



# **FAIR Policy Analysis: Build Back Better Act (H.R. 5376)**

By: Government Relations

## **Top Line**

House Judiciary Democrats are responsible for the Build Back Better Act’s (BBB) \$100 billion immigration section, which includes amnesty for around 7 million illegal aliens. Last week, they released a [memorandum](#) outlining their immigration provisions. This analysis, prepared by FAIR’s Government Relations team, summarizes the latest version of the reconciliation bill’s immigration section and addresses ludicrous claims regarding amnesty and its purported benefits to American society.

## **Parole and Work Authorization for Illegal Aliens**

Sec. 60001 gives the Secretary of Homeland Security the authority to provide amnesty to at least 7 million illegal aliens living in the United States. The current proposal requires the Secretary of Homeland Security to grant parole, a mechanism that is meant to be used sparingly on a case-by-case urgent humanitarian or significant public interest basis, to millions of illegal aliens who entered the United States prior to January 1, 2011, subject to minimal eligibility criteria. This section also requires the Department of Homeland Security (DHS) to issue work authorization and advanced parole (permission to leave the U.S. and return without immigration consequences) to all aliens paroled under this section, removing officers’ discretionary authority to determine whether a paroled alien’s case merits such grants.

Further, the proposal creates no numerical limitation as to how many aliens may receive parole, and aliens paroled under this proposal are not counted towards the worldwide level of family-sponsored immigrants cap under section 201(c)(4) of the Immigration and Nationality Act (INA). This proposal allows parole to be extended for approximately 10 years (until September 30, 2021), and unreasonably limits DHS’s ability to revoke parole granted to an alien under this section without additional Congressional action.

The proposal also fails to establish adequate security and background check requirements and recklessly allows the Secretary to waive red flags so long as the background check results are “to the satisfaction of the Secretary.” Not only is the amnesty provided under this proposal expansive, but this plan is ripe for abuse and does nothing to discourage illegal immigration into the United States.

### **Parole and Work Authorization Provisions ARE Amnesty**

Do not be fooled by the semantics Democratic leaders and the Judiciary Committee are using to push BBB. The benefits offered to illegal aliens under this section **are** amnesty provisions. While there is much discussion about immigration and what amnesty means, the definition is clear. Black's Law Dictionary defines amnesty as, “A pardon extended by the government to a group or class of persons, usu. for a political offense; the act of a sovereign power officially forgiving certain classes of persons who are subject to trial but have not yet been convicted.” And from the Merriam-Webster Dictionary, amnesty is, “The act of an authority (as a government) by which pardon is granted to a large group of individuals.” That is exactly what the Democrats’ proposal does – and more.

Not only do these provisions forgive the illegal conduct without consequence, they also reward illegal aliens with the exact prize that motivated their illegal conduct to begin with: the ability to live and work in the United States. The existing immigration scheme imposes numerous criminal and civil immigration consequences for the illegal border crossing and unlawful presence in the United States. For example, the three-and ten-year bars prohibit an alien who has accrued unlawful presence from returning to the United States, depending on the length of time spent illegally in the country. Additionally, [criminal statutes](#) impose jail time and fines for numerous immigration-related offenses, such as illegal reentry or failure to register.

Sec. 60001 pardons illegal aliens for the violations they committed and outrageously rewards them with the ability to remain and work in the United States despite such conduct. This bill is unfair to immigrants in the United States legally; foreign nationals wishing to legally work, visit or immigrate to the United States; and Americans who expect their laws to be upheld.

Proponents of the bill also point to the temporary nature of the benefits offered under this section to argue that their proposal does not provide amnesty. This is a red herring. Recent political and judicial battles, such as the previous administration’s attempts to roll-back temporary amnesties such as Deferred Action for Childhood Arrivals (DACA) or certain nations’ Temporary Protected Status (TPS) designations, strongly suggest that no “temporary amnesty” is really temporary and allowing these benefits to expire will not be so simple. TPS even has the word “temporary” in its name, but activist judges and illegal alien advocates have exercised

every opportunity to make the lawful presence and work authorization benefits permanent despite conflicting case law or, in the TPS context, despite clear congressional intent for the benefits to expire.

