FAIR
FEDERATION FOR AMERICAN IMMIGRATION REFORM
LEGISLATIVE ANALYSIS

Summary of H.R. 4321: Comprehensive Immigration Reform for America's Security and Prosperity

January 8, 2010

Introduction

On December 15, 2009, Representatives Luis Gutierrez (D-Ill.) and Solomon Ortiz (D-Tex.), along with 91 original co-sponsors, introduced H.R. 4321, the "Comprehensive Immigration Reform for America's Security and Prosperity Act of 2009," (CIR ASAP). The bill would grant amnesty to millions of illegal aliens, dramatically increase legal immigration, and create loopholes in existing penalties in exchange for promises of "enforcement" in the future. CIR ASAP contains several amnesty programs, including AgJOBS (Title IV, Subtitle B); the DREAM Act (sprinkled throughout the bill); and a broad amnesty program through which millions of illegal aliens could obtain "earned legalization" (Title IV, Subtitle A). These provisions are in many ways similar to those in the Bush-Kennedy Amnesty Bill of 2007, except that several significant requirements have been weakened.

In exchange for the multiple amnesties and massive increases in legal immigration proposed in the bill, H.R. 4321 contains measures ostensibly aimed at strengthening immigration "enforcement." Upon closer examination, however, CIR ASAP would actually undermine the enforcement of our immigration laws. The following is an overview of the major provisions in this bill.

Amnesty

Title IV of CIR ASAP contains a broad amnesty program that would legalize virtually every illegal alien in the United States. To qualify for the first step — status as a *conditional nonimmigrant* or a dependent thereof — an alien need only show that he:

(1) was illegally present in the U.S. on the date of introduction; (§401, p. 355-356)
(2) is not barred from admission through conviction of certain crimes (although many may be waived) or as a national security threat; and (§401, p. 357-359)
(3) is contributing to the U.S. through employment, education, military service, or other community service. (§401, p. 359-360)

The contribution requirement is a significant difference from the 2006 and 2007 amnesty bills (S.2611 and S.1639, respectively), which required an alien to be gainfully employed. In addition, this contribution requirement is waived for individuals who are primary caregivers, pregnant, physically or mentally disabled, over 65, or an individual who initially came to the U.S. before the age of 16, has lived in the

U.S. for five years, and has not reached the age of 35 (this last provision per the DREAM Act). (§401, p. 360-361)

In order to obtain conditional nonimmigrant status, CIR ASAP requires aliens to undergo background/security checks and submit biometric information. (See § 401) However, no additional evidence or documentation is required. DHS has discretion to request evidence from alien applicants or an interview with such applicants.

Once conditional nonimmigrants, these aliens receive significant benefits. DHS must grant conditional nonimmigrants employment authorization and permission to travel abroad. In addition, Title IV provides that conditional nonimmigrants are virtually immune from immigration enforcement activities. For example, DHS may not detain them for immigration purposes, deem them inadmissible, or remove them pending final adjudication of the alien's application unless subsequent conduct makes the alien ineligible. In addition, DHS must provide conditional nonimmigrants with counterfeit-resistant authorization documents that reflect these benefits. DHS may renew an alien's conditional nonimmigrant status every five years upon a showing that he continues to meet the requirements. (§401, p. 369)

After six years, a conditional nonimmigrant may apply for a green card (legal permanent residence status). To get a green card, the alien must establish that in the previous five years the alien:

- Has not been convicted of offenses that render the alien inadmissible;
- Has met his federal tax liability while a nonimmigrant (but not back taxes while an illegal alien, nor state or federal taxes);
- Can establish that he/she has contributed to the community through employment, education, military service or other enterprise (similar requirements to obtaining conditional nonimmigrant status);
- Is, at a minimum, satisfactorily pursuing a course of study to achieve a basic understanding of English and U.S. civics; and
- Establishes proof of registration under the Military Selective Service, if applicable. (§402, p.372-373)

For aliens who entered the U.S. before the age of 16, lived in the country for five years and have not reached the age of 35 (per **the DREAM Act**), the process of applying for a green card is easier. These aliens may apply for green cards immediately upon completion of:

- At least two years of study, in good standing, at an institution of higher education or the completion of a degree;
- Two years of service in the uniformed services (with honorable discharge); or
- Two years of full-time, part-time, self, or seasonal employment.

