



Summary of Key Provisions of the U.S. Citizenship Act

On February 18, 2021, Senator Robert Menendez (D-NJ) and U.S. Representative Linda Sanchez (D-CA) introduced the U.S. Citizenship Act in the [Senate](#) and [House of Representatives](#), respectively.¹ The bill, which President Joe Biden sent to Congress on his first day in office, would provide a pathway to U.S. citizenship to an estimated 11 million undocumented immigrants living in the United States. It reforms our immigration system to prioritize family unity and prevent the issuance of discriminatory bans, restores asylum and other humanitarian forms of relief, and strengthens protections for all workers. The bill also begins to address root causes of migration from Central America and replaces the long stigmatizing term “alien” with “noncitizen” in our immigration law. This summary highlights the National Immigration Law Center’s initial analysis of certain key provisions of the bill and key areas where NILC will advocate for maintaining positive provisions as well as needed improvements.

Title I: Earned Path to U.S. Citizenship and Other Reforms

Many aspects of the bill’s Title I represent important progress from past immigration reform proposals that for decades tied legalization of immigration status to harmful immigration enforcement provisions. A cornerstone feature of this bill is the creation of a new interim status, *lawful prospective immigrant*, or LPI, for undocumented immigrants that puts them on a pathway to U.S. citizenship and includes (1) a fast track to citizenship for agricultural workers and for people with Deferred Action

¹ <https://www.menendez.senate.gov/imo/media/doc/USCitizenshipAct2021BillText.pdf>; <https://lindasanchez.house.gov/sites/lindasanchez.house.gov/files/2021.02.18%20US%20Citizenship%20Act%20Bill%20Text%20-%20SIGNED.pdf>.

for Childhood Arrivals (DACA), temporary protected status (TPS), or deferred enforced departure (DED); (2) the opportunity for a subset of essential workers — nearly 75 percent of whom are undocumented — to qualify; and (3) a new waiver that would also allow people removed from the U.S. or who departed under the Trump administration, if they were continuously present for three years prior to leaving the U.S., to apply.

Though Title I contains many positive provisions, it also contains provisions that raise concerns. The bill takes the welcome step of eliminating longstanding and arbitrary barriers to health care access for DACA recipients who were excluded from the definition of “lawfully present” for purposes of eligibility under the Affordable Care Act (ACA) and also eliminates the five-year waiting period for Medicaid and the Children’s Health Insurance Program (CHIP) for DACA recipients who have adjusted to lawful permanent resident (LPR) status. At the same time, however, it creates some of these same barriers for people newly legalizing their immigration status under the bill by denying them access to ACA tax credits during their years in LPI status and prior to becoming LPRs. This patchwork approach unnecessarily restricts immigrant access to health and economic supports — it will result in particularly acute harms during a pandemic — and adds new complexity to an already deeply confusing system of immigrant eligibility for benefits, ensuring that more people will be deterred from seeking coverage

In addition, while the bill includes positive reforms to address the racialized biases and consequences of the criminal legal system, such as redefining “conviction” for immigration purposes, it simultaneously creates a new and unnecessary layer of criminal bars — beyond what exists under current immigration law — in the eligibility requirements for LPI status that fail to recognize these racial inequities in policing.

Immigration Status and U.S. Citizenship

- ▶ **Creates a new lawful prospective immigrant (LPI) status.** In order to be eligible for LPI status, a person must:
 - have been continuously present in the U.S. from January 1, 2021, until the application for LPI status is approved
 - pay an application fee to cover processing costs
 - submit biometric and biographic data for a security and background check



