H.R. 6136 Border Security and Immigration Reform Act of 2018 (Rep. Goodlatte, R-VA)

CONTACT: Jennifer Weinhart, 202-226-0706

FLOOR SCHEDULE:

H.R. 6136 is expected to be scheduled for consideration on June 27, 2018, under a rule.

TOPLINE SUMMARY:

H.R. 6136 would reform America's immigration system by limiting chain migration, providing funding for a southern border wall, enforcing biometric entry-exit tracking, and providing a pathway to citizenship through a temporary, merit-based system for DACA eligible individuals and children of certain worker visas.

COST:

A Congressional Budget Office (CBO) estimate is not yet available.

The bill would authorize and advance appropriate $23.4 billion in border wall funding. The bill would also authorize additional appropriations.

CONSERVATIVE VIEWS:

Some may be pleased that this legislation would authorize and advance appropriate $23.4 billion in border wall funding. If the funding is transferred or not obligated, the green cards under the new merit based program would not be available. Some conservatives may be concerned that if the money is transferred or not obligated the DACA eligible population would still be able to apply for six-year, indefinitely renewable legal status. Others may be concerned that only a minimum amount of the money will be spent, allowing the merit-based program to give out green cards even if the border has not been fully secured.

Conservatives will be pleased this legislation would require full implementation of biometric entry-exit screening. Not only has this program been authorized for some time, but the 9/11 Commission found that the program would have alerted authorities to the presence of five of the hijackers in the United States prior to the attack.

Some conservatives may be pleased the bill would elevate the standard for asylum, requiring those in expedited removal proceedings with a credible fear, to demonstrate a "significant possibility" exists that the alien would likely get asylum or have removal put on hold. Because a significant number of individuals were found to have a "credible fear" under the Obama

Administration, leading to asylum claims that were baseless, this heightened standard would ensure only those truly facing persecution would go through the asylum process. It would close a loophole that provided unaccompanied minors two chances for asylum review.

Some conservatives may feel that providing a legal, renewable status to DACA recipients constitutes amnesty. Many believe DACA, like DAPA which was adjudicated by the Supreme Court, is unconstitutional, and that we should not reward illegal immigrants that broke the law with renewable legal status. Some conservatives may further believe that it would set a very bad precedent for the Legislative Branch to codify and expand an illegal, unconstitutional action by the Executive Branch.

Further, some conservatives may be concerned that creating a temporary, merit-based immigration system for a population of individuals already in the country, constitutes a special pathway to citizenship that is not available to the millions of others that would like to legally immigrate to the United States. Some conservatives may believe that if a pathway to citizenship is permitted for illegal immigrants, it should be by taking advantage of the current-law immigration system, rather than by establishing a new pathway.

The new merit-based program would only apply to DACA-eligible individuals and children of recipients of certain visa recipients. This population represents only a fraction of the millions of people seeking legal admittance to the United States. The merit-based immigration system would not be available to the other individuals seeking legal admittance to the United States. Some may be concerned that this is not a true shift to a merit-based immigration system as it is temporary – once the green cards are allotted to the eligible population, the merit-based program would go away. Some conservatives would like to see more of America's immigration system shift to a merit-based approach, particularly to be applicable to new immigrants who are not already residing in the United States.

Other conservatives feel that Congress should provide a permanent legal status for DACA recipients, as these children may have been brought into the United States by their parents with no fault of their own, and many of whom no longer have a connection with their home country. Some believe that providing a new special pathway to citizenship is appropriate as it does not only apply to DACA eligible individuals, but also applies to the children of E1, E2, H-1B, and L visas recipients.

Some conservatives will be pleased that this legislation would end the diversity visa lottery, which provided 55,000 visas to people from countries with low immigration rates into the U.S. Some may also be pleased that this legislation halts two categories of chain migration, eliminating the F3 (married sons and daughters of U.S. citizens, and their spouses and minor children (23,400 visas)) and F4 (brothers and sisters of U.S. citizens, and their spouses and minor children, provided the U.S. citizens are at least 21 years of age (65,000 visas)) categories.

