

ON THE BRINK OF IMMIGRATION POLICY REGRESSION

**A GUIDE FOR COMMUNITY-BASED ORGANIZATIONS, HOMETOWN
ASSOCIATIONS, RELIGIOUS GROUPS, UNIONS, AND OTHER
ORGANIZATIONS CONCERNED WITH
NATIONAL IMMIGRATION REFORM**

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The Center for Human Rights and Constitutional Law is a public interest legal services and advocacy organization that has represented over one million undocumented immigrants in major class action cases, currently represents several hundred thousand immigrants in class action cases, and provides technical support to hundreds of community-based organizations and legal services providers assisting immigrant communities throughout the United States. The Center recently concluded settlements with the DHS and DOJ regarding the rights of over 200,000 immigrants under the amnesty program enacted in 1986.

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THE BIG PICTURE

On May 11, following private negotiations between Senate Republican leader Bill Frist and Democratic leader Harry Reid, they announced that the impasse on Senate action on immigration “reform” had been broken. Mr. Frist and Mr. Reid said they hoped to schedule a vote before Memorial Day.

Republicans will offer and likely win a range of restrictionist amendments to the Senate compromise crafted by Senators Chuck Hagel (R-NE) and Mel Martinez (R-FL), and Democrats will be allowed to select a number of members for a Conference Committee that will later meet to resolve differences between the House and Senate bills.

One day later, the White House announced that President Bush would open the next push for “immigration reform” with a nation-wide address. President Bush announced that he was assigning some 6,000 National Guardsmen to the border, supports massive new enforcement measures against immigrants, but also supports some form of legalization

for some number of the 12 million undocumented immigrants now living permanently in the U.S. The President said these are not contradictory goals. The nation can be welcoming to immigrants while at the same time cracking down on immigrants.

White House officials in a briefing for the New York Times were clear that “members of the House will like what they hear ...” NYT May 13 p. 1.

The New York Times succinctly identified the two major forces at play in the current push to move the Hagel-Martinez Senate bill forward to a House-Senate conference committee, and eventually a new law: The Senate bill “addresses both *the demands to stem the inflow of undocumented workers across the border with Mexico and the desire of American employers to have reliable access to low-wage work force.*”

The interests not on the table, and not any significant part of the Senate compromise, are the interest of the immigrant community in a broad and meaningful legalization process, the interest of unions and non-unionized workers in the protection of already vulnerable U.S. and foreign workers, or the interest of the country in a rational long-term immigration policy.

IN A NUTSHELL, WHAT IS WRONG WITH THE SENATE COMPROMISE BILL? THE ELEVEN SLEDGE-HAMMERS YOU SHOULD KNOW ABOUT THAT MAKE THIS A LAW TO OPPOSE

The Senate compromise includes the right architecture for “immigration reform” from the standpoint of the two groups the compromise takes into account: The high tech sector of corporate America that has lobbied vigorously for and demanded “reliable access to low-wage work force,” and certain lower-tech sectors of corporate America that traditionally rely upon cheap undocumented labor.

However, a careful analysis of the Senate compromise shows that it does not, as presently drafted, come close to offering the right architecture for rational immigration reform from the standpoint of the immigrant communities, U.S. and immigrant workers, or those who support family reunification and fair treatment for immigrants. As presently drafted, among many other disastrous provisions, the Senate compromise --

1. Criminalizes undocumented immigrants by making illegal entry a “continuing” crime after the person’s entry; Section 206(a)(4): “(a), criminalizing [‘illegal entry’] continues until the alien is discovered within the United States by an immigration officer.” This is a covert way of criminalizing all immigrants who entered without inspection.
2. Prevents future legalization for undocumented immigrants who have used false names or security cards to obtain work; except for the small percentage eligible to apply for legalization, this provision will consign the vast majority of undocumented immigrants, including future entrants, to permanent underground status.
3. Will cause the separation of hundreds of thousands of mixed-status families through a multi-tiered legalization program and interior enforcement provisions blocking about

80% of all undocumented immigrants presently in the U.S. and all future entrants from ever legalizing their status.

4. Wipes out the ability of the courts to review arbitrary and illegal immigration policies that result in unlawful detentions and deportations, destroy labor campaigns to protect U.S. and foreign workers, or unlawfully separate families.

