

# BACKGROUND

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## House Standards for Immigration Reform Nearly Identical to Flawed Senate Bill

*The Heritage Foundation Immigration and Border Security Reform Task Force*

### Abstract

*The House Republican leadership recently released its “Standards for Immigration Reform,” which amount to little more than a repackaging of the flawed and harmful Senate bill. The principles of the House leadership match up almost exactly with the framework laid out by the Senate’s Gang of Eight for the Senate bill. Both chambers promise new enforcement, border security, and visa reforms in exchange for amnesty—a costly, unfair, and unworkable policy that didn’t work in 1986 and won’t work now. Congress should reject dangerous policies that do not fix the problems of the U.S. immigration system but only make it worse. Rather than repeat the mistake of 1986, the House leadership should focus on how it can encourage President Obama to enforce existing law.*

The House Republican leadership recently released its “Standards for Immigration Reform.”<sup>1</sup> Regrettably, these standards amount to little more than a repackaging of the flawed and harmful Senate bill. The principles of the House leadership match up almost exactly with the framework laid out by the Senate’s Gang of Eight for the Senate bill.<sup>2</sup>

### Border Security

**The House.** “It is the fundamental duty of any government to secure its borders, and the United States is failing in this mission. We must secure our borders now and verify that they are

### KEY POINTS

- The Senate’s immigration bill, S.744, has been widely rejected by the House due to its many flaws and comprehensive nature.
- Regrettably, the recently released House Republican “Standards for Immigration Reform” are essentially modelled on the Senate approach.
- The Senate and House approach is built around amnesty, which is unfair to Americans and legal immigrants, costly to American taxpayers, and harmful to U.S. border security efforts.
- Importantly, President Obama has engaged in unprecedented levels of lawlessness on immigration, requiring that trust and integrity be restored before Congress advances new policies.

This paper, in its entirety, can be found at <http://report.heritage.org/bg2881>

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secure. In addition, we must ensure now that when immigration reform is enacted, there will be a zero tolerance policy for those who cross the border illegally.”<sup>3</sup>

**The Senate.** “To fulfill the basic governmental function of securing our borders, we will continue the increased efforts of the Border Patrol by providing them with the latest technology, infrastructure, and personnel needed to prevent, detect, and apprehend every unauthorized entrant.”<sup>4</sup>

**Analysis.** There is next to no difference between the Senate bill and the House principles. It is well known that the Senate bill directs billions of dollars to border security and uses flawed metrics that do not effectively measure how many immigrants are still illegally entering the U.S. every year.<sup>5</sup> The House’s Border Security Results Act sets up similarly misguided metrics and requires at least 10 additional reports for Department of Homeland Security (DHS) to give to Congress, half of which are recurring.<sup>6</sup> While the proper metrics can be important, ultimately what is needed are actual results, which neither the House principles nor the Senate bill can ensure.

## Enforcement of the Law

**The House.** “There will be a zero tolerance policy for those who cross the border illegally or overstay their visas in the future. Faced with a

consistent pattern of administrations of both parties only selectively enforcing our nation’s immigration laws, we must enact reform that ensures that a President cannot unilaterally stop immigration enforcement.”<sup>7</sup>

**The Senate.** “We will demonstrate our commitment to securing our borders and combating visa overstays by requiring our proposed enforcement measures be complete before any immigrant on probationary status can earn a green card.”<sup>8</sup>

**Analysis.** While the two are very similar, here the Senate bill actually makes enforcement more difficult by providing the executive branch with additional discretion and waivers.<sup>9</sup> What the House principles and the Senate bill have in common on this point is that neither the House nor the Senate has a way of ensuring that the President will actually enforce the law. The House may claim that it does, but, if the President already disregards current laws, how can the House really ensure that President Obama—or a future President—will respect a new immigration law?<sup>10</sup> Ultimately, both the Senate and House promise more enforcement, but neither can actually deliver it.