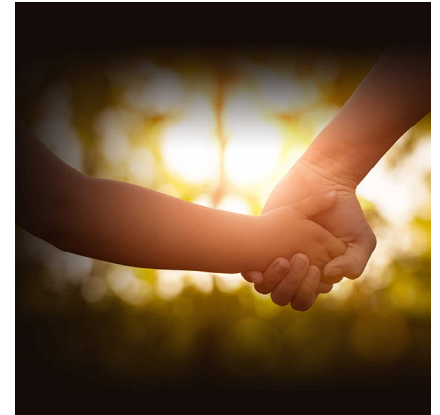
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- ▶ **LPI status is valid for 6 years and may be renewed for 6 additional years.** After 5 years as an LPI, the person can adjust their status to lawful permanent resident (LPR) if they:

- remain eligible for LPI status
- establish that they have not been continuously absent from U.S. for more than 180 days in any calendar year while in LPI status
- satisfy any applicable federal tax liability

While most nonimmigrants are ineligible for LPI status, there is an exception for certain essential workers who otherwise qualify.

- ▶ **Creates a streamlined family application process.** The bill establishes procedures whereby the applicant, spouse, and children may file a single combined application. Spouses and children may apply independently in case of domestic violence or termination of the legal relationship to the primary applicant. The U.S. Department of Homeland Security (DHS) may limit the maximum fee paid by a family unit.
- ▶ **Allows people outside the U.S. to apply.** DHS may waive – for humanitarian purposes, to ensure family unity, or if the waiver is otherwise in the public interest – the physical presence requirement for people who were removed or departed from the U.S. on or after January 20, 2017. To qualify for the waiver, the waiver applicant must have been continuously present in the U.S. for three years preceding their removal or departure and otherwise qualify.
- ▶ **Limitations on removal.** If an individual applies for LPI status within a reasonable period of time, they shall not be removed until a final order of removal has been issued, DHS has issued a final decision denying LPI status, and that decision has been upheld by a court or the individual's time to appeal the decision has expired.
- ▶ **Employment authorization.** DHS is required to issue each applicant a document acknowledging receipt of their LPI application. That document shall serve as interim proof of employment authorization until the application is fully adjudicated.
- ▶ **Information privacy.** Information submitted in the LPI application may not be used to initiate removal proceedings against anyone identified in the application. No one from outside U.S. Citizenship and Immigration Services (USCIS) may examine the application.
- ▶ **Criminal bars.** In addition to retaining existing criminal bars under immigration law, the bill adds bars for any felony conviction (excluding immigration status-related offenses under state law), or three or more



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misdemeanor convictions (excluding simple marijuana possession, marijuana-related paraphernalia that is no longer a state offense, nonviolent civil disobedience, and minor traffic offenses).

- ▶ **Criminal waivers.** The bill creates a humanitarian waiver for certain grounds of inadmissibility and deportability, though the waivers are not universal and apply only to felonies (excluding aggravated felonies) or to people with two misdemeanor convictions if the person has no convictions in the ten-year period prior to applying, and only to people with one misdemeanor conviction if the person has no convictions in the five-year period prior to applying.
- ▶ **Criminal-immigration reforms.** The bill redefines “conviction” for immigration purposes to exempt expunged convictions; restores judicial discretion to immigration judges in cases involving people convicted of “aggravated felonies” who have strong equities; and increases the number of petty offense exceptions for crimes involving moral turpitude as a ground of inadmissibility and deportability.
- ▶ **Expedited pathway.** The bill creates an expedited pathway to U.S. citizenship for agricultural workers, people eligible under the Dream Act, and people with TPS or DED by making them immediately eligible to apply for LPR status.

Dream Act–related provisions

- Creates an expedited road to citizenship for people who meet all the requirements for LPI status and who initially entered the U.S. before reaching the age of 18, graduated from high school or received a GED, and have completed at least 2 years of college, served 2 years in the uniformed services, or earned income for at least 3 years while they were work-authorized, and have registered for military service, if otherwise required. A person who meets these requirements will be able to apply immediately for LPR status.
- Eliminates the age cap.
- Allows DHS to waive the requirement of attending college, serving in the uniformed services, or working, if the applicant can demonstrate compelling circumstances for their inability to satisfy the requirement.

