

## **Conceptual Proposal for Immigration Reform**

### **I. Achieving Operational Control of America's Borders to Prevent Future Illegal Immigration**

#### **A. Securing the Border First Before any Action can be Taken to Change the Status of people in the United States Illegally**

Proponents of immigration reform acknowledge that we need to meet clear and concrete benchmarks before we can finally ensure that America's borders are secure and effectively deal with the millions of illegal immigrants already in the United States. These benchmarks must be met ***before*** action can be taken to adjust the status of people already in the United States illegally and should include the following: (1) increased number of Border Patrol officers; (2) increased number of U.S. Immigration and Customs Enforcement (ICE) agents to combat smuggling operations; (3) increased number of ICE worksite enforcement inspectors and increased inspection resources; (4) increased number of ICE document fraud detection officers and improved detection capability; (5) increased number of personnel to conduct inspections for drugs, contraband, and illegal immigrants at America's ports of entry; (6) improved technology, infrastructure, and resources to assist the Border Patrol and ICE in their missions; (7) increased resources for prosecution of drug smugglers, human traffickers, and unauthorized border crossers; and (8) increased immigration court resources to expedite the removal of unlawfully present individuals.

#### **Subtitle B. Further Fortification of America's Border Enforcement Capability**

Even after the benchmarks have been met, further fortifications of our border enforcement capabilities will still be required. These include substantial increases in the number of border patrol agents stationed on the southern and northern borders and the number of officers stationed at America's ports of entry to conduct inspections for drugs, contraband and illegal

immigrants. In addition, rather than spending billions of federal dollars in an attempt to link up untested satellite technology, our strategy calls for installation of high-tech ground sensors throughout the southern border and for equipping all border patrol officers with the technological capability to respond to activation of the ground sensors in the area they are patrolling. This solution is far more cost-effective than the SBInet project in Arizona and has been proven to be far more effective in the areas in which it has been deployed.

As a result of this proposal, the Border Patrol will also receive substantial upgrades in technology—including: 1) clear and secure two-way communication capabilities among all border patrol agents conducting operations between ports of entry; 2) use of Department of Defense equipment at the border; and 3) increases in the number of sport utility vehicles, helicopters, power boats, river boats, portable computers to track illegal immigrants and drug smugglers while inside of a border patrol vehicle, night vision equipment, Unmanned Aircraft Systems (UAS), Remote Video Surveillance Systems (RVSS), scope trucks, and Mobile Surveillance Systems (MSS).

Notwithstanding this substantial increase to America's current border enforcement capabilities, this proposal recognizes that there may still be occasions where the border patrol needs additional, flexible support to maintain operational control of America's borders. In this regard, the proposal recommends the creation of a border patrol auxiliary unit to assist the US Border Patrol in accomplishing the mission of detecting, interdicting, and apprehending those who attempt to illegally enter or smuggle people, including terrorists, or contraband, including weapons of mass destruction or narcotics, across US borders between official ports of entry. The proposal also provides the Secretary of Homeland Security with the authority to deploy National Guard personnel at our borders when needed.

The proposal also recognizes that securing the border between America's ports of entry is a necessary but insufficient step to preventing future illegal immigration. Due to years of insufficient investment in our port-of-entry, far more contraband and illegal immigrants enter the United States through our ports-of-entry than between the ports-of-entry. That is why the proposal calls for construction of additional ports-of-entry and for the hiring of thousands of new customs and border protection inspectors. These ports-of-entry will also have enhanced connectivity with all government fingerprint databases to ensure that criminals are not permitted to enter the United States. We also require the construction and commencement of operations of additional permanent Border Patrol Forward Operating Bases.

More must also be done to ensure that all officers within U.S. Customs and Border Protection have the tools they need to succeed. These officers will all receive training to: 1) identify and detect fraudulent travel documents; 2) accomplish border enforcement without engaging in racial profiling; and 3) address vulnerable populations such as children and victims of human trafficking. Officers will also be equipped with high-quality body armor that is appropriate for the climate and risks faced by each officer. They will also be equipped with weapons, including non-lethal intermediate force weapons, that are reliable and effective to protect themselves, their fellow agents, and innocent third parties from the threats posed in the line of duty.

Other agencies will also be asked to play a greater role in using their expertise and capabilities to make America's borders more secure. Immigration and Customs Enforcement will be given additional investigators for the specific purpose of investigating alien smuggling. The Drug Enforcement Administration and the Bureau of Alcohol, Tobacco, Firearms and Explosives will be given more agents for the Southwest Border Initiative to investigate the cross-

border smuggling of drugs, firearms, and other contraband between the United States and Mexico. The proposal also calls for more resources for America's immigration courts to expedite the removal of unlawfully present individuals.

