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THE SENATE'S NEW "Z" VISA: MORE ZAP THAN ZEN FOR IMMIGRANT FAMILIES AND U.S. WORKERS

On May 17, 2007, less than a handful of Democratic Senators, seven Republican Senators, and the White House announced a deal on a proposed immigration reform packet. The deal followed what the media has called several over-night secret bargaining meetings resulting in the proposal now offered for Senate debate.

This is a preliminary assessment of the new proposal the details of which are not yet available for full analysis. In summary, we believe that the proposal is clearly pro-business, anti-family, anti-U.S. worker, and anti-immigrant. If enacted, the proposal will –

- defer meaningful legalization for millions of immigrants for many years,
- offer immigrants a *temporary* status permitting their exploitation for many more years,
- make family reunification difficult for many more years,
- discourage massive numbers of applicants by extraordinarily high application fees,
- require applicants for legalization to travel abroad so that final legalization decisions will likely escape review, permitting arbitrary decision-making that could impact the majority of cases,
- drastically reduce family-based immigration in favor of pro-business worker visas,
- drastically increase the number of temporary foreign "guest workers" available to US companies as cheap and exploitable labor (well over 500,000 per year),
- dramatically increase a wide range of highly repressive enforcement measures against immigrant communities that will result in local police

enforcement of immigration laws, increased detention of immigrants in privately operated detention sites, greatly increased family separations, and increased criminal and deportation penalties against a range of immigrants merely based upon undocumented presence,

- substantially increase the militarization and walling-in of the U.S.-Mexico border.

The most likely short and long-term results of these proposals are as follows —

- Several million undocumented immigrants will likely apply for and eventually (when is unknown) be granted temporary “Z” status, leaving them in a temporary and precarious status for many years, extending the time in which they are subject to exploitation on and off the work site, and delaying their meaningful economic, social, and political integration for likely in excess of ten years.
- Several million immigrants will not qualify for “Z” visas because of the extraordinarily high fees and other grounds of ineligibility, and will be left in undocumented status;
- Millions of Z visa holders will not qualify for permanent resident status because of extraordinarily high fees, restrictions on eligibility, and the need to go abroad to be processed where arbitrary and capricious decisions are not subject to review.
- Eliminating and reducing rather than expanding visas available for family reunification will immediately and over the long-term increase the size of the undocumented population as families refuse to be separated. To make matters worse, family members who live here unlawfully with their parents, spouses, or children, are then blocked from ever legalizing their status in the future (even if a visa becomes available).
- Permitting far more than 500,000 “Y” visa temporary workers to enter the U.S. each year will have immediate adverse effects on U.S. workers while permitting the exploitation of these temporary foreign workers. Because the proposed procedures are highly favorable to corporations, both in obtaining “certifications” of alleged labor shortages (without real evidence of shortages) and in setting minimum wages of foreign temporary workers, US workers will suffer loss of jobs and lowering of wages and working conditions. With no chance to seek permanent resident status, it is likely that hundreds of thousands and eventually millions of these temporary workers will remain in the U.S. in undocumented status, rapidly rebuilding the size of the undocumented population supposedly being reduced with the Z visa program, and in the end providing unscrupulous companies with access to both a massive temporary worker

- program *and* an undocumented workforce of migrants who failed to depart when their two-year temporary visas expired.
- Four major groups of immigrant families will face new and severe enforcement measures: (1) Those who do not qualify for Z visas, (2) temporary “Y” visa workers who overstay their visas, (3) families no longer eligible to legalize their status, and (4) new flows of undocumented migrants. These immigrants will be largely blocked from ever legalizing their status in the future, detention of immigrants will increase substantially, local police will become far more active in the enforcement of federal immigration laws (likely resulting in racial profiling, detentions, and arrests in Latino, African-American, and Asian communities), and the “criminalization” of undocumented status will be increased. All of these measures will drive undocumented immigrants deeper underground and clearly increase their exploitability on and off the job. Driving immigrant workers deeper underground also clearly adversely impacts US workers.
 - Further walling-in of the U.S. and militarization of the US-Mexico border is a concession of a failed immigration policy. Over the past 30 years the building of walls, militarization, and criminalization of the border have resulted in dramatically increased deaths and injuries, destruction of local communities, a range of civil and human rights violations involving US citizens and immigrants, and destruction of the border environment. Hundreds of millions of dollars given to private companies to build border walls without regard to most environmental and labor laws would be better spent on economic development in the major sending communities to reduce undocumented migration.

