



TRUE Enforcement and Border Security Act of 2005

The Hidden Dangers of *McKennedy*: Why the Kennedy-McCain Amnesty Bill Endangers America

The Capitol Hill Club, literally steps from the U.S. Capitol in Washington D.C., is a popular venue for members of Congress to address special interests concerning their legislative views. On June 20, 2005, Senator John McCain spoke at the Club to a meeting of the American League of Lobbyists, promoting the Secure America and Orderly Immigration Act, S. 1033, better known as the Kennedy-McCain bill after its two principal sponsors. During question time, FAIR staff attorney Mike Hethmon challenged the Senator to name any successful guest worker program anywhere in the world, because FAIR was unaware of any such program anywhere that improved economic conditions for domestic workers and resulted in the guest workers returning to their home country upon completion of their work contracts in the receiving country. The Senator hemmed and hawed, and then stated that he would debate FAIR on the merits of the Kennedy-McCain plan “anywhere, anytime, and in a respectful manner.”

What Makes John McCain Run?

Senator McCain has since refused to talk about his promise to defend his immigration proposals to the American public. The Senator’s “fear of FAIR” can’t be due to distaste for vigorous public debate, as he is one of America’s most prominent orators. So what makes John McCain (and Ted Kennedy) run? Answer: ***McCain doesn’t want the public to understand how horrific S.1033 really is.***

Amnesty Legislation on a Massive, Historically Unprecedented Scale

If enacted, S.1033 would be amnesty legislation on a massive, historically unprecedented scale. America faces an immigration crisis today because all previous amnesties have failed to stop and actually encouraged greater levels of illegal immigration. S.1033 incorporates the worst features of every failed amnesty program since 1986, but in numbers greater than all the illegal and legal aliens who entered the U.S. in the past fifteen years combined.

The Iron Law of Chain Migration

The primary reason amnesty programs always fail is that they fuel, rather than choke off, both illegal and legal immigration. This is the “iron law of chain migration.” The worldwide population of foreigners who would promptly move to the U.S. if given the chance is today over a billion human beings. In other words, the demand for immigrant visas is virtually unlimited. Since preferential eligibility for an immigrant visa is based on family ties to a citizen or legal permanent resident, the number of derivative relatives each immigrant alien cohort can sponsor increases geometrically, as most aliens sponsor the extended family members of both the alien and his spouse.

In addition, if the waiting period required to admit a derivative relative is reduced (or in the case of illegal alien amnesty, eliminated) the rate of geometric increase speeds up, compressing or eliminating the time period of each immigrant “generation.” Any increase or improvement in

processing visa applications has a similar surge effect. As a corollary effect, chain migration also accelerates the rate at which recent immigrants import spouses from the home country, rather than marry U.S. citizens.

S.1033 would both massively increase the numbers of aliens immediately eligible for permanent immigrant status, and significantly reduce the existing waiting time between applying for a visa in the home country and becoming a U.S. citizen, able to sponsor the widest range of derivative relatives.

H-5B Amnesties

The initial phase of the S.1033 amnesty program, the “H-5B visa program,” would work essentially like the 1986 amnesty for farm workers, the notorious Special Agricultural Worker (SAW) program. SAW is considered by experts to be perhaps the most fraud-ridden program enacted by Congress in the 20th century.

S.1033 also incorporates the DREAM amnesty, by making illegal aliens under 21 with no work history eligible, as long as they are enrolled in a secondary school or college, very loosely defined.

As a rough estimate, about 10 million illegal aliens would be immediately eligible to apply for an H-5B visa, as adults who are employed full or part-time, or self-employed, high school or college students under 21, and their spouses and children present in the United States, including ex-spouses and their dependents where “domestic violence” was a factor in separation.

