

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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WHY WE SUPPORT IMMIGRATION REFORM BUT OPPOSE THE FLAWED SENATE IMMIGRATION BILL.

As the principle legal organization in the country that has represented applicants for legalization under prior laws, we have always supported federal legislation and Government regulations that promote a fair and rational immigration policy. By a fair and rational immigration policy, we mean a policy that protects the interests of U.S. workers, the unification of families, reduction in the size of the undocumented population, the non-exploitation and proper treatment of foreign workers and immigrant families, and non-militarization of the borders.

Over the past 20 years, both Democrat and Republican Administrations have assiduously ignored the immigration problem. During this time--thanks in large part to laws that make it difficult for undocumented immigrants to legalize their status even if they qualify for visas through family members or approved job offers, and other laws that make unrealistically low numbers of visas available to immigrants from countries with high visa demand--the number of undocumented immigrants has grown to as many as 12 million people, including a large number with U.S. citizen children.

During the past several months we and many other organizations have worked hard with members of United States Senate to arrive at a bill that would address immigration reform in a manner that protects the interests of U.S. workers, avoids the exploitation of foreign workers, substantially reduces the size of the undocumented population, distributes visas more fairly depending on different countries' visa demands, protects the due process and judicial review rights of immigrants, and includes effective but humane border enforcement. Indeed, we appreciate and recognize the bipartisan efforts of many members of the Senate to adopt a comprehensive immigration reform bill that seriously addresses the adverse national and local consequences of a large population of families living and working underground.

On Thursday, May 25, 2006, the U.S. Senate passed S. 2611. Unfortunately, despite the hard work of many individuals and organizations on these issues, for the reasons explained below, we feel compelled to announce our firm opposition to the Senate immigration bill unless and until it is drastically improved.

We understand that representatives of the House and Senate will next meet in a conference committee in an effort to arrive at a compromise between their respective versions of immigration reform. We see little possibility in that forum for the Senate bill to be improved. Indeed, if there is to be a House-Senate compromise, it will likely be even less fair and rational

than the already hopelessly flawed Senate bill. Nevertheless, we will continue to advocate for passage of a comprehensive immigration reform law that truly takes into account the best interests of the country, as well as the human and civil rights of immigrant families living here. If this means continuing this effort after the November elections, we and thousands of local coalitions, community-based groups, churches, unions and other concerned groups are in this effort for the long haul, and will not be discouraged or abandon hope because a positive bill is not produced this year. It took about three sessions of Congress to finally enacted the 1986 Immigration Reform and Control Act (IRCA), a law that legalized several million people without turning the balance into criminal fugitives.

We are guided in our position not only by the charter of our organization, and our long history of contributions in the area of civil and human rights, but also by the hundreds of thousands of immigrants and U.S. citizens who have recently marched and demonstrated in favor of comprehensive immigration reform. None of these marchers carried banners calling for endorsement of the Senate Hagel-Martinez compromise which provided the architecture for the Senate's final bill. Nor have the local coalitions that were responsible for organizing these marches endorsed the Senate bill. These mobilizations have served as a wake-up call for the whole country to acknowledge the vital role that immigrants play as co-workers, neighbors and members of our broad society.

The New York Times recently succinctly identified the two major forces at play in current legislative debate: The Times reported that 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." NYT May 13, p.1. Unfortunately, the interests that we do not see present in any significant way in the Senate bill 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

Here is why we oppose the Senate bill ---

S. 2611 will divert billions of dollars of taxpayers money to further militarize and criminalize the U.S.-Mexico border with no guarantee, or even estimate, of success in increasing national security

Past massive increases in border militarization have not measurably reduced the influx of undocumented migrants. Operation Gatekeeper and other such programs have merely (1) driven immigrants to more remote and dangerous crossing routes, (2) replaced "coyotes" who used to help people cross in relatively safety with violent armed thugs who are willing to risk the new dangers of crossing and long prison terms smugglers now face, (3) caused major increases in deaths and rampant violence along the border, and (4) destroyed the infra-structure of many border communities. Further militarization and criminalization of the U.S.-Mexico border is not a viable or humane solution to the problem of illegal entry.

Mandatory Detention for Aliens Apprehended at or Between Ports of Entry

Beginning in 2007, immigrants “attempting to illegally enter the U.S. and who [are] apprehended at a U.S. port of entry or along the ... border ... shall be detained until removed or a final decision granting admission has been determined,” and starting 60 days after the law is enacted, apprehended migrants may only be released if “[the] Secretary [of DHS] determines, after ... security checks ... that the alien does not pose a national security risk;” and the migrant posts “bond of not less than \$5,000.” Obviously very few immigrants can afford a release bond of \$5,000, so this provision is in effect one that will cause detention without bond for most migrants. Second, security checks even for citizenship applications currently take one to two years to complete. We also oppose the provision that provides that the Secretary of DHS retains the “sole unreviewable discretion” over whether to detain or release asylum applicants with a “credible fear of persecution.” Massive long-term detention of immigrants, with virtually no recourse to review by the courts, is not a response to the immigration problem that we can support.

