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Key Senate Democrats Draft Legislative Framework for Immigration Reform

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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. We will summarize the six main points of The REPAIR proposal here:

I. Achieving Operational Control of America’s Borders to Prevent Future Illegal Immigration (Border Enforcement)

The proposal states that the following major benchmarks must be met to secure the border before action can be taken to adjust the status of the 10.8 million undocumented persons in the United States:

- 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

II. Detection, Apprehension, and Removal of Unlawfully Present Persons in the United States (Interior Enforcement)

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 restrictions on entry for gang members.

III. Ending Illegal Employment through Biometric Employment Verification (Biometric Identification and 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. 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.

IV. Reforming America's Legal Immigration System to Maximize American Economic Prosperity (High Skilled Immigration, Immigration of Lower-Skilled Workers , Promoting Family Immigration)

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.

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. 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.

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

Family Immigration 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 (Registration and Legalization Plan)

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 fees, civil penalties and taxes. Upon completing registration, they will be considered for eligibility for a new interim status: "Lawful Prospective Immigrant" (LPI). 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 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 (Miscellaneous)

The proposal includes the following miscellaneous reform ideas.

- * 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.
- * 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.

In his statement the President indicated that the White House welcomes the discussion on the Senate proposal, and that they will playing an active role in engaging both sides of the aisle to work towards a bipartisan solution to fix our nation’s broken immigration system.

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