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# Rogue Republican Immigration Bill: An Example of What's to Come

## A brief overview of H.R. 4796, the Uniting and Securing America (USA) Act of 2018

By Dan Cadman

## Introduction

The House of Representatives seems to have been on the cusp of voting on several immigration bills, all having to do with grants amnesty to "Dreamers" (or a smaller subset of those "Dreamers" who are still registered under the Obama-era DACA program).

While matters are still in flux, it appears that the legislative jockeying over a "discharge petition" to trigger a "queen of the hill" procedure that would have forced a vote on four separate measures has failed.[1] But it's worth taking a closer look at one of the bills that would likely have been voted on had the gambit succeeded.

The Uniting and Securing America (USA) Act of 2018 (H.R.4796) was introduced by Rep. Will Hurd (R-Texas) in January of this year.[2] Even though it is no longer likely to be taken up this year, its details still matter for two reasons.

First, it is the legislation championed by those pro-DACA Republican House members who sparked the political drama of the past month or so by trying to force a vote, and thus provides insight into their motivations and objectives. Second, and perhaps more important, like the Gang of Eight omnibus bill that went down in flames in 2014, H.R. 4796 is a masterpiece of double-talk and duplicity: What you think you see is not what you get, because the bait-and-switch is hidden in technical language and subparagraphs that make it hard to spot. As such, it offers a lesson in what to look for when assessing immigration legislation in the future.

The false note that the bill strikes starts right at the beginning. It is unctuous to title a bill that is about granting an amnesty to illegal aliens as the "Uniting and Securing America Act". There are many who would question how such an amnesty either unites or secures America. Wrapping an illegal alien amnesty around a bill with "USA" in the title, one supposes, is intended to invoke warm feelings of patriotism and distract from its primary intent. But the dishonesty doesn't stop there. Here is the official description of the bill:

> *To provide relief from removal and adjustment of status of certain individuals* ***who are long-term United States residents*** *and who entered the United States before reaching the age of 18, improve border security, foster United States engagement in Central America, and for other purposes.* [Emphasis added.]

Note that there is no reference to illegal aliens; instead, the bill uses the euphemism "long-term United States residents". Yet they are not, within the context of the immigration law, "residents" at all. If they were, they would not be in need of relief from removal through amnesty. I realize that titles and descriptors are, in the scheme of things, minutiae, but they establish a tone of deception that is found throughout the bill.

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# Key Points

- Not only does the bill not endorse or provide further support for a border wall, it actively works to sabotage the possibility of a physical barrier and substitutes instead a variety of technological approaches, some of which (such as drones) have been found by watchdogs to have little value; all of which rely heavily on the manpower to respond to notices of border intrusion (the bill provides no new border agent resources); and thus — unlike a physical barrier — oblige U.S. agents to react only *after* illegal crossings have been effected, thus ensuring that current self-defeating defects in law and operations continue.

- Although the bill establishes threshold ineligibilities, for instance for criminal misconduct, it then goes on to provide a wealth of waivers for these crimes. The bill is also inconsistent in prohibiting student visa violators from receiving amnesty, yet permitting aliens who have been deported multiple times to apply.

- Similarly, the bill establishes certain prerequisites before aliens may apply for amnesty, primarily through education, service in the military, or a history of gainful employment. But like the ineligibility waivers, the bill then goes on to provide a host of exemptions that in point of fact ensure that nearly any alien will be able to apply, whether or not they have the required education, military service, or work history.

- The bill does absolutely nothing to amend the seriously broken portions of the immigration law that have led to the phenomenon of family units crossing en masse, and minors being smuggled by criminal cartels at the behest of their parents.

- The bill, in fact, rewards those parents because, through a sleight-of-hand in the way eligibility for naturalization is calculated for amnestied aliens who receive conditional resident status, they will be entitled to gain their citizenship very quickly and thereafter file petitions on behalf of the parents who violated the law in the first place. Yet there is nothing in this bill to prohibit or prevent those parents from enjoying the fruits of their criminal and irresponsible behavior.

# Title I —Adjustment of Status for Certain Individuals Who Entered the United States as Children

This title of the bill establishes the amnesty, and outlines the conditions under which it would operate.