Criminalization of undocumented immigrants

Section 132 criminalizes the conduct of any person who “attempts to elude or eludes” immigration inspection and provides a sentence for up to three years in prison. It also criminalizes “whoever willfully disregards or disobeys the lawful authority or command of any officer” charged with enforcing the immigration laws, with a sentence of up to five years in prison. The Senate bill also criminalizes undocumented immigrants by making illegal entry a “continuing” crime after the person’s entry is completed. The crime of illegal entry “continues until the alien is discovered within the United States ...” This provision, when combined with laws permitting local police to be involved in immigration enforcement, will encourage local police to conduct widespread arrests in the immigrant communities solely for illegal entries which may have taken place many years ago. Because the “crime” is continuing, and is therefore taking place in the presence of the officer, arrests may take place without the need to obtain arrest warrants. We do not support mass criminalization of undocumented immigrants and extending extraordinary arrest powers to local police as an effective or rational component of comprehensive immigration reform.

Indefinite detention of immigrants

Title II of the Senate bill allows for indefinite detention of immigrants, overriding the U.S. Supreme Court’s recent decision in *Zadvydas v. Davis*, 533 U.S. (2001). Detained immigrants are also denied effective judicial review of detention decisions. The expansion of detention of immigrants in removal proceedings will lead to tens or hundreds of thousands of immigrants languishing in detention centers at U.S. taxpayers’ expense. We do not believe that indefinite detention of immigrants is a reasonable or Constitutional response to the problem of effecting the removal of immigrants in deportation proceedings.

Blocks future legalization for undocumented immigrants who have used false names or social security cards to obtain work.

Except for those immigrants eligible to apply for legalization under the Senate bill, this provision will consign the vast majority of undocumented immigrants, including future entrants, to permanent underground status. This section will inexorably lead to an increase in the size of the undocumented population as immigrants with a path to legalization through family members or approved job offers find that path blocked because they previously worked using someone else's name or social security number, something most undocumented immigrants have done in the past and are likely to continue doing in the future.

Wipes out the ability of the courts to review arbitrary and illegal immigration policies and decisions

The Senate bill strips the federal courts of their historic role to review unlawful and unconstitutional Government policies, unlawful implementation of the acts of Congress, and erroneous decisions in individual cases involving such matters as detention, deportation, legalization, and naturalization. Courts will no longer have the power to stay, toll, or enjoin the voluntary departure period and those who fail to timely depart will be ineligible for immigration relief. This provision will encourage lawlessness and recklessness by policy makers as well as front-line officers making decisions in individual immigrant's cases.

Forces immigrants in deportation proceedings to waive their right to "voluntary departure" if they wish to appeal an illegal deportation order or denial of asylum.

The Senate bill 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. The ability to leave under "voluntary departure" is essential both to prevent severe criminal penalties from attaching should the immigrant return without inspection and in order to preserve the immigrant's ability to immigrate lawfully in the future. Given the high rate of court reversals of erroneous decisions by Immigration Judges, wiping out an immigrant's ability to leave the country under "voluntary departure" simply because he or she exercises the right to appeal a possibly erroneous deportation decision is unfair and unjust.

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 will face mandatory detention and may be deported through an "expedited" process without a formal due process hearing because he or she had three drunk driving misdemeanors twenty or more years ago; persons subject to "expedited removal" are provided no judicial review.

Encourages local police to become involved in enforcing the immigration laws

The Senate bill, combined with prior laws including the REAL ID Act, will significantly increase the involvement of local police in the enforcement of the nation's federal immigration laws. This may lead to mass arrests in minority communities and will decrease the willingness of immigrants to report violent crimes and cooperate with prosecutions aimed at putting violent criminals behind bars.

Permits the arrest and deportation of immigrants who have committed no crimes but were once members of "gang" or participated in a "gang activity"

The Senate bill provides that if an immigration officer has reason to believe that an immigrant is or was a "member" of a "gang," or has "participated" in gang activities, the immigrant faces detention and deportation even though he or she has never been arrested, or charged with or convicted of a crime. Thousands of young immigrants, mostly from Mexico and Central America, who have committed no crimes, will face detention and deportation even if they joined a gang in order to steer its members towards lawful activities, or participated in a baseball game with a gang (a "gang activity"), or otherwise committed no crimes.

Makes getting asylum more difficult for many asylum-seekers and offers no program for permanent resident status for several hundred thousand Central Americans

The Senate bill increases the difficulties legitimate asylum seekers will seek in their effort to avoid deportation to countries where they face torture and other forms of persecution. The bill also fails to include any effective and reasonably prompt legalization program for thousands of Central Americans who have lived in this country for many years, played by the rules, and enrolled for temporary benefits under TPS, NACARA and ABC.

Penalizes churches and other charitable organizations for their humanitarian work.