DACA-related provisions

- For people who already have DACA and meet the requirements for renewing DACA, streamlines the process for applying to adjust to LPR status.
- Repeals a provision of the Illegal Immigration Reform and Immigrant



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Responsibility Act of 1996 that prohibits public universities from offering in-state tuition rates to undocumented students on the basis of residence in the state unless they offered the same rates to nonresidents of the state.

- Prohibits discriminating against DACA recipients in applications for federally insured residential mortgages.
- Removes the bar to including DACA recipients in the definition of “lawfully present” for purposes of eligibility under the ACA (see more below) and eliminates the five-year waiting period for Medicaid and CHIP for DACA recipients who have adjusted to LPR status.

Health Care

- ▶ **Includes LPIs in the definition of “lawfully present” for all purposes, except eligibility for ACA subsidies.** LPIs could enroll in qualified health plans in the health insurance marketplace only at full cost. The bill also bars the newly expanded category of V-visa holders (available to certain spouses and children with pending family-based petitions) from eligibility for subsidies under the ACA, as well as Medicaid, CHIP, the Supplemental Nutrition Assistance Program (SNAP), Temporary Assistance for Needy Families (TANF), and Supplemental Security Income (SSI).
- ▶ **Rescinds a 2012 U.S. Department of Health and Human Services regulation that excludes DACA recipients from the definition of “lawfully present” for purposes of ACA eligibility.** DACA recipients would be able to receive subsidized coverage under the ACA, and DACA recipients who are children or pregnant could receive Medicaid or CHIP in states that have elected to cover lawfully residing children or pregnant people. The bill would eliminate the five-year waiting period for Medicaid and CHIP for DACA recipients who have adjusted to LPR status.



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Title II: Addressing the Root Causes of Migration and Responsibly Managing the Border

The bill outlines President Biden’s long-term regional vision to manage migration from Central America, combining legal pathways and initiatives to address the root causes of migration. It creates new systems with safer options for Central Americans to initiate refugee processing from within their region, allowing applicants to seek protection and resettlement to the U.S. or other partner countries. It also improves asylum processing at U.S. ports of entry and establishes robust case management processing at U.S. borders that will begin

to address the backlog of thousands of people seeking asylum who are waiting at U.S. ports of entry. The bill also takes significant steps to address root causes of migration from the Northern Triangle countries of Central America – El Salvador, Guatemala, and Honduras – where many people who decided to migrate have had to endure violence, poverty, social instability, and government corruption and impunity, and have been severely impacted by climate change.

The bill also directs DHS, in collaboration with other agencies and experts, to develop guidelines and protocols for basic minimum standards of care for individuals and children held in U.S. Customs and Border Protection (CBP) custody. Lawsuits have [revealed a pattern of horrific conditions and treatment](#) of people in CBP detention facilities – including lack of access to the most basic hygiene needs and depriving people of sleep for days.² Since September 2018, [at least six children have died](#) while in CBP custody.³ While these minimum standards across all CBP facilities are an important step, they should be part of a larger commitment to end the use of all civil immigration detention.

Significantly, while the bill does not add any provisions for further construction of a southern border wall or the hiring of more CBP officers, it authorizes DHS to buy new technologies for use at the southern border. The expansion of a “smart” or “virtual” wall raises substantial concerns about whether the bill will adequately protect the privacy, civil, and human rights of migrants and border communities and ensure that information collected is not used for harmful immigration purposes. While the bill requires consultation with community stakeholders and directs the DHS Office of Inspector General to conduct oversight of key criteria for each proposed technology – specifically, whether the technology serves a legitimate agency purpose, is the least intrusive means, and is cost effective – it does not require DHS to make this showing before the technology is approved for use. Notably, the key criteria do not include protection of personal information or a prohibition on the use of technologies for unconstitutional purposes, such as racial profiling. Such safeguards are critical for protecting migrants and border communities.