### **C. Other Necessary Reforms**

Upon enactment of this proposal, a bipartisan commission will be created and tasked with investigating the state of security on the southern and northern borders and issuing recommendations on additional resources, technology, manpower, and infrastructure that must be implemented to ensure complete operational control of the southern and northern borders within 12 months. Congress shall be required to vote on whether to enact the Commission's recommendations. Because the federal government will have fulfilled its obligation to secure America's borders, states and municipalities will be prohibited from enacting their own rules and penalties relating to immigration, which could undermine federal policies.

This proposal also ensures that we will secure our borders in a manner that is consistent with America's best values and traditions. The Departments of Homeland Security, Interior, and Agriculture will work together to make sure we are protecting our borders while at the same time preserving our national parks and our protected wildlife sanctuaries. We will provide grants to local towns and counties to mitigate the impact of unauthorized immigrants crossing the border and to assist them in transferring unauthorized immigrants to law enforcement authorities. Owners of property near the border will be protected from civil lawsuits for injuries that took place on their property that were related to the duties of law enforcement officers seeking to combat drug smuggling and illegal immigration. Indian tribes that have been adversely affected by illegal immigration will be reimbursed for law enforcement activities and restoration of areas damaged by illegal immigration. Northern border cities will be treated just like their southern

border counterparts, and will be reimbursed for handling case dispositions of criminal cases that are federally initiated but federally declined-referred.

To ensure that our border security efforts are not substantially affecting the quality of life and economic viability of the cities near our borders, the proposal establishes a Border Communities Liaison Office that will be responsible for conducting outreach to residents of border towns and a standardized complaint process for addressing complaints from the public related to the operations of U.S. Customs and Border Protection. Communities will be given the ability to create alternatives to detention programs to lower the costs of immigration detention and, if detention is necessary, there will be custody standards providing for basic minimum standards of care at all Border Patrol stations, holding cells, checkpoints and short-term custody facilities.

## **II. Detection, Apprehension, and Removal of Unlawfully Present Persons in the United States**

In addition to increasing border enforcement, this proposal will substantially enhance our capabilities to detect, apprehend, and remove persons who entered the United States unlawfully and persons who entered lawfully on temporary visas but failed to leave the country when designated. We will complete implementation of an entry-exit system that permits us to know whether foreign nationals have overstayed their visas and will permit us to apprehend and expeditiously remove these individuals. This proposal will equip all ports of entry with the United States-Visitor and Immigrant Status Indicator Technology (“US-VISIT”) system and will deploy this system in an interoperable fashion with all immigration screening systems operated by the Department of Homeland Security.

The Department of Homeland Security will promptly identify, investigate, and initiate removal proceedings against every alien admitted into the United States on a temporary nonimmigrant visa who exceeds his or her period of authorized admission beyond a specified period or otherwise violates any terms of the alien's nonimmigrant status. All criminals in federal, state, and local prisons will be checked for lawful immigration status and will be deported if they are here illegally. The Visa Waiver Program (“VWP”) will be evaluated and monitored to ensure that no country on this program has a high percentage of visa overstays. Countries whose nationals frequently overstay their visas will be removed from the VWP until such time as they implement accountability systems to ensure compliance from their nationals.

Additional measures will also be critical to combat future illegal immigration. There will be zero tolerance for illegal entry and reentry into the United States. Gang members will be prohibited from entering the United States and will be deported when apprehended. In order to combat human trafficking, convicted sex offenders will be prohibited from petitioning to bring foreign nationals to the United States. DHS will have greater authority to seize boats and other vessels used to traffic drugs, guns, and human beings and to subject these vessels to forfeiture. Noncitizens in removal proceedings will be required to inform the United States government of their location at all times. Laws will be amended to encourage individuals here illegally to depart voluntarily. New crimes will be created for the trafficking and misuse of passports and increased penalties and prison sentences will be levied upon persons who sell or use false documents. Fraud and misrepresentation in the context of immigration proceedings will be punished.

To ensure the removal of dangerous individuals, laws will be amended to sanction countries that delay or prevent repatriation of their citizens and the U.S. Government will have

heightened authority to detain dangerous criminals until they can be deported. States will be quickly reimbursed for the costs of incarcerating and transporting aliens. All foreign nationals will be required to provide the United States government with biometric information, and will be refused admission or deported for non-compliance. Carriers will be required to provide advanced delivery of passenger manifests to the U.S. government, to ensure that dangerous individuals are not permitted to travel to the United States.