H-5B Fraud and Waiver Beneficiaries

Even assuming for the sake of argument the highly unlikely scenario that the Kennedy-McCain amnesty programs would experience lower levels of fraud and abuse than previous amnesties, it would be conservative to estimate that a half-million other criminal aliens would be ineligible for a H-5B visa because of crimes they have committed. However, the rigid confidentiality provisions and weak documentation standards carried over from the SAW program would, as in the 1986 amnesty, make it difficult to detect ineligible criminal applicants. The slipshod screening of amnesty applicants under S.1033 could also attract immigrant visa applicants waiting in line abroad to fraudulently apply for an H-5B visa, as a much faster route to a green card. Even if fraud were detected, the “212(i)” waiver for fraud and misrepresentation would be expanded by S.1033, and the unlawful presence bar to admission would be eliminated for all aliens aged 18-21 and waived for every illegal alien present in the U.S. over 180 days, including previously deported aliens. A reasonable rough estimate of the illegal aliens who would probably obtain legal status under these loopholes would be at least 500,000.

H-5B Derivative Immediate Relatives

Those H-5B aliens in turn would be able to immediately petition for spouses and children living outside the U.S. (estimated at a 1:1 ratio), for a rough total of **21 million** estimated immediate beneficiaries within four years of implementation.

The second phase of the H-5B amnesty program, adjustment to permanent legal alien status, would operate like the discredited 245(i) rolling amnesty of the late 1990s. H-5B visa holders would pay a \$1000 “penalty” to obtain a green card. With employer sponsorship, the second phase would begin immediately, but all H-5B beneficiaries would become eligible after 4 years in the program.

Elimination of Immediate Relatives from Family-Based Visa Cap

With their new green cards, adjustment-phase beneficiaries would be able to begin sponsoring members of their extended families for immigrant visas. S.1033 Title VI provides for a very large increase in the numbers and kinds of derivative relatives of illegal aliens eligible to enter the U.S. as immigrants. Immediate relatives (spouses, minor children and parents) of US citizens and most parolees would be removed from counting against the ceiling for family-based immigrant visas, and the definition of immediate relatives, who are exempt from any visa limits, is expanded to include *the children* of children (i.e. grandchildren), children of spouses (i.e., step-children), and children of parents (i.e., siblings) of U.S. citizens.

These provisions would free up at least 400,000 new family preference immigrant visas per year, the latter could **easily** double the number of admitted immediate relatives, to 800,000 additional immigrants per year, supplemented by a pool of unused immigrant visa numbers from prior years. For example, a U.S. citizen will be able to sponsor for immediate entry, outside of any limits, all of the U.S. citizen's siblings, grandchildren, spouses' children by prior marriage, etc. When those family-sponsored relatives arrive, as immediate permanent residents, they will be able to immediately apply to bring in additional family members, spouses, and children.

Eliminate Special Immigrant Journalist and NACARA Amnesty Caps

Caps on admissions of "special immigrant" journalists and NACARA amnesty beneficiaries would be lifted, adding, with following "chain-linked" relatives, another 5,000 or so new entries per year.

More than Double Employment-Based Immigrant Visas

Employment based permanent immigrant visas would be more than doubled by S. 1033, increasing by 150,000 per year, plus a pool of about 240,000 unused visas from years prior to 2005.

Allow Immigrant Sponsorship by U.S. Citizens with Poverty-Level Incomes

In addition to these massive increases in immigrant numbers, limitations on the entry of aliens would be rolled back, by allowing persons to become immigrant sponsors who were previously ineligible because they, themselves, had poverty-level income.

H-5A 'Essential Worker' Guest Worker Visas

It is important to remember that these shockingly large numbers of amnestied aliens and additional immigrants do not include the additional 400,000 H-5A "Essential Worker" visas in a new guest worker program that would be authorized by S.1033 Title III.

