

**An Analysis of the Proposed Immigrant Legislation
in the United States Congress**

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Abstract

Immigration reform in the United States is causing battles in both Houses of the U.S. Congress. The proposal that came out of the House of Representatives in December 2005 is a more repressive reform proposal treating the immigrants without legal entry into the U.S. more as criminals than as undocumented workers. The reform proposal that passed the Senate in May 2006 is less harsh, and also provides routes to legalization for undocumented workers which the House of Representative version does not. The main problem with the proposal for reform that came from the Senate is that in reality, it would be very hard to put into effect. The Department of Homeland Security, which is the parent agency governing immigration matters, is not equipped to deal with the numbers of legalization applications that this proposal would generate. In addition, the last two provisions require that the undocumented workers leave the country, which would not be viable and certainly would not occur.

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Both the United States' House of Representatives, and the United States' Senate, have put forth proposals on how to resolve the problem of undocumented immigration in the United States. Legislation can originate in either the Senate or the House of Representatives, but both Houses of Congress must approve the legislation before it can be implemented. It then goes to the president for his signature, or his veto, depended on the administration's position.

The House of Representatives in December 2005 passed what is known as the Sensenbrenner bill, and sent it to the Senate for approval. The Senate however, passed its own proposal for immigration reform in May 2006, which must then be sent to the House of Representatives for its approval. Both versions of how to solve the immigration dilemma are very different, and in this article, an attempt will be made to describe the major thrusts of each proposed bill.

The Bush administration has published its general outline of its priorities in immigration reform. According to a White House press release, the Bush administration's five objectives for immigration reform are

- Securing the borders of the United States
- Creating a temporary worker program
- Making it easier for employers to verify employment eligibility and holding employers accountable for the legal status of their workers

- Finding a solution for the millions of illegal immigrants who are already within the United States
- Honoring the American tradition of the “melting pot”

The Bush White House priorities contain portions that are contained in both the Senate and House bills on immigration reform. It is interesting to note that Bush’s priorities, as a Republican president, have both “guest” worker, (another way of stating the temporary worker issue), and “amnesty” (another term often used for “legalizing” those undocumented workers already present) provisions which are usually associated with the Democratic party, and are notably absent from the Republican-majority House bill. The reason for Bush’s realistic or enlightened view of immigration reform is usually attributed to the fact that he was once governor of the state of Texas which has one of the largest Mexican populations in the United States and shares a border with Mexico. For this reason, he seems to have a better understanding of the immigration problem than most of his Republican cohorts in the House and the Senate who have never dealt directly with the immigration problem.

The House Proposal (The Sensenbrenner Bill)

In December 2005, the United States Congress passed the Border Protection, Antiterrorism and Illegal Immigration Control Act of 2005. This bill was authored by Rep. James Sensenbrenner, a Republican from a rich district north of Milwaukee, the largest city in Wisconsin. Sensenbrenner has become very powerful in the

House, and is also known for being virulently anti-immigration. He is disliked by many in the United States for his seemingly vengeful attitude against these poor undocumented workers who come to the United States not as criminals, but in search of work. Much of this dislike comes from the fact that he is from an incredibly wealthy family, and has never known poverty, so his attitude toward the poor seems all the more callous. His great-grandfather, Frank Sensenbrenner, was the founder of the large paper company in Wisconsin, now international, called Kimberly-Clark. He donated large amounts of money to Marquette University, a Jesuit university in Milwaukee, for which the university named its law school building, Sensenbrenner Hall, after him. Sensenbrenner is a perfect example of a U.S. politician who instead of using his position to better U.S. relations in the world merely reinforces the stereotype of the “ugly Americans.”

The Sensenbrenner Bill is entirely punitive. It does nothing to address the issues of why immigrants come to the United States, or the fact that all types and sizes of industries in the United States are using this cheap labor that the immigrants supply. It is a backward-looking bill, only addressing the symptoms of the immigration problems as they existed in December 2005, not the causes. It also does not look forward and analyze what new issues may arise, in order to prepare for them. For example, it provides increased fines for companies using undocumented labor, proposing an electronic verification system to be used by all employers to check that the workers they hire have valid legal documents proving their employment authorization by the government. If the company fails to comply with this procedure, it could be fined up to \$7,000 per violation for a first offense,

and up to \$40,000 for the third time an employer is caught employing undocumented immigrants. This is typical of the provisions of the bill, punishment without an analysis of the consequences that these dismissals of workers or the amounts of these fines would have upon the financial operations of these businesses and thereby the economy of the United States. This is a rule of punishment rather than prevention.

Other examples under this proposed legislation are that the number of border patrol officers would be increased and a 700 mile border fence would be built. Both proposals are again dealing with the symptoms of the problem of undocumented workers, not the cause.

The Sensenbrenner Bill also contains a provision that would allow local police units, normally not authorized to act in immigration matters since all immigration laws are federal, not state or municipal, to begin enforcing federal law and be allowed to search for and arrest undocumented immigrants. On the surface this may seem to be only increasing the number of immigration police within the U.S. borders, but a severe problem with this proposal is the reality of using state or municipal police against undocumented workers. These police forces are normally dealing with “real” criminals, not undocumented workers whose only “crime” is working without authorization from the US government. The U.S. Immigration and Customs Enforcement agency, or ICE, has officers who are trained to search for and detain undocumented workers, and not criminals. Hence, their methods tend not to be as brutal or violent as the state or local polices forces of the individual

states. Having these local or state law enforcement agencies, who often tend toward violent or brutal methods, begin to arrest merely undocumented workers, who are for the most part a peaceful law-abiding population, runs the risk that serious human rights violations may occur.