Some conservatives may be concerned that instead of eliminating the green cards originally issued under the diversity visa program and the F3 and F4 categories, most of these green cards will instead be reallocated to the new merit-based pathway to citizenship for DACA eligible individuals and the children of E1, E2, H-1B, and L visas recipients. Other conservatives may be concerned that this legislation does not end extended chain migration in its entirety, preserving all immediate relative visas, including for parents, and F1 visas (unmarried sons and daughters of

U.S. citizens, and their minor children, if any (23,400 visas)) and F2 visas (spouses, minor children, and unmarried sons and daughters (age 21 and over) of Lawful Permanent Resident (LPRs). At least 77 percent of all visas available for this category will go to the spouses and children; the remainder is allocated to unmarried sons and daughters (114,200 visas)). Some conservatives may be pleased that some visas from the eliminated categories will be reallocated toward employment visas.

Some conservatives will be concerned that this legislation does not include mandatory E-Verify. House republicans have long fought for mandatory nationwide E-Verify to crack down on illegal aliens working in the United States.

Some conservatives will also be concerned that this legislation does not defund sanctuary cities. While it does provide for a private right of action for victims of aliens released by sanctuary jurisdictions, the bill does not prohibit federal funds from going to the jurisdictions that openly disobey federal immigration law. Many sanctuary cities and jurisdictions have seen increased crime, including violent crime, resulting from actions of those in the United States illegally.

Some conservatives may be pleased the bill would include some interior enforcement priorities, such as ending catch and release and allowing for removal of alien gang members.

Some conservatives may be concerned about the separation of parents and children at the border. This legislation would address the Flores Settlement and clarify that minors not be separated from their parents while charges are pending if the parent is being charged with a misdemeanor illegal entry and crosses the border with their minor child. Illegal aliens crossing with or without their children two or more times are charged with felonies, and therefore this provision would not apply. Generally, children are only separated from their parent if the parent is not actually their legal parent or guardian, the parent is a threat to the child, or the parent enters prosecution proceedings.

Some conservatives may be pleased the bill would allow for the safe expedited removal of unaccompanied alien children from noncontiguous states in the same manner as contiguous states (Mexico and Canada).

Finally, some conservatives may be concerned that this legislation was introduced on June 19, 2018, giving members a very short window during which they can examine proposed complex immigration policy.

Last year, RSC undertook an initiative entitled Three Promises for Three Months, calling for Congress and the Administration to secure America's southern border.

- **Expand the Size and Scope of the Federal Government?** This legislation provides an overall net reduction in immigration into the United States but it creates a new merit-based immigration system for certain individuals. The bill would provide significant funding for border security improvements.
- **Encroach into State or Local Authority?** This legislation would encourage state and local authorities to work with federal authorities in enforcing immigration law.
- **Delegate Any Legislative Authority to the Executive Branch?** This bill would provide some administrative flexibility to the Executive Branch.

- **Contain Earmarks/Limited Tax Benefits/Limited Tariff Benefits?** No.

DETAILED SUMMARY AND ANALYSIS:

Last September, President Trump announced his Administration would be ending the Deferred Action for Childhood Arrivals (DACA) program created under President Obama. While his announcement came with a 6-month delay for Congress to act, the end of the program has been subsequently tied up in federal courts, removing the impetus for the March deadline. This broader discussion on what to do with individuals who were brought across the border as children has provided a window to address immigration policy, including securing our southern border, on a larger scale.

Some members of the Republican Conference filed a discharge petition to force a vote on immigration legislation, needing the requisite 218 members. While this petition has yet to be successful, voting on legislation included in the discharge petition would "turn off" the petition mechanism. Last week, Speaker Ryan announced that the House would be voting on two pieces of immigration legislation, including H.R. 6136.