An alien who becomes an LPR via these DREAM Act requirements may apply for citizenship (naturalization) within three years. All other green card holders under this bill may, per current law, apply for citizenship after five years.

Another major provision of the DREAM Act is incorporated into Title IV, namely the repeal of Section 505 of IIRIRA. This law prohibits states from offering illegal aliens **in-state tuition** unless they also offered it to citizens and legal residents, regardless of state residency. (§411, p. 393)

Title IV of CIR ASAP also contains the **AgJOBS Act of 2009**, legislation that grants illegal farm workers amnesty and significantly restructures the H-2A agricultural guest worker program to provide employers easier access to cheap foreign labor. It is virtually the same as the AgJOBS Act of 2007. (§§421-464, p. 394-498)

Legal Immigration

Title III of CIR ASAP contains numerous changes to the Immigration and Nationality Act (INA) that dramatically increase legal immigration by increasing numerical caps, exempting certain aliens from caps, and making it easier for those certain aliens to gain admission.

First, Section 301 increases the minimum number of family-based immigrants who may be admitted annually from 226,000 to 480,000, and increases the minimum annual number of employment-based green cards from 140,000 to 290,000. Section 301 also "recaptures" what the authors deem are "unused" family-based and employment-based green cards from 1992 to 2009. Depending on State Department calculations, this "recapture" provision alone could increase the number of additional green cards (a one-time increase) by over 550,000. (§301(a)-(b))

In addition to raising the numerical caps, Title III also increases the country cap on the total percentage of immigrants (LPRs) that the U.S. may accept from any one country from 7 percent to 10 percent. This will help individuals from countries such as Mexico and the Philippines, which have long waits due to the high number of Mexican and Philippine nationals applying for green cards. (§ 303)

Title III also creates a new visa category, called a "PUM" visa, ostensibly designed to "prevent unauthorized migration." This provision adds 100,000 visas annually (for three years) to aliens who:

- neither have a family sponsor or a job waiting for them in the U.S.;
- do not have a family or employment-based application pending;
- have not earned a college degree; and
- submit to a background check. (§317)

In addition, to be eligible for a PUM visa, the alien must be from a country that is the source of at least 5 percent of the illegal alien population in the U.S during the previous 5 years. Thus, these visas would mainly go to Mexicans, as Mexico accounts for 59 percent of the illegal alien population. (*See* Pew Hispanic, *Portrait of Unauthorized Immigrants in the United States*, April 14, 2009) Recipients of a PUM visa are eligible to apply for conditional LPR status and eventually citizenship.

Title III also increases immigration by exempting various classes of educated immigrants from numerical caps. This includes aliens (and their spouses and children) who:

- have earned at least a master's degree from an accredited U.S. university;
- have been awarded medical specialty certification based on post-doctoral training in the U.S.;
- will perform labor in "shortage occupations" as designated by DOL for blanket certification;
- have earned a master's degree or higher in science, technology, engineering or mathematics and have been working in the U.S. as a nonimmigrant for 3 years; and
- are either special immigrants or refugees who have received a national security waiver. (§320)

Title III expands the definition of "immediate relatives" to include the spouses and children of legal permanent residents (LPRs, or green card holders). Immediate relatives, by definition, are not subject to the overall numerical or country caps. Thus, expanding the definition will significantly expand legal immigration. (§302) This provision also changes current law to allow spouses and children of LPRs, and the spouses, children and parents of citizens to still petition for immediate relative status if the alien files within 2 years of the death of the principal alien/citizen. (§302)

Finally, Title III makes it easier for certain aliens to gain admission to the United States. This includes immigration violators who have been deported. Current law (INA §212(a)(9)) imposes 3 and 10-year bars to reentry on aliens who were in the U.S. unlawfully or engaged in certain illegal behavior. Section 304 of CIR ASAP authorizes the Attorney General to waive the 3 and 10-year bars to reentry if the AG determines that "a waiver is necessary for humanitarian purposes, to ensure family unity or is otherwise in the public interest." This, along with numerous other exceptions created in §304, essentially make the 3 and 10-year bars meaningless. (§304)

Title III also makes it easier for skilled aliens to stay in the U.S. (and work) while waiting for a green card. It authorizes DHS to create a process under which skilled, professional, and unskilled workers (and their dependents) may be paroled into the U.S. while they wait for a green card to become available. Under this process, DHS shall grant such applicants parole into the U.S. in three-year increments and work authorization. Such applicants must pay a $500 fee. (§321)

Title III makes it easier for poor aliens to sponsor immigrants to the U.S. by lowering the required income level for the sponsor of a family-based immigrant from 125 percent of the federal poverty level to 100 percent of the federal poverty level. (§316)

Guest Workers and Employment-Based Immigrants

Title V of CIR ASAP would overhaul how the annual number of guest workers admitted to the United States is determined, amend existing guest worker programs, and add language to the INA designed to protect workers.

