

Attn: Legislative Assistant for Immigration Policy

**A Legislative Analysis of:
BORDER PROTECTION, ANTITERRORISM, AND
ILLEGAL IMMIGRATION CONTROL ACT
H.R. 4437 sponsored by Rep. James F. Sensenbrenner Jr. (R-WI)**

The Drum Major Institute for Public Policy (DMI) offers a framework for evaluating immigration policy. The framework centers on a two-part “middle-class test.” Part One requires that: immigration policy should bolster—not undermine—the critical contribution that immigrants make to our economy as workers, entrepreneurs, taxpayers, and consumers. Part Two holds that: immigration policy must strengthen the rights of immigrants in the workplace. To the extent that a proposed policy fulfills both parts of the test, we argue that it will help to strengthen and expand the American middle class, enhancing opportunities for all Americans to realize the American dream. We assign legislation a letter grade based on how well it matches up to each of these objectives.

A complete explanation of the framework and rationale for each part of the test is fully laid out in “**Principles for an Immigration Policy to Strengthen and Expand the American Middle Class: A Primer for Policymakers and Advocates**” available at www.drummymajorinstitute.org.

Description: The Border Protection, Antiterrorism, and Illegal Immigration Control Act increases immigration penalties, creates new criminal immigration offenses, steps up enforcement of immigration law and expands the list of violations that render a non-citizen deportable. Unauthorized entry and presence in the United States, currently civil violations, would become felony crimes, punishable by more than a year in jail. The bill imposes mandatory minimum sentences for immigrants convicted of re-entering the country after deportation, requires mandatory detention of undocumented immigrants for an indefinite period of time, and increases the expedited removal of immigrants without judicial review. Mandatory employer verification of every employee’s immigration status would be required after six years. The bill also increases security along the United States border and provides for increased use of military surveillance equipment.

Middle-Class Test Part One: Immigration policy should bolster — not undermine — the critical contribution that immigrants make to our economy as workers, entrepreneurs, taxpayers, and consumers.

Grade: D

The American middle class relies on the economic contributions of immigrants. Yet the Border Protection, Antiterrorism, and Illegal Immigration Control Act does nothing to acknowledge

immigrants' economic contributions and, in fact, newly criminalizes their presence in the country. In effect, the bill endorses a policy of deporting more than 10 million undocumented immigrants currently helping to support the American economy. The bill receives a D in this category rather than an even lower grade because of the implausibility that this effort will succeed: the Department of Homeland Security and Department of Justice do not have the capacity to prosecute, incarcerate, and deport 10 million people, suggesting that a large number will continue to live and work in the United States whether or not this legislation becomes law. The bill's objectives are so impracticable that it could not completely undermine the economic contributions of the undocumented immigrants it targets.

Middle-Class Test Part Two: Immigration policy must strengthen the rights of immigrants in the workplace.

Grade: F

When immigrants lack rights in the workplace, labor standards are driven down and all working people have less opportunity to enter or remain part of the middle class. While this bill aims to remove undocumented workers from American workplaces, the more likely effect would be to drive them further underground. By criminalizing the presence of undocumented immigrants in the United States and increasing the severity of criminal penalties, the bill would give undocumented workers much more reason to fear asserting their rights in the workplace. This, in turn, would render them even more vulnerable to intimidation and exploitation by unscrupulous employers, who can threaten jail and deportation if they complain about workplace conditions, than they are today.

Moreover, as felons, undocumented immigrants would likely be ineligible for any guest worker program or other opportunity to regularize their immigration status in the future. This would ensure the continuous presence of a desperate, disempowered, underground workforce competing in the labor market with American citizens and would perpetuate a race to the bottom in which employers, especially those in industries requiring unskilled labor, are driven to restrict wages and benefits and degrade employee working conditions in an effort to compete with companies that employ undocumented workers under substandard conditions. For this reason, as is discussed more extensively in "Principles for an Immigration Policy to Strengthen and Expand the American Middle Class," this bill would have a severely negative impact on the workplace conditions and living standards of the American middle class.

The Drum Major Institute for Public Policy is a non-partisan, non-profit organization dedicated to challenging the tired orthodoxies of both the right and the left.
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