Immigration Statistics

There are an estimated 11.1 million illegal immigrants in the United States. Of those, roughly 1 million have committed a criminal offense. About 8 million unauthorized immigrants are participating in the civilian workforce as of 2014. An estimated 40 percent of illegal aliens in the United States have resulted from visa overstays. Roughly 34 million immigrants legally live in the United States – including those who have obtained green cards, and those that have received temporary visas. In FY 2016, almost 805,000 people received legal status through family based visa categories. Family based immigration is the most common path to obtaining a green card and is responsible for almost 70 percent of green cards allocated annually, whereas only 12percent of green cards issued are allocated to employment-based immigrants.

H.R. 6136 would reform America's immigration system by limiting chain migration, providing funding for a southern border wall, enforcing biometric entry-exit tracking, and providing a pathway to citizenship through a temporary, merit-based system for DACA eligible individuals and children of certain worker visas.

Division A – BORDER ENFORCEMENT

Title I – Border Security

Subtitle A – Infrastructure and Equipment

This title would direct DHS to construct, install, deploy, operate, and maintain tactical infrastructure and technology in the vicinity of the United States border to deter, impede, and detect illegal activity in high traffic areas. Infrastructure would include physical barriers, fencing, border wall systems, and levee walls. In doing so, the bill would direct the Secretary of Homeland Security to consult with the Secretary of the Interior, the Secretary of Agriculture, the Governors for each State on the

southern and northern land borders, other local governments, Indian tribes, representatives of the U.S. Border Patrol and U.S. Customs and Border Protection, relevant Federal, State, local, and tribal agencies that have jurisdiction on the southern land border. DHS would also be directed to consult with private property owners in the United States to minimize the impact on the environment, culture, commerce, quality of life for the communities and residents located near the sites at which physical barriers, tactical infrastructure, and technology are to be constructed.

Authorization for the construction of a 700-mile border fence is found in the Secure Fence Act of 2006, which was signed into law by President George W. Bush in 2006. While the U.S. has already built 653 miles of fencing along the southern border, extending the border wall would be a costly endeavor. It is estimated that completing the 2,000 miles of fencing along the border could cost up to $31.2 billion, not including yearly maintenance costs.

U.S. Customs and Border Patrol Activity

DHS would be required to ensure that no fewer than 95,000 annual flight hours are carried out by U.S. Customs and Border Protection Air and Marine Operations, and that Air and Marine Operations operate unmanned aerial systems on the southern border of the United States for not less than 24 hours per day for five days per week. DHS would further be directed to deploy specified assets and capabilities, including tower-based surveillance technology, subterranean surveillance and detection technologies, and man-portable unmanned aerial vehicles to specified sectors and transit zones. It would further direct the Department of Homeland Security to require border patrol agents to place themselves close to the border as physically possible, and would require DHS to document approved baselines, costs, schedules and compliance with Federal Acquisition Regulation Guidelines for major border security technology acquisition programs.

U.S. National Guard

This Title would authorize the Governor of a State, with the approval of the DHS Secretary and Secretary of Defense, to order any units or personnel of the National Guard of such State to perform operations and missions under section 502(f) of title 32, United States Code, along the southern border to assist U.S. Customs and Border Protection to achieve situational awareness and operational control of the border. The National Guard would have the authority to: construct reinforced fencing or other barriers; operate ground-based surveillance systems; operate unmanned and manned aircraft; provide radio communications interoperability between U.S. Customs and Border Protection and State, local, and tribal law enforcement agencies; construct checkpoints along the Southern border to bridge the gap to long-term permanent checkpoints; and provide intelligence support. The secretary may reimburse states.

Prohibitions on actions that impede border security on certain federal land

This section would prohibit the Departments of Interior and Agriculture from impeding or restricting CBP activities within 100 miles of the Southern border.

Landowner and Rancher Security Enhancement

This section would direct the Department of Homeland Security to establish National Border Security Advisory Committee which may advise, and make recommendations to the DHS Secretary on matters relating to border security matters, including verifying security claims and the border security

metrics and, discussing ways to improve the security of high traffic areas along the northern border and the southern border.