- ▶ **Creates a strategy for engaging in Central America.** Directs DHS to implement a \$4 billion four-year interagency plan to address the underlying root causes of migration. This plan increases assistance to El Salvador, Guatemala, and Honduras conditioned on their ability to reduce systemic corruption, violence, and poverty – all drivers of migration.



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² <https://www.nilc.org/issues/immigration-enforcement/hieleras/>.

³ <https://www.propublica.org/article/six-children-died-in-border-patrol-care-democrats-in-congress-want-to-know-why>.

- ▶ **Expands refugee and asylum processing in the Western Hemisphere.** Requires the secretaries of State and DHS to work with international partners, including UNHCR (the United Nations refugee agency) and nongovernmental organizations, to support and strengthen the capacity of Western Hemisphere countries to process and accept refugees for resettlement and adjudicate asylum claims.
- ▶ **Establishes designated refugee processing centers in Central America.** These processing centers are for registration, screening, and processing of refugees and other eligible individuals and resettlement or relocation to the U.S. or other countries. This bill restarts or creates the following protection programs: the Central American Refugee Program, the Central American Minors (CAM) refugee program, and the Central American Family Reunification Parole Program. Refugee officers and other personnel at the processing centers will process applications for these programs. The bill directs the appointment of additional refugee officers. Screening and background checks for applicants will be provided within 180 days.
- ▶ **Modernizes port of entry infrastructure.** Authorizes the purchase and deployment of scanning technology to increase processing capacity at U.S. ports of entry and to expedite screening. CBP is instructed to identify additional infrastructure improvements necessary to enhance the ability to process people seeking asylum, facilitate daily pedestrian and vehicular travel, and detect and prevent contraband from entering the U.S.
- ▶ **Provides for “smart technology” as the new “smart wall.”** Authorizes DHS to craft a strategy to increase the use of smart technology and surveillance along the U.S.-Mexico border. The stated goal of the smart technology strategy is to enhance “situational awareness” and counter transnational criminal networks along the southern border. In this strategy, DHS must include, among other things, an explanation of why a new technology or tool is being recommended. The explanation must include an evaluation of the technology’s impact on border communities’ privacy.
- ▶ **Directs the DHS Office of Inspector General (OIG) to conduct oversight and accountability.** Directs the OIG to conduct oversight to ensure that (1) the technology (or tool) used by CBP is effective in serving a legitimate agency purpose, is the least intrusive means of serving that purpose, and is cost effective; (2) DHS is developing guidelines to limit data collection, processing, sharing, and retention; and (3) DHS has consulted with stakeholders, including border communities, in its plans to expand technology use.

The DHS secretary, along with the secretary of HHS and other health care and humanitarian response experts, must develop guidelines and protocols for the minimum standards of care for people in CBP custody.

- ▶ **Provides standards of care for people held in CBP custody.** Provides that the DHS secretary, along with the secretary of the U.S. Department of Health and Human Services and other health care and humanitarian response experts, must develop guidelines and protocols for the minimum standards of care for people in CBP custody. The bill also requires the development of guidelines for the treatment of children in CBP custody following the guiding principle “the best interest of the child.” The bill prohibits the removal of a child from a parent or legal guardian for the purpose of deterrence.

Title III: Reform of the Immigrant Visa System

The bill includes key provisions that prioritize family unity by removing barriers to family-based applications for adjustment of status, including the repeal of the 3- and 10-year unlawful presence bars, the elimination of the permanent bar on admission, the inclusion of spouses and children of lawful permanent residents as immediate relatives, and the expansion of the definition of “child” under immigration law. It also recognizes same-sex partnerships and provides them equal access to family-based petitions. And it increases the number of family-based (and employment-based) visas available, recaptures immigrant visas lost due to bureaucratic delays, and adjusts per-country limits, with the aim of speeding up adjudications.