First, Title V creates the Commission on Immigration and Labor Markets which, among other things, would: (1) collect, analyze, and publish information about employment-based immigration and the labor market, and (2) make annual recommendations to Congress regarding the number and characteristics of employment-based workers to be admitted. Once submitted, Congress shall have 90 days to enact a resolution of disapproval. In the absence of disapproval, the recommendations shall stand approved and be implemented at the start of the next fiscal year. (§501)

Despite the creation of this commission, Title V makes substantial changes to the **EB-5** green card program and various guest worker programs. Section 595 increases the annual number of EB-5 visas set aside for regional center investments from 3,000 to 10,000. This enables more individuals to qualify for the EB-5 program as immigrants investing in approved regional centers may participate for half of $1 million generally required as an initial investment. Section 599 expands the EB-5 program to include aliens who complete certain investment agreements. (§§595, 599) Section 593 provides for the concurrent filing of EB-5 petitions and adjustment of status petitions.

Title V makes numerous changes to the **H-1B** and **L-1** guest worker programs through the incorporation of the Grassley-Durbin H-1B and L-1 Visa Reform Act. These changes include:

- requiring employers to make a good faith effort to hire Americans before H-1B visa holders;
- requiring employers to better publicize job openings to improve the recruitment of American workers;
- limiting the current practice of "leasing" or "outsourcing" of H-1B workers to circumvent protections for American workers;
- expanding methods the Department of Labor (DOL) and the Department of Homeland Security (DHS) may use to investigate fraud;
- increasing fines for employers who violate program requirements; and
- requiring greater information sharing between DOL and DHS. (§§531-572)

Title V amends the **H-2B** guest worker program to improve labor protections. It authorizes the Department of Labor (DOL) to enforce laws governing the H-2B program, aggrieved H-2B workers to file civil suits for violations, and Legal Services to represent aggrieved H-2B workers. Title V also requires employers to notify DOL within 30 days of the conclusion of an H-2B worker's employment. (§581) It also requires employers to take certain actions to recruit U.S. workers (advertising, in particular) before hiring H-2B workers. (§582) Finally, it imposes new certification requirements which employers

must meet before they can import H-2B guest workers. In particular, DOL must certify that an employer is offering H-2B workers certain wage rates, has not undergone a mass layoff pursuant to the Worker Adjustment and Retraining Notification Act (29 U.S.C. 2101 et seq.) within the past year, and that the employer does not intend to undergo such a layoff. (§§583-584)

Finally, Title V imposes new requirements on employers and foreign labor contractors that seek guest workers. Section 511 requires such employers and foreign labor contractors to make substantial disclosures to prospective guest workers regarding the specific terms of the employment offered and worker protections under law. Criminal penalties are imposed for repeat offenders. (§511)

E-Verify

Title II of CIR ASAP repeals E-Verify (§§401-405 of IIRIRA) and rewrites INA §274A (Employment Verification) to create a new, mandatory employment eligibility verification system. This system appears to be a system similar to E-Verify. It requires:

- individuals to attest that they are work authorized,
- employers to attest that they have verified the identity and work authorization of an individual by examining documents, and
- employers to *electronically* verify an individual's identity and work eligibility, based on Social Security numbers.

However, there are also differences. For example, the documentation requirements are vague. Section 201, like current law, requires employers to attest that they have examined documents evidencing an individual's identity and work authorization. However, instead of maintaining current statutory language that outlines acceptable identity and work authorization documents, Section 201 simply provides that acceptable documents for verification are those listed in the regulations. (p.213) Such regulations could be changed at any time by the administration.

While Title II creates this mandate, Title IV simultaneously creates statutory roadblocks for implementation. First, the Comptroller General must certify that the electronic eligibility verification system meets extraordinarily high accuracy rates for updating information, tentative non-confirmations, and final non-confirmations. (p.248) The bill then provides that DHS shall waive or delay the participation requirements until the date of such certification. (p.238) These provisions are similar to those offered in the STRIVE Act of 2007 (H.R.1645, p.252).

