

## **What You Need to Know About the Gang of 8's Backroom Deal with Senators Corker and Hoeven**

*This deal is still amnesty first, border security later (if ever). This framework is fatally flawed. It incentivizes more illegal immigration right away, as illegal aliens face few consequences and lax requirements to qualify for immediate amnesty and a special path to citizenship. Once amnesty is granted, all incentive to secure the border is lost, and nothing about this bill or the Schumer-Corker-Hoeven amendment will ensure that it happens. As a result, this bill repeats the mistakes of the 1986 amnesty, ensuring that the country's problems with illegal immigration will continue.*

### **The truth about Schumer-Corker-Hoeven "border security"**

1. Schumer-Corker-Hoeven maintains the Gang of 8's framework of immediate amnesty without border security first. It grants amnesty to the current illegal population as soon as the Secretary of Homeland Security gives notice that she has begun to implement *her strategy* to secure the border--due within 6 months of enactment--not when the border is actually secure.
2. The Schumer-Corker-Hoeven deal does not even pretend to require any additional border security until years after the entire illegal population has been granted amnesty. The amendment still gives the Secretary discretion to certify satisfaction of the bill's border security "triggers," which include:
  - The Southern Border Security Strategy is deployed and operational, meaning the "technology, infrastructure, and personnel *deemed necessary by the Secretary*" is in current use;
  - The Southern Border Fencing Strategy has been implemented and there are at least 700 miles of single-layer fencing in place;
    - Schumer-Corker-Hoeven waters down existing law on a border fence. The original Secure Fence Act of 2006 required 700 miles of double-layered reinforced fencing. Schumer-Corker-Hoeven only requires pedestrian fencing, and the bill explicitly says the DHS Secretary only has to build a second layer if she deems it "necessary and appropriate." *Furthermore, the deal still says that nothing in the bill should be construed to require the Secretary to build fencing in any particular location.*
  - The Secretary has "implemented" the new employment verification system in the bill (not that all employers are using the new system);
  - The Secretary is "using" the new electronic exit system at all international air and sea ports where U.S. Customs and Border Protection officers are *currently* deployed;
    - The amendment does nothing to change the bill's rollback of current law requiring a biometric exit system at all ports of entry, including land. Instead, it creates an outdated biographic system, which GAO has said will only hinder efforts to reliably identify overstays.

- No fewer than 38,405 Border Patrol agents are stationed on the southern border.
  - Under the Schumer-Corker-Hoeven amendment, not a single border patrol agent has to be hired before amnesty is put into place, and the Secretary has until 2021 to complete this. However, based on our experience with the Secure Fence Act -- which required 700 miles of double-layer, reinforced border fencing but never was built -- that the hiring of 20,000 border patrol agents might never happen.

The Schumer-Corker-Hoeven border security “enhancements” are weakened by the amendment’s adoption of a Gang of 8 provision that allows the border security and enforcement triggers to be ignored if, 10 years after enactment, litigation or an act of God has prevented just one of the triggers from being implemented, or if the trigger system has been held (or simply *challenged* in the Supreme Court as, unconstitutional).

3. Schumer-Corker-Hoeven does not require that illegal immigration actually be reduced, as it adopts the Gang of 8’s bogus “effectiveness rate” metric. Secretary Napolitano herself conceded this metric is meaningless, because by definition DHS has no idea how many illegal border crossings go undetected. As such, the measure is subject to limitless manipulation. And, Secretary Napolitano already believes the border is secure, as she stated on February 4, 2013: “I believe the border is secure. I believe the border’s a safe border.”

4. The Schumer-Corker-Hoeven deal pretends to allocate certain new technology to various sectors of the border, but, much like the underlying bill, it gives the Secretary the authority to *ignore* these instructions. The Secretary is allowed to: (1) reallocate the personnel, infrastructure and technology required by the plan, and (2) substitute the technology required in the plan with other technology she determines is equally effective, regardless of “the minimums” required by the plan. So Congress isn’t specifying the necessary border security measures--once again, the Secretary will decide.