The bill includes language from the No Ban Act as a critical step towards ensuring that Muslims, Africans, and people from all other communities are not subjected to unlawful and unconstitutional discriminatory bans in the future. It also removes COVID-related language that was previously added to the No Ban Act before it passed the House of Representatives in July 2020, language that reinforced inaccurate and harmful stereotypes about immigrants – in particular, about the Asian American community, whose members have faced drastically increased discrimination during the COVID-19 pandemic.

Finally, the bill provides for increased funding for and accessibility of community-based citizenship and English-language learning programs and waiver of the English-language requirements for older adults. These will remove language-related barriers that prevent immigrants – regardless of their age and proficiency in English – from fully participating in society.

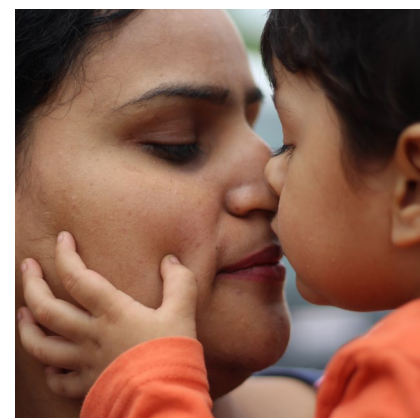
- ▶ **Increases the number of visas available, including the per-country visa levels.** Modifies the number of visas available to unmarried sons and daughters of U.S. citizens and LPRs and increases the number of family-based (and employment-based) visa petitions. The bill also provides for recapturing visas lost due to bureaucratic delays by allowing for the use of unused visa numbers from the previous fiscal year, as well as unused visa numbers from fiscal years 1992 through 2020. The bill also increases the



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annual per-country caps on immigrant visas from 7 percent to 20 percent for a single country and from 2 percent to 5 percent for a dependent area, making it easier for people from higher-admission countries to immigrate. The bill also exempts certain Filipino veterans from the immigrant visa limits.

- ▶ **Addresses discrimination against same-sex partnerships by protecting permanent partners and their children.** Creates a definition of “permanent partner” and provides the same protections to permanent partners as are available to spouses, husbands, or wives. The bill also recognizes the union of permanent partners and recognizes the union wherever references are made to marriages and marital unions in immigration law, as well as in the LIFE Act, the Cuban Adjustment Act, and the Violence Against Women Act (VAWA) of 2000. The bill also modifies the definition of “child” to include biological children and adopted children of noncitizen permanent partners.
- ▶ **Expands protections for youth, orphans, widows, and widowers, and expands the definition of “child.”** Protects orphans, widows, and widowers by allowing their pending applications to continue to be adjudicated even after the U.S. citizen petitioner dies and by allowing any visas that have been issued to continue to be valid until their expiration date. The bill also expands the definition of “child” to include biological children and adopted children of noncitizen permanent partners and removes age limits for stepchildren beneficiaries.
- ▶ **Promotes family unity.** Repeals the 3- and 10-year unlawful presence bars and the permanent bar on admission, thus removing barriers to adjustment of status applications in family-based petitions.
- ▶ **Expands the categories of individuals who are considered immediate relatives.** Provides that derivative spouses and children qualify as immediate relatives, thus excluding them from the numerical caps on the number of visas available each year.
- ▶ **Streamlines priority dates in immigration petitions.** Sets permanent priority dates for any family-based (or employment-based) petitions and allows for applicants to retain their earliest priority date of the petition they filed even if they later become eligible for a visa under a different category. The bill also prevents children from aging out by allowing them to retain their original priority date.
- ▶ **Changes immigration law to prohibit discrimination based on religion.** Includes language from the No Ban Act that broadens the Immigration and Nationality Act’s (INA’s) nondiscrimination clauses, specifically to prohibit religion-based discrimination against any visa applicant, as occurred under President Trump’s Muslim and African bans.



The bill repeals the 3- and 10-year unlawful presence bars and the permanent bar on admission, thus removing barriers to adjustment of status applications in family-based petitions.