When aliens must be detained by the United States government to ensure their appearance in Court, or to ensure their removal, uniform standards will govern their detention. The Department of Homeland Security will be required to file a charging document with the immigration court closest to the location at which an alien was apprehended within 48 hours of the alien being taken into custody by the Department. If an alien is detained, minimum standards for detention will be enacted for both government and privately-owned detention facilities to ensure that these facilities are in compliance with standards recommended by leading experts. In addition, no detainee shall be transferred from his/her area of apprehension until arrangements have been made for the detainee's children, and the government has given due consideration to the best interest of the child in decisions concerning detention, release or transfer of a parent.

Penalties and sanctions will also be increased for violators of immigration law. There will be substantial increases in fines and prison sentences for individuals who: a) evade border checkpoints; b) fail to obey the lawful commands of border officials; c) engage in human smuggling; d) use vessels and aircraft to smuggle aliens; e) sell firearms to illegal immigrants; f) engage in money laundering or use stored value cards and E-Currencies to fund illegal trafficking activities; and g) willfully fail to comply with conditions placed upon them if they are on supervised release programs.

There will also be penalties to ensure that unscrupulous employers are not permitted to exploit unauthorized labor. Victims of egregious labor violations will be provided with legal incentives to cooperate with law enforcement to report labor law violations committed by their employers. Egregious labor law violators will face civil sanctions and prison sentences.

Existing enforcement laws will be reformed to become more efficient and effective. The government will require any state or local entity that participates in the 287(g) program to collect and maintain such records and data as are reasonably necessary to ensure that actions under the agreement comply with federal law. Refugees and asylees will be admitted to become lawful permanent residents when they receive the grant of refugee or asylee status, so as to reduce inefficiency and unnecessary duplication in government. The proposal includes new custody options for refugees and other vulnerable populations. Children seeking asylum will be afforded necessary protections and certain vulnerable refugee groups will be permitted to obtain expedited adjudication to minimize the risk of facing government persecution while awaiting adjudication of refugee status.

### **III. Ending Illegal Employment through Biometric Employment Verification**

In order to prevent future waves of illegal immigration, this proposal recognizes that no matter what we do on the border, our ports of entry, and in the interior, we will not be completely effective unless we can prevent the hiring, recruitment, or referral of unauthorized aliens in America's workplaces. Jobs are what draw illegal immigrants to the United States.

Not later than 18 months after the date of enactment of this proposal, the Social Security Administration will begin issuing biometric social security cards. These cards will be fraud-resistant, tamper-resistant, wear resistant, and machine-readable social security cards containing

a photograph and an electronically coded micro-processing chip which possesses a unique biometric identifier for the authorized card-bearer.

The card will also possess the following characteristics: (1) biometric identifiers, in the form of templates, that definitively tie the individual user to the identity credential; (2) electronic authentication capability; (3) ability to verify the individual locally without requiring every employer to access a biometric database; (4) offline verification capability (eliminating the need for 24-hour, 7-days-per-week online databases); (5) security features that protect the information stored on the card; (6) privacy protections that allow the user to control who is able to access the data on the card; (7) compliance with authentication and biometric standards recognized by domestic and international standards organizations. The new biometric social security card shall enable the following outcomes: (1) permit the individual cardholder to control who can access their information; (2) allow electronic authentication of the credential to determine work authorization; and (3) possession of scalability of authentication capability depending on the requirement of the application.

Possession of a fraud-proof social security card will only serve as evidence of lawful work-authorization but will in no way be permitted to serve—or shall be required to be shown—as proof of citizenship or lawful immigration status. It will be unlawful for any person, corporation; organization local, state, or federal law enforcement officer; local or state government; or any other entity to require or even ask an individual cardholder to produce their social security card for any purpose other than electronic verification of employment eligibility and verification of identity for Social Security Administration purposes. No personal information will be stored on the electronic chip contained within the social security card other than the individual's name, date of birth, social security number, and unique biometric identifier.

Under no circumstances will any other information, including medical information or position-tracking information, be contained within the card.

The Secretary of Homeland Security shall work with other agencies to secure enrollment locations at sites operated by the federal government.

Prior to issuing an individual a new fraud-proof social security card, the Social Security Administration will be required to verify the individual's identity and employment eligibility by asking for production of acceptable documents to be provided by the individual as proof of identity and employment eligibility. The Secretary of Homeland Security will work with the Commissioner of the Social Security Administration to verify non-citizens' employment authorization. SSA will also be required to engage in background screening verification techniques currently used by private corporations that use publicly available information that can be derived from the individual's social security number. An administrative adjudication process can be invoked in the event that an individual is unable to establish his or her identity or lawful immigration status. Adverse decisions can be reviewed in the federal courts. There will be a multi-stage process of re-verification if an individual claims he lost his previously issued fraud-proof social security card to ensure that there is no identity-theft or unlawful collaboration of identity. There will also be a multi-stage process for resolution of proper identity if an individual claims an identity tied to a social security number that has been claimed by another individual. Tough penalties will be put in place for fraud in procurement of a fraud-proof social security card. The same penalties shall apply for conspiracy to commit fraud if false information is intentionally provided.