5. Schumer-Corker-Hoeven extends the term of the toothless “Southern Border Security Commission,” for ten years, but does not give it any power. Thus, it is still not a check on executive action and now simply adds to already bloated government bureaucracy.

6. Schumer-Corker-Hoeven limits searches at the northern border to within 25 miles; current law allows border patrol to search vehicles within 100 miles of the northern border. It is unclear how this strengthens border security.

7. The Schumer-Corker-Hoeven deal still authorizes class action lawsuits against the government by illegal aliens suing to obtain amnesty or prevent border security measures from taking effect.

8. In a major concession that this bill will not stop illegal immigration, the Schumer-Corker-Hoeven deal requires the placement of up to 1,000 additional distress beacons for those who are injured or endangered while illegally crossing the border.

9. Schumer-Corker-Hoeven spends U.S. taxpayer dollars paying other countries to enforce foreign laws. It includes programs “to enhance the training, resources, and professionalism of border and law enforcement officials in Mexico, Honduras, El Salvador, Guatemala, and other countries, as appropriate.”

**This is amnesty.**

*This bill does not secure the border prior to granting legal status to illegal immigrants. Furthermore, it does not impose real, meaningful penalties. Instead, it rewards those who have broken the law with immediate legal status and a special path to citizenship.*

1. Like the Gang of 8, Schumer-Corker-Hoeven immediately authorizes illegal aliens to work and reside in the United States, grants them a Social Security number, gives them the ability to get a driver’s license, and allows them to travel outside the country.

2. The Schumer-Corker-Hoeven deal, just like the Gang of 8, allows employers to knowingly employ illegal immigrants who have applied or will apply for legalization under the bill, regardless of whether that application has any chance of being granted.

3. The Schumer-Corker-Hoeven amendment continues to allow 2.5 to 3 million illegal immigrants to become citizens in only five years, and many millions more to become citizens only three years after receiving a green card. Meanwhile, legal immigrants wait years outside the country just to receive a green card, and another five years to become citizens.

4. Schumer-Corker-Hoeven requires that illegal immigrants pay only \$2,000 in fines -- that can be paid in installments -- and a processing fee determined by the Secretary, which in many instances can be reduced or waived altogether. This is far less than the fees and fines required under the failed 2007 bill, which could have totaled up to \$8,000. The amount of these fees is unlikely to even equal the cost of obtaining a green card through our legal immigration system -- which can range from \$8,300 to over \$30,000 for an employment-based immigrant, and additional \$6,000 to \$12,000 often paid in legal fees.

5. The Schumer-Corker-Hoeven deal creates a loophole allowing certain people who have been in the country on a work-authorized non-immigrant visa for 10 years or more, but who have overstayed their visa, to obtain a green card without returning home to their country. This is a never-ending amnesty.

**This deal includes at least \$46 billion in new spending, and that spending is within the complete discretion of the Obama Administration.**

*The Schumer-Corker-Hoeven deal gives the Obama Administration a \$46 billion blank check for immigration spending. Since the Administration has already refused to enforce many immigration laws, you can bet this money is going to special interests rather than border security or interior enforcement.*

1. Schumer-Corker-Hoeven drastically increases spending compared to the existing Gang of 8 bill, by authorizing over \$46 billion in new spending. The bill still says that only \$8.3 billion must be paid back to the taxpayers through fee increases on legal immigrant visas. So the claim that the bill is entirely paid for by fees is no longer true under the amendment

**The deal stifles interior enforcement.**

*This deal would continue the Obama Administration's unwritten policy that illegal immigrants who get past our border have the freedom to live in the United States without hindrance by our interior enforcement agencies. This assures the incentives for illegal immigration will not be changed and future waves of illegal immigration will continue, as noted by the Congressional Budget Office.*

1. The Schumer-Corker-Hoeven deal almost completely halts deportation of illegal immigrants for two and a half years by prohibiting immigration law enforcement from detaining illegal immigrants. It also halts removal proceedings already underway if an illegal immigrant even *appears* eligible for amnesty. The deal even allows illegal aliens who have been ordered removed to apply for amnesty and remain in the country, and those who have already been deported to apply for amnesty while outside the country.

