

Immigration Bill Is Worse Than You Think

by Sen. Jeff Sessions

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Editor's Note: Sen. Jeff Sessions (R.-Ala.), a member of the Senate Judiciary Committee, offered a devastating analysis on the Senate immigration bill in a speech delivered on the Senate floor on Tuesday, May 23. Sessions pointed to shocking elements of the bill that were hidden deep in its text. These include, for example, that the employers of illegal aliens would be given an amnesty for cheating on their taxes, and that under the terms of the law the government would for all practical purposes have to take an illegal alien's word for it that he has been in the country illegally long enough to qualify for an amnesty.

Sessions also pointed to some of the tremendous hidden costs of the bill, including the \$500 billion in additional welfare payments it will cost American taxpayers in the period 10 to 20 years after its passage.

Senators who vote for the bill today cannot credibly claim later they were unaware of the elements and consequences that Sen. Session's outlined in this speech.

I am going to take some time tonight to inform my colleagues about some of the problems with the legislation before us. It is worse than you think, colleagues.

The legislation has an incredible number of problems with it. Some, as I will point out tonight, can only be considered deliberate. Whereas on the one hand it has nice words with good sounding phrases in it to do good things, on the second hand it completely eviscerates that, oftentimes in a way that only the most careful reading by a good lawyer would discover. So I feel like I have to fulfill my duty. I was on the Judiciary Committee. We went into this. We tried to monitor it and study it and actually read this 614-page bill, and I have a responsibility and I am going to fulfill my responsibility.

I think the things I am saying tonight ought to disturb people. They ought to be unhappy about it. It ought to make them consider whether they want to vote for this piece of legislation that, in my opinion, should never, ever become law.

I would also just point out I will be offering tomorrow, or soon, an amendment to deal with the earned-income tax credit situation that is raised by this legislation, focusing on the amnesty in the bill and what will happen after amnesty is granted, before they become a full citizen. The Congressional Budget Office has concluded that the earned-income tax credit will pay out to those who came into our country illegally \$29 billion over 10 years. The earned-income tax credit has been on the books for some time. It is a good bit larger than most

people think. The average recipient of it receives \$1,700. Lower-income people get a larger amount. Over half the people who we expect will receive amnesty are without a high school degree. They are receiving lower wages. They will be the ones who will particularly qualify for this. This is a score that has been given to us by the group that is supposed to score it-\$29 billion will be paid out.

If they go all the way and become a citizen they will be entitled to this like any other citizen, and they will be entitled to get it under my amendment. But I do not believe we should award people who have entered our country illegally, submitted a false Social Security number, worked illegally-I do not believe we should reward them with \$29 billion of the taxpayers' money. That is a lot of money.

I will also be offering a budget point of order, I or one of my colleagues will, in the next day or so. We have been working on that. We asked for a report. The Congressional Budget Office has concluded that the budget point of order lies in the first 10 years of this bill. It also concludes that it lies under the long-term provisions of the budget points of order for expenditures in the outyears. They didn't give us those numbers, but they said, without much work-they didn't have to do much work-the numbers are going to be much worse in the outyears. It clearly would be a detriment to the Government and these figures would exceed the budget, and a budget point of order would lie.

At the Heritage Foundation, Mr. Robert Rector, who is the expert who dealt with welfare, studied this. He was the architect of welfare reform who has done so much to improve America's welfare system and improve incomes for low-income families. It really worked beautifully. He was the architect of it. He says this bill represents the greatest increase in welfare in 35 years. With the provisions and benefits that will be in it, he estimates that year 10 through year 20, the cost could be \$50 to \$60 billion a year to the taxpayers because it takes some time for the people who are adjusting and becoming citizens and/or legal permanent residents to really begin to make the claims.