Employers hiring workers in the future will be required to use the newly created Biometric Enrollment, Locally-stored Information, and Electronic Verification of Employment (BELIEVE) System as a means of verification. There will be strict employer penalties for failure to participate in the BELIEVE system after being notified of a requirement to do so by the Secretary of Homeland Security or after the BELIEVE system has been fully implemented nationwide such that it is required to be used by all employers. Prospective employees will present a machine-readable, fraud proof, biometric Social Security card to their employers, who will swipe the cards through a card-reader to confirm the cardholder's identity and work authorization. The cardholder's work authorization will be verified by matching a digital encryption key contained within the card to a digital encryption key contained within the work authorization database being searched. The cardholder's identity will be verified by matching the biometric identifier stored within the micro-processing chip on the card to the identifier provided by the cardholder that shall be read by the scanner used by the employer.

During the transition period from the current employment verification system to the BELIEVE System, all current employment verification laws applying to employers, including all laws currently pertaining to E-Verify, will be extended until such time as a particular employer is notified of a requirement to verify their employees using the BELIEVE system or until after the BELIEVE system has been implemented nationwide such that it is required to be used by all employers. When the BELIEVE system is deployed nationwide current employment verification laws will sunset. This date is estimated to occur six (6) years after the date of enactment.

Employers will be permitted to voluntarily verify their employees by using the BELIEVE system, even if it is before the date they are required by law to use the system. DHS shall require expedited participation in the BELIEVE system for certain employers who: (1) are in an industry

which the Secretary knows or has reason to believe has a high rate of employment of aliens who are not authorized for employment in the United States; (2) have access to locations or information directly related to national security; or (3) who have engaged in material violations of the law. DHS will provide ample notice to those employers required to participate on an expedited basis and will provide clear guidance to employers as to the process for informing employees of the need to obtain a new social security card and the process for enrolling in the BELIEVE system. DHS will provide a reasonable time period for employers to verify that all employees have been confirmed as authorized for employment by the BELIEVE system. The federal government will be required to use the BELIEVE system as the sole employment verification system within three (3) years after the date of enactment and federal contractors will be required to use the BELIEVE system within four (4) years after the date of enactment.

Within five (5) years of the date of enactment, the fraud-proof social security card will serve as the sole acceptable document to be produced by an employee to an employer for employment verification purposes. This requirement will exist even if the employer does not yet possess the capability to electronically verify the employee by scanning the card through a card reader. In that circumstance, the employer's sole responsibility shall be to obtain a photocopy of both sides of the card and maintain that document for inspection by the Secretary. But all businesses will be required to possess electronic scanning capability within six (6) years after the date of enactment. If a business is unwilling or unable to scan an employee on its own, government-certified, private sector providers will be permitted to conduct verification of an employer's employees. All private sector providers will be required to post a \$150,000 financial bond to the Secretary as a requirement for certification. There will be annual auditing and undercover investigations of private sector providers to ensure that they are operating as required

by law. For businesses that do not want to use a private provider, DHS and SSA shall promulgate regulations authorizing the use of United States Post Offices or other local government offices as locations where individuals may be verified for employment eligibility.

The following procedures will govern the employment verification process for a particular worker. Employers will swipe the biometric society security card through a card reader for all new hires no sooner than the date of hire and no later than the third business day after the employee has reported for duty, or no later than the first day following recruitment for employment or any time an employee requests to provide self-verification. The BELIEVE system will respond to each inquiry as soon as possible but no later than 24 hours after receiving the inquiry. Employers will notify the employee of the response within 24 hours of receiving the system response. If there is a denial, employers will provide employees with a notice, in written form developed by the Commissioner, which states the reason for the denial, the right to contest the denial, and contact information for initiating a contest of the denial. Employees may contest any initial disapproval within 10 days of its receipt. If the system is unable to confirm the employee's work authorization, employees will have 30 days to file an administrative review of a work disapproval under procedures developed by SSA and DHS. They will also have an opportunity to seek judicial review within 30 days of receiving the final determination of the administrative review. Employees will be provided lost wages when a determination is reached that the disapproval was caused by erroneous system information and not by an act or omission of the employee. Employees will be provided with a private right of action against the employer when a determination is reached that the disapproval was caused by an act or negligence on the part of the employer.