**Section 101.** Lays out various definitions used within the bill, most of which draw their meaning from definitions in other, already-existing definitions of federal law — such things as "DACA"; "elementary school, high school and secondary school"; "poverty line", etc.

**Section 102.** An extremely long section that, among other things, provides that aliens who were younger than 18, who entered the United States prior to December 31, 2013, and who are inadmissible or deportable, or recipients of Temporary Protected Status (TPS), will be granted adjustment of status as conditional residents. Superficially, there are additional caveats. The alien must not be inadmissible under certain grounds laid out in the Immigration and Nationality Act (INA), to wit the exclusion grounds based on:

- Criminal behavior and drug trafficking;
- National security, foreign policy, and terrorism grounds;
- Genocidists, torturers, and totalitarian party members;
- Alien smugglers or student visa violators;
- Aliens who are ineligible for citizenship or draft evaders; and
- Polygamists, international child abductors, and aliens who have voted unlawfully.

The compilation of this list of aliens prohibited from seeking amnesty leads to some interesting anomalies. For instance, student visa violators are barred from applying for amnesty, whereas aliens who have *repeatedly* been arrested and formally deported only to reenter illegally (a federal felony) are not barred from applying.

Section 102 also specifically disallows aliens who have engaged in persecuting others under any of the grounds giving rise to claims to refuge or asylum (race, religion, nationality, membership in a particular social group, or political opinion), which is a slightly broader exclusion than that found in the inadmissibility grounds of the INA as written.

Section 102 declares that DACA recipients *shall* be granted conditional resident status "unless the alien has engaged in conduct since the alien was granted DACA that would make the alien ineligible for DACA." One can think of many sound policy reasons to require DACA recipients to undergo the same vetting process, anew, as all other amnesty applicants, but this is foreclosed under the terms of the bill.

Section 102 requires biometric and biographic checks of aliens against national security, intelligence, and law enforcement databases when they apply for amnesty under the bill, and it further provides that no alien will receive conditional residence until all background vetting is concluded. This is important and desirable, but one wonders how it reconciles with the mandate to simply adjust DACA recipients to conditional resident status.

The section also requires medical screening, and obliges aliens to meet their obligations for Select Service registration.

The section prohibits the DHS secretary from removing any alien who has applied for amnesty under the bill during the pendency of the application, and in fact may not even commence removal proceedings against such an alien. The section also directs the attorney general to grant stays of removal. Aliens falling into this category are also able to obtain work authorization.

**Section 103.** Provides that, on approval, an alien will be accorded conditional resident status for a period of eight years, unless extended by the DHS secretary. (There is no explanation of why such an extension might occur.) It also lays out specific requirements that must be met by the government before an alien's conditional resident status may be terminated.

The section provides that an alien whose conditional resident status expires or is terminated returns to the status he or she had prior to applying. Special rules are laid out for aliens who were recipients of temporary protected status (TPS), including those whose TPS status expires or is terminated during the eight-year period of conditional resident status. What the bill does not lay out, however, is what might happen to DACA recipients whose conditional status expires or is terminated in the event that the Supreme Court rules for the government and permits termination of that program. It is a curious omission.

**Section 104.** Lays out the rules by which the "conditional" portion of an alien's status may be removed, rendering him or her a lawful permanent resident alien. Superficially, these rules reinforce the requirement that the alien have completed certain educational thresholds or served in the military or exhibited a history of stable, gainful employment. However, the bill provides that an alien may be waived these requirements in the event he or she "demonstrates compelling circumstances for the inability to satisfy the requirements." Once again, there are fee waivers (under exactly the same bases as previously enumerated for the original application for amnesty) for individuals applying to have the conditional portion of their resident status removed.

Section 104 also asserts that to have the conditional status removed, aliens must demonstrate proficiency in English as well as a knowledge and understanding of the fundamentals of the history, and of the principles and form of government, of the United States. And, as before, applicants to have the conditional status removed must be vetted via biometric and biographic processes before the condition may lifted.

Interestingly, Section 104 provides that all of the time an alien accrues in a conditional status applies toward his or her eligibility to apply for naturalization in the same way as if he or she had been a lawful permanent resident alien. In practical effect, this could very well mean that he or she might be eligible for citizenship as soon as his conditional status is removed.