CBO admits the numbers are going to surge in the outyears. He says it is \$50 billion a year. If that is so-and he is not exaggerating the numbers, because that is based solely on the amnesty provisions, not the provisions that will allow 3 times to 4 times as many people to come into the country legally in the next 20 years as come in today, and many of them will go on welfare because that whole system is not based on identifying people with skills and educational levels that would indicate they would be more than low-wage workers-so it could really be more than that. But \$50 billion a year over 10 years is \$500 billion. That is a half a trillion dollars, and that is why Mr. Rector said this legislation is a fiscal catastrophe. This is a man whose opinions and ideas and research this Congress, and particularly the Republicans, utilized to hammer away, time and time again, year after year, to get welfare reform.

It finally happened. It worked just like he said. The predictions of disaster made against his recommendations proved to be false.

He is saying that about this. So this is not a technical point of order. It represents an attempt to save the fiscal soundness of the budget of the United States.

I want to take some moments here to deal with some problems with the legislation. The American people are suspicious of us. They were promised in 1986, after years of urging the Government, the President and the Congress, promised to fix our borders and end illegal immigration. In exchange for that they acquiesced and went along with amnesty in 1986. They said there were a million, 2 million here who would claim it. It turned out 3 million claimed amnesty after 1986. That ought to give us some pause about the projections that we would have. We have 11 million people here now and only 8 or so will seek amnesty under it. That ought to give us some pause there. It may well be above the number.

So the American people are suspicious and they are dubious and they are watching us carefully, and they should. Let me tell you some of the things that are in the legislation that indicate a lack of respect for the American people, really. Some of these are some of the reasons I said the other day the Senate should be ashamed of itself, the way we are moving this bill.

My staff, working up some of these comments, came up with a title-maybe at my suggestion-"Sneaky Lawyer Tricks" that are in the bill. I will let you decide if that is a fair description of what is in it. I will go down through some of the matters that are important. There are others I could complain about for which we will not have time.

First, the legislation talks about title IV of the bill. That title IV of the [*S5031]

bill defines the new H2-C program as a temporary guest worker program. Those are in big print in the bill: Temporary guest workers.

That sounds like a temporary worker, doesn't it? It sounds like a guest, like somebody who stays in your bedroom for a weekend, a guest, temporary guest.

Interesting, section 408 sets out the temporary guest worker visa program task force. So a little further down it has what is called a temporary guest worker visa program task force. So you would think they are writing in this section, would you not, something about the task force. But this, down in that section, this task force establishes the number of H2C visas that may be issued annually and subsection (h) is where the writers of the bill hid the provision that actually transforms these so-called temporary workers into legal, permanent

residents. OK? So all the big print, "temporary guest workers," "temporary guest worker task force," and then you read in that section down there that it effectively converts them from temporary workers to legal permanent residents, granting them a green card.

It is tucked away in a title that has nothing to do with substance of that matter. So I am pleased that my staff and others who have been reading the bill have discovered that. It wasn't discovered early on in the process.

Family members of H-2C visa holder need not be healthy. Under current law, aliens must prove that they are admissible and meet certain health standards. Many times, visa applicants must have a medical exam to show that they do not have a communicable disease. They have to be up-to-date on immunizations, and cannot have mental disorders. Spouses and children of H-2C visa holders, however, are not required to have a medical exam before receiving a visa. I have an amendment to fix this that I hope is accepted.

The work requirement for a blue card can be satisfied in a matter of hours. Under the AgJOBS component of the substitute, illegal alien agricultural workers who have worked 150 "workdays" in agriculture over the last 2 years will receive a "blue card," allowing them to live and work permanently in the U.S. However, because current law defines an agricultural "workday" as 1 hour of work per day-the bill language restates that definition on page 397-an alien who has worked for as little as 150 hours-there are 168 hours in a week-in agriculture over the last 2 years will qualify for a blue card.

Blue card aliens can only be fired for just cause, unlike an American citizen worker who is likely under an employment at will agreement with the agricultural employer.