If the Comptroller General ever certifies the electronic employment verification system, use of it will be phased in over three years, depending on the size of the employer or whether the employer is considered "critical." (p.236-237) However, DHS has the authority "to waive or delay the participation requirements" with respect to "any employer or class of employers" if DHS provides notice to Congress before the date

it grants such a waiver. DHS also has the authority to modify any of the "operational and technical aspects" of the program "to improve the efficiency, accuracy, and security of the System." (p. 248)

Other noteworthy provisions in Title II include a ban on verifying existing employees (p.228) and a general prohibition on re-verifying an individual's identity and employment eligibility (p.226). There are also numerous provisions that give individuals the right for judicial review in addition to administrative review (p.258), encouraging resource-draining and time-consuming litigation. The bill also prohibits repeat violators from obtaining federal contracts, but DHS may waive application of this provision or its scope (p.278-279).

Title II also increases civil penalties to employers who hire illegal aliens, but in most cases still leaves them at relatively low levels (e.g., a maximum of $4,000 per alien for an initial offense). It also creates a special rule for employers regarding paperwork violations. In such cases where DHS fails to establish intent to hire an illegal alien, DHS shall give the employer 30 days to correct such paperwork. This change is noteworthy as the Obama administration is focusing its enforcement efforts on I-9 paper audits.

Finally, Title II preempts all state and local laws, contract licenses, or other "standard, requirement, action or instrument" from imposing sanctions for employing illegal aliens or requiring the use of an employment verification system (i.e., E-Verify) unless mandated by federal law. (§201, p.281) This provision would eviscerate the progress many states have made in combating illegal immigration by mandating the use of E-Verify.

Border Security

Title I contains a variety of border security provisions, although it appears that these measures are more intended to restrict the Department of Homeland Security's ability to conduct border activities than to increase them. For example, **Section 134** provides that DHS shall take such actions as may be required to gain operational control of the border, but such actions may only be taken in accordance with the border protection strategy also mandated under CIR ASAP (§124). DHS *must give first priority* to use of remote cameras, sensors, removal of non-native vegetation, incorporation of natural barriers, additional manpower, unmanned aerial vehicles, and other **"low impact border enforcement techniques."** In carrying out these border security activities DHS must consult with virtually every governmental entity in the United States, including the Departments of Interior, Agriculture, Defense, and Commerce, as well as *states, local governments, tribal governments and "private property owners in the United States"* (emphasis added).

In addition, Title I provides that DHS is not be required to install fencing, physical barriers, roads, lighting, cameras, or sensors in a particular location if DHS determines that doing so would not be the "most effective and appropriate means" to achieve control of the border, or if DHS determines that the

"direct or indirect costs or impacts on the environment, culture, commerce, safety or quality of life" for border communities outweigh the benefits. DHS may not construct any fencing, barriers or other tactical infrastructure along the border or award or expend funds until 90 days after DHS submits the border protection strategy to Congress.

Additional restrictions on immigration enforcement in Title I include suspending Operation Streamline, a program that facilitates the speedy prosecution of border violators, and prohibiting use of the Armed Forces and the National Guard in assisting in the enforcement of immigration laws. Exceptions permitted are: (1) the President declares a national emergency or (2) the use of the Armed Forces/National Guard is required for specific counter-terrorism duties. ((§125, §131)

With respect to manpower and resources, Title I increases the number of Customs and Border Protection (CBP) agents by about 6,500, subject to appropriations, and authorizes appropriations for equipment and manpower to generally improve port of entry and border security. (§112, §113) However, the bill also *requires DHS to identify and inventory current personnel and assets/equipment dedicated to border security and enforcement prior to* ***any increase****. (§§114,116)* DHS must establish standards of professional conduct for all CBP and ICE agents stationed within 100 miles of the border, as well as a process for individuals to file complaints against such agents for violations of the standards of professional conduct. (§115)

Finally, in a nod to local government agencies, Title I sets up a $100 million "Border Relief Grant Program" for law enforcement agencies located in counties within 100 miles of either the Mexican or Canadian borders; agencies located in "High Intensity Drug Trafficking Area[s]" as designated by federal statute; and institutions of higher education that provide assistance to the aforementioned agencies. (§123)