Finally, the section has a surprising "jump the queue" provision buried at the very end. It permits aliens who have already met threshold educational, military, or employment requirements to avoid conditional residence and shoot straight to lawful resident alien status:

> *The Secretary shall provide lawful permanent residence status without conditional basis to any alien who demonstrates eligibility for lawful permanent residence status on a conditional basis … if such alien has already fulfilled the requirements of subsection (a) at the time such alien first submits an application for benefits under this title.*

**Section 105.** Provides that an alien must be able to provide proof of his or her identity and requisite physical presence in the United States, as well as evidence of having entered the United States prior to the cutoff date established in the bill (December 31, 2013). Among the more reliable documents enumerated for various purposes are passports, national identity cards, U.S. military service ID cards, and federal immigration records. More questionable examples embedded in the section include readily counterfeited or altered items such as rent receipts, remittance receipts, utility bills, and employment records.

Section 105 also lays out the documents that are deemed acceptable for aliens to evidence their compliance with the educational, military service, and/or gainful employment requirements of the bill.

**Section 106.** Requires the DHS secretary to promulgate initial regulations within 90 days, and final regulations within 180. It provides that Paperwork Reduction Act requirements will be waived as they apply to the rule-making process. The bill also provides that the initial regulations will be put into force immediately without need to await public comment.

**Section 107.** Lays out confidentiality rules governing the amnesty process. It prohibits use of information collected for other purposes, including "for immigration enforcement". It prohibits "referral" of applicants or DACA recipients to CBP or ICE agents. Exceptions are granted for:

- Use in considering an application for permanent resident status on a conditional basis (in other words, as a part of the background biometric and biographic vetting process);
- Identifying or preventing fraudulent claims;
- National security purposes; or
- Investigating or prosecuting "any felony not related to immigration status".

The section goes on to prescribe a civil penalty of $10,000 for violations.

**Section 108.** Eliminates existing law prohibiting states from according to illegal aliens any higher education benefit (including in-state tuition or reduced fees) that is not available to U.S. citizens and nationals, whether or not they are domiciled in that state.[3]

## *Concerns with Title I*

**Section 102.** Here are some of the most objectionable features of the amnesty portion of the bill found in this section:

- The cutoff date is overly generous. Some have estimated the likely impact to be more than three million aliens. Although advocates of various forms of Dreamer amnesties are quick to allege that the beneficiaries are "Americans in all but name, having spent all their lives here," in point of fact, were the USA Act to become law this year, *it would reward aliens who have not yet been in the United States five years*. One can hardly think of a larger lure to encourage more would-be entrants who will hope to be beneficiaries of another cyclical amnesty a few short years up the road.
- A multiplicity of disqualifiers, including criminal misconduct, are met with a multiplicity of waivers, thus undercutting any notion that only the truly deserving will accrue benefits from the amnesty. Even criminals and multiple reentrants after deportation will be entitled should they obtain a waiver — and the conditions of granting

the waiver are so nebulous and stacked in favor of the alien that it is certain that denial of waivers will result in a host of lawsuits.

- In addition to waivers for criminal misconduct, the bill is extremely generous in the way that it declares that expungements; judgments of guilt that have been deferred, withheld or sealed; orders of probation without entry of judgment; or "any similar rehabilitative disposition[s]" do not serve to disqualify alien offenders who have been the happy recipients of such treatment from the criminal justice system. Some states, though, such as New York, have actually established provisions for pardons, expungements and other forms of clemency simply based on the fact that an alien may be subject to removal if not accorded this favorable treatment — treatment that is *not* equally accorded to U.S. citizens. This portion of section 102 will encourage that kind of inequity.

- Similarly, many so-called requisites, such as education or military service, are equally met with numerous waivers that make it impossible to seriously consider them as requirements. Again, the language of the bill having to do with granting the DHS secretary discretion to grant waivers is so vague and inadequate that one can be assured of decades of costly litigation (at taxpayer expense) fighting back claims of "abuse of discretion" every time an alien is unhappy with denial of one of the many waivers. One is reminded of a saying that was current among officers of the legacy INS: No case is ever over until the alien wins. It seems as true today as ever.