No alien granted blue card status may be terminated from employment by any employer during the period of blue card status except for just cause.

Because blue card aliens are not limited to working in agriculture, this employment requirement will follow the alien at their second and third jobs as well. The bill goes as far as setting up an arbitration process for blue card aliens who allege they have been terminated without just cause. Furthermore, the bill requires the Secretary of Homeland Security to pay the fee and expenses of the arbitrator. American citizens do not have a right to this arbitration process, why are we setting up an arbitration process for blue card aliens paid for by the American taxpayer.

Regarding free legal counsel, the AgJOBS amendment goes further than paying for arbitrators, it also provides free legal counsel to illegal aliens who want to receive this amnesty. The AgJOBS amendment specifically states that recipients of "funds under the Legal Services Corporation Act" shall not be prevented "from

providing legal assistance directly related to an application for adjustment of status under this section." Interestingly, page 414 of the bill requires the alien to have an attorney file the application for him. Not only will AgJOBS give amnesty to 1.5 million illegal aliens, it would have the American taxpayer pay the legal bills of those illegal aliens. This is unbelievable and unacceptable. We should not be rewarding illegal aliens who break our laws with free legal counsel and a direct path to citizenship.

Under this bill a temporary worker is eligible for a green card if they, in part, maintained their H-2C status. In order to maintain this status the "temporary" worker may not be unemployed for a period of 60 continuous days. This means that a temporary worker only has to work 1 day in every 59 days to maintain status. This employment requirement only requires that they work about 1 day every 2 months.

In this bill, an alien who has been here between 2 and 5 years is not eligible for asylum if they have persecuted others on account of race, religion, nationality, membership in a particular social group, or political opinion. However, an alien here more than 5 years who has persecuted others on account of race, religion, nationality, membership in a particular social group, or political opinion gets amnesty under this bill. There is no specific ineligibility for such conduct. Since it is included under the "mandatory deferred departure" section, a court will interpret this to mean we purposefully left it out of the "earned amnesty." I cannot imagine why the drafters of this bill would allow persecutors to benefit from amnesty.

The bill's future flow "guest worker" program in title IV leaves no illegal alien behind-it is not limited to people outside the United States who want to come here to work in the future, but includes illegal aliens currently present in the United States that do not qualify for the amnesty programs in title VI, including aliens here for less than 2 years. Under the bill language, you can qualify for the new H-2C program to work as a low-skilled permanent immigrant, even if you are unlawfully present inside the United States today. The bill specifically says:

In determining the alien's admissibility as an H-2C nonimmigrant . . . paragraphs (5), (6)(A), (7), (9)(B), and (9) (C) of section 212(a) may be waived for conduct that occurred before the effective date. . . .

By waving these grounds of inadmissibility, the new H-2C program is specifically intended to apply to illegal aliens who were already removed from the United States and illegally reentered.

The bill tells DHS to accept "just and reasonable inferences" from day labor centers and the alien's "sworn declaration" as evidence that the alien has met the amnesty's work requirement. Under the bill, the alien meets the "burden of

proving by a preponderance of the evidence that the alien has satisfied the [work] requirements" if the alien can demonstrate employment "as a matter of just and reasonable inference." An alien can present "conclusive evidence" of employment in the United States by presenting documents from social security, IRS, employer, or a "union or day labor center." The bill then states that:

It is the intent of Congress that the [work] requirement . . . be interpreted and implemented in a manner that recognizes and takes into account the difficulties encountered by aliens in obtaining evidence of employment due to the undocumented status of the alien.

If these lax standards can't be met, the bill makes sure that the alien can get what they need by allowing them to submit "sworn declarations for each period of employment." Putting these together the alien must prove it is more likely than not that there is a just and reasonable inference that the alien was employed. I don't know what this means other than DHS will have to accept just about anything as proof of employment.