## An Entry-Exit System

**The House.** “A fully functioning Entry-Exit system has been mandated by eight separate stat-

1. Laura Meckler, “House Republicans Release ‘Standards’ on Immigration Overhaul,” *The Wall Street Journal*, January 30, 2014, <http://blogs.wsj.com/washwire/2014/01/30/house-republicans-release-standards-on-immigration-overhaul/> (accessed February 4, 2014).
2. Senator Charles Schumer et al., “Bipartisan Framework for Comprehensive Immigration Reform,” January 2013, [http://www.flake.senate.gov/documents/immigration\\_reform.pdf](http://www.flake.senate.gov/documents/immigration_reform.pdf) (accessed February 4, 2014), and The Border Security, Economic Opportunity, and Immigration Modernization Act, S. 744, 113th Congress, 1st Session, <http://www.gpo.gov/fdsys/pkg/BILLS-113s744es/pdf/BILLS-113s744es.pdf> (accessed February 4, 2014).
3. Meckler, “House Republicans Release ‘Standards’ on Immigration Overhaul.”
4. Schumer et al., “Bipartisan Framework for Comprehensive Immigration Reform.”
5. Jessica Zuckerman and David Inserra, “Top Five Border Security Concerns in the Senate Immigration Bill,” Heritage Foundation *Issue Brief* No. 4003, August 1, 2013, <http://www.heritage.org/research/reports/2013/08/top-5-border-security-concerns-in-the-senate-immigration-bill>.
6. Jessica Zuckerman, “Border Security Results Act: Misguided Metrics and a Potential Trigger for Amnesty,” Heritage Foundation *Issue Brief* No. 3992, July 17, 2013, <http://www.heritage.org/research/reports/2013/07/border-security-results-act-misguided-metrics-and-a-potential-trigger-for-amnesty>.
7. Meckler, “House Republicans Release ‘Standards’ on Immigration Overhaul.”
8. Schumer et al., “Bipartisan Framework for Comprehensive Immigration Reform.”
9. “The Senate’s Comprehensive Immigration Bill: Top 10 Concerns,” Heritage Foundation *Backgrounder* No. 2819, June 21, 2013, <http://www.heritage.org/research/reports/2013/06/the-senates-comprehensive-immigration-bill-top-10-concerns>.
10. Amy Payne, “Immigration Plan: Trust Obama?” The Heritage Foundation, *The Foundry*, January 31, 2014, <http://blog.heritage.org/2014/01/31/immigration-plan-trust-obama/>.

utes over the last 17 years. At least three of these laws call for this system to be biometric, using technology to verify identity and prevent fraud. We must implement this system so we can identify and track down visitors who abuse our laws.”<sup>11</sup>

**The Senate.** “Our legislation will require the completion of an entry-exit system that tracks whether all persons entering the United States on temporary visas via airports and seaports have left the country as required by law.”<sup>12</sup>

**Analysis.** The House principles and the Senate bill both demand that overstays be addressed, but do not provide the resources to do so. Furthermore, making this a biometric system, as House bills such as the Biometric Exit Improvement Act have done, is just a way of pretending that real security is happening.<sup>13</sup> Neither the House nor the Senate, however, provides enforcement agencies such as Immigration and Customs Enforcement with the resources and political backing to actually enforce the law. Once again, both the House and Senate fail to solve the problem.

## Employment Verification

**The House.** “In the 21st century it is unacceptable that the majority of employees have their work eligibility verified through a paper based system wrought with fraud. It is past time for this country to fully implement a workable electronic employment verification system.”<sup>14</sup>

**The Senate.** “We believe the federal government must provide U.S. employers with a fast and reliable method to confirm whether new hires are legally authorized to work in the United States. This is essential to ensure the effective enforce-

ment of immigration laws.... Our proposal will create an effective employment verification system which prevents identity theft and ends the hiring of future unauthorized workers.”<sup>15</sup>

**Analysis.** There is little difference again between the House principles and the Senate bill. While an employment verification system may be part of a solution, once again it requires that enforcement agencies are able to enforce the law.<sup>16</sup> The Senate bill and the House’s Legal Workforce Act are very similar in that they both call for expanded and modernized employment verification systems, but do nothing to make sure that the President will actually use or enforce it.

