are admissible under the immigration laws. A limited number of bars to admission related to unlawful status (including the 3 and 10 year bars, removal orders, failure to meet labor certification requirements; presence without admission or parole; misrepresentation while seeking immigration benefits; document fraud; student visa abuse; among others) would not apply; other bars could be waived for humanitarian reasons. Bars to admission related to crimes and security could not be waived.

Can the new worker change employers? Yes, the new worker may change employers at any time so long as the new employer has complied with recruitment requirements specified in this bill and the worker did not work without authorization after lawful admission to the U.S.

Are workers required to waive their rights? No. The bill explicitly says that a new worker may not be required to waive any rights or protections granted under this bill.

If a new worker becomes unemployed, does he have to return home? If the new worker is unemployed for 60 days, she must leave the United States. Exceptions apply for reasons related to disability; authorized leave such as maternity, vacation or medical leave; and a major disaster or emergency.

Can the new worker apply for a green card? How does the program work? Yes. The bill provides two avenues for the new worker and his family members to apply for green card status: 1) Employer Sponsored: at any time the employer may file an immigrant visa petition on behalf of a new worker; 2) Self-Petition: the worker may self petition if she has been in new worker visa status for at least five years. In both cases, the applicant must show he is admissible under the immigration laws. Self-petitioners must meet some additional requirements, including payment of a \$500 fee.

Electronic Verification Program

Can you explain who is subject to the employer verification program and when it must be implemented? The STRIVE Act creates a new electronic work authorization system that will ultimately replace the paper-based, fraud-prone I-9 system. Under the STRIVE Act, the program would be phased in over four years. The first phase includes “critical infrastructure” employers – such employers must participate within 1 year of the bill’s enactment.

What protections exist for workers under this program? The STRIVE Act includes numerous protections for workers. For example, the bill provides a worker with “default” confirmation of work authorization if DHS fails to respond according to the timetable outlined in the STRIVE Act. In addition, the STRIVE Act includes a process for administrative and judicial review for workers and process for collecting lost wages. The bill also expands the antidiscrimination provisions for employees.

What documents must a worker show to prove identity and work authorization under this program? The STRIVE Act identifies a menu of documents a worker may show to establish identity and work authorization. The documents vary depending on the worker's immigration and citizenship status. For example, U.S. Nationals may show a U.S. passport, a biometric, machine readable, tamper-resistant social security card, or a REAL ID driver's licenses or identity card to meet this requirement. DHS may also approve of alternative documents in certain situations. Finally, the bill includes exemptions to the documentation requirement for children and people with disabilities.

Does this bill include penalties for employers? Yes. The bill includes some of the toughest criminal and civil penalties against employers who violate the program or who hire undocumented immigrants. For example, an employer engaged in a pattern of knowing violations in recruiting, hiring or continuing to employ unauthorized workers is subject to fines of up to \$20,000 for each worker, imprisonment of up to 3 years, or both. The STRIVE Act also includes new penalties for employers who violate verification or recordkeeping requirements.

Undocumented Population—Earned Legalization

What are the terms of the new legalization program for undocumented workers (conditional nonimmigrant status)? The bill creates a legal channel for qualified undocumented immigrants living and working in the United States and their families. Eligible immigrants will receive legal status which is valid for a period of six years. To qualify for conditional nonimmigrant status (legalization), the applicant must show: 1) unlawful physical presence before June 1, 2006; 2) meet other presence and employment requirements; 3) undergo security and background checks; 4) pay a \$500 fine and fees (fine waived for minors); and be admissible under the immigration laws. A limited number of bars to admission related to unlawful status, including the 3 and 10 year bars, would not apply; other bars could be waived for humanitarian reasons. Bars to admission related to crimes and security could not be waived.

What about people in removal proceedings or with removal orders? Does the STRIVE Act include bars to admission for undocumented workers applying for legal status? What about the 3 and 10 year bars? Under the bill, all workers must show they are admissible under the immigration laws. But, a limited number of bars to admission related to unlawful status (including the 3 and 10 year bars, removal orders, failure to meet labor certification requirements; presence without admission or parole; misrepresentation while seeking immigration benefits; document fraud; student visa abuse; among others) would not apply; other bars could be waived for humanitarian reasons. Bars to admission related to crimes and security could not be waived. Additionally, people in removal proceedings may still apply for adjustment under STRIVE if they can show basic eligibility.

Can the worker (conditional nonimmigrant) apply for a green card? How does the program work? Yes. The bill provides qualified workers and their families with a path to permanent residence. To qualify for a green card, workers must 1) meet employment requirements (must establish that during the 6-year period immediately preceding the application for adjustment of status, he has been employed full-time, part-time, or seasonally in the U.S. or has been self-employed in the U.S.) Exceptions to the employment requirement apply for certain minors, those with disabilities, and those who are pregnant; 2) undergo medical, security, and background checks; 3)

meet English and civics learning requirements; 4) pay back taxes; 5) register for the selective service; 6) pay a \$1500 fine and fees (fine waived for dependent children), including a \$500 state impact assistance fee; and 7) be admissible under the immigration laws. A limited number of bars to admission related to unlawful status, including the 3 and 10 year bars, would not apply; other bars could be waived for humanitarian reasons. Bars to admission related to crimes and security could not be waived. Primary applicants must meet a reentry (“touchback”) requirement (see below).