SSA and DHS will be required to establish procedures to maintain the accuracy and integrity of the system. Also, a public education campaign and registrant training will be developed in consultation with the Department of Health and Human Services and the States –within 6 months before the first date of registration. Minimum system requirements will be established to ensure efficiency, accuracy, and privacy. Several of those measures include: a mechanism for employers to attest to their compliance; audits of employer use of the system; timely entry and access of all data; a method to correct relevant data held within the system; secure procedures for individuals to examine their records, request expedited corrections of errors, and appeal disapprovals; procedures limiting agency and contractor personnel to enter data; and 24-hour Internet and telephone help desk.

An annual report will be submitted to Congress by SSA, no later than 24 months following full implementation of the BELIEVE System, which provides a certified determination of the percentage of inquiries that result in an initial or final disapproval within the applicable timeframe and that were not overturned on appeal. If the percentage is less than 99 percent the Commissioner must detail the steps being taken to bring the percentage to 99 percent, with specified timeframes. Further, the Commissioner must provide an assessment of the privacy and security of the BELIEVE system and employer compliance with the system's rules. Only the absolute minimum amount of data necessary to accomplish employment verification and detect and prevent employment related identity theft shall be stored in the database. Storing of biometric data stored in the fraud-proof social security card in any government database will be prohibited under all circumstances. Any office, employee, or contractor shall be punished for willfully and knowingly using information in a manner other than prescribed in the law. SSA will establish procedures whereby an individual may block and remove a block on the use of

their Social Security Card for any employment verification purpose until such time as they unblock their card.

Protections will be put in place to prevent misuse of the system. Employers will be prohibited from using the BELIEVE system to selectively verify a class, level, or category of new employees and we will allow employers with multiple locations to verify employees at selected locations without verifying at all locations. Officers, employees, and contractors will face strict penalties for willfully and knowingly using information in a manner other than prescribed in the law. Restitution will be available to victims of a violation of the BELIEVE system, including those who have suffered a financial loss due to an improper disclosure of information. Restitution issued to the Commissioner shall be deposited in the Social Security trust funds. It will be an unfair immigration-related employment practice to: terminate or to take any adverse employment related action unless authorized or required to do so by this Act or by the Secretary; screen an applicant prior to an offer of employment; to use the system on current employees unless required to do so by the Secretary; or to require an individual to self-verify unless permitted by the Secretary. There will be substantial civil monetary penalties for violations of this section.

Employers will be protected from liability for employment related actions taken with respect to an employee in response to information provided by the BELIEVE system. SSA in conjunction with DHS will provide proof of verification via the BELIEVE system to employers that they can produce to the Secretary to show compliance upon request. In addition, all state and local immigration or employment verification laws will be preempted by federal immigration law. There will be an Employment Verification Advisory Panel consisting of experts and representatives from affected industries, including human resources, employer and

employee organizations, and those in the database and biometric technology industries that will advise the Government on the implementation, deployment, and security of the BELIEVE System. The Government Accountability Office will also be required to conduct a study and submit a report every two years following the date of enactment in order to evaluate the accuracy, efficiency, integrity and impact of the BELIEVE system.

To make the system air tight, the proposal substantially increases civil monetary penalties by 300 percent for violations of knowingly hiring someone not authorized for employment or hiring without verifying employment eligibility, continuing to employ an unauthorized alien knowing the alien is or has become unauthorized to work or violating the anti-discrimination protections related to employment authorization. It also increases penalties of any person or entity that engages in a pattern or practice of violations and requires imprisonment for repeat offenders. There will be mitigation of certain increased penalties for small employers and an exemption from penalties if the employer proves it was the first of such a violation and that they acted in good faith. There will also be a safe harbor for employers who hire or continue to employ unauthorized workers through a subcontractor, unless the employer knew or recklessly disregarded that the subcontractor hired or continued to employ an unauthorized worker. Employers will be able to include in a written contract or subcontract an effective and enforceable requirement that the contractor or subcontractor adhere to the immigration laws, including the use of the BELIEVE system.

Enforcement will also be made more effective by the requirement that the Secretary of Health and Human Services, Commissioner of Social Security, and Secretary of Homeland Security establish a national birth and death registration system. The system will ensure fraud prevention and uniformity for all states. The Department of Defense will process information

regarding the death of military personnel and their dependants within one year. The Department of State will improve registration and notification for births and deaths abroad. States will be required to retain birth and death data within three years of enactment. Moreover, employers who hire unauthorized workers will be prohibited from deducting wages paid to unauthorized workers. Employers will be required to provide a list of employees whose wages are being deducted and the date in which their employment eligibility was verified. The Internal Revenue Service will perform random inspections to determine if employees were verified as claimed by the employer.