## Reforming the Legal Immigration and Visa System

**The House.** “For far too long, the United States has emphasized extended family members and pure luck over employment-based immigration. This is inconsistent with nearly every other developed country. Every year, thousands of foreign nationals pursue degrees at America’s colleges and universities, particularly in high-skill fields. Many of them want to use their expertise in U.S. industries that will spur economic growth and create jobs for Americans. When visas aren’t available, we end up exporting this labor and ingenuity to other countries. Visa and green card allocations need to reflect the needs of employers and the desire for these exceptional individuals to help grow our economy.”<sup>17</sup>

**The Senate.** “The development of a rational legal immigration system is essential to ensuring America’s future economic prosperity. Our failure to act is perpetuating a broken system

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11. Meckler, “House Republicans Release ‘Standards’ on Immigration Overhaul.”  
12. Schumer et al., “Bipartisan Framework for Comprehensive Immigration Reform.”  
13. Steven P. Bucci and David Inserra, “Biometric Exit Improvement Act: Wrong Solution to Broken Visa and Immigration System,” Heritage Foundation *Issue Brief* No. 4064, October 8, 2013, <http://www.heritage.org/research/reports/2013/10/biometric-exit-improvement-act-and-the-broken-visa-and-immigration-system>.  
14. Meckler, “House Republicans Release ‘Standards’ on Immigration Overhaul.”  
15. Schumer et al., “Bipartisan Framework for Comprehensive Immigration Reform.”  
16. David Inserra, “U.S. Immigration Officers Give Frightening Warning,” The Heritage Foundation, The Foundry, November 1, 2013, <http://blog.heritage.org/2013/11/01/u-s-immigration-officers-give-frightening-warning/>.  
17. Meckler, “House Republicans Release ‘Standards’ on Immigration Overhaul.”

which sadly discourages the world's best and brightest citizens from coming to the United States and remaining in our country to contribute to our economy. This failure makes a legal path to entry in the United States insurmountably difficult for well-meaning immigrants. This unarguably discourages innovation and economic growth.... The United States must do a better job of attracting and keeping the world's best and brightest. It makes no sense to educate the world's future innovators and entrepreneurs only to ultimately force them to leave our country at the moment they are most able to contribute to our economy."<sup>18</sup>

**Analysis.** These positions taken by the House and Senate are again quite similar. Both take a good step by shifting to a more competitive immigration system. The Senate bill, however, is full of special interest loopholes and handouts. Additionally, the bill causes an already burdensome and difficult process to become even more difficult and convoluted by making key visa provisions like H-1Bs almost unworkable and making visas provisions of all kinds more complicated.<sup>19</sup>

While the House's Supplying Knowledge-based Immigrants and Lifting Levels of STEM (SKILLS) Visa Act does not have all of the flaws of the Senate's bill, both suffer from a central problem: Neither approach fixes the U.S. Citizenship and Immigration Services. Both approaches claim that they will clear the 4.3 million applicant backlog, but neither makes the fundamental reforms necessary to ensure our visa system works effectively. Importantly, both will be adding millions of unlawful individuals to that backlog by giving them amnesty, crippling an already burdened system.

## Amnesty

**The House.** "Our national and economic security depend on requiring people who are living and working here illegally to come forward and

get right with the law. There will be no special path to citizenship for individuals who broke our nation's immigration laws—that would be unfair to those immigrants who have played by the rules and harmful to promoting the rule of law. Rather, these persons could live legally and without fear in the U.S., but only if they were willing to admit their culpability, pass rigorous background checks, pay significant fines and back taxes, develop proficiency in English and American civics, and be able to support themselves and their families (without access to public benefits). Criminal aliens, gang members, and sex offenders and those who do not meet the above requirements will not be eligible for this program. Finally, none of this can happen before specific enforcement triggers have been implemented to fulfill our promise to the American people that from here on, our immigration laws will indeed be enforced."<sup>20</sup>

**The Senate.** "While these security measures are being put into place, we will simultaneously require those who came or remained in the United States without our permission to register with the government. This will include passing a background check and settling their debt to society by paying a fine and back taxes, in order to earn probationary legal status, which will allow them to live and work legally in the United States. Individuals with a serious criminal background or others who pose a threat to our national security will be ineligible for legal status and subject to deportation. Illegal immigrants who have committed serious crimes face immediate deportation.