- ▶ **Limits executive authority to issue future bans such as the Muslim and African bans.** Changes the INA standard for a ban and imposes stricter requirements before any future ban could be issued. Instead of relying on the current vague standard, which requires only that a president claim that a group's entry is "not in the national interest," any future ban would have to be, among other things, temporary, based on credible facts, and connected to specific acts that have already taken place. It would also have to meet a compelling government interest and use the least restrictive means possible to meet that interest. It would also require that any future ban be reported to Congress, creating an oversight mechanism once any ban is in place, thus ensuring that Congress can hold the executive branch accountable.
- ▶ **Makes clear that people present in the U.S. may file lawsuits if they are harmed by a future ban.** Ensures that people present in the U.S. who are harmed by a future ban may file a federal lawsuit challenging the ban or its effects. For example, members of a visa applicant's family would be able to sue over the wrongful exclusion of their loved one.
- ▶ **Increases diversity in the issuing of visas.** Amends the INA to increase the number of diversity visas issued per year from 55,000 to 80,000.
- ▶ **Promotes immigrant and refugee integration.** Creates and funds a number of programs to support immigrant integration into the U.S., including for citizenship, state and local immigration councils, English-language learning and civics classes, workforce and educational development, and programs to help immigrants apply for lawful immigration status, particularly those newly eligible under the bill.
- ▶ **Promotes U.S. citizenship.** Waives the English-language requirements for naturalization for immigrants who have disabilities as well as for those who are older than 65 and have had LPR status for five years. It applies this waiver to other populations ages 50 years and older who have been in the U.S. for varying lengths of time. It also waives the civics and English-language requirements for people who have graduated from high school in the U.S. The bill also requires that state universities allow humanitarian immigrants to pay in-state tuition rates.



The bill creates and funds a number of programs to support immigrant integration into the U.S.

Title IV: Immigration Courts, Family Values, and Vulnerable Individuals

We are facing a due process crisis in the immigration courts. [Nearly 1.3 million cases are currently pending](#) in a structurally flawed system housed within a prosecutorial agency, the U.S. Department of Justice (DOJ).⁴ While this bill

⁴ <https://trac.syr.edu/immigration/reports/637/>.

falls short of [creating an independent Article I immigration court](#),⁵ provisions in the bill would improve court operations and enhance due process protections for individuals facing highly complex immigration court proceedings that [often raise issues of life and death](#).⁶ Even though [representation is often the single greatest factor](#) in determining whether an individual will obtain relief in removal proceedings,⁷ low-income immigrants and people in immigration detention face significant barriers to obtaining counsel. This bill calls for expanding alternatives to detention and authorizes funding for the appointment of counsel for children and vulnerable noncitizens. Provisions in this bill also provide for an expansion of DOJ's Legal Orientation Program and greater access to legal information for immigrants who are not detained. These are important steps in the right direction, but the bill falls short of ending civil immigration detention and establishing a much-needed [universal representation program](#).⁸

Judicial diversity encourages fair decision-making, but DOJ's Executive Office for Immigration Review (EOIR) has a long history of [politicized hiring](#),⁹ resulting in a supermajority of judges on the bench who have prosecutorial backgrounds. This bill calls for the hiring of additional immigration judges (IJs) and Board of Immigration Appeals (BIA) members who are experts in immigration law, and it encourages the hiring of IJs who have diverse experience, including people from the private sector. The bill also requires EOIR to conduct mandatory continuing legal and diversity training for IJs and BIA members. Additional steps must be taken to ensure critical oversight into the hiring process, promote diversity, and eliminate [harassment in the immigration courts](#).¹⁰

Also included in this bill are provisions to protect vulnerable individuals. The bill eliminates the one-year filing deadline for asylum claims and increases access to employment authorization for people seeking asylum and for U and T visa applicants, ensuring that vulnerable populations seeking refuge in the U.S. will be able to work and support their families while their immigration cases are pending.