Another provision of the Sensenbrenner Bill is that it would make illegal entry into the United States, now a misdemeanor, which is a crime with a jail sentence of less than one year, a felony, a crime which calls for jail time of one year or more. Normally, illegal entries are punished with deportation, and not jail time. This change would mean that more undocumented workers would be sent to prison, depriving them of their freedom instead of only returning them to their countries of origin. Besides the obvious human rights implications of this change, it would also greatly increased the governments, both state and federal, would have to spend on prisons. Again, an example of how the author of this bill did not plan for the realities of the consequences of its provisions.

In addition, the Sensenbrenner Bill has no provisions for allowing immigrants to obtain work authorization, or legalize those undocumented workers already present. This again shows the punitive nature of the bill, and its shortsightedness, and a complete denial of the reality that there are currently 11 million undocumented workers in the United States. The Sensenbrenner Bill only seems to pander to the politically extreme right in the United States, mostly made up of persons as ignorant and callous to the plight of the undocumented workers, as Sensenbrenner himself.

The US Senate's Response to the Sensenbrenner Bill

On May 25, 2006, the United States Senate passed its own bill to address the problem of immigration reform. This version of immigration reform goes farther toward the reality of the immigration problem, allowing for "guest" worker programs and an attempt at "amnesty," but as is discussed below, it too has its shortcomings. Again, as was stated earlier, this proposal would need approval from the House of Representatives, and the president, both of which are still very much in doubt. And additionally, this legislation does not take into account the reality of the impact that this legislation would have on the lives of the undocumented immigrants currently living in the United States.

The proposed legislation creates three distinct classes of immigrants who would be eligible for legalization.

First Class

1. Immigrants who have lived in the United States for five years or more, approximately seven million people, who would be allowed to apply for permanent residency and eventually citizenship but only if they remain employed, pass background checks (i.e. have no criminal past), pay any fines or taxes due to the federal or state governments, and enroll in English classes.

This option makes the most sense. It gives a type of amnesty to immigrants who have been working and contributing positively to the betterment of the US economy and society and who more than likely have established lives in the United States. These are immigrants who have children in US schools, have strong social ties in their communities, i.e. church, volunteer organizations, have purchased homes, cars and other possessions, and in short, have the intention of living permanently in the United States and not returning to their country of origin.

Second class

2. Immigrants who have lived in the United States two to five years, approximately three million people, who would have to leave the country briefly and receive temporary work visas before returning as guest workers. Over time, they would be allowed to apply for permanent residency and ultimately citizenship.

This option is not viable. Immigrants who have been in the United States for two to five years will have many of the same ties to the US as those who have been in the country for five years or more. This option requires these immigrants to leave the country and then ask for permission to re-enter. This makes no sense. Why should they be required to leave? Most immigrants, and rightly so, do not trust the United States' immigration service. It is subjective, inefficient, has huge backlogs in processing time, untrained personnel, and in effect, this mass exodus of immigrants would be a bureaucratic nightmare. The immigration service right now

can not handle efficiently the document processing it has. Adding three million more petitions for re-entry is just not realistic. In addition, these immigrants would be very unwilling to leave the country for fear of not being allowed back in, as well as unwilling to provide the personal information that the US government will require during this exit-entry process. The procedures for this option would have to be very detailed to give immigrants the confidence they would need to leave the country. In addition, the majority of Mexican immigrants are working. This option would mean these immigrants would have to ask their employers for time off from work, which is not very likely to be granted. If they did leave, many would lose their jobs, and a job is the reason they are in the country.

Third class

3. Immigrants who have been in the United States less than two years, approximately one million people, who would be required to leave the country with no guarantee of returning. They could apply for the guest worker program, but they would not be guaranteed acceptance into it.

This option is completely unworkable. In my four years of working as an immigration attorney in the United States I never met an immigrant who would accept these terms. It is like asking the immigrants to commit immigration suicide. The US government would ask them for all types of personal information, take their fingerprints, take their photos, and with this information it is not unthinkable that the US government could deny them entry into the United States, and then have them

on record to keep permanently denying them legal entry. Very few or very naïve immigrants would take that chance.

Other aspects of the proposed law are the introduction of a new work visa, the H-2C visa, or “blue card,” 370 miles of new fencing along the Mexican-US border, and a clause indicating that English is the official language of the US, but without more specific information about this aspect.

The visa H-2C, or “blue card,” would allow employers to bring in foreign workers for up to 6 years, after which the employee would have to leave the US for one year. Again, these attempts to bring in foreign workers temporarily, and then force them to leave for periods of time, are unrealistic and contrary to human nature. Only legislation that allows freedom for the worker to decide whether to stay or leave the United States would be realistic. Many workers do want to return to their home countries, and are not interested in pursuing US citizenship. Only legislation that reflects these realities will work. Any other type of legislation, with periods of forced absence from the US, would be as useful as trying to herd a group of cats, i.e., impossible.

Since this legislation has not been fully passed by the entire U.S. Congress, the actual operational procedures have not been formulated. Currently the Senate is holding what are called Town Hall meetings. These are local meetings with citizens to discuss citizen’s views on proposed legislation. These meetings are still

being held as of the date of this writing, a final vote by the Congress has not been had.

Only time will tell how the U.S. Congress will reform immigration. As of today's date, the future of immigrants in the U.S. looks fairly uncertain, and with more than eleven million lives in the balance, it is making life difficult for those waiting to receive the full benefits of their labor working in the United States of America.

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