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## **AILA Analysis of the Sinema-Tillis Immigration Proposal**

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The American Immigration Lawyers Association (AILA) welcomes bipartisan immigration reform discussions led by Senators Kirsten Sinema (I-AZ) and Thom Tillis (R-NC) to protect Dreamers, ensure availability of immigrant visas, and improve the processing of migrants at the U.S. southern border during the lame duck session.

After three decades without a major reform, it is imperative that Congress act immediately to safeguard the status of Dreamers and other people who have become part of the American community but whose remain at risk of deportation. Our nation's economic recovery also hangs in the balance, and across sectors American businesses urgently need foreign workers to fill gaps in the U.S. workforce. Finally, a viable proposal should include better solutions to manage increased migration in border regions effectively and in a way that upholds humanitarian values.

AILA issued a [press release](#) on Monday responding to the Sinema-Tillis proposal. In the absence of bill text, AILA has not endorsed the proposal. The following analysis is drawn from available information and thus may be inaccurate.

### **Protection for Dreamers**

- The proposed bill offers a limited pathway to citizenship called “Conditional Permanent Residence” (CPR) for an estimated 2 million Dreamers who have lived in the United States since June 15, 2018, and who were under 18 when they entered and no older than 38 on June 15, 2012. The educational, financial, character and criminal eligibility requirements are not yet known and will significantly impact who benefits from this proposal.
- This limited pathway creates a two-tiered system of legal permanent residency, where individuals with CPR have limited access to established aspects of holding a green card.
  - Dreamers with CPR status would be prohibited from sponsoring others for immigration benefits, aside from their spouse and children.
  - If an individual who has CPR wishes to naturalize, they must apply through the CPR process and not existing naturalization avenues that may be faster with fewer restrictions (such as based on marriage to a U.S. citizen).
  - People receiving CPR status will eventually be able to obtain a green card and become citizens. The timeline for obtaining those steps is unclear but is likely at least a decade. Individuals with CPR would be required to continuously maintain eligibility requirements to renew until their naturalization.
- The proposal does not provide relief for recipients of Temporary Protected Status.

## **Immigrant Visas**

- To address the growing backlog of immigrant visa applicants due to the limited annual availability of immigrant visas, this proposal recaptures previously allocated, but unused, employment-based immigrant visas.
- Immigrant visas have gone unused since 1992 in both employment-based and family-sponsored immigrant categories. Immigrant visas primarily go unused by the end of the fiscal year due to bureaucratic delays.
- Recapturing unused immigrant visas is consistent with Congressional intent to ensure that all allocated visas are fully utilized. INA 201 was designed to allow for unused immigrant visas in the family category to spillover the following fiscal year to employment-based category and vice-versa. However, due to a technical error and outdated language in the statute, unused employment-based immigrant visas cannot spill over to family and are forever lost or “incinerated.”
  - The proposal would fix the incinerator problem ensuring that all Congressionally allocated visas are available until used and recaptures some of the previously incinerated visas.
- The scope of the recapture is unclear (estimates range from 150,000-200,000 visas), as to whether it will recapture the full extent of unused employment-based visas dating back to 1992 as has been proposed in bills such as section 3101 of the [U.S. Citizenship Act of 2021](#) (H.R. 1177/S. 348) or whether it will be a more limited recapture as proposed by Senator Tillis in the [Preserving Employment Visas Act](#) (S.2828).
- The proposal does not include the recapture of previously lost family-sponsored immigrant visas, nor will it ensure that unused family-sponsored immigrant visas remain for use by families.

## **Border Management and Security**

- The proposal includes increasing tough border security measures in an effort to increase the speed and efficiency of migrant processing at the border. However, it is likely the proposal will severely undermine fair and meaningful access to legal relief for asylum seekers and other migrants.
  - Makes investments in border security, surveillance and other infrastructure and personnel, including the addition of 25,500 Border Patrol agents and at least 600 officers at ports of entry. It establishes border centers that will increase the speed and efficiency of migrant processing and provide humanitarian assistance.
  - Creates a new expulsion policy modeled after Title 42 that will erode U.S. asylum and humanitarian laws and international commitments. The proposal anticipates sunseting the expulsion policy, but the requirements for ending the program may never occur, thus creating an indefinite policy blocking asylum seekers at the southern border.
- Although the details are still unclear, it is possible that the proposal will include asylum processing at the border with expedited timelines that will hinder due process, including [restricting meaningful access to counsel](#), which is essential to fair proceedings.

- [Fast-tracked timelines](#) result in lower representation rates. The proposal is unlikely to provide enough time for an attorney to represent an asylum seeker and uncover the trauma at the core of their asylum case. Estimates for representing an asylum seeker in immigration court [conservatively range](#) from 40 to 125 hours of work. New DHS timelines established to expedite asylum processing [have already made it more difficult for asylum seekers to obtain counsel](#).
- The proposed bill imposes a lifetime bar on immigration benefits if a migrant willfully fails to appear in immigration court. While compliance with court appearances is necessary, a lifetime bar is extremely severe. There is widespread acknowledgement that a similar consequence enacted 20-years ago, the existing 3- and 10-year bars for people who stay in the U.S. without authorization, are unworkable and unfair. Such a penalty also implicates serious due process concerns: The existing court notice process is fraught with errors and inefficiencies – for example, CBP officers have entered [erroneous addresses](#) on court documents, court hearings days and times change regularly and frequently with no notice, and there is no central way for individuals to change their address with all immigration agencies.
- The proposal is expected to impose mandatory detention upon people who enter between ports of entry. In addition to being operationally challenging, such a potentially dramatic increase in the detained population will lead to prolonged lengths of stay, increase the risks of migrants falling ill or dying in custody, and subject migrants to additional trauma, including survivors of gender-based violence.
  - Mandatory detention will severely undermine fair access to asylum and legal relief because migrants will be held in geographically isolated areas away from attorneys or legal service providers. This will also compound [existing delays](#) in the asylum process and [decrease the likelihood](#) of an asylum grant.
  - Finally, the cost to expand prolonged detention would be dramatic. The FY2023 [projected average cost](#) of detaining a single adult is \$148.62 per day, and this proposal will skyrocket annual detention costs to many billions of dollars. In comparison, it would be far less expensive for the government to enroll people in a case management program operated by community-based organizations which can be as low as [\\$14.05 a day](#).
- Included in this proposal is an investment in digital systems that have the potential to improve communication between the different agencies that handle immigration, as well as increase access to information for the migrant.
- The proposal potentially alleviates USCIS’s backlog of asylum cases by providing additional funding for asylum officers.