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⁵ <https://www.aila.org/advo-media/aila-correspondence/2020/advocates-call-on-congress-establish-independent>.

⁶ https://www.washingtonpost.com/opinions/im-an-immigration-judge-heres-how-we-can-fix-our-courts/2019/04/12/76afe914-5d3e-11e9-a00e-050dc7b82693_story.html.

⁷ <https://bit.ly/3q310Uh>.

⁸ <https://www.vera.org/advancing-universal-representation-toolkit/the-case-for-universal-representation-1>.

⁹ <https://www.whitehouse.senate.gov/news/release/senators-press-barr-on-politicization-of-justice-department-administration-of-immigration-courts>.

¹⁰ <https://www.sfchronicle.com/politics/article/Sexually-inappropriate-behavior-runs-rife-in-15889003.php>.

- ▶ **Provides for appointing counsel for children and vulnerable noncitizens.** Authorizes funding for and requires DOJ to appoint or provide counsel for children, vulnerable individuals, and other people where necessary. Requires DHS to provide copies of their immigration files to individuals who are in immigration court proceedings.
- ▶ **Requires access to legal orientation programs and access to counsel.** Requires legal orientation programs to be available for all noncitizens in immigration detention. DHS must provide access to counsel inside all immigration detention facilities and border facilities.
- ▶ **Increases access to legal information.** Expands the help desk program to all immigration courts, providing non-detained individuals who have pending asylum claims access to information related to immigration status. Requires DHS to provide copies of their immigration files to people who are in immigration court proceedings.
- ▶ **Expands alternatives to detention.** Expands the family case management program and requires DHS to develop additional community-based programs. People enrolled in these programs will receive legal orientations.
- ▶ **Increases immigration court hiring.** Requires DOJ to increase the number of IJs on the bench, hire additional BIA staff attorneys, and provide sufficient support staff. In hiring the new IJs and BIA members, DOJ is instructed to select people from diverse backgrounds, including from the nonprofit sector and the private bar and people with academic experience.
- ▶ **Expands training for IJs and members of the BIA.** Requires the EOIR to conduct mandatory training for IJs and members of the BIA, including continuing legal training and training on age, gender, and trauma sensitivity.
- ▶ **Directs EOIR to modernize technology.** Requires the EOIR director to modernize electronic systems, including by allowing electronic filing, to improve court proceedings.
- ▶ **Eliminates barriers to asylum and protects vulnerable populations.** Removes the one-year time limit for filing an asylum claim. Increases protections for U visa, T visa, and VAWA applicants by providing them with a rebuttable presumption of release from detention and prohibiting the removal of these applicants from the U.S. while an application is pending. Increases the number of U visas, which are available to some crime victims, from the current cap of 10,000 to 30,000 per year.

In hiring new IJs and BIA members, DOJ is instructed to select people from diverse backgrounds, including from the nonprofit sector and the private bar and people with academic experience.

- ▶ **Increases access to employment authorization for people seeking U and T visas and protection under VAWA.** People seeking U and T visas shall and must be granted employment authorization on the date their application is approved or a date to be determined by the DHS secretary within 180 days of submitting their petition, whichever is earlier. Employment authorization is issued for two years, with the possibility of renewal.
- ▶ **Increases access to employment authorization for people seeking asylum.** Provides that DHS shall grant employment authorization to *bona fide* and non-detained asylum-seekers within 180 days after they file their asylum application with DHS or DOJ.