"Our legislation will provide a tough, fair, and practical roadmap to address the status of unauthorized immigrants in the United States that is contingent upon our success in securing our borders and addressing visa overstays."<sup>21</sup>

**Analysis.** Both the House principles and Senate bill advocate providing amnesty to unlawful immi-

18. Schumer et al., "Bipartisan Framework for Comprehensive Immigration Reform."

19. The Heritage Foundation Immigration and Border Security Reform Task Force, "The Senate's Comprehensive Immigration Bill: Top 10 Concerns," Heritage Foundation *Background* No. 2819, June 21, 2013, <http://www.heritage.org/research/reports/2013/06/the-senates-comprehensive-immigration-bill-top-10-concerns>.

20. Meckler, "House Republicans Release 'Standards' on Immigration Overhaul."

21. Schumer et al., "Bipartisan Framework for Comprehensive Immigration Reform."

grants. The House may say that it does not offer a special path to citizenship, but the very act of giving unlawful immigrants a unique path to “get right with the law” is by definition a special path. It is not the path established by U.S. law that millions of legal immigrants or those waiting in line took, and so it is special, just like the Senate’s approach. The House may call it legalization, but it is amnesty since it rewards unlawful immigrants with legal status and forgives their lawbreaking.<sup>22</sup>

Both the House and Senate claim to include certain “tough” requirements:

- Both approaches require background checks. But, starting in the fall of 2012, DHS started using “lean and light” background checks since it couldn’t handle the hundreds of thousands of applications for President Obama’s temporary amnesty known as Deferred Action for Childhood Arrivals (DACA). Then, right after the election, all background checks stopped.<sup>23</sup> If this Administration cannot properly handle a few hundred thousand background checks, it clearly cannot be trusted to enforce “rigorous background checks” for millions of amnesty recipients.
- Both approaches call for paying significant fines and back taxes. The Senate bill, however, is difficult to enforce, and could actually cost the U.S. money. After all, the Internal Revenue Service (IRS) can only determine whether back taxes are due if there is a clear record of employment and earnings, but most unlawful immigrants were paid under the table—thus no such record exists. Worse still, unlawful immigrants might even be able to claim tax credits that could actually result in the government paying amnesty recipients.<sup>24</sup> Any House bill will likely struggle with many of these issues, especially since it is up to the President’s IRS to enforce the law.
- Both approaches call for a proficiency in English and American civics, but the Senate bill has various exceptions and waivers. It is unclear that a House bill would be any different.
- Both the Senate and House also demand that to receive amnesty, unlawful immigrants must be able to financially support themselves, i.e., they must not be public charges. While the Senate bill has this requirement, it is set up to be almost entirely meaningless and will not actually prevent unlawful immigrants from receiving amnesty—and all the benefits that go with it.<sup>25</sup> The House bill is not yet available but will likely contain similar provisions that allow the President to ignore the public charge requirement. Even if the House bill did have strict requirements, they would have to be enforced by a President who has consistently shown a willingness to enforce laws only as he sees fit.
- Both claim to bar criminal aliens. The Senate bill, however, provides the President with broad waiver authority. It is unclear that a House bill would be any different, but whatever the rules are, the President will likely find room to exercise his own prerogative on the matter.
- Lastly, both approaches claim to use a trigger that will only allow amnesty to happen if enforcement and security happen. The Senate’s trigger, however, is weak and ultimately easy to meet since it does not actually require that illegal immigration be stopped. Indeed the Congressional Budget Office (CBO) predicted that the Senate bill will not stop the problem and that millions of new unlawful immigrants would enter the country over the coming decade.<sup>26</sup> Furthermore, if the standard somehow was not met, it is unlikely that the President would deny millions of unlawful immigrants

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22. David S. Addington, “Encouraging Lawful Immigration and Discouraging Unlawful Immigration,” Heritage Foundation *Backgrounder* No. 2786, March 27, 2013, <http://www.heritage.org/research/reports/2013/03/encouraging-lawful-immigration-and-discouraging-unlawful-immigration>.

23. David Inserra, “Homeland Security Abandons Amnesty Background Checks,” The Heritage Foundation, The Foundry, June 20, 2013, <http://blog.heritage.org/2013/06/20/homeland-security-abandons-amnesty-background-checks/>.