We urge elected officials to review and consider the proposals contained in the Unity Blueprint for Immigration Reform, an approach far more likely to serve the national interests, the interests of US workers, and the interests of immigrants and the communities in which they live and work. See –

<http://www.ime-tech.com/unityblueprint/documents/3-29-07UnityBlueprintForImmigrationReform.pdf>

Review of specific provisions of the White House/Senate proposal

1. THE “Z” VISA GETS AN “F”: A RESTRICTIVE LEGALIZATION PROPOSAL INTENDED TO BLOCK LEGAL, ECONOMIC, AND POLITICAL INTEGRATION FOR AS LONG AS POSSIBLE

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 Senate Proposal announced on May 17, 2007, indefinitely delays any legalization program until Congress and the White House determine that a range of repressive and probably unhelpful enforcement measures have been put into place and are operational. In addition to indefinitely delaying a legalization program, it is questionable whether these enforcement measures will have any discernible impact on reducing undocumented migration. In fact, as discussed below, they will most likely drive migrants not legalized and new immigrants deeper underground, making them even more vulnerable and exploitable.

There are numerous reasons why elected officials, community leaders, and the public should reject the proposed "Z" visas:

- 1. Permanent versus temporary visas:** A rational, comprehensive, and humane legalization program would provide qualified applicants with prompt access to lawful *permanent* resident status without the delay, obstacles, and administrative nightmare of first having to apply for and be granted a temporary status.
- 2. "Touchback."** In order to obtain lawful permanent resident ("LPR") status, immigrants (after they obtain their "Z" temporary visas), must apply for their adjustment to permanent residence at the U.S. consulate in their home country. This provision is an unnecessary, bureaucratic, and burdensome step for millions of immigrants,. More importantly, decisions to deny permanent resident visas made abroad may be arbitrary and capricious with no resort to meaningful review.
- 3. Families of Legalizing Immigrants.** The White House/Senate proposal does not allow the spouses and children of Z visa holders who are outside the country to join the Z visa holder. Applications for spouses and children will be delayed by many years until after the Z visa holder is granted permanent resident status. This will result in family separation for many years, or, because of the strength of family ties, many spouses and children will live with the Z visa holder in undocumented status and will then be blocked from ever legalizing their status in the future.
- 4. Cost of Z visas.** The proposed application fees are so extraordinarily high that many eligible immigrants will be unable to even apply, unless a fee waiver is available for those unable to afford the proposed fees. Community service would be a far better alternative than fees most immigrants will be unable to afford. The unusually high fees will also spawn a loan shark industry that will undoubtedly victimize immigrant communities across the country.
- 5. Delay in the Z visa program.** Before the Z visa program starts up, certain "trigger" events must take place, including:

1. 18,000 (CBP) Border Patrol hired

2. Construction of 200 miles of vehicle barriers and 370 miles of fencing
3. 70 ground-based radar and camera towers along the southern border
4. Deployment of 4 Unmanned Aerial Vehicles and supporting systems
5. Established of programs to detain all apprehended immigrants
6. Resources to detain up to 27,500 aliens per day on an annual basis
7. The use of secure and effective identification tools including a new Electronic Employment Verification System to prevent unauthorized work.

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.*

Among the primary beneficiaries of the "trigger" milestones indefinitely delaying an urgently needed legalization program are the usual suspects of military contractors: 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 Senators' and President's proposal's emphasis on new enforcement technologies, not to mention delaying legalization indefinitely while these technologies are developed.