Despite amendments that narrowed criminalization of humanitarian assistance for life-threatening needs, faith-based and charitable organizations that help refugees could have their humanitarian work deemed criminal by the overbroad definition of immigrant "smuggling."

Creates new criminal document-fraud offenses, also making immigrants ineligible for future legalization

Title II allows for the deportation of individuals for document fraud even if they were never charged or convicted of a document-related offense. In addition, it broadens the definition of "fraud related offenses" to include omissions (failure to place material information in a form) and expands the definition of "immigration documents" to encompass a wide range of supporting documents. Immigrants convicted of a document-related offenses will be considered "aggravated felons," barring them from applying for any immigration relief in the future and permanently banning them from returning to the United States.

Expanded definition of “smuggling crimes”

Title II will criminalize such acts as moving or transporting an undocumented immigrant within the United States. It also makes such acts “aggravated felonies” resulting in the same harsh consequences as outlined above.

Expanded use of secret evidence

Title II broadens the “terrorist bars” allowing for the use of secret evidence in deportation proceedings and visa decisions, inviting violations of individuals’ fundamental rights and the principle of government accountability.

Reduces the list of acceptable documents to obtain employment

Title III will decrease the number of documents that are acceptable as proof of employment eligibility. U.S. citizens must present a U.S. passport or driver’s license or identity card that complies with the REAL ID Act as proof of identity. Legal Permanent Residents must present a permanent resident card as proof of identity. Many low-income U.S. workers do not possess the types of documents required to be lawfully employed.

Provides a fatally flawed legalization program

Rather than providing a fair path to citizenship to the majority of the 12 million undocumented workers currently living in our communities, a necessary program to protect U.S. workers, the Senate adopted the flawed “three tier” framework of the Martinez-Hagel compromise. The three-tier program will divide hundreds of thousands of families, leave immigrants in temporary status for eight years, delay citizenship and participation in the democratic process for 16-18 years, strips the courts of their ability to correct erroneous denials of legalization and illegal policies in the implementation of the law, requires tier two and three immigrants to give up their rights to due process deportation hearings at the end of the programs, and requires most tier two and three immigrants to eventually petition for employment-based visas based upon a showing that no U.S. workers are available to fill their jobs, a requirement that will result in a large number of applicants being rejected.

Based on data from the 1986 legalization program, we doubt that more than 3 million immigrants will apply under tier one, and less under tiers two and three. The majority of immigrants will be left in undocumented status. Combined with the Senate bill’s new interior enforcement programs and provisions blocking undocumented immigrants from ever legalizing their status, the three-tiered approach will create a caste society in which millions of hard-working immigrants will be driven further into the shadows of American society, leaving them vulnerable to exploitation and further disadvantaging U.S. workers..

English as the official language

Making English the “official” language of the United States will do nothing to help immigrants learn English but may well place obstacles before key agencies like the Federal Emergency Management Agency (FEMA) and the Centers for Disease Control and Prevention (CDC) in communicating vital public health and safety information in other languages, and may encourage Government agencies at all levels to eliminate or reduce their efforts to convey important information (voting rights, consumer protections, labor rights, etc.) in any language other than English.

What we unconditionally support: Fair and Humane Immigration Reform

- Genuine legalization and opportunities to adjust status for the majority of undocumented immigrants, including youth and farmworkers, with a reasonably prompt path to lawful permanent resident status and citizenship. The best approach to minimizing the undocumented population and protecting the interests of U.S. workers is to create a “rolling” legalization program, rather than embracing “one-time” programs every twenty or so years.
- Preservation of due process, including unobstructed access to the courts and meaningful judicial review of erroneous individual decisions and illegal policies that violate the laws enacted by Congress.
- No indefinite detention or expansion of mandatory detention; unless they pose a danger to the community or are a flight risk, immigrants suspected of being removable should be entitled to release on reasonable bonds while their proceedings are pending.
- No more wasted resources allocated to further militarize and criminalize our borders and that contribute to the crisis of human rights and lives in the border regions; through modern technology borders can be monitored without weapons and violence.
- The strengthening and strict enforcement of labor law protections for all workers, native and foreign born; depriving immigrants of full labor rights simply makes them more exploitable and increases the interest employers have in hiring them over U.S. workers.
- No use of city, state or other local government agencies in the enforcement of immigration law; when local police become immigration enforcers then immigrants stop reporting violent crimes. Reduce their cooperation with prosecutions, and violent criminals remain on the streets instead of behind bars.
- No criminalization of immigrants, or those who provide them critical services. When immigrants are criminalized they will be driven deeper underground and be even less

likely to report housing code violations, sexual harassment, crimes, spousal abuse, child abuse, labor law violations, etc.

- Expansion of legal immigration opportunities, support for family reunification and immediate processing of the massive backlog of over 1 million pending visa applications.

We dedicate ourselves to the pursuit of these goals which we believe will best serve the national interest, the position of U.S. workers, and the human and civil rights of immigrant families.

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