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Rewarding Illegal Aliens: Senate Bill Undermines the Rule of Law

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The most controversial component of the Senate's Secure Borders, Economic Opportunity and Immigration Reform Act of 2007 is Title VI, euphemistically entitled "Nonimmigrants in the United States Previously in Unlawful Status." It would create a new "Z" visa exclusively for illegal aliens. This title would change the status of those who are here illegally to legal, essentially granting amnesty to those "previously in unlawful status." This seriously flawed proposal would undermine the rule of law by granting massive benefits to those who have willfully violated U.S. laws, while denying those benefits to those who have played by the rules and sometimes even to U.S. citizens.

Flawed Provisions. The following are ten of the worst provisions—by no means an exhaustive list—of Title VI of the bill:

1. **A Massive Amnesty:** Title VI of the bill grants amnesty to virtually all of the 12 million to 20 million illegal aliens in the country today. This amnesty would dwarf the amnesty that the United States granted—with disastrous consequences—in 1986 to 2.7 million illegal aliens. It is also a larger amnesty than that proposed in last year's ill-fated Comprehensive Immigration Reform Act. Indeed, the Senate's bill imposes no cap on the total number of individuals who could receive Z-visa status.

To initially qualify for a Z visa, an illegal alien need only have a job (or be the parent, spouse, or child of someone with a job) and provide two documents suggesting that he or she was in the

country before January 1, 2007, and has remained in the country since then. A bank statement, pay stub, or similarly forgeable record will do. Also acceptable under the legislation is a sworn affidavit from a non-relative (see Section 601(i)(2)).

The price of a Z visa is \$3,000 for individuals—only slightly more than the going rate to hire a coyote to smuggle a person across the border. A family of five could purchase visas for the bargain price of \$5,000—some \$20,000 short of the net cost that household is likely to impose on local, state, and federal government each year, according to Heritage Foundation calculations.

Expect a mass influx unlike anything this country has ever seen once the 12-month period for accepting Z visa applications begins. These provisions are an open invitation for those intent on U.S. residence to sneak in and present two fraudulent pieces of paper indicating that they were here before the beginning of the year.

That is precisely what happened in the 1986 amnesty, during which Immigration and Naturalization Services discovered 398,000 cases of fraud. Expect the number of fraudulent applica-

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tions to be at least four times larger this time, given the much larger applicant pool.

2. **The Permanent “Temporary” Visa:** Supporters of the bill call the Z visa a “temporary” visa. However, they neglect to mention that it can be renewed every four years until the visa holder dies, according to Section 601(k)(2) of the legislation. This would be the country’s first *permanent* temporary visa. On top of that, it is a “super-visa,” allowing the holder to work, attend college, or travel abroad and reenter. These permissible uses are found in Section 602(m).

A law-abiding alien with a normal nonimmigrant visa would surely desire this privileged status. Unfortunately for him, only *illegal* aliens can qualify, according Section 601(c)(1).

And contrary to popular misconception, illegal aliens need not return to their home countries to apply for the Z visa. That’s only necessary if and when an alien decides to adjust from Z visa status to lawful permanent resident (“green card”) status under Section 602(a)(1). And even then, it’s not really the country of origin; any consulate outside the United States can take applications at its discretion or the direction of the Secretary of State.

3. **Hobbled Background Checks:** The bill would make it extremely difficult for the federal government to prevent criminals and terrorists from obtaining legal status. Under Section 601(h)(1), the bill would allow the government only *one business day* to conduct a background check to determine whether an applicant is a criminal or terrorist. Unless the government can find a reason not to grant it by the end of the next business day after the alien applies, the alien receives a probationary Z visa (good from the time of approval until six months after the date Z visas begin to be approved, however long that may be) that lets him roam throughout the country and seek employment legally.

The problem is that there is no single, readily searchable database of all of the dangerous people in the world. While the federal government does have computer databases of known criminals and terrorists, these databases are far from comprehensive. Much of this kind of informa-

tion exists in paper records that cannot be searched within 24 hours. Other information is maintained by foreign governments.

The need for effective background checks is real. During the 1986 amnesty, the United States granted legal status to Mahmoud “The Red” Abouhalima, who fraudulently sought and obtained the amnesty intended for seasonal agricultural workers (even though he was actually employed as a cab driver in New York City). But his real work was in the field of terrorism. He went on to become a ringleader in the 1993 terrorist attacks against the World Trade Center. Using his new legal status after the amnesty, he was able to travel abroad for terrorist training.

4. **Amnesty for “Absconders”:** Title VI’s amnesty extends even to fugitives who have been ordered deported by an immigration judge but chose to ignore their removal orders. More than 636,000 absconders are now present in the country, having defied the law twice: once when they broke U.S. immigration laws and again when they ignored the orders of the immigration courts.

The Senate’s bill allows the government to grant Z visas to absconders. Though the bill appears to deny the visa to absconders in Section 601(d)(1)(B), Section 601(d)(1)(I) allows U.S. Citizenship and Immigration Services officials to give an absconder the Z visa anyway if the absconder can demonstrate that departure from the United States “would result in extreme hardship to the alien or the alien’s spouse, parent or child.”