- The same willy-nilly approach is taken to granting exemptions to aliens instead of paying the appropriate costs, thus making a mockery of the suggestion that this amnesty will pay for itself through fees. The bill is littered with exemptions permitting aliens to claim penury — even though amnesty advocates frequently proclaim that Dreamers are self-sustaining, productive members of society.

- The general rule in law is that when an alien applies for a benefit, the burden is on him or her to establish eligibility. This bill stands that logic on its head where DACA recipients are concerned by declaring that they are, upon passage of the bill into law, to be granted conditional resident status "unless the alien has engaged in conduct since the alien was granted DACA that would make the alien ineligible for DACA". What if the alien was not entitled to DACA status to begin with, and the ineligibility only comes to light when the application is received? By the plain language of the law, many would infer that such a fraud committed upon the government should be forgiven.

- While the language forbidding removal during pendency of an application may be near-obligatory language, it will also act as a spur to frivolous applications by clearly ineligible aliens who will nonetheless receive the temporary relief of not being susceptible to removal while the application is being adjudicated — something that is likely to be lengthy if millions of aliens apply. This propensity toward filing frivolous applications will be particularly true given that applicants granted stays of removal will be permitted to work under the terms of the bill.

**Section 103**. The stringent requirements for termination in this section are problematic and will act as an impediment to public safety in those instances where the termination is based on an alien's criminal misconduct. In those instances, the government should be permitted to take the alien into custody as a deportable alien and issue a warrant of arrest and notice to appear in removal proceedings, as would happen in any other case (including, it's worth nothing, lawful permanent resident aliens), and institute termination as an ancillary process.

**Section 104.** The language in this section — providing that all of the time an alien accrues in a conditional status applies toward his or her eligibility to apply for naturalization in the same way as if he or she had been a lawful permanent resident alien — is highly problematic in the way that it hastens recently amnestied aliens toward the path of citizenship. The implication goes beyond the generation of "children who were brought here through no fault of their own" — as false as that narrative often is — because it means that the parents who smuggled those children here will be quickly rewarded with the legal possibility of being the recipients of petitions on their behalf. One can think of no quicker way to ensure a continuing exodus of families and minors from Central America and Mexico attempting their own illegal crossings into the United States.[4]

The "jump the queue" portion of section 104 — permitting many aliens to go straight to lawful permanent residency without spending any time as a conditional resident — is deeply troubling. The requirements are de minimis to begin with — for instance, an alien with an associate's degree from a junior college would meet the threshold. Again, as with the calculation of time for purposes of naturalization eligibility, this subsection appears to bend over backward to ensure that amnestied

aliens are put on a fast track, even as many aliens who have not broken our laws wait patiently overseas for years for their oversubscribed visa number to come up.

**Section 105.** Enumerates a variety of readily counterfeited or altered items such as rent receipts, remittance receipts, utility bills, and employment records that may be used to support an amnesty application. These are precisely the kinds of records that were deemed acceptable for "legalization" under the 1986 Immigration Reform and Control Act (IRCA, the "once and never again amnesty"), in which fraud was rampant. While there may be an inevitability to having to accept such documents for purposes of an amnesty, then certainly the bill should provide ironclad discretion to the DHS secretary to reject supporting documents at the first whiff of suspicion of fraud, counterfeiting, or alteration. It doesn't do so for individual cases. Instead, it merely authorizes the secretary to ban documents or classes of documents "being obtained fraudulently *to an unacceptable degree.*" (Emphasis added.)

One wonders in any case how aliens will reconcile many of their supporting documents when they reflect names other than those under which the alien is registering for amnesty, because those receipts, bills, and employment records were based on bogus, cheaply bought, forged Social Security cards and the like for the purpose of unlawfully obtaining jobs or living in the United States.

The portion of Section 105 concerning documents acceptable as evidence of their compliance with the educational, military service, and/or gainful employment requirements is a mixed bag. Items such as diplomas and degrees are acceptable — which superficially sounds right. But what if the institution was a renowned diploma mill whose sole purpose was to churn out degrees for a profit? What if the diploma was issued by an unaccredited institution? There is no provision in the bill for rejection or denial on such a basis.