Visa Waiver

CIR ASAP would grant Homeland Security three additional years to expand the visa waiver program. This provision has a somewhat complicated history. One of the first bills the Democrats enacted after the 2006 elections was the Implementing Recommendations of the 9/11 Commission Act of 2007 (Pub.L. 110-53). Although the 9/11 Commission recommended suspending the visa waiver program, this law allowed DHS to waive the requirements for countries to participate if the country had a "sustained reduction" in visa refusal rates, had helped in counterterrorism initiatives, and DHS felt the country's participation would not compromise security interests. However, to overcome objections from visa waiver opponents, compromise language was added providing that such waiver authority would expire on June 30, 2009 unless DHS certified it had an electronic travel authorization system and biometric air exit system in place. DHS was able to implement an Electronic System for Travel Authorization in January 2009 (see www.esta.gov), but was unable to implement a biometric air exit program by the June 30, 2009

deadline and DHS's waiver authority evaporated. *CIR ASAP would extend this waiver authority by three years to June 30, 2011*. (§306)

Detention

Title I of CIR ASAP dramatically limits the ability of ICE to apprehend illegal aliens and to detain them. It also grants extensive statutory protections to immigration violators who are detained.

Title I places severe restrictions on Immigration and Customs Enforcement's ability to apprehend illegal aliens. The bill directs DHS to issue regulations that "prohibit the apprehension of persons" (immigration violators, terrorists, criminal aliens, etc.) and tightly control investigative operations "on the premises or in the immediate vicinity of":

- Childcare providers;
- Schools;
- Legal service providers;
- Federal or state court proceedings;
- Administrative proceedings;
- Funeral homes;
- Cemeteries;
- Colleges or universities;
- Victim service agencies;
- Social service agencies;
- Hospital or emergency care centers;
- Health care clinics;
- Places of worship;
- Day care centers;
- Head start centers;
- School bus stops;
- Recreation centers;
- Mental health facilities; and
- Community centers. (§157)

Title I also limits ICE's ability to conduct investigations by imposing strict procedural requirements. For example, ICE must notify local law enforcement and appropriate "state and local service agencies" (i.e., social service agencies) of enforcement actions at least 24 hours ahead of time, disclosing the specific area of the state that will be affected and the languages ICE anticipates will be spoken at the targeted site. (§158) If ICE cannot plan the enforcement action more than 24 hours in advance, ICE must notify local law enforcement and social service agencies "in a timely fashion" before the enforcement action begins or immediately after it begins.

Furthermore, Title I effectively eliminates the 287(g) program by providing that the authority to "investigate, identify, apprehend, arrest, or detain" individuals for a violation of the INA or related regulations is restricted to immigration officers and DHS employees. This language carves out exceptions for three circumstances:

- DHS's authority to deputize state and local authorities in emergency circumstances where the U.S. is poised for a mass influx of aliens;
- Judicial review of deportation orders; and
- Arrest authority for smuggling and harboring illegal aliens to all officers whose duty it is to enforce criminal laws. (§184)

Within 6 hours of apprehension, ICE must provide state and local service agencies with "ongoing confidential access" to apprehended individuals to help determine whether such individuals are members of "vulnerable populations" that must receive special treatment. (§158) DHS must also provide one interpreter for every five individuals targeted by the enforcement action and must permit nonprofit legal services (i.e. MALDEF, AILA, ACLU, etc.) to offer free legal services. (§158)

Prior to questioning, ICE or a DHS official must read a detainee their rights, even though removal is a civil proceeding. Specifically, a DHS or other official must inform a detainee that:

- he/she has the right to be represented by counsel (at no expense to the government);
- he/she may remain silent; and
- any statement made by the detainee may be used against him in a removal or criminal proceeding. (§159(a))

Evidence obtained by an officer in violation of these requirements is not admissible in a removal proceeding or used to confirm that the detainee is a noncitizen for the purposes of issuing an immigration detainer. (§159(a)) DHS must ensure that all detained aliens who are in or may be in EOIR Immigration Court proceedings receive legal orientation through a program administered by EOIR in DOJ. (§159(b))

During questioning, the "examining officer" shall, in the language spoken by the detainee, provide such individual, prior to being taken to a detention facility, with a list of "available free or low-cost legal services provided by local organizations/attorneys. Detainees are also given a statutory right to legal counsel in immigration proceedings, including deportation proceedings, and DOJ must take steps to ensure that aliens with mental or physical disabilities have counsel, including counsel appointed at the expense of the government. (§159(c) and (d))