5. Permits indefinite detention of tens of thousands of immigrants, including those in removal proceedings and those ordered deported for whom “travel documents” cannot be obtained from their home countries.

6. Makes getting asylum more difficult for many asylum-seekers and offers no program for permanent resident status for several hundred thousand Central Americans who have been in the U.S. for many years under TPS, NACARA and ABC temporary status.

7. Forces immigrant in deportation proceedings to waive their right to “voluntary departure” if they wish to appeal an illegal deportation order or denial of asylum. Hagel-Martinez Compromise, § 211; this anti-due process proposal places immigrants in the absurd position of having to waive a legitimate appeal simply to preserve their right to seek voluntary departure so that they may legally immigrate in the future.

8. Expands the ability of the DHS to place immigrants, including those convicted of “aggravated felonies,” in “expedited removal” proceedings. An expanded definition of “aggravated felony” includes crimes that are neither aggravated nor felonies. A long-term lawful permanent resident immigrant can be deported through the “expedited” process and without a formal due process hearing because he had three drunk driving misdemeanors twenty or more years ago; persons subject to “expedited removal” are provided no judicial review.

9. Encourages local police to become involved in enforcing the immigration laws (Hagel-Martinez Compromise, § 229), a proposal that will significantly decrease the willingness of immigrants to report violent crimes and cooperate with prosecutions aimed at putting violent criminals behind bars.

10. Permits the arrest and deportation of immigrants who have committed no crimes if an immigration officer has “reason to believe” that the person is or was either a “member” of a “gang.” Hagel-Martinez, §§ 206(a)(1)-(2). Thousands of young immigrants, mostly from Central America, who have committed no crimes, will nevertheless face detention and deportation under this proposal.

11. Drastically increases the militarization and criminalization of the U.S.-Mexico border, an approach that has already destroyed border communities, caused thousands of immigrant deaths, turned immigrant smugglers into hardened violent criminals (the only ones willing to risk the heavy jail sentences now associated with smuggling offenses), and increased robberies and rapes of migrants entering without inspection.

WHAT DOES THE SENATE COMPROMISE OFFER IN RETURN FOR THESE DRACONIAN ENFORCEMENT MEASURES?

1. About 9 million immigrants will be excluded from “tier one” of the Senate legalization plan -- Under the Senate compromise about 2-3 million undocumented immigrants with at least five years residence will be rewarded with a twilight-zone temporary status for up to eight more years--during six of which they must be employed--BEFORE they qualify for permanent resident status. In 1986 experts and the INS estimated an undocumented population of over 6 million, of which only 1.6 million (about 25%) qualified for legalization based upon five years residence in the country. *The Senate compromise is less generous than the 1986 IRCA legalization program, and it is therefore optimistic to assume that even 25% of the 12 million undocumented now in the country will be eligible for the first tier legalization of the Senate compromise.*

The plan encourages labor law violations and discourages organizing -- The “legalization” program will adversely impact on the exercise of labor rights by immigrant workers because *participation in any labor strikes, or involuntary termination because of something like sexual harassment, will delay the worker’s eligibility for legalization.*

The plan delays democratic participation for about 16 years -- For about the next 16 years, immigrants granted legalization will work and pay taxes before they are ever allowed to cast their first vote in a democratic election. The legalization application period will take about one year, applicants will wait in temporary resident status for up to eight years, they must hold permanent resident status for five years, they may then apply for citizenship, a process that generally takes another two years, for a total of a 16-year wait to vote. *It would be difficult to structure a program better aimed at keeping people out of the political process for as long as possible.*

Few immigrants will qualify for the second tier of the Senate compromise legalization. These immigrants must give up all of their legal rights to ever fight their deportation, will receive a temporary 3-year visa, and within that time must find an independent way to immigrate. The number who will have an independent ground to immigrate during this 3-year period is minimal. *Likely less than 250,000 to 500,000 immigrants with 3-5 years residence will have an independent ground upon which to immigrate during the three years they are offered temporary visas.*

Millions of immigrants will avoid the third tier (guest worker program) of the Senate bill as presently constructed -- Given the complete absence of a path to permanent status, and the need to surrender their anonymity, their required agreement to depart when their guest worker visas expire, and the relatively nominal increase in wages they may gain by converting from undocumented to guest worker status, the majority of undocumented immigrants will avoid this program. *The program as presently drafted is designed to bring new immigrants into the country to perform cheap labor, not to entice millions of existing undocumented immigrants to come forward and surrender to authorities in return for a nominal, if any, increase in pay.* Under the current version of the guest

worker program, few if any CBOs, unions, churches, lawyers, or hometown associations will recommend that their members or clients apply for the program. It is, for most, a one-way ticket for eventual deportation.