The subsection within Section 105 dealing with acceptable identity documents OKs the use of various state identification cards, which inevitably means driver's licenses. Many of our most populous states — states such as California and New York, which also have sizable populations of illegal aliens — have granted illegal aliens the right to obtain driver's licenses and, while that may be objectionable in and of its own right (at least to those who wish to see the nation's immigration laws enforced), the greater problem is that the standards by which such licenses have been issued are lenient. There are a number of examples nationwide of aliens who have gamed the system and ended up with one or more licenses under aliases,[5] and in at least one metropolitan area, motor vehicle employees engaged in a corrupt scheme to sell licenses to illegal aliens.[6] As a consequence, this bill would simply cement those bogus identities in perpetuity by permitting them to be used to gain lawful status.

In the subsection enumerating documents acceptable to prove physical presence, one of those listed is the birth certificate of a child born in the United States. While this may be somewhat persuasive for a mother, of what good is it for a father, whose liaison with the mother may or may not be evidence of *his* continuous physical presence for the entire duration of time specified in the bill?

**Section 106**. The provision in this section permitting interim rules to be implemented immediately without regard to the usual public comment period is an example of unseemly and imprudent haste. Public commentary from informed experts helps ensure that the regulatory process is both sound and fair. Having waited this long to enact an amnesty — assuming it happens — would it not make sense to wait long enough to be sure that the regulations are appropriate?

**Section 107**. This section, dealing with confidentiality provisions, is not only onerous, but self-defeating. By way of example: Although an exception is made for investigating and prosecuting felony offenses, the caveat "not related to immigration status" isn't clarified. Does this mean that an alien who commits fraud in the application may not be prosecuted for that offense, which is clearly related to his or her immigration status?

Furthermore, once an alien has applied, and been found ineligible for amnesty, as a matter of sound public policy, should that file information not be referred to CBP or ICE agents for follow-up? Does it make sense for Congress, by this provision, to perpetuate a sub-populace of individuals "living in the shadows"? What, then, is the use of having immigration laws? What if a CBP or ICE agent happens upon a denied applicant? Should they be refused access to the file information, which will almost certainly include data important for such agents to be privy to?

**Section 108.** This section not only once again favorably positions illegal aliens over U.S. citizens and nationals, it goes so far as to repeal the existing provision of law *retroactively*. Once again, as it does at so many junctures, the bill shows a bias toward illegal aliens that defies sound public policy.

## Title II —Secure Miles with All Resources and Technology

This title of the bill deals with security in immediate proximity to our international border.

**Section 201.** Provides definitions for this title of the bill; they are not new, but rather recycled from a number of other prior bills — phrases such as "operational control of the border" and "situational awareness".[7]

**Section 211.** (There are no sections 202 through 210.) Redefines the authorization for a border wall embedded in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). It does so in a way that *deemphasizes* the need for a physical border barrier, focusing instead on technology.[8] Take, for instance, this mandate:

> *Not later than January 20, 2021, the Secretary of Homeland Security, in carrying out subsection (a), shall deploy the most practical and effective technology available along the United States border for achieving situational awareness and operational control of the border.*

**Section 212.** Mandates creation of a comprehensive southern border strategy within one year of enactment of the bill. This, too, has been mandated before, but the Hurd bill imposes a bizarre twist — the DHS secretary is obliged to conduct a per-mile cost analysis of the various forms of barriers vs. technology, and justify whenever there is a preference for one over the other. The section also mandates a consultative process with a whole host of other federal, state, and local officials in developing its strategy, one portion of which is the preferred mix of physical barriers and technological means for securing the border.

**Section 213.** Mandates the control or eradication of Carrizo cane and salt cedar along the Rio Grande River proximate to the border.

**Section 214.** Mandates that Air and Marine Operations (AMO) of Customs and Border Protection (CBP) conduct a minimum of 95,000 flight hours yearly "with adequate accountability and oversight, including strong privacy protections." The section also mandates that AMO maintain unmanned aerial vehicles (drones) 24 hours a day, and requires a study to determine whether responsibility for these UAVs should be transferred to the Border Patrol.