Further, after such period expires (assuming that the provisions will not be renewed by a later Congress), many illegal aliens may become eligible for cancelation of removal. Cancelation of removal is an existing mechanism in the INA that allows immigration judges, in their discretion, to stop the removal of certain illegal aliens who have been continuously present in the United States for ten years if the immigration judge determines their removal would cause exceptional or unusual hardship to a U.S. citizen or lawful permanent resident. This mechanism makes qualifying aliens eligible for work authorization and adjustment to lawful permanent resident status.

### **Amnesty Is Not a Solution to the Immigration Crisis**

Democrats' amnesty proposal is unconscionable in light of the current border crisis, which has seen an [historic number of illegal border crossings](#) since President Joe Biden took office in January 2021. Amnesty impedes all efforts to deter illegal immigration by making others think they can enter illegally and receive an amnesty later.

This is exactly what happened after an amnesty was approved by Congress and signed into law by President Ronald Reagan in 1986. The enactment of the 1986 Immigration Reform and Control Act (IRCA) stands as a case study in how good intentions can result in bad law. Following enactment, 2.7 million illegal aliens were granted amnesty while approximately another 3 million illegal aliens remained. Today, there are at least 14.5 million aliens in the United States without a lawful immigration status, according to [FAIR's latest estimates](#). That means the number of illegal aliens has increased almost fivefold since 1986.

Amnesty is also unfair to legal immigrants and undermines unemployed and struggling Americans, especially during the pandemic. Granting amnesty places illegal aliens on the same playing field with Americans in a pandemic-weakened economy with high unemployment. The negative impact of an influx of foreign workers in higher-skilled vocations would be replicated among lower-skilled jobs as well. The sudden increase in the supply of legal labor generated by amnesty would likely further contribute to wage stagnation, giving employers even less incentive to raise wages. Providing amnesty to people who violated our laws and effectively cut in line is deeply unfair to those who followed the rules, respected our laws, and waited.

## **Other Immigration Provisions**

Included in BBB are two additional elements that would increase legal immigration and have nothing to do with the millions of illegal aliens present in the United States. Rather, these provisions address our growing visa backlog. Democrats note that there are 4 million chain migration recipients waiting for visas, while there are about 1 million people waiting for employment-based visas. This disparity reflects the sad reality that we are one of the only developed Western countries that does not prioritize skills and merit. Instead, in the land of opportunity we prioritize family relationships. FAIR advocates moving to a [skills-based system](#) akin to those in countries such as Canada and the United Kingdom.

### **Visa Recapture**

Sec. 60002 inserts a visa recapture scheme that applies “unused” visa totals from 1992-2021. In 1990, Congress created top-line cap levels of visas for each fiscal year. Sometimes these are filled, and sometimes they are not. Democrats want to use these un-allocated visas from prior years to address the current immigrant visa backlog. They also note that this would apply to 222,000 chain migration visas and 157,000 employment-based visas. Previous Congresses have used visa recapture in the past, the most recent being in the [REAL ID Act of 2005](#).

The notion of “visa recapture” is a misguided concept. Why do we have so many people in the backlog to begin with? If so many people are in line to receive green cards, why are we not hitting our top-line numbers every year?

The answer is simple: because of [per-country caps](#). Under the INA, no one or two countries can dominate green card allotment. Yet, that is exactly what is happening. Individuals from India and China make up the vast majority of applications. Ergo, the majority of people waiting for green cards are Indians and Chinese who do not qualify because of country caps. Caps are an important tool that ensure large countries do not monopolize visas at the expense of other countries, and reflect changes made in the INA to prevent discrimination.

Visa recapture is a proposal favored by Big Tech companies and [ethnic lobbies](#). FAIR opposes green card recapture as well as eliminating per-country caps. The visa backlog does not indicate a problem – it indicates that our immigration laws are working as intended to prevent some nationalities from hoarding the majority of our green cards and shouldering out others who are just as deserving. This “temporary fix” is nothing more than a giveaway to Big Tech companies and massive corporations who prioritize foreign workers over American citizens.

## **Enhancements to Green Card Processing and Additional USCIS Funding**

Sec. 60005 of BBB also allows for large-scale status adjustment for non-immigrant guestworkers and their families in the United States to apply for green cards. Upon paying a fee, a person eligible for status adjustment receives a work permit even if there are not available visas for them. This creates a sense of permanency and kicks the can further down the road, as nothing in the bill does anything to make permanent changes to topline visa numbers or per-country caps.

