



Comprehensive Immigration Reform

Action in the 109th Congress

On December 16, 2005, the House of Representatives passed [H.R. 4437](#), the Border Security, Antiterrorism, and Illegal Immigration Act. This bill addresses border security and enforcement issues, but does not address the need for future temporary workers, nor does it offer a realistic solution for the undocumented population currently in the U.S. The ABA [opposed](#) passage of H.R. 4437 on the grounds that it would further diminish procedural and due process protections for individuals in the immigration system.

On March 27, 2006, the Senate Judiciary Committee reported out a bill entitled the Comprehensive Immigration Reform Act of 2006. Drafted by Committee Chairman Arlen Specter (R-PA) and amended significantly during markups held over a period of nearly four weeks, this 300+ page bill contains provisions on a wide range of immigration issues including border security and enforcement, visa reform, and backlog reductions. One of the key amendments adopted was to provide for an earned adjustment program for the estimated 12 million undocumented individuals currently residing in the United States (the provisions were taken from a measure previously introduced by Senators McCain (R-AZ) and Kennedy (D-MA)). The ABA [urged](#) the Senate to adopt comprehensive reform legislation that provides a realistic and meaningful approach to national security and the need for immigrant labor, promotes family reunification, and provides crucial due process safeguards for immigrants and asylum seekers.

Not satisfied with the pace of the Judiciary Committee, Senate Majority Leader Bill Frist introduced his own immigration reform legislation on March 16. The Frist bill, [S. 2454](#), the Securing America's Borders Act, is similar to H.R. 4437 in that it fails to provide a path to permanent residence for undocumented population and further limits due process and judicial review for noncitizens. On March 27, 2006, the ABA [urged](#) Senator Frist to let the Judiciary Committee complete its work and expressed concerns over several provisions included in S. 2454

The full Senate began consideration of S. 2454 on March 29. On March 30, Senator Specter offered the Comprehensive Immigration Reform Act as a substitute amendment and the Senate proceeded with the debate based on that legislation. Over 400 amendments were filed to the bill and there remained considerable disagreement over many of its provisions. On April 6, the Senate Republican and Democratic leadership agreed on a compromise that would, along with addressing border security, create a temporary guest worker program and provide a path to U.S. citizenship for most of the estimated 11 million to 12 million undocumented immigrants now in the United States. The compromise, brokered by Senators Hagel (R-NE) and Martinez (R-FL), would separate the undocumented population into three groups: those here more than 5 years would be allowed to stay in the country and embark on a path to permanent residence and eventual citizenship; those here more than 2 but less than 5 years would have 3 years to leave the country and apply to reenter in a legal temporary status at a port of entry, but then would eventually be eligible for permanent residence and citizenship; and those here less than 2 years would have to immediately depart the U.S., but would be eligible to apply, from their home country, to reenter under a new temporary worker program in the future.

While the Senate leadership reached this tentative agreement on substance, negotiations broke down over the process under which the compromise bill would be considered – primarily over the number and content of amendments that would be allowed. On April 7, votes to invoke cloture (end debate) on both S.2454 and the Hagel-Martinez compromise bill failed.

After a two-week spring recess, the Senate returned to the immigration debate the week of May 15, 2006. The ABA weighed in on a number of amendments considered during the debate. On May 17, 2006 ABA President Mike Greco [wrote](#) to members of the Senate to urge them to oppose including a provision that would prohibit courts from granting stays of removal to an individual whose appeal is pending unless they prove by clear and convincing evidence the relief they seek will be granted. Greco stated that the result of such a provision would greatly heighten the standard for the grant of a stay of removal and significantly increase the change that legitimate asylum-seekers would be returned to their countries of persecution. The ABA [urged](#) Senators to support an amendment offered by Senators Sam Brownback (R-NE) and Joe Lieberman (D-CT) that would provide important protections for asylum-seekers and help to ensure an effective and human system of immigration detention. Finally, the ABA [supported](#) modifying a section of the bill in order to preserve longstanding legal protections embodied in the Violence Against Women Act for victims of domestic violence, sexual assault and human trafficking.

After nearly two weeks of further debate and consideration of over 40 amendments, the Senate passed [S. 2611](#), the Comprehensive Immigration Reform Act of 2006, on May 25th. The final version of this bill includes provisions for new legal channels for future workers, a path to legal status for much of the undocumented population currently residing in the U.S., family- and employment-based visa backlog reduction, and border security. Unfortunately, S. 2611 also contained some provisions that further undermine due process for non-citizens, including the expansion of expedited removal, mandatory and indefinite detention, and new restrictions on judicial review.

Under normal congressional procedures, the House and Senate would appoint members of a conference committee which would meet to reconcile the differences between their respective immigration reform bills. However, in a surprising development, Speaker Dennis Hastert announced on June 20th that the House would conduct a series of field hearings around the country on the Senate's immigration reform bill over the summer. Shortly after his announcement, Senate Judiciary Committee Chair Arlen Specter stated that his committee also would undertake field hearings and scheduled the first hearing for July 5th in Pennsylvania. This development likely means a conference committee will be postponed at least until the fall and, according to many, may doom chances for enactment of any legislation this year.