**Section 215**. Authorizes the DHS secretary to modernize and expand high-volume southern border ports of entry (POEs). Plans established pursuant to this authority must be accomplished taking into account existing wait-time standards. The section also authorizes the DHS secretary to establish new northern and southern land POEs, subject to a consultative process with affected parties and *only* after the modernization and expansion of existing POEs is finished.

**Section 221.** (There are no sections 216 through 220.) Embeds Operation Stonegarden (a CBP/Border Patrol initiative that uses state and local law enforcement entities as force multipliers in the immediate vicinity of the border, in return for substantial amounts of grant monies) into the 2002 Homeland Security Act that created DHS. The language would authorize $110 million in the four years from federal fiscal years 2018 through 2022 to grant recipients.

**Section 222.** Authorizes a two-year grant program to pay *private individuals* proximate to the southern border to procure equipment for emergency communications where cellular or LTE networks are unavailable. No specific fund amount is mentioned.

## *Concerns with Title II*

Here are some of the most objectionable features of the border security portions of the bill found in Title II:

**Section 201.** While terms like "operational control" and situational awareness" sound good, they lack precision and, as a consequence, are difficult metrics to actually capture in any objective way. The inevitable result will be the same as it is, and has been, for many years where border security is concerned: a politicization of the facts. It is just too great a temptation for any administration to declare the border equivalent of "mission accomplished" by asserting that operational control and situational awareness have been achieved by whatever measure that administration chooses to adopt, even though ground realities may belie the declarations.

**Sections 211 and 212.** It is significant that the title is called "secure miles" and not "secure barriers" or something of that nature. This is because of the calculated intent to refocus efforts away from walls and physical barriers and focus instead on various forms of technology to "impede and deter" illegal crossings. This is also evident in the bill's requirement that the DHS secretary 1) conduct a per-mile cost analysis of the various forms of barriers versus technology; and then 2) justify whenever there is a preference for one over the other.

This goes beyond just apples-and-oranges thinking. It is consonant with the bill's intent to render a physical border barrier a practical impossibility by throwing up as many impediments as possible. It is entirely possible — indeed likely — that the initial outlay for a border wall or physical barrier would far outstrip any technology outlay. But in the long run, a well-constructed wall might very well be the cheaper option when other critical factors are contemplated. For instances, technology is only useful as long as there are an adequate number of Border Patrol agents to respond. Failure to fund more and more agents means that the technology may be alerting to entries there is no one to respond to. What's more, apprehensions on *this* side of the border instantly require multiple other resources: detention or, in the alternative, relocation costs borne by Health and Human Services (HHS); significant additional outlays for asylum officers to conduct credible fear interviews; increasing numbers of trial attorneys and judges in an immigration court system that is already tottering on the edge of collapse from dockets and backlogs; ICE agents to locate and re-arrest the aliens when they fail to appear for court; ad infinitum. None of these resources are required if an alien is prevented from entering by a physical wall.

Here is the truth about substituting technology for physical barriers, though: Technology cannot impede or deter because technology cannot interdict or make arrests; technology cannot substitute for egregious loopholes in the law that will continue to lure family units and minors to attempt to cross; and technology does not provide the funds needed to detain and remove. *This only happens when they are stopped from ever entering in the first place.* That is something only a physical barrier can do, and which in the end is the only real impediment or deterrence to the kind of mass movement of aliens we have seen across our southern border in the past five years.

The obligation for multiple consultations with so many disparate parties — many of whom have no particular affinity for the security provided by a serious border wall — is also a cause for concern. It virtually condemns any attempt at consensus or prompt action on the need for a physical barrier, right from the start. As Sir Barnett Cocks once famously noted, "A committee is a cul-de-sac down which ideas are lured and then quietly strangled." Extensive consultative processes seem intended to serve precisely the same purpose in this bill: to impede action in favor of the illusion of motion.

**Section 214.** The continuing insistence of Congress on use of drones (such language has found its way into a variety of House and Senate bills) is curious given that federal watchdogs have said that the pilot program has not proven itself or been conducted in a cost efficient manner.

**Section 215**. Interestingly, the section mandating expansion and improvement of existing high-volume ports, and creation of new ones, contains no language authorizing additional CBP field operations inspectors to handle the additional work.