The section also appropriates \$2.8 billion to U.S. Citizenship and Immigration Services (USCIS) in FY 2022. This is for the stated purpose of staffing the agency to handle the influx of applications that would occur from the changes in this bill, including amnesty for illegal aliens. FAIR [opposes appropriating funding for USCIS](#) and has in the past. Unlike most other agencies, funding from USCIS comes from fees associated with doling out immigration benefits like work authorization, green cards, and others. Giving appropriated money to USCIS – even in a “temporary” nature – sets up future political battles the likes of which U.S. Immigration and Customs Enforcement (ICE) and Customs and Border Protection (CBP) face every year during the appropriations process.

## **Supposed Economic Benefits of the Immigration Provisions in Build Back Better**

Democrats have made a series of claims regarding the economic impact of both legal and illegal aliens. They claim that BBB will create “millions” of additional jobs. They add that legalizing illegal aliens will have “positive impacts, including increased wages and productivity,” on U.S. citizens. They say that giving work authorization and benefits to millions of low-skilled illegal aliens will somehow “ensure the solvency of critical social safety net programs” and will “increase state and local tax revenues by billions of dollars.”

Research by FAIR and other organizations throw cold water on these claims. There is no guarantee that BBB will create any jobs, and even moderate increases do not necessitate the allocation of work authorization to millions of illegal aliens. Indeed, passing a \$1.75 trillion spending bill could have profound negative effects on an American economy already reeling from [runaway inflation](#) and [low growth](#).

Authorizing millions of low-skilled illegal aliens to work will not increase the wages and productivity of American citizens. It will have the exact opposite effect, particularly on first-generation immigrants, African Americans, those without a college degree, and others as outlined by Harvard economist [George Borjas](#). Flooding the job market with millions of illegal

aliens will decrease wages, reduce opportunities for Americans, and reverse any gains made from [tight labor markets](#).

Claims that illegal aliens will bolster the reserves of our safety social net programs such as Medicare, Medicaid, and Social Security are unfounded. Giving quasi-legal status to millions of low-skilled illegal aliens will contribute little to these programs. Giving millions of low-skilled illegal aliens *access* to these programs once they qualify will drain them. Illegal aliens already cost taxpayers [\\$116 billion a year](#). Their projected earnings, even with legal work authorization, will not be enough to supplant the billions that they would drain from social net programs. Legalization of any kind – including parole provisions and work authorization – will [hasten insolvency](#) in social safety net programs.

The committee’s Democrats also insist that these steps will increase state and local tax revenues by billions of dollars every year. It is true that giving employment authorization documents would cut down on “under the table” paychecks and would increase some state and local tax revenues. But as these aliens become eligible for state assistance, nutrition assistance, and other programs there will be significant withdrawals. The budgetary impact on state and local coffers would be negligible at best, and would run net deficits at worst.

## Conclusion

Democrats continue to insist that BBB does not contain amnesty for illegal aliens. The House Judiciary document itself reads that “this legislation provides an opportunity for certain undocumented individuals to receive temporary protection from removal and a work permit.”

Anyone who takes even a brief look at the history of immigration policy knows that **temporary protections are anything but temporary**. President Obama’s DACA program – promised as a temporary fix – remains in effect. Courts sued the Trump administration to prevent their attempts to wind down TPS designations for certain countries, which also remain in effect. There is nothing more permanent in immigration policy than a “temporary” status or protection.

Democratic leaders know that once these 10-year statuses are in effect, it will be difficult to remove them. Giving illegal aliens 10 years of work authorization and deportation protection enshrines a certain sense of permanent residence. What will happen when the ten years is up? It is almost guaranteed that nothing substantive would happen to this population, or even worse, will eventually be put on a path to citizenship.

This is an amnesty, plain and simple. It shields immigration lawbreakers from removal. It gives them work documentation and access to public benefits, which is exactly why illegal aliens come to the United States in the first place. It creates a perverse incentive to further reward this population of illegal aliens 10 years from now and all but guarantees permanent protections. Even worse, it contains absolutely no enforcement tradeoffs.

**For these reasons, FAIR firmly opposes H.R. 5376, the Build Back Better Act.**