

CENTER FOR HUMAN RIGHTS AND CONSTITUTIONAL LAW

256 S. OCCIDENTAL BOULEVARD
LOS ANGELES, CA 90057
Telephone: (213) 388-8693 Facsimile: (213) 386-9484
www.centerforhumanrights.org

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Major Concerns with the Security Through Regularized Immigration and a Vibrant Economy Act of 2007 (STRIVE ACT of 2007) Sponsored by U.S. Representatives Luis V. Gutierrez and Jeff Flake

A “surge” in current failed policies

On March 22, 2007, U.S. Representatives Luis V. Gutierrez and Jeff Flake announced the introduction of The STRIVE ACT of 2007 (Security Through Regularized Immigration and a Vibrant Economy Act of 2007). A preliminary review of the STRIVE ACT indicates that it falls far short of a comprehensive proposal for fair and rational immigration reform taking into account the interests of children, US workers, US communities, and the immigrant communities. It basically calls for a “surge” in current largely failed policies. Our analysis may be modified upon review of the actual language of the bill when publicly available.

1. Delaying urgently needed legalization while putting the border and work-site enforcement up for sale

Despite the virtually unanimous agreement among economists, law enforcement agencies, migration specialists, labor experts, and social planners that legalizing the undocumented population is in the interest of the communities in which they reside and U.S. workers, the STRIVE ACT indefinitely delays any legalization program until the Secretary of DHS certifies to Congress that (1) new systems to make more secure immigration document verification are ready to use, (2) a new Electronic Employment Verification System has been implemented, and (3) new border surveillance technology has been adopted and implemented. It is unclear how many months or years it will take to achieve these “trigger” milestones before a legalization program would be implemented.

In addition to indefinitely delaying a legalization program, it is questionable whether these enforcement measures will have any discernible impact on reducing undocumented migration.

The notion that 25 million businesses in the U.S. will have the resources, interest, or willingness to participate in a new Electronic Employment Verification System is highly improbable. The idea that the U.S. Department of Homeland Security will have sufficient resources to monitor 25 million businesses or the

infrastructure necessary to penalize employers who ignore or game the Electronic Employment Verification System is far-fetched.

Regarding the adoption of new border technologies, the 11,000 member U.S. Border Patrol has for several years utilized underground sensors, remote cameras that pan the desert, unmanned aerial vehicles, radiation detectors, radars, access to criminal databases and terrorist watch lists, and other technological means to detect migrants crossing the border without inspection. President Bush's proposed 2006 budget called for even more high-tech gear for the Border Patrol, including \$125 million to test and buy more radiation detectors and \$51 million to improve sensors and video equipment.

At some point, while currently politically unpopular, U.S. elected officials and the public will have to come to understand what virtually all migration experts have been saying for years, that putting money into sustainable economic development in major migrant sending communities and making a realistic number of visas available to future flows of immigrants are far more effective ways to reduce undocumented immigration than pouring hundreds of millions of dollars into border enforcement technologies.

The primary beneficiaries of the "trigger" milestones indefinitely delaying an urgently needed legalization program are the usual suspects of military contractors who see the sun setting on their profiteering in Iraq: Boeing, Ericsson, Lockheed, Northrop Grumman, Raytheon, etc. At the invitation of the Department of Homeland Security, Lockheed, one of the 50 largest companies in the U.S., has more than 100 executives working on the Secure Border Initiative. Boeing, Ericsson, Northrop Grumman and Raytheon are vying for the same slice of the DHS budget pie. According to CorpWatch, each of these rivals has between 70 and 100 executives assembling security teams and designing new border technologies. See CorpWatch, *Border for Sale: Privatizing Immigration Control* (July 2006)

Yet, by Immigration and Customs Enforcement's (ICE) own data, half the nation's undocumented workers enter the United States legally with temporary visas that they overstay. This fact, combined with the thousands of miles of U.S. borders, waterways, oceans, and private land strips, brings into serious question the soundness of the Gutierrez-Flake emphasis on new enforcement technologies, not to mention delaying legalization indefinitely while these technologies are developed and then implemented.