Once apprehended, Title I of CIR ASAP significantly limits DHS's authority to detain illegal aliens. First, it creates a classification of "vulnerable populations" and requires that these aliens receive special treatment. These aliens include:

- Individuals with a "nonfrivolous claim" to U.S. citizenship;
- Aliens who have "a disability" or have been determined by a medically trained professional to have medical or mental health "needs";
- Pregnant or nursing aliens;
- Aliens detained with one or more of their children and their detained children;
- Aliens who provide financial, physical, and other direct support to their minor children, parents, or other dependents;
- Aliens who are at least 65 years old;
- Children;
- Victims of abuse, violence, crime, or human trafficking;
- Aliens referred for a "credible fear interview, a reasonable fear interview, or asylum hearing";
- Stateless aliens;
- Aliens who have applied or intend to apply for asylum;
- Aliens who make a prima facie case for eligibility for relief under ***any*** provision of the INA; and
- Any group designated by DHS as a vulnerable population. (§160(a))

DHS shall release aliens who are classified as "vulnerable" within 72 hours and shall not require electronic monitoring unless DHS demonstrates "by a preponderance of the evidence" that the alien is subject to mandatory custody as a terrorist or criminal, the alien poses a national security risk, the alien is a flight risk, and that the risk cannot be mitigated. Such alien shall be released on either (1) the individual's own recognizance, (2) with minimum bond, or (3) on parole. In addition, Title I authorizes DHS to release any alien on his or her own recognizance (without a bond or conditional parole as required under current law) and also authorizes DHS to enroll an alien in a "secure alternatives" program. (§160(b))

Vulnerable populations aside, Title I requires that before detaining an alien not subject to mandatory detention under INA §236A, DHS use the following criteria to "*demonstrate that detention of the alien is necessary*." These criteria are:

- Whether the alien poses a risk to public safety, including a risk to national security; and
- Whether the alien is a flight risk and there are no conditions of release that will reasonably ensure that the alien will appear for immigration proceedings, including bond or other conditions.(§160(b))

These criteria shall not apply if DHS demonstrates "by substantial evidence" that the alien is subject to detention under the current requirements for mandatory detention (felon, violent criminal, etc.).

DHS must issue written decisions when detaining any alien under this section. Such written decision must specify the reasons for detention if without bond or parole and be served upon the detainee, in a language spoken by the alien, within 72 hours of detention. Any alien may request a "redetermination of such

decision by an immigration judge." (§160(b)) DHS must also establish a "secure alternatives program" for detention of aliens. When issuing detainers, DHS must provide the alien and his/her attorney with written notice including the intention of DHS to take custody of the aliens, the grounds why, and notice that an alien has the right to challenge a detainer "lodged in error." (§159(f))

If detained, Title I of CIR ASAP provides illegal aliens with significant rights. The first of these is the right to "prompt and adequate medical care" at no cost to the detainee. Detainees also receive the right to primary care, emergency care, chronic care, prenatal care, dental care, eye care, mental health care, and other medically necessary specialized care. (§152) Detention facilities shall provide comprehensive medical and mental health screenings to detainees upon arrival as well as medically necessary treatment. Detainees (and their legally appointed advocates) may appeal any denial of care to an independent appeals board. Detention facilities must provide detainees with discharge planning to ensure continuity of medical care for a "reasonable period of time." (§152)

Detention facilities must also provide detainees "reasonable and equitable access" to working telephones and the ability to use toll-free numbers to contact legal representatives, family courts, child protective services, foreign consulates, immigration courts, etc. (§152(c)) There must be a minimum of one phone per 25 detainees. Detention facilities must publish rules governing phone access and provide translation and assistance for detainees who are not literate. Detention facilities must take and deliver phone messages as promptly as possible, no less than twice per day. (§152(c))

DHS must issue and enforce regulations that implement these statutory requirements. (§154) Detainees have the right to file grievances, which DHS must review within 30 days. If DHS determines the detention center has violated such rules, DHS shall impose penalties. (§153) Each detention center must have a compliance officer charged with investigating complaints and remedying violations within 30 days. Detainees may seek judicial review of a detention facility's findings after 30 days. (§153) Finally, CIR ASAP requires DHS to appoint and convene an "Immigration Detention Commission" which shall conduct independent investigations and evaluate and report on the compliance of detention facilities. (§155)