Carrizo Cane and Salt Cedar

This section would direct the DHS Secretary, after coordinating with the heads of the relevant Federal, State, and local agencies, shall begin eradicating the carrizo cane plant and any salt cedar along the Rio Grande River not later than September 30, 2022.

Southern Border Threat Analysis

This section would direct the DHS Secretary to submit a Southern Border Threat Analysis report to Congress including an assessment of current and potential terrorism and criminal threats posed by individuals and organized groups seeking to unlawfully enter the United States through the Southern border; or to exploit security vulnerabilities along the Southern border.

Agent and Officer Technology Use

This section would require DHS to ensure that technology that is put into use is provided to front-line agents and officers.

Integrated Border Enforcement Teams

This section would establish the Integrated Border Enforcement Team (IBET) program to allow for detection, prevention, investigation and response to terrorism and law violations pertaining to border security generally related to the northern border.

Tunnel Task Forces

This section establishes the Tunnel Task Force program, to investigate and remediate threats posed by cross-border tunnels.

Pilot Program on the use of Electromagnetic Spectrum For Border Security Operations

This pilot program would allow for the identification of unauthorized spectrum use and jamming and hacking of communications.

Foreign Migration Assistance

This section would permit DHS to provide financial assistance to a foreign government for foreign country operations to address migrant flows that may affect the U.S. The Secretary could seek reimbursement from the receiving foreign government. This legislation would authorize $50 million for FY19-FY23.

Biometric Identification Transnational Migration Alert Program (BITMAP)

This section would establish the Biometric Identification Transnational Migration Alert Program (BITMAP), to address and reduce threats to national security, border security, and public safety, before they reach the border. The Secretary would be required to report on agreements with foreign countries to carry out BITMAP operations to Congress.

Subtitle B - Personnel

Customs and Border Patrol Staffing

This section would direct the Commissioner of U.S. Customs and Border Protection (CBP) to hire, train, and assign sufficient agents to maintain an active duty presence of not fewer than 26,370 full-time equivalent agents, and hire sufficient agents for CBP Air and Marine Operations to maintain not fewer than 1,675 full-time equivalent agents and not fewer than 264 Marine and Air Interdiction Agents for southern border air and maritime operations. It would direct DHS to hire, train, and assign 27,725 customs officers. The commissioner would be directed to deploy not fewer than 300 new K–9 units, with supporting CBP officers and other required staff, at land ports of entry and checkpoints, on the southern border and the northern border. It would also require the hiring and training of at least 550 special agents in the Office of Professional Responsibility and at least 700 employees for U.S. Customs and Border Protection Office of Intelligence. It would further provide for the hiring of other personnel in various categories. It would require a GAO report if staffing levels are not met by September 30, 2022.

This legislation would also provide for direct hire authority and recruitment and relocation bonuses, retention bonuses, and special pay for CBP officers assigned to remote/hard-to-fill posts.

Anti-Border Corruption Reauthorization Act

This section would provide hiring flexibility by providing exemptions for the CBP to waive the polygraph for current state and local law enforcement officers that have already passed a polygraph, for federal law enforcement that have already passed intense background investigation, and for veterans with at least three years of service that have a clearance and have passed a background check.

Training for Officers and Agents of U.S. Customs and Border Protection

This section would require agents and officers to undertake 21 weeks of mandatory training, and provides for additional training for certain supervisors, in addition to continued education.

Subtitle C – Grants

This subtitle would establish within DHS, a program to be known as 'Operation Stonegarden', under which the Secretary would be directed to make grants to eligible law enforcement agencies, through the State administrative agency, to enhance border security, and would authorize $110 million for each fiscal year from 2019 to 2023 for such grants.