Title V: Employment Authorization and Protecting Workers from Exploitation

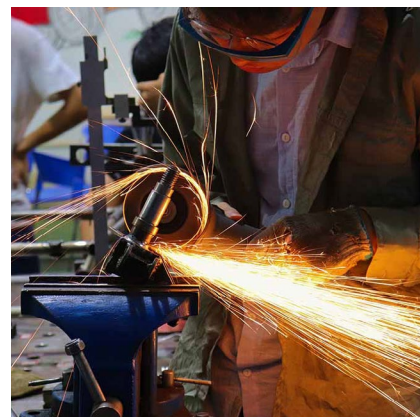
The U.S. Citizenship Act contains several important provisions that strengthen the rights of workers and remove barriers to workplace organizing. In extending existing labor rights to cover more workers, building new protections that specifically address the ways immigrant workers are targeted for discrimination or retaliation, and removing barriers to worker organizing and employer accountability, the bill recognizes that enforcement of labor and immigration laws must be rebalanced to account for the ways in which immigration laws and enforcement policies have contributed to making all workers in the U.S. more vulnerable to labor exploitation. These new protections, coupled with the absence of a mandate that employers use E-Verify, are indicative of an important paradigm shift that pivots away from worksite immigration enforcement policies that punish workers and towards using immigration policy as a way to boost wages by expanding rights and ensuring that all working people, regardless of their immigration status, have meaningful access to the full protection of labor and employment laws.

- ▶ **Verification of employment authorization.** Creates a new federal commission to develop policy recommendations for improvements to the employment eligibility verification process, including E-Verify, designed to ensure workers are not wrongfully deemed ineligible to be employed or subject to discrimination based on race or national origin.
- ▶ **POWER (Protect Our Workers from Exploitation and Retaliation) Act provisions.** Expands eligibility for U visas to workers who have experienced serious abuses by their employers; allows DHS to grant workers who file workplace claims temporary immigration status and work authorization; prohibits DHS from deporting workers detained in worksite raids or as a result of retaliatory tips before first providing labor agencies with the opportunity to interview such workers; and prohibits DHS from deporting workers who are entitled to stays of removal under this section.



The bill recognizes that enforcement of labor and immigration laws must be rebalanced to account for the ways in which immigration laws and enforcement policies have contributed to making all workers in the U.S. more vulnerable to labor exploitation.

- ▶ **Workplaces with labor disputes deemed “sensitive locations.”** Expands DHS’s sensitive locations policy, which prohibits immigration enforcement activities at certain sensitive locations absent special circumstances, to include workplaces about which a labor claim has been filed.
- ▶ **Hoffman Plastic fix.** Reverses, in effect, the U.S. Supreme Court decision in *Hoffman Plastic Compounds, Inc. v. NLRB*, 535 U.S. 137 (2002), by clarifying that all rights, remedies, and relief provided under any federal, state, or local law related to workplace rights shall be available to all workers regardless of their immigration status – including back pay and reinstatement remedies.
- ▶ **Farmworker protections.** Provides farmworkers with the right to overtime pay under the Fair Labor Standards Act (FLSA). And the bill creates new criminal penalties for employers who violate certain provisions of the Migrant and Seasonal Agricultural Worker Protection Act (MSAWPA) – for example, by withholding workers’ identity documents or restricting their movements.
- ▶ **Strengthens employer accountability.** Creates new civil penalties that employers must pay if they violate federal, state, or local labor or antidiscrimination laws with regard to undocumented workers; increases the criminal penalties imposed on employers for wage theft, discrimination, and labor exploitation and trafficking; and establishes a new Labor Law Enforcement Account funded by these newly established civil and criminal penalties on employers that is to be used by the U.S. secretary of Labor to fund the enforcement of labor and employment laws.
- ▶ **Extends protections against national origin and citizenship status discrimination.** Extends INA protections against employment discrimination on the basis of national origin or citizenship status to all employment-authorized workers; and clarifies that such protections apply with regard to hiring, firing, and employment eligibility verification (including an employer’s use of E-Verify).



The bill reverses, in effect, the decision in *Hoffman Plastic Compounds* by clarifying that all rights, remedies, and relief provided under any federal, state, or local law related to workplace rights shall be available to all workers regardless of their immigration status.