2. Schumer-Corker-Hoeven generally prohibits enforcement of immigration laws at "sensitive locations," which the DHS Secretary gets discretion to define. Sensitive locations include hospitals and health clinics; public and private schools of all educational levels (including vocational and trade schools); organizations assisting children, pregnant women, victims of crime or abuse, or individuals with mental or physical disabilities; churches, synagogues, mosques, and other places attached to places of worship; and such other locations as the DHS Secretary determines.

3. The Schumer-Corker-Hoeven deal prohibits border patrol from returning illegal immigrants to their country during night hours in many situations, even though apprehensions disproportionately occur at night.

4. The Schumer-Corker-Hoeven deal fundamentally alters well-settled legal principles underlying the probable cause and reasonable suspicion standards required to make an arrest, conduct a stop and conduct a search. Specifically, the bill codifies Justice Department policies

prohibiting *all federal law enforcement officers* from using race or ethnicity to any degree when making routine or spontaneous law enforcement decisions, such as ordinary traffic stops. If Congress wishes to make such an unprecedented change in criminal law and procedure, it should examine this issue outside the contours of a 1,200 page immigration bill to avoid unintended consequences and allow all federal law enforcement agencies to weigh in.

5. The Schumer-Corker-Hoeven deal creates a new permanent, rolling amnesty for future visa overstays by waiving illegal presence bars and allowing them to obtain green cards.

6. It appears that the Schumer-Corker-Hoeven deal attempts to codify President Obama's anti-deportation policies by requiring the Secretary to address 90 percent of those admitted to the country within six months of enactment who have overstayed their visa. The Secretary is given the option to (1) initiate removal proceedings, OR (2) simply confirm that an immigration judge has granted legal status, OR (3) *administratively close the case*. Given this administration's track record, it's no mystery which option Secretary Napolitano would choose. Due to what appears to be a drafting error, this provision is likely inoperable; however, it deserves significant scrutiny and should be monitored for changes.

**The deal lets criminal aliens stay in the country.**

*Although unthinkable, this deal creates multiple loopholes for criminal aliens to get amnesty and stay in this country.*

1. The Schumer-Corker-Hoeven deal gives the DHS Secretary broad authority to waive deportation for certain criminal activity, thus allowing criminals to get amnesty. It specifically preserves the Gang of 8's language blessing the Secretary's authority to refuse to deport illegal immigrant *criminals* who are ineligible for amnesty under the bill (and, in some cases, gives the Secretary discretion to grant them amnesty anyway), stating that nothing in the provisions making certain criminals ineligible "shall be construed to require the Secretary to commence removal proceedings against an alien."

2. Section 3707 of the bill decriminalizes individual acts of passport fraud and attempted passport fraud in many circumstances. While current law criminalizes all such acts, the Schumer-Corker-Hoeven deal keeps the Gang of 8's provisions rolling back current law to target only "document mills" that produce large volumes of false passports and immigration documents.

3. The Schumer-Corker-Hoeven deal would continue to allow many members of criminal gangs -- potentially including members of notoriously violent drug cartels and MS-13 -- to gain entry and the legal right to remain in the country. Those provisions make a gang member inadmissible only if he has "been convicted of an offense for which an element was active participation in a

criminal street gang,” and, even then, only where it can be proven the individual was actively seeking to further the activities of the gang.

4. Schumer-Corker-Hoeven specifically allows illegal immigrants who have been convicted of drunk driving to be granted amnesty, and it allows deportation of illegal aliens convicted of drunk driving offenses only after their third conviction -- which would make them a felon in most states. Also, they only get deported if 1 of those 3 drunk driving offenses happened *after* this deal becomes law.

