



# Jeff Sessions

## United States Senator ALABAMA

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Press Release of Senator Sessions

### Sen. Sessions Releases List of 20 Loopholes in the Senate Immigration Bill

Monday, June 4, 2007

WASHINGTON – U.S. Sen. Jeff Sessions (R-AL) released a list of 20 loopholes in the comprehensive immigration bill today which reveals that the bill is fatally flawed and will not establish a functioning immigration system in the future.

The list of loopholes includes flaws effecting border security, chain-migration and assimilation policies. The list exposes the lack of serious attention given to ensuring that the legislation fixes America's failed immigration system.

***"I am deeply concerned about the numerous loopholes we have found in this legislation. They are more than technical errors, but rather symptoms of a fundamentally flawed piece of legislation that stands no chance of actually fixing our broken immigration system," Sessions said. "Many of the loopholes are indicative of a desire not to have the system work."***

For example, one loophole in the "enforcement trigger" fails to require the U.S. VISIT system – the biometric border check-in/check-out system established by Congress in 1996, but never implemented – to be fully functioning before new worker or amnesty programs begin. Without the system in place, the U.S. has no method of ensuring that workers and their families do not overstay their visas.

Another flaw in the legislation prevents the benefits of merit-based immigration from taking full effect until 2016. Until then, chain migration into the U.S. will actually triple, compared to a disproportionately low increase in skill-based immigration. As a result, the merit-based system in the bill is only a shell of what it should have been.

A third loophole in the bill allows immigrants to avoid demonstrating a proficiency in English for more than a decade. Illegal aliens are not required to learn English to receive full "probationary benefits" of citizenship. Passing a basic English test is only required for the third Z-visa renewal, twelve years after amnesty is granted.

Sessions will highlight many of the loopholes contained in the list this week during Senate debate on the immigration bill.

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- ◊ [Committee Assignments](#)
- ◊ [Voting Record](#)
- ◊ [Legislative Searches](#)
- ◊ [Congressional Record](#)
- ◊ [Staff List](#)

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- ◊ [News Releases](#)
- ◊ [Floor Statements](#)
- ◊ [Monthly Public Affairs TV](#)
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- ◊ [Photo Album](#)
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## 20 Loopholes in the Senate Immigration Bill

- **Loophole 1 – Legal Status Before Enforcement:**

Amnesty benefits do not wait for the “enforcement trigger.” After filing an application and waiting 24 hours, illegal aliens will receive full “probationary benefits,” complete with the ability to legally live and work in the U.S., travel outside of the U.S. and return, and their own social security card. Astonishingly, if the trigger is never met and amnesty applications are therefore never “approved,” the probationary benefits granted to the illegal alien population never expire, and the new social security cards issued to the illegal alien population are not revoked. [See pp. 1, 290-291, & 315].

- **Loophole 2 – U.S. VISIT Exit Not In Trigger:**

The “enforcement trigger,” required to be met before the new temporary worker program begins, does not require that the exit portion of U.S. VISIT system – the biometric border check-in/check-out system first required by Congress in 1996 that is already well past its already postponed 2005 implementation due date – to be in place before new worker or amnesty programs begin. Without the U.S. VISIT exit portion, the U.S. has no method to ensure that workers (or their visiting families) do not overstay their visas. Our current illegal population contains 4 to 5.5 million visa overstays, therefore, we know that the U.S. VISIT exit component is key to a successful new temporary worker program. [See pp. 1-2].