**Section 221**. It is astounding that Congress continues to authorize the grant to any state or local agency that might at the same time be exercising sanctuary policies with respect to honoring ICE detainers or providing information about alien criminals who are taken into custody by that agency. And yet, this bill says nothing about disqualifying sanctuary jurisdictions from receipt of Operation Stonegarden funds.

# Title III — Reducing Significant Delays in Immigration Court

This title purports to deal with docket backlogs and case completions at the Executive Office for Immigration Review (EOIR), including judges for the immigration courts as well as the Board of Immigration Appeals (BIA).

**Section 301.** Authorizes (but does not actually fund, since this is not an appropriations bill) increasing the number of immigration judges by 55 in federal FYs 2018-2020. An unspecified number and makeup of support staff, technological changes, and court facilities are also authorized, as deemed appropriate by the attorney general. Similarly, the BIA would gain an additional 23 lawyers yearly for the same FYs. Additionally, the Government Accountability Office (GAO) is directed to conduct a review of EOIR to determine what hurdles must be overcome in the hiring process.

**Section 302.** Mandates requirements of continued training and education for EOIR judges and BIA members and staff. Among other things, it requires with great specificity that they receive training in coordination with the National Council of Juvenile and Family Court Justices.

**Section 303.** Requires the EOIR director to take steps to modernize technological equipment and systems to accomplish such things as electronic filing and other improvements to efficiency in the courts.

## *Concerns with Title III*

**Section 301.** Although incrementally increasing the number of immigration judges and BIA members is desirable, this in and of itself will not reduce delays or eliminate backlogs because it doesn't address the root problems of those backlogs, which include inordinate numbers of continuances, delays in completion, etc. Perhaps it's time for Congress to contemplate mandating an equivalent of the Speedy Trial Act, which applies in federal criminal cases.

Furthermore it is odd that the bill directs GAO to conduct a review of EOIR to determine what hurdles must be overcome in the *hiring process* — but not the processes or policies that underlie the need to keep hiring new judges.

Then, there is this language concerning the hiring of immigration judges:

> *The Attorney General shall ensure that all newly hired immigration judges are highly qualified and trained to conduct fair, impartial hearings consistent with due process and that all newly hired immigration judges represent a diverse pool of individuals that includes a balance of individuals with nongovernmental, private bar, or academic experience in addition to government experience.*

The clear implication is that the authors and sponsors of the bill think that existing judges are somehow unqualified or do not conduct impartial hearings. There is no evidence to suggest that this is true. While there is disparity among judges in the disposition of, for instance, applications for asylum, it may equally be true that some judges are overly lenient as that some are unnecessarily narrow in their construction of the governing laws and standards. What's more, a significant number of sitting immigration judges *have* come from diverse backgrounds.

**Section 302.** The mandate in this section that EOIR and BIA members receive training "in partnership with" the National Council of Juvenile and Family Court Justices is unusual.[9] While there is nothing *per se* objectionable about such training, one wonders whether the bill's authors are conflating the pressing and critical question of illegal migration of juveniles up through Mexico and across our borders — which is a decidedly international phenomenon having implications for federal immigration policy — with distinct domestic issues of child abuse, welfare, and delinquency.

# Title IV — Advancing Reforms in Central America to Address the Factors Driving Migration

This title establishes mandates for reforms in Central America using as a fulcrum the preexisting "Alliance for Prosperity" in the countries of El Salvador, Guatemala, and Honduras — the three countries known as the "Northern Triangle" whose nationals (other than Mexico) have become the largest portion of illegal entrants, most particularly minors and families.

**Section 401.** Lays out definitions of such terms as "Northern Triangle".

**Section 411.** (There are no sections 402 through 410.) Requires the president to designate a senior official responsible directly to him who will supervise the efforts mandated under the bill. This official is obliged to consult with Congress and coordinate with the various federal agencies, international organizations, and foreign partners to:

- Confront armed criminal gangs, illicit trafficking networks, and organized crime responsible for high levels of violence, extortion, and corruption in Central America;
- Prevent and mitigate the effects of violent criminal gangs and transnational criminal organizations on vulnerable Central American populations, including women and children;
- Counter human smugglers illegally transporting Central American migrants to the United States;
- Increase protections for vulnerable Central American populations, improve refugee processing, and strengthen asylum systems throughout the region;
- Combat illicit narcotics traffickers, interdict transshipments of illicit narcotics, and disrupt the financing of the illicit narcotics trade;
- Combat corruption, money laundering, and illicit financial networks;
- Strengthen the rule of law, democratic governance, and human rights protections; and, finally,
- Strengthen the foundation for inclusive economic growth and improve food security, investment climate, and protections for labor rights.