**This deal continues to treat illegal immigrants better than U.S. citizens and legal immigrants.**

*Illegal immigrants are given preferential treatment under this deal. Illegal immigrants will get an affirmative action preference for hiring, fee waivers, taxpayer-funded lawyers, more opportunities to bring lawsuits that clog up our courts, expedited citizenship, and in-state college tuition.*

1. The Schumer-Corker-Hoeven deal, like the Gang of 8 bill, creates *de facto* affirmative action for illegal immigrants. Under this bill, those amnestied will be eligible to work, but will not be eligible for the Obamacare subsidies. Under Obamacare, employers are required to pay as much as a \$3,000 penalty for most employees that receive a healthcare exchange subsidy. A former illegal immigrant who receives amnesty will not trigger the \$3,000 penalty on the company. Therefore, employers will have a substantial incentive to hire or retain former illegal immigrants, rather than current citizens.

2. Schumer-Corker-Hoeven waives several bars to admission for illegal immigrants (including public charges, people who have ignored a notice to appear to answer deportation charges, people who have been deported in the past, and those who have committed document fraud). But it doesn't grant these waivers for legal immigrants.

3. The Schumer-Corker-Hoeven deal, like the Gang of 8, allows the Secretary to waive or limit fees for classes of illegal immigrants, while all legal immigrants must pay the fees associated with their visa applications.

4. There is no change from the Gang of 8's provisions allowing DHS to appoint counsel to illegal aliens fighting deportation *at taxpayer expense* -- a privilege not enjoyed by U.S. citizens in the vast majority of civil cases.

5. The Schumer-Corker-Hoeven deal preserves the Gang of 8's language allowing illegal immigrants denied amnesty to sue the Department of Homeland Security for amnesty in federal court. And they're given two appeals, which is better treatment than most U.S. citizens or legal immigrants get.

6. Schumer-Corker-Hoeven purports to disallow Social Security credit for work done illegally but is rendered meaningless by a gaping loophole that allows individuals to simply attest that they were authorized to do so -- without any evidence or documentation to prove it.

7. Schumer-Corker-Hoeven repeals current law prohibiting states from treating illegal immigrants better than out-of-state U.S. citizens, thereby encouraging states to give in-state tuition to illegal immigrants.

**This deal is full of handouts to special interests and political cronies.**

*Washington is great at giving handouts to special interests, and this deal is no exception.*

1. The Schumer-Corker-Hoeven deal, like the Gang of 8 bill, creates a new bureaucracy, the Office of Legal Access Programs, to provide illegal aliens with "legal orientation programs" and other services -- including legal services -- to illegal immigrants in deportation hearings.
2. The Schumer-Corker-Hoeven deal still creates a "slush fund" for nonprofits that help implement the amnesty. The deal also authorizes DHS to award newly-created "Initial Entry, Adjustment, and Citizenship Assistance" (IEACA) grants to nonprofit organizations that help illegal aliens navigate the amnesty process. The bill gives \$100 million for IEACA grants for the first five years and a potentially unlimited amount of taxpayer funds for every year thereafter.
3. The deal authorizes at least \$50 million for grants to nonprofits that advertise and promote the new amnesty, and to assist illegal immigrants in completing applications for amnesty, green cards, and citizenship. In all likelihood, these funds will be distributed almost entirely to groups who helped write the bill, like La Raza and the American Immigration Lawyers Association.
4. Schumer-Corker-Hoeven also establishes an Office of Citizenship and New Americans, apparently modeled on offices established by Governor Andrew Cuomo in New York and Mayor Rahm Emanuel in Chicago, to coordinate "immigrant integration" and establish local entities to promote citizenship.
5. The deal struck under Schumer-Corker-Hoeven retains provisions from the Gang of 8 bill authorizing up to \$100 million over 5 years for grants to organizations, which provide direct assistance to aliens applying for legal status, including citizenship, and to educate aliens on the rights and responsibilities of U.S. citizenship, English language, and civics, including U.S. history and the Constitution. Under the current administration, it is likely these funds will almost entirely be distributed to the left-leaning groups who helped to write the bill.
6. Schumer-Corker-Hoeven keeps the Gang of 8's creation of a nonprofit "United States Citizenship Foundation" to help convince immigrants to seek citizenship, as well as provide

direct assistance to aliens seeking legal status (including legalization, green cards, and citizenship). This organization is authorized to give grants to nonprofits, again channeling money to the bill's supporters.