TITLE II – EMERGENCY PORT OF ENTRY PERSONNEL AND INFRASTRUCTURE FUNDING

This title would authorize the DHS Secretary to construct new ports of entry along the northern border and southern border and determine the location of any such new ports of entry. DHS would further be required to ensure that each U.S. Customs and Border Protection and U.S. Immigration and Customs Enforcement officer or agent is equipped with a secure two-way communication device, supported by system interoperability, that allows each such officer to communicate between ports

of entry and inspection stations; and with other Federal, State, tribal, and local law enforcement entities.

Border Security Deployment Program

The DHS Secretary would be directed to fully implement the Border Security Deployment Program of the U.S. Customs and Border Protection and expand the integrated surveillance and intrusion detection system at land ports of entry along the southern border and the northern border. In doing so, $33 million for each fiscal year between FY19-2023 would be authorized to be appropriated.

Upgrade of License Plate Readers

U.S. Customs and Border Protection would be required to upgrade all existing license plate readers on the northern and southern borders on incoming and outgoing vehicle lanes, and conduct a one-month pilot program on the southern border using license plate readers for one to two cargo lanes at the top three high-volume land ports of entry or checkpoints to determine their effectiveness in reducing cross-border wait times for commercial traffic and tractor-trailers. $125 million for fiscal year 2019-2020 would be authorized to be appropriated for the program.

Non-Intrusive Inspection Operational Demonstration

It would also require the deployment of a high throughput non-intrusive passenger vehicle inspection system at least three land ports of entry.

Biometric Entry-Exit System

DHS would further be required to submit to Congress an implementation plan to establish a biometric exit data system to complete the integrated biometric entry and exit data system required by section 7208 of the Intelligence Reform and Terrorism Prevention Act of 2004 (8 U.S.C. 1365b). DHS would additionally be required to establish a six-month pilot program to test the biometric exit data system on non-pedestrian outbound traffic at not fewer than three land ports of entry with significant cross-border traffic.

While Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act, authorizing biometric entry-exit tracking, a successful program has yet to be put in place. Following 9/11, the 9/11 Commission highlighted the importance of implementing the program as two of the hijackers were in the U.S. illegally. DHS estimates that roughly 629,000 people illegally overstayed their visas last year. While the U.S. largely tracks entries, we fall behind on tracking exits, leading to a lack of clarity as to how many individuals illegally overstayed their visas and remain in the U.S.

While conservatives generally support increased border presence, there remains the concern of ongoing cost.

A one pager, section-by-section, and executive summary from the House Committee on Homeland Security for similar legislation can be found here, and here respectively.

Authorization of Appropriations

This title would authorize an additional $21.25 billion ($4.25 billion for fiscal years 2019 through 2023) for emergency port of entry personnel and infrastructure funding, of which $2 million would

be used by the Secretary of Homeland Security for hiring additional Uniform Management Center support personnel, purchasing uniforms for CBP officers and agents, acquiring additional motor vehicles to support vehicle mounted surveillance systems, hiring additional motor vehicle program support personnel, and for contract support for customer service, vendor management, and operations management; and $250 million per to implement the biometric exit data system.

TITLE III – VISA SECURITY AND INTEGRITY

This title would expand Visa Security Units to the 75 highest risks posts worldwide, enhancing counterterrorism screening, provides additional training for international posts, and would create the Visa Security Advisory Opinion Unit. These Visa Security Units are integral in catching potential terrorists and criminals abroad, attempting to gain entry into the U.S. with valid visas. This title would provide for an additional visa fee in support of visa security.

It would require the CBP to screen passports using their biometric chips and facial recognition technology to screen Visa Waiver Program travelers.

Reporting on Visa Overstays

This title would also require DHS to report visa overstays to Congress each fiscal year. Visa overstay is believed to be responsible for up to 40% of illegal immigrants in the United States. According to the Committee, in FY16 CBP calculated almost 740,000 people overstayed their visas.

Student and Exchange Visitor Information System Verification

This Title would require DHS to ensure information contained in Student and Exchange Visitor Information System verification (SEVIS) is shared with CBP officers at all ports of entry.

Social Media Review

It would also require DHS to review the social media accounts of visa applicants and perform open source screening.