- **Loophole 3 – Trigger Requires No More Agents, Beds, or Fencing Than Current Law:**

The “enforcement trigger” does not require the Department of Homeland Security to have detention space sufficient to end “catch and release” at the border and in the interior. Even after the adoption of amendment 1172, the trigger merely requires the addition of 4,000 detention beds, bringing DHS to a 31,500 bed capacity. This is far short of the 43,000 beds required under current law to be in place by the end of 2007, or the additional 20,000 beds required later in the bill. Additionally, the bill establishes a “catch, pay, and release” program. This policy will benefit illegal aliens from countries other than Mexico that are caught at the border, then can post a \$5,000 bond, be released and never show up for deportation hearings. Annual failure to appear rates for 2005 and 2006, caused in part by lack of detention space, doubled the 2004 rate (106,000 – 110,000 compared with 54,000). Claims that the bill “expands fencing” are inaccurate. The bill only requires 370 miles of fencing to be completed, while current law already mandates that more than 700 miles be constructed [See pp. 1-2, & 12-11, and EOIR’s FY2006 Statistical Yearbook on

- **Loophole 4 -- Three Additional Years Worth of Illegal Aliens Granted Status, Treated Preferentially To Legal Filers:**

Aliens who broke into the country illegally a mere 5 months ago, are treated better than foreign nationals who legally applied to come to the U.S. more than two years ago. Aliens who can prove they were illegally in the U.S. on January 1, 2007, are immediately eligible to apply from inside the U.S. for amnesty benefits, while foreign nationals that filed applications to come to the U.S. after May 1, 2005 must start the application process over again from their home countries. Last year's bill required illegal aliens to have been here before January 7, 2004 to qualify for permanent legal status. [See pp. 263, 282, & 306].

- **Loophole 5 – Completion of Background Checks Not Required For Probationary Legal Status:**

Legal status must be granted to illegal aliens 24 hours after they file an application, even if the aliens have not yet “passed all appropriate background checks.” (Last year's bill gave DHS 90 days to check an alien's background before any status was granted). No legal status should be given to any illegal alien until all appropriate background checks are complete. [See pp. 290].

- **Loophole 6 – Some Child Molesters Are Still Eligible:**

Some aggravated felons – those who have sexually abused a minor – are eligible for amnesty. A child molester who committed the crime before the bill is enacted is not barred from getting amnesty if their conviction document omitted the age of the victim. The bill corrects this loophole for future child molesters, but does not close the loophole for current or past convictions. [See p. 47: 30-33, & p. 48: 1-2]

- **Loophole 7 – Terrorism Connections Allowed, Good Moral Character Not Required:**

Illegal aliens with terrorism connections are not barred from getting amnesty. An illegal alien seeking most immigration benefits must show “good moral character.” Last year's bill specifically barred aliens with terrorism connections from having “good moral character” and being eligible for amnesty. This year's bill does neither. Additionally, bill drafters ignored the Administration's request that changes be made to the asylum, cancellation of removal, and withholding of removal statutes in order to prevent aliens with terrorist connections from receiving relief. [Compare §204 in S. 2611 from the 109<sup>th</sup> Congress with missing §204 on p. 48 of S.A. 1150, & see missing subsection (5) on p. 287 of S.A. 1150].

- **Loophole 8 – Gang Members Are Eligible:**

Instead of ensuring that members of violent gangs such as MS 13 are deported after coming out of the shadows to apply for amnesty, the bill will allow violent gang members to get amnesty as long as they “renounce” their gang membership on their application. [See p. 289: 24, 26]

Aliens who have already had their day in court – those subject to final orders of removal, voluntary departure orders, or reinstatement of their final orders of removal – are eligible for amnesty under the bill. The same is true for aliens who have made a false claim to citizenship or engaged in document fraud. More than 636,000 alien fugitives could be covered by this loophole. *[See p. 285:19-22 which waives the following inadmissibility grounds: failure to attend a removal proceeding; final orders of removal for alien smuggling; aliens unlawfully present after previous immigration violations or deportation orders; and aliens previously removed. This appears to conflict with language on p. 283:40-41. When a direct conflict appears in a statute, the statute is interpreted by the courts to the benefit of the alien.]*