In order to pay for implementation of the BELIEVE System, funding will be obtained in whole or in part by collecting the following fees and fines: (1) an employment authorization fee that will be charged only to non-citizens in order to obtain the biometric social security card required for employment—under no circumstances will a fee be charged to United States citizens for obtaining an initial biometric Social Security Card; (2) an employment authorization system fee to be paid by all employers who seek to petition for an employment-related immigration benefit for a non-citizen worker; (3) fees charged to business entities who seek pre-certification as authorized private employment eligibility screeners under regulations provided for pursuant to this Act; (4) fines charged to every person or other entity subject to the Immigration and Nationality Act who fails to comply with the provisions of this law; and (5) fees charged to U.S. citizens for obtaining replacement Social Security Cards. This proposal also requires that neither backpay nor any other monetary remedy for unlawful employment practices, workplace injuries or other causes of action giving rise to liability shall be denied to a present or former employee on account of: the employer's or the employee's failure to comply with the requirements of the policy in establishing or maintaining the employment relationship; the employee's violation of

the provisions of federal law related to the employment verification system set forth in the proposal; or the employee's continuing status as an unauthorized alien both during and after termination of employment.

#### **IV. Reforming America's Legal Immigration System to Maximize American Economic Prosperity**

##### **A. High Skilled Immigration**

This proposal will reform America's high-skilled immigration system to permanently attract the world's best and brightest while preventing the loss of American jobs to temporary foreign labor contractors. At the moment, high-skilled workers are prevented from emigrating to the United States due to restrictive caps on their entry. In order to accomplish this goal, a green card will be immediately available to foreign students with an advanced degree from a United States institution of higher education in a field of science, technology, engineering, or mathematics, and who possess an offer of employment from a United States employer in a field related to their degree. Foreign students will be permitted to enter the United States with immigrant intent if they are a bona fide student so long as they pursue a full course of study at an institution of higher education in a field of science, technology, engineering or mathematics. To address the fact that workers from some countries face unreasonably long backlogs that have no responsiveness to America's economic needs, this proposal eliminates the per-country employment immigration caps.

This proposal also adds fraud and abuse protections for existing temporary high-skilled work visas. It will amend current law regarding H-1B employer application requirements to: (1) revise wage determination requirements; (2) require Internet posting and description of employment positions; (3) lengthen U.S. worker displacement protection; (4) apply certain

requirements to all H-1B employers rather than only to H-1B dependent employers; (5) prohibit employer advertising that makes a position available only to, or gives priority to, H-1B nonimmigrants; and (6) limit the number of H-1B and L-1 employees that an employer of 50 or more workers in the United States may hire. The proposal also authorizes the Department of Labor (DOL) to: (1) investigate applications for fraud; and (2) conduct H-1B compliance audits. DOL will also be required to conduct annual audits of companies with large numbers of H-1B workers and initiate H-1B employer application investigations. Penalties for employers who violate the law will be increased.

For L-1 visas, the proposal prohibits, with a specified waiver by the Secretary of Homeland Security, an employer from hiring an L-1 nonimmigrant for more than one year who will: (1) serve in a capacity involving specialized knowledge; and (2) be stationed primarily at the worksite of an employer other than the petitioning employer. The proposal also specifies L-1: (1) employer petition requirements for employment at a new office; (2) wage rates and working conditions; and (3) employer penalties. DHS will be authorized to initiate investigations of L-1 employers suspected of being non-compliant with the law. DHS shall also report to Congress regarding the L-1 blanket petition process.

#### **B. Immigration of Lower-Skilled Workers.**

This proposal will reform America's lower-skilled worker programs to ensure that businesses only obtain foreign workers when American workers are unavailable. For agricultural workers, the H-2A program will be reformed to adopt the proposals agreed to by the farm workers and the growers which are enumerated in the Agricultural Job Opportunities, Benefits and Security Act ("AgJOBS"), which is a bi-partisan agreement of interested

stakeholders in the agricultural industry that has existed since 2003. AgJOBS also addresses the acute labor needs of the dairy industry.

For non-agricultural seasonal workers, the H-2B program will be reformed to add critical protections necessary to eliminate fraud and abuse within the program. The Department of Labor will be given the authority to impose penalties and seek injunctive relief to assure employer compliance with the H-2B rules. Aggrieved workers will have a right to file a civil action against the employer. Employers must notify the Department of Labor within 30 days of an H-2B employee's termination and submit to DOL payroll records showing that the employer paid the required wage, transportation and other expenses.