In a nutshell, the Gutierrez-Flake bill puts essential legalization indefinitely on the back-burner while major corporations are invited to make a few billion or at least hundreds of millions of dollars pursuing programs of dubious value in slowing undocumented migration. This hardly seems to be in the national interest.

2. Criminalizing undocumented immigrants will simply drive them deeper underground rather than prevent their entry or encourage their departure.

Unlike the Sensenbrenner House Bill of 2005 that made all undocumented immigrants felons based on their illegal presence in the United States, the Gutierrez-Flake bill makes all immigrants who entered without inspection criminals. The result is functionally the same.

Immigrants who are treated as criminals because of their entry without inspection will likely now be subject to arrest by local law enforcement agencies. Immigrants dubbed as criminals will obviously be driven deeper underground, become even more fearful of reporting crimes, less likely to seek medical help when suffering from communicable diseases, less likely to report domestic abuse, and far easier to exploit by unscrupulous employers who will threaten them not only with reporting to immigration authorities, but to local police. Immigrants convicted of these crimes may also be ineligible for visas in the future, yet are unlikely to leave the country (or will return without inspection if removed). They will add to the size of the undocumented population.

Interestingly, no similar criminal penalties are imposed on undocumented immigrants who entered lawfully but then illegally over-stayed their visas. In short, these criminal penalties will fall almost exclusively on immigrants from Mexico and Central America, who are routinely denied non-immigrant visas and are therefore far more likely to enter the country without inspection than to come with visas which they then overstay.

3. Ramped up interior enforcement will drive immigrants deeper underground, further divide families, encourage racial profiling, and disrupt work sites and communities

The grab-bag of interior enforcement provisions offered in the Gutierrez-Flake bill will cause havoc in ethnic communities, result in even greater separation of families, and generally drive undocumented workers deeper underground, particularly given the delay in any type of program to allow these immigrants to surface and legalize their status.

It appears the Gutierrez-Flake bill will further increase the already severe criminal penalties for immigrant smuggling. Combined with added border enforcement, immigrants must increasingly rely upon smugglers to get across the border, pay higher and higher smuggling fees, and the more criminal penalties are increased, the more the only persons willing to smuggle are hardened, violent, and armed criminals.

Providing new criminal penalties for immigrants found deportable because they are inadmissible or for such offenses as drunk driving will send thousands of immigrants to prison for relatively minor offenses, separate families, cause the deportation of long-time residents, and divert law enforcement resources from addressing far more serious and violent crimes.

Authorizing the DHS to construct and acquire at least 20 additional facilities for the detention of another 20,000 immigrants (above the over 100,000 already detained) will likely result in the detention of thousands of immigrants who pose no threat to the national security threat, are not a danger to their communities, and are not a flight risk. This will also cause the separation of thousands of families.

Making it more difficult for immigrants to leave the United States under “voluntary departure” will certainly mean that far more immigrants will depart under formal orders of deportation, blocking their lawful return even if they have U.S. citizen family members through whom they could otherwise immigrate legally in the future. These immigrants are likely to return illegally in order to be with their families.

Granting immigration enforcement authority to state and local police will invite racial profiling, unquestionably increase immigrants’ fear of local police and reluctance to report crimes, and divert local law enforcement agencies from addressing more serious and violent crimes.

Expanding the ability of the DHS to subject immigrants to “expedited removal” (deportation without a hearing) will result in far more erroneous deportations, separation of families, the inability of immigrants with U.S. citizen family members to legalize their status because of minor offenses such as illegal entry, and eventually encourage such removed immigrants to return illegally to rejoin their families.

4. The employer verification and worker penalties will harm U.S. workers, drive immigrant workers further into a black market economy, and mushroom the size of the undocumented population

Many leading migration experts and labor groups oppose employer sanctions in their present form because the penalties are usually passed on to the workers and they have had no measurable impact on protecting U.S. workers. The Gutierrez-Flake bill would continue employer sanctions and create a system for employers to electronically verify workers’ employment authorization.