- **Loophole 10 – Learning English Not Required For A Decade:**

Illegal aliens are not required to demonstrate any proficiency in English for more than a decade after they are granted amnesty. Learning English is not required for an illegal alien to receive probationary benefits, the first 4-year Z visa, or the second 4-year Z visa. The first Z visa renewal (the second 4-year Z visa) requires only that the alien demonstrate an “attempt” to learn English by being “on a waiting list for English classes.” Passing a basic English test is required only for a second Z visa renewal (the third 4-year Z visa), and even then the alien only has to pass the test “prior to the expiration of the second extension of Z status” (12 years down the road). *[See pp. 295-296].*

- **Loophole 11 – Earned Income Tax Credit Will Cost Taxpayers Billions In Just 10 Years:**

Current illegal aliens and new guest workers will be eligible for the Earned Income Tax Credit, a refundable tax credit designed to encourage American citizens and legal permanent residents to work. The Congressional Budget Office estimates that this loophole will cost the U.S. taxpayer up to \$20 billion dollars in just the first 10 years after the bill’s enactment. To be consistent with the intent of the 1996 welfare reforms – which limited new immigrants from receiving public benefits until they had been legal permanent residents for five years – the bill should withhold EITC eligibility from amnestied aliens until they become legal permanent residents. Closing this loophole will save the taxpayers billions of dollars. *[See p. 293 after S.A. 1190 was adopted, p. 307, p. 315, §606. All that is required for EITC eligibility is a social security number and resident alien status. Nothing in the bill’s tax provisions limit EITC eligibility. The issuance of social security numbers to aliens as soon as they apply for amnesty will ensure they are able to qualify for the EITC.]*

- **Loophole 12 – Affidavits From Friends Accepted As Evidence:**

Records from day-labor centers, labor unions, and “sworn declarations” from any non-relative (acquaintances, friends, coworkers, etc) are to be accepted as evidence that the illegal alien has satisfied the bill’s amnesty requirements. This low burden of proof will invite fraud and more illegal immigration – even aliens who are not

declarations” of the alien’s friends (that the alien was here prior to January 1, 2007 and is currently employed) are actually valid. [See p. 293: 13-16].

- **Loophole 13 – Taxpayer Funded Legal Counsel and Arbitration:**

Free legal counsel and the fees and expenses of arbitrators will be provided to aliens that have been working illegally in agriculture. The U.S. taxpayer will fund the attorneys that help these individuals fill out their amnesty applications. Additionally, if these individuals have a dispute with their employer over whether they were fired for “just cause,” DHS will “pay the fee and expenses of the arbitrator.” [See p. 339:37-41, & p. 332: 37-38.]

- **Loophole 14 – In-State Tuition and Student Loans:**

In-state tuition and other higher education benefits, such as Stafford Loans, will be made available to current illegal aliens that are granted initial “probationary” status, even if the same in-state tuition rates are not offered to all U.S. citizens. This would normally violate current law (8 U.S.C. §1623) which mandates that educational institutions give citizens the same postsecondary education benefits they offer to illegal aliens. [See p. 321: 8-31].

- **Loophole 15 – Inadequacy of the Merit System:**

The “merit system,” designed to shift the U.S. green card distribution system to attract higher skilled workers that benefit the national interest, is only a shell of what it should have been. Though the merit system begins immediately, it will not increase the percentage of high skilled immigrants coming to the United States until 2016, 8 years after enactment. Of the 247,000 green cards dedicated to the merit based system each year for the first 5 years, 100,000 green cards will be reserved for low-skilled guest workers (10,000) and for clearing the current employment based green card backlog (90,000). From 2013 to 2015, the number of merit based green cards drops to 140,000, and of that number, 100,000 green cards are *still* reserved each year for low-skilled guest workers (10,000) and for clearing the current employment based green card backlog (90,000). Even after 2015, when the merit system really begins (in 2016) by having 380,000 green cards annually, 10,00 green cards will be reserved specifically for low skilled workers, and points will be given for many characteristics that are not considered “high-skilled.” For example, 16 points will be given for aliens in “high demand occupations” which includes janitors, maids, food preparation workers, and groundskeepers. [See p.260: 25 – p. 261: 20, p. 262, & *The Department of Labor’s list of “occupations with the largest job growth” available at [www.bls.gov/emp/emptab3.htm](http://www.bls.gov/emp/emptab3.htm)*].