The approximately 8-9 million immigrants who will not qualify under the Senate's proposed legalization program will be driven deeper underground by the Senate bill's interior enforcement provisions, as will all future flows of undocumented immigrants. They will be on the run, have a range of federal and local police looking for them, face more severe penalties when caught, find virtually every avenue to legalization blocked even if they have the required family members or job offers here, and will therefore be more exploitable and exploited than immigrants already are today.

2. The Senate bill positively increases visa quotas for a temporary period, and this will certainly reduce massive visa backlogs. However, the temporary increase in quotas completely fails to address the fundamental problem caused by the present structure of "per-country quotas." *Countries like Mexico and the Philippines with high demand for visas based upon family reunification will continue to face disproportionately long delays*. The Senate bill fails to address the extent to which the per-country visa quota law results in massive visa delays for countries which have high demand for visas based upon qualifying family relationships.

3. The Senate bill positively includes provisions of the DREAM Act which would allow certain undocumented students to legalize their status and attend college.

"IMPROVING" VERSUS "OPPOSING" THE SENATE COMPROMISE

In the coming weeks advocacy efforts should be taken to "improve" the Senate compromise. However, to be realistic, it is far more likely that as the Senate bill moves forward, it will get substantially worse than it already is.

Several Senators will offer repressive amendments to the Senate bill. Proposed amendments will seek to block guest workers from ever obtaining lawful permanent resident status, block any immigrant from legalizing if he or she has a misdemeanor conviction, block legalization for any immigrant previously ordered deported or given voluntary departure who did not leave, and delay any legalization until the Secretary of DHS certifies that the border is sealed.

If the Senate passes a bill and it moves into a Conference Committee, the conferees will work on dovetailing the Senate bill with the violently anti-immigrant House bill. It is obviously more likely than not that any bill reported out of a Conference Committee will be worse than the already extremely harsh Senate bill. The President will most likely go along with whatever emerges from a Conference Committee. His position will pretty much remain as stated: a combination of massive new enforcement and some type of earned legalization, even if it only covers a minimal number of immigrants.

The leaders of the two political parties are now looking for a bill that will help their respective positions in the elections. A huge enforcement bill, combined with some minimal legalization, is the most likely result given this political jockeying.

While this result is perfectly satisfactory to those who support a major crackdown and those who demand access to a supply of cheap labor, it is not rational or humane immigration reform and is opposed by immigrant communities, those who seek to protect the interests of workers, and those concerned with human and civil rights.

Reports regarding the major anti-immigrant provisions that dominate the Senate bill are now available from the web sites of (or by emailing) the National Immigration Project of the National Lawyers Guild, the Immigrant Legal Resource Center, the National Network for Immigrant and Refugee Rights, the AFL-CIO, the National Organization for Women, the Rights Working Group, the Leadership Conference on Civil Rights, the ACLU, the National Immigration Law Center, and the Center for Human Rights and Constitutional Law.

PEOPLE DID NOT MARCH AND BOYCOTT IN FAVOR OF THE SENATE COMPROMISE

Whether in the no-boycott or pro-boycott coalition marches across the country in the past few months, nowhere among the hundreds of thousands of signs people carried was there a sign saying “support the Senate compromise” or “support Hagel-Martinez.”

Immigrants and concerned citizens marched for a rational and humane immigration reform program. They marched for legalization and labor rights and civil treatment for undocumented families, not a law that will make “illegal entry” a continuing crime, in effect criminalizing all undocumented people. Only legalize about 20-25% of all undocumented workers, permit indefinite detention of many immigrants in the future, strip immigrants of court review, make getting asylum more difficult, ignore the plight of thousands of long-time resident Central Americans already in the DHS system in NACARA and TPS status, encourage local police to arrest suspected undocumented immigrants, further criminalize and militarize the border, and discourage the exercise of workers’ rights by requiring six years of future labor before legalizing status.