Employers using the H-2B program will also be required to conduct advanced recruiting of U.S. workers prior to hiring an H-2B worker and will be required to pay higher wages than the current wages paid, namely, either the wage set forth in a collective bargaining agreement, or if there is no collective bargaining agreement, higher than: (1) the wage determination issued under the Davis-Bacon Act; (2) the wage issued under the Service Contract Act; (3) the median rate of the highest 50% of the wage data published under the most recently published OES Survey compiled by BLS; or (4) a wage that is 133% of the minimum wage. Employers will be required to reimburse H-2B workers for the reasonable transportation costs incurred by the worker to reach the job site and to return home. Returning workers will not be counted toward the current H-2B cap in any year the national unemployment rate is at, or below, 8.0% percent. If unemployment is greater than 8.0%, a returning worker may still be exempted from the cap if the metropolitan statistical area where the labor is to be performed is below 6.0%.

This proposal also creates a provisional visa (H-2C) for non-seasonal, non-agricultural workers to enter the United States. The visa shall be for three years, and is renewable once for a

total of six years. Workers in the H-2C program shall be permitted to earn lawful permanent residence if they meet sufficient integration metrics to demonstrate that they have successfully become part of the American economy and society. The provisional visa will be a dual intent visa so there is not a problem with intending immigrants.

Employees on H-2C visas shall have portability to change employers after 1 year. The annual cap for H-2C visas shall be adjusted each year based on unemployment and relevant economic indicators. If an employer cannot obtain a foreign worker because the annual cap has been reached, the employer may still obtain the worker by paying an additional fee to USCIS, a heightened wage to the employee, and by engaging in additional recruiting to demonstrate the need for the worker. In all cases, no H-2C worker may be hired before an employer takes affirmative steps to recruit and hire American workers, including through America's Job Bank and recruiting through State Workforce Agencies. H-2C workers shall be entitled to the same labor protections as American workers and shall have the same causes of action afforded to American workers. Any qualified American worker who is displaced by an H-2C worker or who applies for a job that was filled by an H-2C worker shall have redress for being unlawfully displaced by an H-2C worker.

This proposal also authorizes the creation of the Commission on Employment-Based Immigration. The Commission shall have the purpose of studying America's employment-based immigration system to recommend policies that promote economic growth and competitiveness while minimizing job displacement, wage depression and unauthorized employment. Each year, the Commission shall publish a report to Congress detailing all relevant economic data surrounding the usage of all of America's employment-based visas and green cards and shall issue recommendations.

The Commission shall have the power to declare an emergency in the immigration system. An emergency shall consist of a situation in which America's employment-based immigration system is either substantially failing to admit a sufficient number of workers for the needs of the American economy or is substantially admitting too many foreign workers, leading to significant job displacement and/or wage depression in the American workforce. If the Commission declares that an emergency exists, the Commission shall recommend proposed adjustments in the employment based immigration system to remedy the emergency. Congress shall then be required to vote on whether to enact the Commission's recommendations or to disapprove of enactment of the Commission's recommendations.

The proposal will also reform America's Green Card system to ensure efficiency and equity in legal immigration to the United States. It authorizes the recapture of immigrant visas lost to bureaucratic delay. The family immigration backlog will be cleared over the course of eight years. After eight years, the current numeric caps on the family preference categories would remain the same as in current law. Spouses and children of lawful permanent residents will be classified as "immediate relatives" to promote the efficient reunification of families. To address the fact that some countries face unreasonably long backlogs, the per country family immigration limits will be amended from 7 to 10 percent of total admissions.

The proposal will also address several remaining technical issues that prevent widows and orphans of U.S. citizens from obtaining immigration benefits. It will eliminate discrimination in the immigration laws by permitting permanent partners of United States citizens and lawful permanent residents to obtain lawful permanent resident status. The proposal also exempts the children of certain Filipino World War II veterans from the numerical limitations on immigrant visas. It also provides protection for children and people with special

humanitarian considerations. The proposal would address several other technical issues related to stepchildren and adoptive children.

**V. MANDATORY REGISTRATION, ACCEPTANCE OF RESPONSIBILITY, AND ADMINISTRATION OF PUNISHMENT FOR UNAUTHORIZED ALIENS PRESENTLY IN THE UNITED STATES**

The Department of Homeland Security estimates that there are approximately 10.8 million people currently in the United States with no legal status. Accordingly, this proposal not only includes well-designed statutory provisions that will strengthen future enforcement, but also includes a broad-based registration program that requires all illegal immigrants living in the U.S. to come forward to register, be screened, and, if eligible, complete other requirements to earn legal status, including paying taxes. These criteria are intended to exclude individuals who threaten public safety or national security and to ensure that those individuals taking advantage of the program intend to stay in the U.S., integrate into society, and become productive, tax-paying members of the community.