By further limiting the list of acceptable documents that can be used in order to establish employment authorization, the proposed bill will adversely impact on

thousands of low-income U.S. workers who do not possess the type of identification required to obtain a job.

By making it a crime for an immigrant to work using someone else's name or social security number, the Gutierrez-Flake bill will effectively block hundreds of thousands of immigrants from ever legalizing their status in the future even if they would otherwise be able to do so based upon U.S. citizen or lawful resident relatives or Department of Labor approved job certifications. These immigrants will not leave the United States. Instead of legalizing their status, they will substantially increase the size of the undocumented population in the future.

The Gutierrez-Flake bill entirely misses the opportunity to protect U.S. workers by imposing enhanced penalties against employers who violate the labor rights of immigrant workers. It fails to bring antidiscrimination protections in the INA into line with those in other civil rights laws. It fails to ensure that immigration enforcement *complements* rather than undermines the enforcement of labor and employment laws. It fails to review international trade agreements that contribute to undocumented migration. It fails to increase budgets for the Wage and Hour Division of the Department of Labor and the Occupational Safety and Health Administration. In short, the Gutierrez-Flake bill does none of the things that migration experts and labor organizations have called for in order to protect U.S. workers within the framework of a revised immigration law.

5. Creating of a new temporary worker program will further harm U.S. workers

Rather than support a major increase in the number of *permanent* visas made available to immigrants in the future, the Gutierrez-Flake bill responds to the demands of US corporations for hundreds of thousands of new foreign *temporary* workers. The bill would permit at least 400,000 *temporary* workers to enter the country annually.

These new temporary workers could apply for permanent status after five years of labor as temporary workers. However, workers would fall out of status for a number of reasons, including for example, not being employed for more than 60 days.

A temporary worker facing termination of her or his immigration status if out of work for more than 60 days will obviously be far less inclined to unionize, strike, quite work because of labor law violations or sexual harassment, etc. than a permanent worker who does not face loss of status based upon loss of employment.

The Gutierrez-Flake bill does not, as recommended by labor organizations, set the wage rate in a collective bargaining agreement (CBA) applicable to the temporary job as the "prevailing wage." It does not appear to require that the

prevailing wage for labor certification purposes be the wage rate applicable to the same occupation in the same geographic area issued pursuant to the Davis-Bacon Act or the McNamara Service Contract Act, depending on the occupation.

The proposed bill does not require that the labor certification process be strengthened so that certifications are issued only when there is a demonstrated shortage of labor to fill temporary jobs.

6. Partial legalization at some indefinite time in the future

The Gutierrez-Flake bill proposed the implementation of a “non-immigrant” status for immigrants residing in the United States since June 2006. After six years of such temporary non-immigrant status, the bill would allow such immigrants to apply for lawful permanent resident status. The non-immigrant program would not commence until the “trigger” milestones mentioned above had taken place. The proposal includes provisions for administrative and judicial review of denied applications,

Even after six years of “non-immigrant” status, when immigrants apply for legalization, they are placed in the “back of the line” and may have to wait for many years before their applications for permanent resident status would be approved.

It is unclear at this point how long this wait would be. If as suggested such applicants would be required to wait until the entire current backlog of visas has been cleared, even with an increased number of family-based visas made available each year, the wait for lawful permanent status could easily be eight to ten years (since some visa categories are now backlogged about 20 years). This period would be followed by five years of lawful resident status, and then about one year to apply for citizenship, for a grand total of perhaps 15 to 18 years to become a citizen.

Other than to placate the anti-immigrant environment and public sentiment, a 15 to 18- year path to citizenship does not appear to be sound public policy. Integrating immigrants into the political institutions of the country and encouraging them to play an active role in the nation’s democracy much sooner extends a range of benefits to the country that the Gutierrez-Flake proposal misses.

Peter Schey
President
Center for Human Rights & Constitutional Law