24. Curtis S. Dubay, “Senate Immigration Bill Does Not Require Payment of All Back Taxes,” Heritage Foundation *Issue Brief* No. 3970, June 14, 2013, <http://www.heritage.org/research/reports/2013/06/senate-immigration-bill-does-not-require-payment-of-all-back-taxes>.

25. Heritage Foundation Task Force, “Senate’s Comprehensive Immigration Bill.”

26. CBO, “Cost Estimate: S. 744, Border Security, Economic Opportunity, and Immigration Modernization Act,” June 18, 2013, <http://cis.org/sites/cis.org/files/CBO%20S744.pdf> (accessed February 4, 2014).

the right to become legal permanent residents. Given that the House security and enforcement bills have similar challenges, the U.S. can expect any House trigger to be similarly weak. Importantly, both bills start by promising amnesty, which is exactly the wrong approach and weakens our immigration system right at the start.

## Costs

Both the House principles and the Senate bill ignore the immediate and long-term costs. The Senate bill throws money at the problem, ultimately spending at least \$46.3 billion on the day it goes into effect.<sup>27</sup> While it is uncertain how much the collection of House bills would cost, the same use of attention-grabbing but cost-inefficient and ineffective measures is present there as well.

Perhaps more importantly, both the House and Senate assume that amnesty will only have positive long-term economic consequences. The House and Senate completely ignore the long-term fiscal consequences of amnesty. Regrettably, the U.S. welfare and entitlement state creates a situation where those with less education are likely to get stuck in the welfare trap, where bad policies discourage work, marriage, and upward mobility. As a result, unlawful immigrants who are given amnesty under the House or Senate approach will likely collect more in benefits than they pay in taxes over their lifetimes, resulting in trillions of dollars in future costs to taxpayers.<sup>28</sup>

## Restoring Trust and Integrity to the Immigration System

Instead of creating more laws for the President to ignore, the country would be better served by Congress improving existing programs and ensuring the enforcement of current law. Congress should:

- **Construct the right infrastructure.** The Secure Fence Act of 2006 gave the federal govern-

ment the authority to establish 700 miles of fencing on the U.S.–Mexico border. This mandate was never fully, adequately, or faithfully implemented. This is a serious shortfall. The key to employing the right combination of border obstacles, such as fencing, is careful assessment of operational needs and cost-benefit analysis. Effective border obstacles are expensive to construct and must be constantly monitored and patrolled. Requirements for additional infrastructure should be driven by operational requirements and can be constructed under existing law and funded through the regular appropriations process.<sup>29</sup>

- **Add the right technology.** When DHS canceled SBI-net (the Secure Border Initiative Network) in 2011, the department promised to develop a replacement system. This promise has not yet been kept. DHS can acquire and employ the technologies to do so under existing budgets through regular appropriations. The department does not require additional congressional authorities to employ them.<sup>30</sup>
- **Cooperate with Mexico.** Addressing the challenges of safety, security, and sovereignty from both sides of the southern border is the most effective and efficient way to operationally control it. In 2008, President Bush established the Merida Initiative to facilitate cross-border cooperation on mutual interests of public safety and transnational crime. President Obama, however, has thoroughly failed to follow through and build on this initiative. The Obama Administration could develop a broad master plan for U.S.–Mexican relations that coordinates law enforcement, judicial, and military assets to target transnational criminal organizations, gangs, human traffickers, terrorists, and other 21st-century threats to shared security. So, too, the Administration could explore with

27. Border Security, Economic Opportunity, and Immigration Modernization Act, p. 46.

28. Robert Rector and Jason Richwine, “The Fiscal Cost of Unlawful Immigrants and Amnesty to the U.S. Taxpayer,” Heritage Foundation *Special Report* No. 133, May 6, 2013, <http://www.heritage.org/research/reports/2013/05/the-fiscal-cost-of-unlawful-immigrants-and-amnesty-to-the-us-taxpayer>.

29. The Heritage Foundation Immigration and Border Security Reform Task Force, “Advancing the Immigration Nation: Heritage’s Positive Path to Immigration and Border Security Reform,” Heritage Foundation *Background* No. 2813, June 14, 2013, <http://www.heritage.org/research/reports/2013/06/advancing-the-immigration-nation-heritages-positive-path-to-immigration-and-border-security-reform>.