Can you explain the “touchback” requirement? Why is this needed? This requires the primary applicant to exit and re-enter through any port of entry during the six-year period he is in legal status but no later than 90 days before he applies for a green card. The intent is for paperwork processing to be performed in the U.S. and for the process to take no longer than a weekend. The “touchback” requirement does not apply to children; the elderly; those who suffer from an ongoing physical or mental disability; single parent heads of household; reasons of extreme hardship to the alien or an immediate family member; and for other reasons.

The “touchback” requirement is included in the STRIVE Act because it allows immigrants to “reboot” and reenter the United States under a clean slate. There are a number of Members in Congress who support comprehensive immigration reform but who believe (or have constituents who believe) that without such a “reentry” requirement, the U.S. government is simply rewarding illegal behavior. The “touchback” requirement provides a way for qualified workers to “clean” their undocumented status, enter the United States lawfully and obtain a green card while in legal status. Far from perfect and arguably overly bureaucratic, the political goal for including the “touchback” requirement is to maximize congressional support for STRIVE and pass a comprehensive immigration reform bill in 2007 that provides legal status to 10 to 12 million immigrants.

Does the STRIVE Act allow workers to seek review on a denied legalization application before a judge? The bill provides applicants with administrative review (review by the DHS) and judicial review (review by the federal court) on denied applications.

What does the STRIVE Act say about the confidentiality of information on an application? The bill includes tough but fair provisions on confidentiality. The bill requires the federal government to provide information relating to a criminal or national security investigation or prosecution to requesting law enforcement agencies. In all other circumstances, the information provided in an application must be protected and may not be used for any other purpose other than to make a decision on the application.

Are applicants required to waive their rights? No, immigrants applying for legal status are not required to waive their rights in exchange for such status.

Will workers who qualify for a green card receive their green cards right away? How long will they have to wait? The bill ensures that an alien adjusting under the STRIVE Act may not receive a green card until the existing backlogs are cleared or 8 years after the enactment of STRIVE, whichever comes earlier. It is estimated that from the total waiting time before an undocumented immigrant receives a green card is 9-11 years. It is important to note that upon enactment, undocumented people who can establish basic eligibility for legal status would be protected from deportation and once implemented would be granted work and travel authorization.

Backlog Reduction

What does the STRIVE Act do to deal with the family backlog? The STRIVE Act makes significant changes to the family immigration system. For example, the bill increases the availability of family visas by taking “immediate relatives” (immigrant spouses, parents, and children of US citizens) out of the family visa cap of 480,000. This “frees up” hundreds of thousands of visas, thereby allowing more immigrants to receive green cards through the family-based immigration system.

What changes do the STRIVE Act make to the employment based visa cap? The STRIVE Act makes significant changes to the employment-based immigration system. For example, the bill increases the employment-based immigrant visa cap (“green card”) from 140,000 to 290,000. This means that 150,000 additional visas will be available annually to immigrants applying for green cards through the employment based immigration system.

Does the STRIVE Act address highly skilled workers? The bill includes a number of exemptions and other benefits for highly skilled workers. For example, the bill increases the annual quota for highly skilled temporary (H-1B) workers from 65,000 to 115,000. The bill also exempts certain alien nurses (and their dependents) and those with advanced degrees in science, technology, engineering, or mathematics (and their dependents) from the numerical caps.

Due Process

Does the STRIVE Act include “Fix 1996” provisions like restoring judicial review and modifying the aggravated felony definition? No. The bill does not include affirmative restorations to judicial review.

Does the STRIVE Act include judicial review stripping provisions? No, the bill does not include provisions that would further erode judicial review.

Does the STRIVE Act include protections for people in detention and asylum seekers? Yes. The bill includes a provision titled “Safe and Secure Detention” which contains enhanced safeguards and protections for asylum seekers and immigrants facing detention, including legal orientation programs, creation of a new office for detention oversight, and establishment of a secure alternatives program.

What are the prospects of adding due process fixes into STRIVE? Given the commitment by many House members to a fair immigration system, it might be possible to include a few due process fixes to STRIVE during the legislative process. However, any proposal will require bipartisan support in order to pass --this includes support from a number of Republicans and Democrats (many of whom ran on moderate and pro-enforcement platforms during their elections).

Other

Can a person who has worked in the United States without authorization receive social security benefits for the years worked? Yes. As written, the STRIVE Act enables the workers to collect social security benefits. However, we can expect there to be negative amendments similar to last year’s “Ensign” amendment that would strip these benefits from hardworking immigrants.

(Note: the Ensign amendment was lost only by one vote in 2006). In addition, the STRIVE Act lacks an important provision that was in last year's Senate bill that would provide protection from prosecution for qualified legalization applicants seeking to correct their social security records.

Do people outside the United States qualify under STRIVE? The bill partially addresses people outside the United States by creating a new worker program for qualified workers and their families. See above.

Does the STRIVE Act have a 245(i) fix? No, the STRIVE Act does not include a separate 245(i) fix. However, the spirit behind 245(i) is partially captured in the STRIVE Act by enabling qualified workers in the United States and their families to apply for adjustment to green card status without being subject to the three and ten year bars to admission.

What does the STRIVE Act say about Haitians? The bill creates some flexibility for individuals to qualify for benefits under the Haitian Refugee Immigration Fairness Act of 1998. For example, it amends HRIFA by basing classification as a child on the age and status of the individual as of October 21, 1998.

What about the DREAM Act? Yes, the STRIVE Act contains the DREAM Act, providing a path to legal permanent residency for certain undocumented students who have been educated in the US.

What about AgJOBS? Yes, the STRIVE Act includes the AgJOBS Act, creating an agricultural worker program that includes earned legalization for undocumented farm workers.