Regarding in-State tuition for illegal aliens, current law provides that:

[A]n alien who is not lawfully present in the United States shall not be eligible on the basis of residence within a State (or a political subdivision) for any postsecondary education benefit unless a citizen or national of the United States is eligible for such a benefit (in no less an amount, duration, and scope) without regard to whether the citizen or national is such a resident.

The DREAM Act would eliminate this provision and allow illegal alien college and university students to be eligible for in-state tuition without affording out-of-state citizen students the same opportunity. Thus, the University of Alabama could offer in-state tuition to illegal alien students while requiring citizens residing in Mississippi to pay the much higher out-of-state tuition rates.

Allowing all illegal aliens enrolled in college to receive in-state tuition rates means that while American citizens from 49 other states have to pay out-of-state tuition rates to send their kids to [*S5032] UVA, people who have illegally immigrated to this country might not. Out-of-state tuition rates range from 2 to 3 ½ times the in-state resident tuition rate.

Regarding Federal financial aid for illegal aliens, while the Pell grants provision was removed from the bill, Stafford student loans and work study remains in.

Under title IV of the Higher Education Act of 1965, as amended, legal permanent residents and certain other eligible non-citizens are eligible to compete with American citizens for certain types of higher education assistance.

The DREAM Act makes illegal aliens eligible for several types of higher education assistance offered under the Higher Education Act-including Stafford student loans and work study programs.

There is another matter, another sleight of hand I suggest.

Amnesty both for legal aliens who have been here for more than 5 years, and those in the next category who are here from 2 to 5 years, don't really require that those aliens have to be continuously present in the United States. That is what it says in plain language.

It starts off that you have to be continuously present in the United States. But, once again, is that what it really means?

The bill allows these aliens to depart and to return after a brief departure. This allows illegal aliens who broke our laws by entering the United States and who have left and returned illegally perhaps multiple times-and each time violating our laws by entering the United States-to qualify for this amnesty.

I am not sure how these departures and illegal entries can be considered innocent since the illegal aliens broke U.S. laws by reentering. But it will absolve them from any of these multiple violations. That is a huge loophole.

This is even more important. An alien may not have had deep roots in our country. They may have spent a lot of their time away from our country. But they heard about this amnesty, and if they can get in the country, then they will say they have been here continuously, perhaps.

Somebody says: No. We found out you were back home.

He says: That was brief. I want my amnesty.

We object. I am going to take you to court, or you prove it, or I say I have been here. That is what I say. It is going to be very difficult to prove that.

There are provisions in the bill that deal with U.S. worker protections. The bill purports to protect U.S. workers from the flood of cheap labor that might occur by requiring employers to prove to the Department of Labor that good-faith efforts have been taken, first, to recruit U.S. workers for a job before they go out and hire someone from outside of our country. They ought to at least find out if there are American workers who want the job.

Then they are supposed to notify the Secretary of Labor and the Department of Homeland Security when one of these H-2C workers is "separated from employment."

I am quoting that-"separated from employment" requires notice.

We heard defenders of the bill say: Well, if you are not continuously working, they will notify the Department of Labor and you have to leave the country.

Have you heard that? You have to be continuously working, you can't be not working, or else you are not entitled to the benefits of this H-2C provision. The separation from employment notification is supposed to help the Department of Labor and Homeland Security know which people have been out of work, and if they are out of work under the bill for more than 60 days, their visas are supposed to be revoked.

OK. That is supposed to be a provision that makes sure people who come here are really working. Sounds good. But under the provisions of the bill, the term "separation from employment"-you can find that on page 236. As defined, the term means virtually zero.

As defined, "separation from employment is anything other than discharged for inadequate performance, violation of workplace rules, cause, voluntary departure, voluntary retirement, or expiration of a grant or contract."

Furthermore, it does not include those situations where the worker is offered-even if they do not take it-another position by the same employer.