7. The deal keeps the "Task Force on New Americans," comprised of various agency heads, to coordinate "immigration integration" issues, including: access to education programming, workforce training, health care policy, access to naturalization, among others. The Task Force will review and recommend changes to policies impacting new immigrants, including developing legislative proposals. In essence, this section establishes a government office to develop and lobby for laws that benefit illegal immigrants.

8. Under the Schumer-Corker-Hoeven deal, the new merit-based points system grants as many points for being a "primary caregiver" and having a U.S. citizen sibling as it does for having a Master's degree.

**This deal is full of kickbacks and buyoffs -- provisions that give certain Senators their pet projects in exchange for their votes.**

*With Obamacare, we saw the Cornhusker Kickback and the Louisiana Purchase. In this deal, we have the Begich & Murkowski Buyoff, the Collins Kickback, and the Sanders Slush Fund.*

1. Begich & Murkowski Buyoff (Begich amendment 1493) - gets cheaper foreign labor for Alaskan seafood processors, by allowing unlimited foreign workers into Alaska's seafood processing industry; (Murkowski amendment 1329) - extends the J-visa Summer Work Travel Program to seafood processing positions only in Alaska.

2. Collins Kickback (Collins amendment 1255) - Section 1104 of Schumer-Corker-Hoeven takes increased emergency preparedness and operational readiness funds that were included to help border states deal with cross-border illegal activity and allows all other states to get a slice of the pie.

3. Sanders Slush Fund (Sanders amendment 1283) - creates a "Youth Jobs Fund" for FY 2014-2015 using \$1.5B from U.S. Treasury, to be repaid through fees. The goal of the Fund is to "provide summer and year-round employment opportunities to low-income youth."

4. Carper's Cut (Carper amendment 1273) - establishes a pilot program to notify nonimmigrants that their visas are about to expire, but only lasts one year and merely requires report. Nothing else is required.

5. Hatch Handout (Hatch amendment 1249) - precludes Social Security credits for unauthorized work, but includes an exception that swallows the rule by allowing an alien to attest that he was authorized to work, even though no records exist to prove it.



6. Schumer Shelter (Schumer amendments 1190, 1193) - exempts public universities that hire H-1B nonimmigrants from the prohibition against displacing U.S. workers and nonprofit education and research institutions from the definition of H-1B dependent employers.
7. King-Johnson Carve Out (King-R. Johnson amendment 1527) - adds a new subtitle to the bill entitled "Providing Tools to Exchange Visitors and Exchange Visitor Sponsors to Protect Exchange Visitor Program Participants and Prevent Trafficking."
8. Leahy Limelight (Leahy amendment 1183) - grants special treatment to Hollywood by waiving fees for artist O and P visas if not processed within 14 days.
9. Kirk Comp (Kirk amendments 1239 & 1503) - allows a person who has served for at least one year in the military and received honorable discharge and certain combat medals to become a citizen without meeting the English language requirements; knowledge and understanding of the fundamentals of the history and of the principles and form of government of the United States; or the good moral character requirement.

**This deal continues to hand over power to President Obama and the Executive Branch.**

*President Obama has shown that he will not enforce existing immigration laws. Yet this deal drastically expands the Executive Branch's authority, giving it the freedom to remain unaccountable to the American people.*

1. The deal authorizes unelected Executive Branch immigration judges to "exercise discretion" and allow illegal immigrants to remain in the country whenever the judge determines deportation "is against the public interest or would result in hardship to the alien's U.S. citizen or lawful permanent resident ("green card") parent spouse or child."
2. The Schumer-Corker-Hoeven deal provides that Secretary may "exercise discretion to waive a ground of inadmissibility or deportability if the Secretary determines that such removal or refusal of admission is against the public interest" or would result in "hardship" to the alien's U.S. citizen or lawful permanent resident ("green card") parent spouse or child. This is an exceptionally broad standard, and it is difficult to imagine a case to which it does not apply.
3. Schumer-Corker-Hoeven requires the Secretary, along with entities she approves, to advertise and promote the amnesty program (in various languages) on TV, print, radio, and social media, spending taxpayer dollars to encourage illegal immigrants to seek amnesty under the bill.