The people did not march or boycott in favor of Hagel-Martinez.

THE BASIC PILLARS OF REAL IMMIGRATION REFORM

During this phase of the Senate debate, advocates for immigrant and worker rights should step up community forums and communications with members of the Senate and the media. We suggest that advocates, CBOs, coalitions, unions, and religious groups –

- Support full labor rights for all workers regardless of immigration status and strong penalties against employers who discriminate against and exploit immigrant workers. These are essential steps to protect U.S. workers.

- *Support a rolling legalization program rather than a “one-time” program re-enacted every twenty years. A two or three-year statute of limitations on illegal entry is the most realistic if not the only way to keep the undocumented population at low levels. A broad rolling legalization program is not a reward for illegal entry, it is an essential tool to protect the interests of U.S. workers by reducing the exploitability of immigrant workers. At minimum, support a broad “one-time” legalization that includes all immigrants who have resided and worked in the U.S. continuously for two years.*
- *Support immediate lawful permanent status for thousands of long-term resident Central Americans who have for many years already had temporary status under TPS, NACARA and ABC.*
- *Support a legalization program that includes both immigrants who entered without inspection as well as those who violated their non-immigrant visas.*
- *Support visa backlog reduction not only by increasing quotas, but more importantly by matching demand with visa availability on a per country basis so that nationals of countries with high demand (Mexico, Central America, Philippines, etc.) do not face much longer visa delays than people from low demand countries.*
- *Support increased not decreased court review of unlawful and unconstitutional decisions regarding immigration policy.*
- *Support efforts to better protect the rights of asylum seekers, unaccompanied minors, and trafficking victims.*
- *Support the right of apprehended immigrants to be released on reasonable bail while awaiting the outcome of their removal proceedings or waiting for travel documents before being deported.*
- *Support humane border enforcement using available technologies and enhanced border surveillance techniques without further criminalizing and militarizing the U.S.-Mexico border;*
- *Support legislation to repeal the three and ten-year bars that make immigrants who have been in the U.S. for six months in undocumented status ineligible for visas without returning to their home countries for three years, and those who have been here for one year or more in undocumented status ineligible to receive visas without returning to their home countries for ten years.*
- *Oppose the Senate compromise provision that criminalizes undocumented immigrants by making unlawful entry a “continuing” crime*
- *Oppose the Senate compromise's cut-backs on the critical role the federal courts have played for over 100 years protecting the fundamental human and civil rights of*

immigrants from unlawful and unconstitutional policies adopted by Government agencies;

- *Oppose the Senate compromise provisions that will likely result in the mass and indefinite detention of tens of thousands of immigrants who have committed no serious crimes;*
- *Oppose the Senate compromise provisions that cut off traditional avenues for immigrants to legalize their status through family relationships, asylum, or approved job offers;*
- *Oppose any “guest worker” program without a mechanism for these workers to eventually apply for permanent resident status and full labor rights to prevent undercutting U.S. workers;*
- *Oppose any provisions that increases the difficulties legitimate asylum seekers face in winning protection from return to countries where they face persecution;*
- *Oppose any further increases in the criminalization and militarization of the US-Mexico border, policies that have caused the deaths of thousands of immigrants crossing the border, substantially increased the dangers faced by border patrol officers, encouraged armed vigilantism, destroyed the infra-structure of border communities on both sides of the border, and done little to stop the flow of migrants.*

"An immigration system that forces people into the shadows of our society, or leaves them prey to criminals is a system that needs to be changed," Bush said recently at the National Catholic Prayer Breakfast. "I'm confident that we can change our immigration system in ways that secures our border, respects the rule of law, and, as importantly, upholds the decency of our country."

The President may be right. However, there is a wide chasm between what the President described in his Prayer Breakfast speech a few weeks ago and what the present House and Senate bills offer. The problems with the Senate compromise bill are not just “concerns” that advocates should raise in an otherwise positive bill. They will be absolutely devastating to the immigrant communities if enacted into law. The Hagel-Martinez compromise is obviously better than the House bill in that it includes a poor and unfair legalization component and only makes undocumented immigrants guilty of misdemeanors, not felonies. But, if carefully analyzed, it is clearly not the type of comprehensive, positive, and humane immigration reform that the country needs or that immigrants and their supporters marched for over the past several months.

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