

# Executive Memorandum

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## The Cornyn–Kyl Immigration Reform Act: Flawed But Fixable

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Any effective national security solution to reducing illegal border crossings and the unlawful population in the United States must address internal enforcement of immigration laws, international cooperation, and border security. Effective immigration reform must be a key component of these reforms. The legislation proposed by Senators John Cornyn (R–TX) and Jon Kyl (R–AZ) offers just such a comprehensive approach but falls short by not adequately deterring illegal entry.

**On the Right Track.** After Senator Cornyn became chairman of the Senate Judiciary Subcommittee on Immigration, he held a series of hearings with Senator Kyl, chairman of the Homeland Security Subcommittee, on a variety of terrorist travel and border enforcement issues. The Comprehensive Enforcement and Immigration Reform Act (S. 1438) reflects the lessons learned from these hearings and their own experiences in Texas and Arizona.

The bill recognizes that strengthening border security without reducing America's unquenchable demand for illegal labor is a losing strategy. As Cato Institute analyst Douglas Massey concluded:

Increased border enforcement has only succeeded in pushing immigration flows into more remote regions. That has resulted in a tripling of the death rate at the

border and, at the same time, a dramatic fall in the rate of apprehension. As a result, the cost to U.S. taxpayers of making one arrest along the border increased from \$300 in 1992 to \$1,700 in 2002, an increase of 467 percent in just a decade.

More international cooperation, strong enforcement of laws inside the United States, and credible alternatives for employers to hire legal immigrant labor are essential to reducing the flood of illegal immigration and making border security manageable and affordable.

S. 1438 would create a new “W” nonimmigrant visa for a guest worker program, which would allow employers to hire foreign citizens temporarily to fill jobs that cannot be filled in the U.S. labor market. Workers would be required to undergo background checks and biometric documentation. The bill also provides for “mandatory departure,” which would permit an alien who ille-

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This paper, in its entirety, can be found at:  
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gally entered the U.S. within the past year to apply for a guest worker visa, leave, and then re-enter through legal means.

**Where They Went Wrong.** One problem is that the bill still rewards those who have entered illegally. Individuals unlawfully present in the country should be required to leave and apply for the guest worker program just as everybody else must do. The bill would give them an advantage over people who were following the laws by allowing them to apply for the W visa before leaving the U.S., effectively putting them at the front of the line.

Even more important is the principle behind making people leave. Repatriation is required by law. Making unlawful presence in the country permissible, even for a short period of time for the sake of expediency, undermines the rule of law and suggests that the government is not serious about immigration enforcement. People will have little reason to follow the law if their illegal activity (presence in the U.S.) is considered legal if they just wait long enough. For a deterrent to be effective, the government cannot give lawbreakers an advantage over those who obey the law.

Furthermore, Cornyn–Kyl does not include security vetting provisions, provide the infrastructure to manage the system, or require that it be in place *before* implementation. In fact, Congress has a track record of refusing to fund internal enforcement of immigration laws adequately. For about 15 years, the number of U.S. immigration agents has held steady at about 2,000, while the number of people unlawfully present in the U.S. has risen from a few million in the early 1990s to an estimated 12 million.

Immigration benefits and enforcement systems are little better than they were 15 years ago. In 1991, Mir Aimal Kansi entered the U.S. on a business visa and overstayed. Two years later, he claimed political asylum and then fraudulently applied for legalization under the 1986 amnesty bill. In January 1993, while his application was pending, he murdered two CIA employees and injured three others outside CIA headquarters. As

written, the Cornyn–Kyl bill would do nothing to prevent the recurrence of a similar scenario.

The current application processes are also inadequate and would be overwhelmed by a guest worker program. U.S. Citizenship and Immigration Services is unable to adjudicate current applications within a reasonable time frame. Its information systems are not integrated with US-VISIT (a system that tracks foreigners' arrivals and departures) or with the other 28 existing immigration databases. Only a handful of benefits applications are available electronically or require biometrics (e.g., fingerprints). Background checks do not include real-time vetting of law enforcement information. To work, the Cornyn–Kyl bill must put the infrastructure in place before implementing a guest worker program.

**A Realistic Solution.** Only a comprehensive solution will address all national security concerns adequately. Immigration reform and, specifically, the implementation of a temporary worker program must coincide with stronger enforcement of immigration laws. Congress should therefore modify S. 1438 so that it:

- Requires that the means to manage a guest worker program be in place before its implementation and
- Does not grant advantages to illegal aliens.

Border enforcement alone, even after spending billions of additional dollars, will not stop illegal entry or discourage unlawful presence. An effective temporary worker program that works for American employers and those seeking work will cost less and reduce the cost of border enforcement. Only such a comprehensive solution makes sense.

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