- **Loophole 16 – Visas For Individuals That Plan To Overstay:**

The new “parent” visa contained in the bill which allows parents of citizens, and the spouses and children of new temporary workers, to visit a worker in the United States is not only a misnomer, but also an invitation for high rates of visa overstay. This new visa specifically

to abandon their residence in a foreign country, to qualify to come to the U.S. to “visit.” The visa requires only a \$1,000 bond, which will be forfeited when, not if, family members of new temporary workers decide to overstay their 30 day visit. Workers should travel to their home countries to visit their families, not the other way around. [See p. 277:1 – 33, and p. 276: 38-43].

- **Loophole 17 – Chain Migration Tipped Before Being Eliminated:**

Though the bill will eventually eliminate chain migration (relatives other than spouses and children of citizens and legal permanent residents), it will not have full effect until 2016. Until then, chain migration into the U.S. will actually triple, from approximately 138,000 chain migrants a year (equal to 14% of the 1 million green cards the U.S. currently distributes on an annual basis) to approximately 440,000 chain migrants a year (equal to 45% of the 1 million green cards the U.S. currently distributes on an annual basis). [See pp. 260:13, p. 270: 29 – pp. 271: 17]

- **Loophole 18 – Back Taxes Not Required:**

Last year’s bill required illegal aliens to prove they had paid three of their last five years of taxes to get amnesty. This year, payment of back taxes is not required for amnesty. The bill requires taxes to be paid at the time of application for a green card, but at that time, only proof of payment of *Federal* taxes (not state and local) is required for the years the alien worked on a Z visa, not the years the alien has already worked illegally in the United States. Though Senator McCain’s S.A. 1190, adopted by voice vote, claimed to “require undocumented immigrants receiving legal status to pay owed back taxes,” the amendment actually only required proof of payment of taxes for “any year during the period of employment required by subparagraph (D)(i).” Since the bill does not contain a subparagraph (D)(i), nor require any past years of employment as a prerequisite for amnesty, the amendment essentially only requires proof of payment of taxes for future work in the U.S., not payment of “back taxes.” [See p. 307, and p. 293 as altered by S.A. 1190, amendment p. 2: 19-20.]

- **Loophole 19 – Social Security Credits Allowed For Some Illegal Work Histories:**

Aliens who came to the U.S. on legal visas, but overstayed their visas and have been working in the U.S. for years, as well as illegal aliens who apply for Z visa status but do not qualify, will be able to collect social security credits for the years they worked illegally. Under the bill, if an alien was ever issued a social security account number – all work-authorized aliens who originally came on legal visas receive these – the alien will receive Social Security credits for any “quarters of coverage” the alien worked after receiving their social security account number. Because the bill requires social security account numbers to be issued “promptly” to illegal aliens as soon as they are granted “any probationary benefits based upon application [for Z status]” (these benefits are granted 24 hours after the application is filed), an illegal alien who is denied Z visa status but continues to work illegally in the U.S. will accumulate Social Security credits. [See pp. 316:8 – 16, and pp. 315: 32-39]

The criminal fines an illegal alien is required to pay to receive amnesty are less than the bill's criminal fines for paperwork violations committed by U.S. citizens, and can be paid by installment. Under the bill, an illegal alien must pay a \$1,000 criminal fine to apply for a Z visa, and a \$4,000 fine to apply for a green card. Eighty percent of those fines can be paid on an installment plan. Under the bill's confidentiality provisions, someone who improperly handles or uses information on an alien's amnesty application can be fined \$10,000. Administration officials suggest that the bill's "criminal fines are proportionate to the criminal conduct." Why, then, is the fine for illegally entering, using false documents to work, and live one-tenth the fine for a paperwork violation committed by a government official? *[See p. 287: 34, p. 317: 9, p. 315:6-8, & remarks made by Secretary Gutierrez on Your World with Neil Cavuto, 4:00 May 31, 2007]*

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