Is that what I just read to you? It is hard to believe-that you are supposed to notify them, except you don't need to notify them if they have left work, if they left work because they were discharged for inadequate performance, fired, or violation of workplace rules, or for just cause, or involuntary departure, involuntary retirement, or expiration of the contract. You don't have to notify them about those things.

What would you notify them for, pray tell? That is "flabber" written. I submit whoever wrote this bill-it was not the Senators, I can assure you of that-ought to be ashamed of themselves.

That was a deliberate evisceration of what on the surface sounds like a legitimate provision, totally unenforceable. There is no way under this provision DHS or the Department of Labor will be provided information about people who have been terminated from employment.

Protections for U.S. workers-that is one of the goals the bill says it reaches. Under the bill, employers must prove that hiring an H-2C worker will not adversely affect the wages and working conditions of workers in the United States, and that they did not and will not cause separation from employment of a U.S. worker employed by an employer within the 180-day period beginning 90 days before this H-2C petition is filed.

Employers must also prove that they made good-faith efforts to recruit U.S. workers before they can hire an H-2C worker. That sounds good but, once again, things are not what they seem.

As defined on page 263 of the bill, a U.S. worker includes not only citizens, it includes legal alien workers. And, amazingly, it also includes aliens who are "otherwise authorized under this act to be employed in the United States."

In other words, this provision provides protection for those who have been given legal status under amnesty, over and above, and provides them the same protection we provide to American citizens who are supposed to be given some protection against the flood of foreign labor.

You have heard the deal. You have heard it said that the people who come to get amnesty-this is almost humorous-have got to pay their taxes. That is part of some sort of punishment. They make it sound like, in some way, you earned the right to be forgiven of your crime by paying your taxes.

Everybody is supposed to pay their taxes. For heaven's sake, we are all supposed to pay taxes. This is nothing but doing what you would expect any American to do. But under the bill, things are, once again, not quite what their sponsors have said, or what the language might lead you to believe. You have to read it carefully.

Under the bill, an illegal alien who is getting amnesty only has to pay back taxes for the period of employment required in the INA, section 245(B)(A)(1)(d).

This is on page 347 of the bill, if people would like to look. These are actually just 3 of the 5 years between April 5, 2001, and April 5, 2002.

So the plain language of the bill doesn't require them to pay all their back taxes at all. They get an option to pick and choose which 3 years they want to pay their taxes. Presumably, they can forget and not pay the taxes for the high years. How silly is that?

This is really important. I think most Americans are pretty sophisticated. They know how the system works and the massive numbers we are talking about-the burden of proving payment of back taxes is on the Internal Revenue Service, pages 351 and 411. They have to prove it. How are they going to prove it? The IRS must prove that they owe the taxes. How will the IRS know if an illegal alien has worked off the books thereby avoiding paying any taxes?

This is really an utter joke. It is a promotion put forth by those in support of the bill that I have heard repeatedly-that somehow it is supposed to make us believe that people have earned their right to be forgiven for violating the

law, and they only have to pay back 3 of the last 5 years in taxes.

What about American citizens? Do you think you can go down to Uncle [*S5033]

Sam, Mr. President, and have 5 years of income and then be able to pick and choose which years you pay and you only pay 3 out of your last 5 years? Why don't we let every American citizen have this benefit? Why do we only give it to people who entered the country illegally? You tell me.

What about background checks? The bill requires the Department of Homeland Security to do them on illegal aliens. That is going to be exceedingly difficult. They are required to do it within 90 days. They have to protect our homeland. They have to handle all these provisions. I don't think it can ever be done. That may sound like something important is going to happen, that all the people here illegally will have their backgrounds checked promptly, but the truth is that is not going to get done in that timeframe.

How about fines? Let me state who they want to fine. A Federal agent, trying to do his duty to enforce the law and investigate fraudulent information provided by an illegal alien in their amnesty application, for law enforcement purposes, what happens to them if they take the amnesty application and actually examine it and find out it is fraudulent? What do they do? The agent would be fined \$10,000. That fine, I note, is five times the amount the alien is able to post, \$2,000, to get his amnesty from his illegal acts.

