

Analysis of HR 191 and S 129 The Repeal Executive Amnesty Act of 2015

The Repeal the Executive Amnesty Act was introduced in January, 2015, by Rep. Robert Aderholt (R-AL) and Sen. Rob Johnson (R-WI). It was drafted in response to President Obama's November 2014 announcement that he would, by using only his executive authority and without any legislative authorization, offer a renewable three-year amnesty to approximately four million illegal aliens (Deferred Action for Parents of Americans – DAPA). (For further information on this amnesty program, see TCCF's evaluation of the program's alleged legal basis – *Is the DAPA Amnesty Legal Under the US Constitution.*)

Although the primary purpose of the bill is to overturn the proposed amnesty (Title II of the bill), it also contains provisions aimed at:

1. Limiting parole entry for aliens who otherwise would not be allowed into the United States (Title I)
2. Unaccompanied Alien Children (Title III)
3. Federal benefits eligibility restrictions (Title IV)
4. State and local enforcement of immigration laws (Title V)
5. Reform of the asylum process (Title VI)

Section 201 in Title II forbids the use of any funds (including user fees) available to the Department of Homeland Security or other Federal agencies for carrying out the various directives (not executive orders, contrary to popular belief) that provide some form of temporary, *de facto* amnesty for broad classes of illegal aliens. These include

- a March 2, 2011 Immigration and Customs Enforcement (ICE) memorandum
- two June 17, 2011 ICE memoranda
- two November 17, 2011 ICE memoranda
- an April 27, 2012 ICE recommendation
- a June 15, 2012 memorandum from the Secretary of Homeland Security (the Deferred Action for Childhood Arrivals - DACA)
- a December 21, 2012 ICE memorandum
- a November 14, 2013 Citizenship and Immigration Services policy memorandum
- nine November 20, 2014 memoranda from the Secretary of Homeland Security
- and two November 21, 2014 memoranda from the President.

Passage of this legislation would prevent the implementation not only of the amnesty announced in November 2014 (DAPA), but also DACA and all previous executive branch actions of the Obama administration intended to guarantee that some illegal aliens would enjoy protection from deportation, the ability to work legally in the United States, and eligibility for some Federal benefits. Employees of Homeland Security would once again be allowed to arrest and begin deportation proceedings against any illegal alien.

Title VII, Section 701 suspends for the remainder of Obama's presidency (i.e. until January 20, 2017) the ability of the Department of Justice to provide a deportation waiver for an illegal alien whose spouse or parent is a legal US resident. This would prevent the abuse of an existing law which was intended to be used for special, individual cases rather than for all, and which might be the next step in the President's move towards total amnesty.

S 129 (but not HR 191), in Section 202, prohibits the Director of Citizenship and Immigration Services from appointing anyone to a position in his agency until all of the documents relating to DAPA (but not the earlier measures) have been formally rescinded. This would provide the President with an incentive to officially renounce the DAPA amnesty and withdraw all the relevant instructions, instead of grudgingly accepting his inability to carry it forward. (In HR 191, this section is used to make some DHS employees eligible for Law Enforcement Availability Pay).

Title III deals with the danger of a renewal of the surge of "unaccompanied minors" arriving as illegal aliens, such as occurred during the summer of 2014. It deals with this in a manner similar to the HUMANE Act of 2014, removing the current legal and practical barriers to detention and prompt deportation. For more details, see our 2014 analysis of the Helping Unaccompanied Minors and Alleviating National Emergency Act, HR 5114 and S 2611 of the 113th Congress.

Another major step in dealing with illegal aliens is found in Title V, which reverses Obama administration policy by encouraging state and local assistance in enforcing the immigration laws. They are permitted to "investigate, identify, apprehend arrest, detain, or transfer to Federal custody" illegal aliens "to the same extent as Federal law enforcement personnel." This is permissive, rather than mandatory, since Congress cannot require state and local governments to enforce Federal laws. Therefore it would not have any effect on "sanctuary cities" (but see the comments below on Section 506). Nevertheless, by also specifically including state and local immigration enforcement laws, it would provide the legal foundation that would prevent Federal judges from continuing to strike down these laws as an unconstitutional infringement on a Federal responsibility and it would overturn the anti-state-enforcement policy of the Obama administration. As

protection against frivolous civil suits, state and local law enforcement personnel would enjoy the same personal legal immunity as Federal employees.

Although state and local governments may not deport illegal aliens, the bill requires the Department of Homeland Security to accept custody within 48 hours if requested by the state or locality. DHS is then required to keep him in custody for an examination of his case (no “catch and release” allowed). State and local governments will be reimbursed for the cost of holding the illegal alien and transporting him to a Federal facility.

Section 506 says that any state or city which fails to provide the Federal government with the information required by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 will be deprived of certain anti-crime Federal grants, as well as reimbursement for the incarceration of illegal aliens. This will have some impact on “sanctuary cities”. Section 507 amends current law to allow ICE to call for the detention of an illegal alien who has been arrested for the violation of any law, rather than merely drug offenses.

Illegal aliens discovered through the Secure Communities program must be taken into Federal custody and deportation proceedings begun.

Title I of the bill limits the reasons for which someone who is not eligible to legally enter the United States may do so on a “parole” basis. Such paroles are to be limited to urgent humanitarian reasons, such as a last visit to a dying family member.

Title IV makes it clear beyond any doubt that illegal aliens, including the parolees of Title I, are not eligible for Federal benefits under Social Security, Medicare, Medicaid, or ObamaCare.

The procedure for seeking asylum in the United States is reformed in Title VI. It would be easier to send an asylum-seeker to another country, and the US would in no circumstances pay for the attorney of an asylum-seeker.

The Executive Amnesty Repeal Act would significantly change Federal law and policy. It would end the *de facto* amnesties of the Obama administration. It would empower state and local governments to participate in enforcement of immigration law – a sharp contrast to the current policy of Federal lawsuits against such laws. It would make the necessary changes to forestall another surge of thousands of “unaccompanied minors” at the border by allowing prompt action to return them to their home countries.