



## The Border Security and Immigration Reform Act (H.R. 6136)

### BACKGROUND

The *Border Security and Immigration Reform Act of 2018* (BSIRA) is compromise legislation drafted by House leadership, representatives of various ideological factions within the GOP conference, and the relevant committee chairmen to avoid the terrible consequences of a discharge petition. FAIR understands and appreciates the political implications of this decision. However, BSIRA is nothing more than a mass amnesty bill that repeats mistakes of the past.

### AMNESTY FOR MILLIONS OF ILLEGAL ALIENS

- **Creates a pathway to citizenship for more illegal aliens than ever benefited under President Obama’s Deferred Action for Childhood Arrivals (DACA) program, as well as children of foreign workers in the U.S. on temporary visas.** Initially, this bill grants 6-year indefinitely-renewable legal status to the entire DACA eligible population (approximately 1.8 million individuals). At the beginning of this new program’s sixth year, green cards will be given to recipients under a new points-based visa program. The points system will score the applicant’s “merits” on criteria such as education level and English proficiency. Children of long-term foreign workers in the U.S. on temporary visas (approximately 75,000 individuals) will also be eligible to obtain green cards under this new program.
- **Permits illegal aliens who are in the midst of removal proceedings, have remained in the U.S. after ignoring an official removal order, or are apprehended after the date of enactment to apply for one of this bill’s amnesty categories if they are prima facie eligible.** Therefore, individuals who have already been reprimanded for ignoring the law at least once will be given another bite of the apple, halting immigration enforcement, and causing even greater backlogs in our already overburdened courts.

### BORDER SECURITY

- **Authorizes and appropriates funding for border wall construction, however, the “triggers” contained in the bill are not adequate enough to ensure the wall’s completion.** The bill appropriates President Trump’s full \$25 billion request for a border wall, border technology, and border access roads. If funding is rescinded, withheld, or reprogrammed in the future, the amnestied illegal aliens will become ineligible for green cards. However, they will maintain their indefinitely renewable legal status, allowing them to live and work in the United States unperturbed regardless of whether the wall is ever built.
- **Continues use of the National Guard along the southern border.** National Guard troops do not carry out law enforcement duties. However, they are trained to provide aerial and ground surveillance support that frees up Customs and Border Patrol (CBP) officers to go into the field, where they are most effective. While there is value in utilizing the National Guard at the border, the Trump Administration is already doing so; and as such, this provision already mirrors current practice.

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- **Implements a biometric entry-exit system.** The bill requires full implementation of a biometric entry-exit system at all ports of entry and makes technological advances and infrastructure improvements in order to keep the border secure.

## ENFORCEMENT

- **No mandatory E-Verify.** The bill does nothing to ensure that American workers are protected from job displacement or wage depression caused by mass illegal immigration. The proposal will maintain the ineffective, paper Form I-9 process for work authorization verification and does not require employers to use E-Verify – the free, web-based verification program that compares identity and work documents against federal databases to ensure a legal workforce and prevent future illegal immigration. **The availability of jobs remains the largest pull factor for illegal aliens.**
- **Does not defund dangerous sanctuary city jurisdictions.** However, the bill does provide indemnification for law enforcement entities if sued for complying with DHS detainers, clarifies ICE detainer authority, and provides victims a private right of action against sanctuary jurisdictions in cases of murder, rape, and sexual abuse of a minor if the crime is committed by an illegal alien.
- **Closes loopholes in current law that create illegal border surges.** The bill tightens the “credible fear” standard to minimize frivolous asylum claims that create a backlog in the asylum system. Similarly, the bill makes asylum fraud a felony punishable by up to ten years in jail. The bill also closes loopholes which bar the federal government from quickly and safely repatriating unaccompanied minors (UACs) apprehended at the border by treating UACs from contiguous countries and non-contiguous countries the same. Further, the bill clarifies the Flores Settlement by ensuring that children apprehended at the border are not separated from their parent or legal guardian while in DHS custody.