There is no reason in the world Federal law enforcement officers should be barred from investigating and utilizing amnesty applications to prosecute criminal activities in America. There is no reason this ought to be protected other than it looks to me that some clever lawyer has realized if they can get this in the bill people can file false amnesty applications all day and no one will ever be able to investigate. Isn't that horrible? That is what it looks like to me. Is that a sneaky lawyer trick? I ask you to make that judgment. It does not sound good to me.

Page 363 of the bill. Look it up.

How about the employers? They get tax amnesty. Employers of aliens applying for adjustment of status-amnesty-"shall not be subject to civil and criminal tax liability relating directly to the employment of such an alien." That means a business that hired illegal workers does not have to pay the taxes they should have paid. Why? This encourages employers to violate our tax laws and not pay what they owe the Federal Government. They are excusing these employers and giving them amnesty from not withholding taxes. That is a very bad thing. Every American business knows they have to pay their withholding taxes.

What about two small businesses, one hiring illegal aliens not paying Social

Security, not paying withholding to the Government, and paying some low wage, and another one across the street doing all the right things, hiring American citizens, perhaps paying higher wages and withholding money and sending his Social Security money to the Federal Government, what message does that send to the good guy, to give complete amnesty to the guy who has manipulated the system and gotten away perhaps with tens of thousands of dollars in benefits that his competitor did not get?

You cannot play games with the law like this. You cannot pick and choose people and allow them unilaterally to not have to pay their taxes.

What about illegal alien protection? The alien and their families who file applications for amnesty "shall not be detained, determined inadmissible, deported, or removed until their applications are finally adjudicated, unless they commit a future act that renders them ineligible with amnesty." With tens of millions of applications, this amnesty, this provision essentially guarantees an illegal alien years of protection in the United States, even if they do not qualify for the amnesty.

We hear they have to pay the fine, the \$2,000 fine, but it is not due right away. For those in the amnesty program, illegal aliens are supposed to pay a fine of \$2,000. However, the way the bill is written, many illegal aliens may not have to pay the fine for 8 years. The bill says that the \$2,000 fine has to be paid "prior to adjudication." It is not required at the first. If it is left the way it is, the illegal alien can live, work and play in our country and not pay a cent of his fine for years. Perhaps they may even decide they do not want to pay it at all. This puts a financial burden on local taxpayers for the health, education, and the infrastructure costs that are not reimbursed for about 5 or 10 years.

There are a number of other items. However, it is late; I will make these remarks part of the Record and will not belabor these points.

It is clear the people who drafted this legislation had an agenda and the agenda was not to meet the expectations of the American people. The agenda was to create a facade and appearance of enforcement, an appearance of toughness in some instances. When you get into the meat of the provisions and get into the bill and study it, tucked away here and there are laws that eviscerate and eliminate the real effectiveness of those provisions. It was carefully done and deliberately done. This is a bill that should not become law. It is a bill that will come back to be an embarrassment to our Members who have supported it. I wish it were not so. I know how these things happen. You do not always have time to do everything you want to do. You try to do something you think is right, but ultimately in a bill as important as this one that has tremendous impact on the future of our country and our legal system and our commitment to the rule of law, we ought to get it right. We ought not to let th

is one slide by. It is not acceptable to say, let's just pass something and we will send it to the House and maybe the House of Representatives will stand up and stop it and fix it. That is not acceptable for the great Senate of the United States.

I strongly believe we are not ready to pass the bill. We are not ready to give it final consideration. I strongly believe it is a horrendous violation of the Committee on the Budget and that it is, as Mr. Rector said, a fiscal catastrophe if passed, and as such we ought not to waive the Budget Act but pull the bill from the floor and fix it.

I yield the floor.

Mr. Sessions is a Republican senator from Alabama.

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