This is a massive loophole because so many things can be construed to constitute “extreme hardship.” This might include removing a child from an American school and placing him in a school in an impoverished country, or deporting a person with any chronic illness. Attorneys representing aliens would also argue that if any member of an absconder’s family is a U.S. citizen, then the other members *must* remain in the United States, because the separation of family members would constitute extreme hardship.

This would also be a reward to those who have defied U.S. immigration courts. Those who have successfully fled justice could receive the most

generous visa ever created, but those who complied with the law and have waited years to enter legally would have to wait longer still. (Indeed, the massive bureaucratic load caused by processing Z visas would undoubtedly mean *longer* waits for those who have played by the rules.) Further, those who have obeyed the law and complied with deportation orders would not be eligible for Z visas.

The effect of this provision may already be felt today. Why would an illegal alien obey a deportation order while this bill is even *pending* in Congress? If the alien ignores the deportation order, he may be able to qualify for the amnesty; but if he obeys the order, he has no possibility of gaining the amnesty.

5. **Reverse Justice:** The bill would effectively shut down the immigration court system. Under Section 601(h)(6), if an alien in the removal process is “prima facie eligible” for the Z visa, an immigration judge must close any proceedings against the alien and offer the alien an opportunity to apply for amnesty.
6. **Enforcement of Amnesty, Not Laws:** The bill would transform Immigrations and Customs Enforcement (ICE) from a law enforcement agency into an amnesty distribution center. Under Sections 601(h)(1, 5) if an ICE agent apprehends aliens who appear to be eligible for the Z visa (in other words, just about any illegal alien), the agent cannot detain them. Instead, ICE must provide them a reasonable opportunity to apply for the Z visa. Instead of initiating removal proceedings, ICE will be initiating amnesty applications. This is the equivalent of turning the Drug Enforcement Agency into a needle-distribution network.
7. **Amnesty for Gang Members:** Under Section 602(g)(2) of the bill, gang members would be eligible to receive amnesty. This comes at a time when violent international gangs, such as Mara Salvatrucha 13 (or “MS-13”), have brought mayhem to U.S. cities. More than 30,000 illegal-alien gang members operate in 33 states, trafficking in drugs, arms, and people. Deporting illegal-alien gang members has been a top ICE priority. The Senate bill would end that. To qual-

ify for amnesty, all a gang member would need to do is note his gang membership and sign a “renunciation of gang affiliation.”

8. **Tuition Subsidies for Illegal Aliens:** The Senate bill incorporates the Development, Relief and Education for Alien Minors Act (DREAM Act). The DREAM Act effectively repeals a 1996 federal law (8 U.S.C. § 1623) that prohibits any state from offering in-state tuition rates to illegal aliens unless the state also offers in-state tuition rates to all U.S. citizens. Ten states are currently defying this federal law. Section 616 would allow these and all other states to offer in-state tuition rates to any illegal alien who obtains the Z visa and attends college.

The injustice of this provision is obvious. Illegal aliens would receive a taxpayer subsidy worth tens of thousands of dollars and would be treated better than U.S. citizens from out of state, who must pay three to four times as much to attend college. In an era of limited educational resources and rising tuitions, U.S. citizens, not aliens openly violating federal law, should be first in line to receive education subsidies.

Further, *legal* aliens who possess an appropriate F, J, or M student visa would not receive this valuable benefit. Nor would they be eligible for the federal student loans that illegal aliens could obtain by this provision.

9. **Taxpayer-Funded Lawyers for Illegal Aliens:** The Senate’s bill would force taxpayers to foot the bill for many illegal aliens’ lawyers. Under current law, illegal aliens are not eligible for federally funded legal services. Section 622(m) of the bill would allow millions of illegal aliens who work in agriculture to receive free legal services. Every illegal alien working in the agricultural sector would have access to an immigration attorney to argue his case through the immigration courts and federal courts of appeals—all at taxpayer expense. This provision alone could cost hundreds of millions of dollars each year.
10. **Amnesty Before Enforcement Triggers:** Proponents of the Senate approach have consistently claimed that it would allow delayed amnesty

only after certain law enforcement goals are met. The text of the bill, however, tells a different story. Section 1(a) allows provisional Z visas to be issued immediately after enactment, and Section 601(f)(2) prohibits the federal government from waiting more than 180 days after enactment to begin issuing provisional Z visas.

These provisional Z visas could be valid for years, depending on when the government begins issuing non-provisional Z visas, according to Section 601(h)(4). Moreover, the “provisional” designation means little. These visas are nearly as good as non-provisional Z visas, giving the alien immediate lawful status, protection from deportation, authorization to work, and the ability to exit and reenter the country (with

advance permission). These privileges are listed in Section 601(h)(1).

Conclusion. What becomes unmistakably clear from the details of the Senate’s bill is that it is not a “compromise” in any meaningful sense. Indeed, the sweeping amnesty provisions of Title VI cripple law enforcement and undermine the rule of law.

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