## LEGAL IMMIGRATION

- **The proposal does not end chain migration.** Laws allowing extended chain migration permit adult immigrants to petition numbers of distant relatives for green cards, who can then sponsor other immigrants themselves, and so on. Over time, extended chain migration laws result in the admission of millions of immigrants without any assessment of their ability to succeed or contribute in the United States. While the bill claims to limit chain migration by eliminating family preference visa categories F-3 (Married Children of U.S. citizens- 23,400 visas) and F-4 (Siblings of Adult U.S. Citizens- 65,000), these visas are simply reallocated to employment-based visa categories.
- **Rewards lawbreaking parents with green cards.** Despite claims that so-called Dreamers were brought to the U.S. “through no fault of their own,” the bill will result in amnesty for their illegal alien parents, who cannot in good faith claim any diminished culpability. By not eliminating the relevant chain migration category, these amnestied illegal aliens will eventually be eligible to sponsor the very individuals who broke our laws and illegally brought their children to the U.S. illegally.
- **Reallocates (instead of eliminates) the Visa Lottery.** Today, the visa lottery allocates 55,000 visas annually to applicants at random and without consideration for an applicant’s ability to succeed in the United States or their ties to this country. This legislation reallocates these visas into the new visa program each year, but will store them in escrow for the first five years. At the beginning of the sixth year, these green cards are awarded to the previously mentioned amnesty populations based on a points system. If any of these reallocated visas remain after all eligible applications have been processed, these green cards will be eliminated and not reallocated.
- **Shifts to a “first-in-line” visa system.** Eliminates the per-country numerical limitation for employment based immigrants, ensuring that future employment-based immigrations come overwhelmingly from just two countries, India and China. The bill also raises the per-country cap for family based immigrants

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to 15% of the total number of family-sponsored visas, making it very likely that just three countries – India, China, and Mexico – will receive more than 60% of available visas.

## **FAIR'S POSITION ON THE BORDER SECURITY AND IMMIGRATION REFORM ACT**

While campaigning in 2016, President Trump and House Republicans energetically reinforced the concept that immigration policies – levels, admission criteria, and enforcement – must serve our national interests, not special interests. They promised to protect American jobs and wages, enhance security, and uphold the rule of law. And these things resonated with the American people, who in turn handed them sweeping majorities in Washington. Yet despite all that, House leadership has proposed nothing short of an antiquated retreat of past amnesties.

The *Border Security and Immigration Reform Act of 2018* (BSIRA) does contain a partial list of true reforms widely embraced by the American people, including a border wall – backed up by \$25 billion in advanced appropriations – elimination of the visa lottery, and the closing of dangerous loopholes that created the current border crisis.

Upon examination, however, these positives are overshadowed by a massive amnesty and reforms that are either too flawed or missing entirely.

First, BSIRA audaciously grants amnesty to 1.8 million illegal aliens – 1.1 million more than anyone interested in addressing the status of DACA recipients ever imagined. By any definition, these numbers expose the bill as a massive amnesty vehicle, not a reasonable DACA compromise.

Second, BSIRA does not address illegal aliens in the workplace by mandating nationwide E-Verify. It is simple: E-Verify is the single most successful tool to address illegal employment, which is widely recognized as the primary motivation for illegal immigration.

Third, BSIRA does not end our failed system of extended chain migration. Replacing chain migration with a merit-based system would both lower the overall number of aliens accepted into the country each year, and ensure that those accepted are able to further the United States' cultural and economic priorities.

Finally, and perhaps most important, BSIRA fails to guarantee that proper enforcement mechanisms will be in place prior to any form of legalization. The proper sequencing should be to first put reforms in place that assure the public they're not going to get the short end of the stick, yet again.

What we are left with is an inadequate bill that – while profoundly affecting the future of this nation – was still cooked up behind closed doors, and rushed to the floor of the House. The American people deserve so much better.

**FAIR urges a NO vote and will include it in our 115th Congress Voting Report.**