In order to register and screen millions of applicants effectively, the program must be simple and straightforward to implement. To achieve these goals, this proposal includes a two-phase process. In Phase 1, eligible applicants, including individuals on Temporary Protected Status and other statuses designated by the Secretary, will be registered, fingerprinted, screened, and considered for an interim “Lawful Prospective Immigrant” (LPI) status that allows them to work and to travel outside of the United States. In Phase 2, which will take place in eight years after current visa backlogs have cleared (often referred to as the “back of the line” provision), LPIs who have fulfilled all additional statutory requirements will be permitted to petition for adjustment to Lawful Permanent Resident (LPR) status.

There will be a broad and streamlined registration/application process that is characterized by rigorous security checks and verification of eligibility. This approach is designed to achieve two complementary objectives:

1. *Encourage maximum participation in the legalization program.* A broad-scope program will serve to bring the vast majority of illegal immigrants out of the shadows. Streamlined processing, including rapid collection of fingerprints from applicants leading to prompt issuance of a biometric-enabled credential to those found eligible for LPI status, will register the physical presence of those here illegally, record their identities with the U.S. Government, and ultimately help ensure that those who are qualified are integrated as accountable, tax-paying members of U.S. society.
2. *Enhance law enforcement capabilities and protect U.S. national security.* Speedy checks of biographic and biometric information against law enforcement databases will help ensure that only those applicants who qualify are granted authorization to remain. Providing eligible applicants with a secure, tamper-resistant credential will enhance border security and interior enforcement by allowing law enforcement to more readily identify and remove convicted criminals; national security and public safety risks; individuals who do not comply with the requirement to register; and other ineligible applicants.

The intended population for the program is that portion of the approximately 10.8 million illegal immigrants currently present in the United States, including minors, who are not disqualified by criminal convictions or actions that threaten national security. Spouses and minor children living abroad will be eligible for legalization, once their resident relative obtains LPI status.

Specifically, to be eligible for *initial registration* for the legalization program and interim status as an LPI, each individual must: (1) complete an application supplying basic biographic and biometric information; (2) pass terrorism, criminal history, and other security checks; (3) pay all applicable fees, civil penalties, and taxes; and (4) have been continuously present in the United States since the date of enactment.

Such persons will not be eligible for registration if they: (1) have been convicted of any felony offense under Federal or State law (all offenses punishable with a term of imprisonment greater than one year), or three or more misdemeanors; (2) have participated in the persecution of others; (3) are inadmissible under certain provisions of INA 212(a), particularly with regard to national security grounds and criminal grounds; (4) are currently present in the U.S. in an authorized immigrant or nonimmigrant status; or (5) have entered illegally after the date of introduction of the bill.

After eight years, individuals who have been granted LPI status will be permitted to apply for *adjustment of status to lawful permanent residence (LPR)*, provided that they can demonstrate that they meet criteria related to: (1) basic citizenship skills; (2) English language skills; (3) continuous residence in the U.S.; (4) updated terrorism, criminal history, and other checks; (5) payment of all federal income taxes, fees, and civil penalties; and (6) registration for Selective Service. Administrative and judicial review of adverse decisions in this program will be available under certain conditions.

In addition, the stand-alone registration programs provided by the DREAM Act and the AGJOBS legislation will also be included within this proposal.

## **VI. REFORMS DESIGNED TO ENHANCE EFFICIENCY AND EFFECTIVENESS IN AMERICA'S IMMIGRATION SYSTEM**

Finally, the proposal also enacts various technical reforms to enhance the efficiency and effectiveness of America's immigration system. A new program will be created to provide visas to promote property ownership by foreign nationals for the enhancement of America's housing market. The R-1 religious worker visa program will be made permanent, and religious organizations will be able to bring minister more easily. The Conrad 30 J-1 Visa Program will be made permanent and H-1B and J-1 visas will be more easily obtainable by foreign doctors, who will also be given an easier path to lawful permanent residence and will be permitted to practice outside of underserved areas, as long as they treat patients living in underserved areas.

This proposal creates an E-3 visa for nationals of the Republic of Ireland similar to the visa already provided for nationals of Australia. It allows for foreign nurses and physical therapists to enter the United States to alleviate shortages in these areas. The EB-5 program will be made permanent and adapted to increase foreign investment into the United States.

The proposal will authorize the Department of Justice to make grants to State courts to develop and implement programs to assist individuals with limited English proficiency to access and understand State court proceedings in which they are a party and will put in place extensive nationwide immigrant integration programs. It will also create a Commission on Wartime Treatment of European Americans to review the United States Government's wartime treatment of European Americans and European Latin Americans during World War II, and a Commission on Wartime Treatment of Jewish Refugees to review the United States Government's refusal to allow Jewish and other refugees fleeing persecution or genocide in Europe entry to the United States during World War II.