In a nutshell, the current Senate and White House proposal puts essential legalization 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. CREATING OF A NEW "Y" TEMPORARY WORKER PROGRAM WILL FURTHER ADVERSELY IMPACT ON THE INTERESTS OF U.S. WORKERS

Rather than support a major increase in the number of *permanent* visas made available to immigrants in the future, the White House/Senate proposal, like the House Gutierrez-Flake bill, responds to the demands of US corporations for hundreds of thousands of new foreign *temporary* workers. The bill would permit far more than 500,000 *temporary* workers to enter the country annually for agricultural and non-agricultural work. After a few years the number of temporary workers present will number in the millions.

Who gets Y visas. Y-1 visas will be made available to non-seasonal workers. Y-2A visas will become available for seasonal agricultural workers, sheepherder, goat herders, and dairy workers. Y-2B visas will be granted for seasonal non-agricultural workers. Y-3 visas will be available to the spouses and children of some Y visa holders.

Caps on visa numbers: 400,000 per year cap on Y-1 visas. But subject to increases depending on market fluctuations. There are no numerical limitations for Y-2A while the Y-2B visas are initially capped at 100,000 with yearly adjustment based on market fluctuations

Period of admission: A Y-1 worker will be admitted for a two year period that may be renewed twice if that worker spends a period of one year outside the United States between each admission. However, a Y-1 worker accompanied by dependents is afforded a single two year visa, non-renewable. Seasonal workers with Y-2A and Y-2B visas will be granted 10 month visas; no extensions may be granted.

Lack of measurable standards for determining labor shortages. The proposed legislation lacks any significant provisions to ensure that employers do not game

the system and manufacture labor shortages that in fact do not exist in order to access temporary foreign workers.

Family separation: The proposal only permits Y visa holders to be accompanied by their spouses and minor children if the worker can show proof of valid medical insurance and demonstrate that his or her wages are 150% above poverty level for the household size. Many or most Y visa holders will not meet these requirements.

No path to legalization and creation of a new undocumented population: All experts agree that many if not most Y visa holders will remain in the U.S. beyond their period of authorized stay. This may happen for family reunification reasons or economic reasons of survival. This new undocumented population will be permanently barred from legalization their status in the future, furthering guaranteeing the build up of a massive new undocumented population caused by the failure of the Y visa proposal to include a path to lawful permanent resident status.

Y visa wages will adversely impact on US workers: The employer must attest that the Y worker will be paid not less than the greater of the actual wage paid by the employer to all other similarly situated workers or the "prevailing competitive wage." The proposal does not appear to require that the wage rate be set in accordance with any collective bargaining agreement (CBA) applicable to a job opportunity for which an employer proposes to hire a temporary worker. If the job is not covered by a CBA, the White House/Senate proposal does not require that the prevailing wage not be less than the wage rate applicable to the same occupation listed in a wage determination which applies to the same geographic area issued pursuant to the Davis-Bacon Act or the McNamara-O'Hara Service Contract Act, depending on the occupation. Finally, if the job opportunity for which an employer proposes to hire a temporary worker is not covered by a CBA, or listed in a wage determination issued pursuant to the Davis-Bacon Act or the Service Contract Act, the proposal does not require that the prevailing wage for labor certification purposes should be determined by the U.S. Department of Labor (DOL) and the appropriate state workforce agency based on wage data compiled by DOL's Bureau of Labor Statistics in a manner that does not adversely affect the wage standards of U.S. workers employed in the same or comparable occupation.

Y visas will be issued regardless of real labor shortages: The corporate-sponsored White House/Senate proposal does not require that the labor certification process be strengthened so that certifications are issued only when there is a demonstrated shortage of U.S. labor to fill temporary jobs. It leaves the current labor certification process largely in place, a system that employers regularly game in order to gain access to cheap foreign temporary labor.

