

# Executive Memorandum

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## The McCain–Kennedy Immigration Reform Bill Falls Short

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Immigration reform is necessary, but it will succeed only if it enhances national security, promotes economic growth, and protects freedom and liberty. The only practical solution is a comprehensive plan that addresses internal enforcement of immigration laws, the origins of illegal migration, and border security. The Secure America and Orderly Immigration Act (S. 1033) introduced by Senators John McCain (R–AZ) and Edward Kennedy (D–MA) does not achieve these ends.

Any comprehensive immigration reform program must encourage individuals to use lawful means to enter and reside in the United States. At the same time, it must effectively combat human smuggling, illegal border crossing, the use of falsified or stolen documents, and benefits fraud.

**Inside America.** McCain–Kennedy would establish a worker visa program that would allow employers to temporarily hire foreign citizens to fill jobs that cannot be filled with U.S. laborers. That is not a bad idea. However, the act proposes to allow individuals unlawfully here to stay and sign up for the program by paying a \$1,500 fine. That is a bad idea. It is, in effect, an amnesty—which undercuts the rule of law by rewarding those who have acted wrongly and will only encourage further illegal entry. Effective internal enforcement must deter further illegal entry. Any effective deterrent must

require individuals to leave and apply for admission without prejudice or advantage.

A successful worker visa program must also have an infrastructure to process applicants and quickly remove those illegally present, particularly any who pose a security safety risk. Processes must be in place before the program begins; otherwise, the millions vying for new benefits will overwhelm a system that is still struggling to reduce the backlog of visa applicants. The Immigration Reform and Control Act of 1986 created

just this problem, generating 3.5 million applications. The backlog prompted an effort to reduce it at the expense of security vetting. Three known terrorists used these programs to stay in the United States.

McCain–Kennedy does not include safeguards to ensure that the essential visa worker program will be properly executed. The law must require that the program be automated; integrated with related law enforcement, security, and immigration sys-

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tems; and that the infrastructure be in place before—not after—the program is implemented.

The bill also fails to adequately enhance detention and removal. The law should require making the current system work more efficiently, rather than just adding bed space or reimbursing states for the costs of incarcerating illegal aliens. For example, Congress could increase capacity by quadrupling the speed of the process. That would increase detention capacity fourfold without building anything or reimbursing anyone. In addition, the law should require that key security screening steps occur at the beginning of the application process.

Finally, the bill does not appropriately engage state and local law officials in immigration enforcement. Model programs already exist in Florida and Alabama, instituted under section 287(G) of the Immigration and Naturalization Act. The programs train selected state and local law officers to assist in immigration investigations and provide federal oversight and liability protection. The law should require the Department of Homeland Security (DHS) to seek out other states to participate in the program.

**Origins of Illegal Entry.** The bill does correctly emphasize the importance of obtaining cooperation from countries that are the sources and transit points for illegal entry. Every year individuals in the U.S. send over \$40 billion in remittances to their home countries. Currently, little of this money goes toward promoting economic development in Latin America. The U.S. can encourage cooperation by developing bilateral solutions, such as tax and investment programs, that make it much more advantageous for states to have remittances come from individuals lawfully present in the U.S.

**On the Border.** Enhanced border security and good immigration policies go hand in hand. Former Immigration and Naturalization Service Commissioner Doris Meissner observed that the largest U.S. temporary worker program, which operated from 1942 to 1964, suffered from lax enforcement. The “lasting effect of [this] program has been that it spawned and institutionalized networks and labor market relationship between Mexico and the United

States. These ties...became the foundation for today’s illegal migration from Mexico.” Ignoring the problem again by implementing reform without a solid strategy for border security and the necessary resources is unacceptable.

While McCain–Kennedy mandates a national border security strategy, it would require DHS to do little more than document efforts underway. Congress needs to establish clear priorities and invest in resources that create a system-of-systems approach to security. Rather than trying to control the entire border, the United States requires a network of assets that direct the right capabilities to the right places at the right times to provide appropriate responses. The network would provide knowledge of activities at sea and along the border, as well as the means to analyze and share that knowledge effectively.

**The Way Ahead.** Although the Secure America and Orderly Immigration Act sets the right framework, it fails in the details. Congress needs a better bill, which:

- Does not grant amnesty to illegal aliens,
- Provides the infrastructure to properly implement a guest worker program,
- Ensures internal enforcement of immigration laws,
- Effectively engages the cooperation of states in Latin America, and
- Requires an effective border control strategy.

A bill that achieves these ends will go a long way toward meeting the national priorities of enhancing security, promoting economic growth, and preserving liberty.

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