Title I creates an ICE Ombudsman, whose duties will include inspecting detention centers, investigating complaints, referring matters to DOJ or other relevant agencies, proposing changes in policies or practices, and reporting to Congress. (§185)

Title I makes it easier for aliens to receive judicial review of removal orders (and drag out the deportation process). It changes current law by, among other things, allowing judicial review for related denials of discretionary relief, extending the deadline to file petitions from 30 to 60 days after the date of the final order, and providing that a petition for judicial review shall stay a removal order. Title I also eases the standard of review, authorizes class action suits relating to review of removal orders, expands the

jurisdiction of courts to hear such claims, eliminates existing statutory limits on permissible grounds for review, and eliminates the current limitation of relief to injunctive relief in a specific case. (§187)

Finally, Title I preempts all state and local laws designed to assist in immigration enforcement. The preemption is broad, prohibiting any state or local law, contract, license, or other standard, requirement, or action, except when specifically authorized by federal law, that discriminates among persons based on immigration status and any state or local sanction or liability based on immigration status or the immigration status of employees. (§183) This effectively bars states from sanctioning employers who intentionally hire illegal aliens.

Detention of Individuals with Children

In addition to general provisions regarding the detention of aliens, Title I of CIR ASAP contains several measures that deal specifically with the apprehension of aliens with children. Overall, these provisions place significant limitations on DHS's ability to detain families, even during deportation proceedings.

First, Section 162 requires that families with children be placed in removal under INA §240. This effectively prohibits customs and border patrol (CBP) agents from removing them via "expedited removal," a process through which border and customs protection agents may promptly return illegal aliens apprehended near the border shortly after entry. (§162(a))

Second, the bill provides that families with children shall not be separated or taken into custody except "when justified by exceptional circumstances, or when required by law." (§162(c)) When detained, DHS must ensure that:

- Special non-penal, residential, home-like facilities that enable families to live as a unit are used;
- Procedures and conditions of custody are appropriate for families with children;
- Child welfare organizations shall staff and be responsible for management of such facilities;
- There are no restrictions on freedom of movement; visitations; telephone; possession of personal property; education; or religious practice, except to prevent flight and ensure safety of the residents (not detention officials or welfare support staff);
- Immigration judges conduct individualized reviews of each family's well-being and the need for continued detention every 30 days and that families are notified in writing of the decision; and
- Parents "*retain fundamental parental rights and responsibilities*." (§162)

Finally, in "exceptional circumstances" where release or a secure alternatives program is "not an option," DHS must:

- Offer mental health services to children and family members at the time of apprehension;

- Provide and advertise a toll-free number through which family members of detainees may report information relevant to the release of an apprehended family member as a member of a vulnerable population
- Provide a primary caregiver with:
    - confidential, toll-free calls within 2 hours of apprehension to arrange for child care;
    - information regarding legal service providers and attorneys that offer free advice on child welfare and custody issues; and
    - Information regarding multiple state and local child welfare providers
- Ensure that DHS personnel do not:
    - Interrogate or screen individuals in the immediate presence of children;
    - Interrogate, arrest, or detain a child without the consent or presence of the parent; or
    - Compel or request children to translate
- Ensure that the best interests of children are considered in detention decisions and that there is a preference for family unity whenever appropriate. (§163)

Miscellaneous

Title VI undermines the financial stability of our immigration system by permitting DHS to waive any or all immigration fees upon the filing of an affidavit that substantiates the alien is unable to pay. Such affidavit will be deemed to be substantiated if the alien is receiving federal means-tested benefits or the alien is at or below 125 percent of the federal poverty level. This waiver authority does not extend to adjustment of status under INA §245 or employment-based petitions. It also prohibits DHS from increasing fees without first reporting to Congress. (§601)

Title VI requires DOJ and DHS to make "a reasonable effort" to complete background checks no later than 90 days after receipt. If the background check cannot be completed within 180 days, DOJ/DHS must report to Congress on why the check cannot be completed within that timeframe and when it will actually be completed. (§604(b))

Title VI amends the tax code to authorize English as a second language (ESL) teachers to receive a tax credit between $1,000 and $1,500 for ten years. It also allows ESL teachers to deduct their certification expenses and employers to receive a credit of up to $1,000 per employee for expenses incurred to provide adult education and literacy skills to English Language Learners. (§616)