3. REDUCING FAMILY-BASED IMMIGRATION IN FAVOR OF CORPORATE-ENDORSED WORK-RELATED VISAS

While virtually all migration experts agree on the urgent need to substantially increase the number of available family-based visas in order to meet the realistic demand and reduce undocumented migration, the White House/Senate proposal moves in the opposite direction, reducing the availability of family-based visas while increasing the availability of employment-based visas. This approach will obviously increase the size of the undocumented population because of the strength of families' need to be together, whether in documented or undocumented status. This proposal will also defeat the purpose of the Z visa (reducing the size of the undocumented population), leave thousands and eventually millions of immigrants in undocumented status, and in many instances cause family separation.

Delay in reducing family-based visa backlog. An annual total of 440,000 visas are assigned to process the current backlog of family-based categories. This visa allocation will likely mean that the current backlog persists for at least ten years. However, nothing will prevent the backlog from rebuilding in the future, particularly given the reduction in the annual allocation of visa for family-based immigration.

Capping annual visas for the parents of US citizens will further increase family separations and undocumented status. The proposal for the first time caps to 40,000 per year visas available for the parents of US citizens. This will cause substantially increased family separations or the parents of US citizens living in the US in undocumented status. Living here in undocumented status will then block their future legalization, leaving them in permanent undocumented status. US citizen children whose parents were undocumented will face far greater difficulty and delays in petitioning to immigrate their parents, something only allowed when the US citizens turns 21 years of age.

Increasing the size of the undocumented population. Given the obvious strength of the drive for family unification, reducing the number of visas available annually based upon family reunification will cause thousands and eventually millions of migrants to live in the US with their spouses, children, and parents in undocumented status. Their undocumented presence will then serve to bar their future legalization. These proposals will combine to substantially increase the size of the undocumented population.

4. 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 White House/Senate proposal 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 proposal 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 deportable immigrants will send thousands of migrants 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.

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.

5. THE EMPLOYER VERIFICATION AND WORKER PENALTIES WILL HARM U.S. WORKERS AND DRIVE IMMIGRANT WORKERS FURTHER INTO A BLACK MARKET ECONOMY

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 White House/Senate proposal 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.

The White House/Senate proposal entirely misses the opportunity to protect U.S. workers by imposing enhanced penalties against employers who violate the labor rights of immigrant workers. The proposal is flawed in numerous ways that will adversely impact on both the rights of US and 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 White House/Senate proposal is certainly a pro-corporate approach, however it 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.

6. CONCLUSION

Having worked extensively in the process of drafting the last major overhaul of US immigration laws in 1986 (Immigration Reform and Control Act of 1986), and represented hundreds of thousands of immigrants in several class action cases who were unlawfully excluded from the 1986 IRCA's legalization program, cases that continue to this day, we have a strong interest in prompt and comprehensive immigration reform. Unfortunately, the current White House/Senate proposal is so strongly pro-business, anti-US worker, and anti-immigrant in its architecture, that we cannot in any way endorse the proposal or even recommend it as a starting point for a rational debate on positive immigration reform that would truly serve the national interests.

We also seriously question the numerous public statements of the authors of the White House/Senate proposal to the effect that now is the "only chance" for many years to come to achieve immigration reform. These rather hysterical and speculative predictions seem more aimed at forcing immediate action regardless of the merits of the proposal, than encouraging a rational and serious debate in the national interest, even if that extends to 2008 or 2009.

We believe that the current White House/Senate proposal will provide corporate America with everything that it wants in immigration reform: Massive new

numbers of foreign temporary exploitable workers and guaranteed access to a large future population of undocumented workers. The proposal also gives away much to anti-immigrant advocates and institutions by offering a wide range of extremely harsh new measures that will unquestionably drive immigrant communities deeper underground rather than result in their apprehension and deportation. The proposal offers major defense contractors hundreds of millions of dollars in the privatization of detention and border enforcement activities. Finally, the proposal offers an entirely inadequate legalization program that will senselessly leave millions of migrants in undocumented status. Taken together, the proposal does not offer the type of architecture for immigration reform upon which a rational and humane program can be built.

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