**Section 421.** (There are no sections 412 through 420.) Requires the comptroller general (who is the head of GAO) to report annually to Congress for six years data on the locales within the Northern Triangle that are sources of the most minors being smuggled to the United States, whether the Department of State and Agency for International Development are appropriately targeting those areas for assistance, and also whether they are sufficiently flexible to shift their targeting when migration patterns shift.

**Section 431.** (There are no sections 422 through 430.) Amends current law relating to foreign assistance under Millennium Challenge compacts to permit more than one eligible country in a region to participate. This would appear to be aimed at ensuring that all countries in the Northern Triangle may benefit from the compacts.[10]

**Section 441.** (There are no sections 432 through 440.) Requires the secretaries of State and Treasury, within 90 days, to submit a three-year plan for enlisting support from regional and international donors and partners in its efforts at ameliorating the conditions within the Northern Triangle that have resulted in illegal migratory flows. To this end, diplomatic and coordinative efforts are to be comprehensive, and periodic briefings are required to be provided to the relevant committees of the House and Senate.

### *Concerns with Title IV*

**Section 411.** Projects an incredibly difficult, diverse, and complex agenda that would require in some instances a complete modification of the social and governmental forces at work in the Northern Triangle. One wonders whether the bill expects too much, and in so doing sets the seed of failure. Perhaps somewhat more modest goals might have better served the United States, which is already all too often accused of meddling in the internal affairs of other nations.

**Section 421.** This is a welcome step, but may require DHS and HHS agencies to compile better data on where the minors they take into custody and resettle are emanating from. Absent this key information, it will be nearly impossible for GAO to offer empirical data. However, there is no requirement in the bill that DHS and HHS do so.

## Conclusion

There is nothing left to be said because there is almost nothing to appreciate about this bill. It will do nothing to alleviate the pressures on our southern border; it will do nothing to abate the flow of smuggled aliens, including families and minors, moving northward, despite the mellifluous language creating and enhancing new programs with overarching ambitions aimed toward the Northern Triangle of Central America. (Such programs have a history of failure and lack of adequate oversight because corruption is endemic and poverty near universal.) The USA Act represents lawmaking at its worst.

# End Notes

[1] For an explanation of these procedures, see Andrew Arthur, "The 'Queen of the Hill' on a DACA Deal", Center for Immigration Studies blog, May 22, 2018; and "A Really Futile and Stupid Gesture on DACA", Center for Immigration Studies blog, May 28, 2018.

[2] H.R. 4796, The "Uniting and Securing America Act of 2018 or the USA Act of 2018", introduced January 26, 2018.

[3] See 8 U.S.C. Section 1623.

[4] Dan Cadman, "DACA Measure Shouldn't Reward the Use of Kids as Human Shields for Illegal Immigration", Center for Immigration Studies blog, May 18, 2018.

[5] Kathy Curran, "Fall River man's ID theft example of need for new RMV system", *The Herald News*, February 22, 2017.

[6] Bob McGovern, "RMV clerks nabbed in fake ID bust: In all, six accused of plot selling licenses to illegal immigrants", *Boston Herald*, August 3, 2017.

[7] See, e.g., the author's analysis of Senate Bill 1757, "Scrutinizing the 'Building America's Trust Act'", Center for Immigration Studies *Backgrounder*, October 24, 2017; as well as the author's blog of the same date, "McCaul's Myopic Border Bill Revisited: The House Homeland Security Committee fiddles around the edges of H.R. 3548", Center for Immigration Studies blog, October 24, 2017.

[8] That language may be found in Section 102 of IIRIRA, Division C of Public Law 104–208, 8 U.S.C. 1103 note.

[9] See the NCJFCJ website.

[10] Millenium Challenge Compacts may be found at 22 U.S.C. Section 7706 et seq.