30. *Ibid.*

Mexico specific agreements, protocols, and efforts that draw the two governments closer together in order to regularize and expedite legal movements of people and goods while increasing cross-border disincentives and obstacles to illegal activities, especially illegal migration.<sup>31</sup>

■ **Improve federal–state–local cooperation.**

The Section 287(g) program, already authorized by Congress, is demonstrably the most effective and flexible program for federal, state, local, and tribal law enforcement to cooperate on issues of mutual interest. DHS, however, has all but abandoned the program in favor of one-size-fits-all initiatives that suit the department’s intent to focus as exclusively as possible on felony-criminal aliens. Congress does not need comprehensive immigration reform to reassert its legislative and oversight authority to preserve the ability of state and local law enforcement agencies to use the 287(g) program. Congress can reverse the burdensome regulatory changes made in July 2009 and continue to fund the program.<sup>32</sup>

■ **Transform the U.S. Citizenship and Immigration Services (USCIS).**

DHS needs a strategic management plan to reform this troubled agency. A serious reform plan must include (1) a different funding model for the USCIS; (2) a comprehensive overhaul of the agency’s service support enterprise; and (3) much better integration of USCIS programs with immigration enforcement and border control. The reform can be implemented through appropriations rather than the revenue of increased fees, and Congress should appropriate the necessary funding. Further, the USCIS must deliver a comprehensive and realistic plan for upgrading its services and information technology, fund the program through annual appropriations, and produce a detailed procurement time line so that this program does not fall behind due to a still-maturing procurement capability at DHS.<sup>33</sup>

■ **Place a premium on high-skilled labor.** Ultimately, as the U.S. economy continues to recover from the recession, demand for high-skilled foreign workers will only continue to grow. The U.S. can either implement the reforms needed to ensure that America welcomes the best and the brightest to its shores, or America can continue leaving it all to chance and bureaucrats in Washington. Raising the cap on H-1B visas for skilled workers and making non-immigrant visa processing responsive to the needs of the economy would allow American businesses to expand operations here in the United States, creating more jobs and higher wages for American workers. Increasing the H-1B cap would also raise significant tax revenue from highly skilled and highly paid workers.<sup>34</sup>

■ **Hold the executive accountable for not enforcing the law.**

The greatest improvement the U.S. can make to its immigration system is to enforce existing law. The executive branch has a responsibility to faithfully enforce the law—written and passed by past Congresses and signed by earlier Presidents—but regrettably, many recent Presidents have ignored this responsibility when it comes to immigration. President Obama, however, has taken ignoring immigration law to unprecedented levels. Ultimately, it is up to Congress to hold him—and all Presidents who abuse the rule of law—accountable for such lawlessness.

■ **Reject amnesty.** Amnesty, whether it is called a path to citizenship or legalization, ignores the rule of law, rewarding those who broke the law with legal status and, ultimately, U.S. citizenship. Amnesty is also unfair to those who followed the rules and waited or are still waiting to enter the U.S. Furthermore, amnesty only makes the U.S. immigration problems worse by encouraging even more illegal immigration. Amnesty will also lead to trillions in new spending and huge increases in government bureaucracy.<sup>35</sup>

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31. Ibid.

32. Ibid.

33. Ibid.

34. Ibid.

35. Heritage Foundation Task Force, “Senate’s Comprehensive Immigration Bill.”

## **Both the Senate and House Approaches Are Bad for America**

The House Republican leadership claims that they are not proposing a “single, massive” bill, but the principles they have laid out are essentially the Senate bill all over again. The House’s multiple pieces will ultimately be combined into a Senate 2.0 bill that is similar to the Senate bill in almost every respect. Regardless of what the House passes, the Senate will take up the House bill, amend it for the worse, and then ask to go to conference, where the bill will become even worse.

Both chambers promise new enforcement, border security, and visa reforms in exchange for amnesty—

a costly, unfair, and unworkable policy that did not work in 1986 and will not work now. Rather than repeat the mistake of 1986, House leadership should focus on how it can encourage President Obama to enforce existing law. In his recent State of the Union address, President Obama pledged new levels of executive action and promised to ignore Congress; trusting that he will enforce any new immigration laws is naïve and dangerous. 🗨