Aliens would be able to enter the U.S. to take a job in any occupational classification except those reserved for H-1B (white-collar workers), H-2A (farm workers), L (managers and executives), P (performing artists) and R (religious worker) visa-holders. Aliens who have been deported from the U.S., with the exception of convicted felons and terrorists (but expressly including alien smugglers, prostitutes, pimps, and unlawful voters and immigration law violators in general) would be eligible to apply for a waiver. These aliens could accept a job with any sponsoring employer, but have full mobility to change jobs during the 3 years their visas remained valid. Depending on first year demand, the number of available visas can increase up to 20% (80,000 visas) each subsequent year, but could only decrease by 10%, starting in the third year of the H-5A program.

H-5A Guest Worker Derivative Immediate Relative Visas

Each H-5A worker could sponsor a spouse and children. Assuming a rough 1:1 ratio, the number of new immigrants would be *at a minimum* 800,000 per year.

Aliens in the H-5A program could apply for a green card at any time with employer sponsorship, and renew their work authorization indefinitely until the green card is issued. The alien could apply for permanent residence (green card) without sponsorship after 4 years.

No U.S. Worker Job Protections

There are no protections for U.S. workers in S. 1033. The H-5A employer would merely “post” a job announcement for a position for which H-5A workers is proposed with the federal labor exchange program for 30 days. There are no requirements to hire a U.S. worker before hiring a foreign worker, and no protections against displacement of U.S. workers by H-5 aliens.

Huge annual and cumulative increases in U.S. non-citizen population

A conservative rough-magnitude tally of the additional amnestied or legal immigrants authorized by S.1033 is **36.5 million** new permanent residents after 8 years, based on the following calculation:

S.1033 Programs	Number of New Immigrants		Total
	1 st 4 years	2 nd 4 Years	
H-5B Amnesty	10,000,000	100,000	10,100,000
H-5B Fraud & Waivers	500,000	100,000	600,000
H-5B Derivative Relatives	10,500,000	1,000,000	11,500,000
Immediate Relatives	1,600,000	1,600,000	3,200,000
Family Preference Visas	1,600,000	1,600,000	3,200,000
Spec. Immigrant & NACARA	20,000	20,000	40,000
Employment Based Visas	600,000	600,000	1,200,000
FY 01-05 Unused Visas	240,000		240,000
H-5A Guest workers	1,600,000	1,600,000	3,200,000
H-5A Derivative Relatives	1,600,000	1,600,000	3,200,000
Total	28,260,000	8,220,000	36,480,000

This total identifies the incremental immigration authorized by S. 1033, and is *in addition to existing levels of legal or illegal immigration*. Clearly, the promise of “backlog reduction” in waiting periods for law-abiding applicants for legal immigration is a mirage. With every “improvement” in the rate at which an alien is processed through the immigration and naturalization pipeline, the number of newly eligible aliens submitting applications increases geometrically. Second, experience shows that some extended family members of a new immigrant cohort will not wait abroad for an eventual visa, and will instead enter illegally.

Moreover, there is good reason to believe that actual totals would be significantly higher. For example, chain migration effects in the immediate relative category could easily increase the admission rate based on the expanded definitions in S.1033 by 10 percent during 5 of the 8 years after enactment, increasing the immediate relative total by 244,000, at an ultimate rate of 644,000 additional admissions per year. Strong demand for H-5A guest worker visas, for example reaching the annual visa cap during the first quarter for 5 of the 8 years after enactment, would add 600,000 more new guest workers, and add up to a total of nearly 1 million per year, accompanied by a corresponding additional 600,000 derivative relatives.

What Will Follow: H-5A-Style Farm Worker and Skill Worker Programs

Most importantly, S.1033 does not include an agricultural guest worker provision, and discriminates against highly skilled legal immigrants by imposing more onerous conditions for visa application and adjustment of status. This is an obvious invitation for political pressure to “correct” these “unfair” omissions, and expand H-5A type programs for farm workers and H-1B white collar workers, completing the massive attack on the U.S. domestic workforce.

With practically unlimited availability of foreign candidates for most U.S. jobs, S.1033 will force employers into an accelerated “race to the bottom” in wages and working conditions for domestic American workers, devastating working and middle class communities in every state of the Union.