Cancellation of Additional Visas

This title would provide for all visas held by an alien to be invalid if an alien has overstayed any visas or violated any terms of nonimmigrant classification.

Visa Information Sharing

This legislation would allow the federal government to release certain data in visa records to foreign governments in certain instances, in order to help determine an individual's admissibility or removability, or for other instances in the national interest. It also allows for visa revocation records to be disclosed.

Restricting Waiver of Visa Interview

This section clarifies that national interest waiver authority for visa interviews can only be used after consultation with the Secretary for Homeland Security. Waivers could not be used for individuals

that are a national security concern or if they would compromise program integrity, nor can they be used to reduce workload for consular officers.

Authorizing the Department of State to Not Interview Certain Ineligible Visa Applicants

The Department of State would no longer be required to conduct visa interviews for nonimmigrant applicants if it is evident from the application that they applicant would be ineligible for a visa.

Petition and Application Processing for Visa And Immigration Benefits

All visa applications would be required to be signed by the applicant, with immigrant visa applications signed in the presence of a consular officer. All applications must be completed. Foreign language documents must be fully translated and certified.

Fraud Prevention

DHS would be required to submit a plan to congress on the integration of prospective analytics software into existing fraud detection techniques. This legislation would also require the completion of benefits fraud assessments by 2021 for certain visa categories.

Visa Ineligibility for Spouses And Children Of Drug Traffickers

This legislation would make spouses and children of drug traffickers ineligible to receive immigration benefits.

DNA Testing

This legislation would allow DHS to require DNA verification or relationships when necessary. It would also allow for DNA verification of classes and sub-classes of applicants.

Access to NCIC Criminal History Database for Diplomatic Visas

Biometric criminal background checks would be expanded to include a small class of diplomatic visa applicants. It would not require fingerprinting of diplomats.

Elimination of Signed Photograph Requirement for Visa Applications

This legislation would allow for unsigned applicant photos through the State Department's electronic visa application system.

Additional fraud detection and prevention

This legislation would allow for the State Department to use visa program fees for antifraud measures.

TITLE IV—TRANSNATIONAL CRIMINAL ORGANIZATION ILLICIT SPOTTER PREVENTION AND ELIMINATION

This title would make it illegal to not only bring aliens into the U.S. or harbor illegal aliens, but also to commit conspiracy to harbor or bring in illegal aliens to the U.S., punishable by up to 10 years in prison if the offense includes use of a firearm. It would also penalize attempt. Finally, it would provide for penalties pertaining to the destruction of border control devices, with enhanced penalties for commission with a firearm.

TITLE V – BORDER SECURITY FUNDING

This title would advance appropriate $23.4 billion to the "U.S. Customs and Border Protection – Procurement, Construction, and Improvements account," of which $16.625 would be for a border wall on the southern border, and $6.775 billion would be allotted for infrastructure, assets, operations, and technology to enhance border security. The border security enhancement funds could be used for technology, new roads and road improvements, facilities and ports of entry, aircraft and aircraft-based sensors, a biometric entry-exit system, and family residential centers.

Of the wall funds appropriated –

- $2,241,000,000 shall become available October 1, 2018;
- $1,808,000,000 shall become available October 1, 2019;
- $1,715,000,000 shall become available October 1, 2020;
- $2,140,000,000 shall become available October 1, 2021;
- $1,735,000,000 shall become available October 1, 2022;
- $1,746,000,000 shall become available October 1, 2023;
- $1,776,000,000 shall become available October 1, 2024;
- $1,746,000,000 shall become available October 1, 2025; and
- $1,718,000,000 shall become available October 1, 2026.

Of the Border Security Investment funds appropriated –

- $500,000,000 shall become available October 1, 2018;
- $1,850,000,000 shall become available October 1, 2019;
- $1,950,000,000 shall become available October 1, 2020;
- $1,925,000,000 shall become available October 1, 2021; and
- $550,000,000 shall become available October 1, 2022.

In both instances, funds would remain available for five years after the date specified.

The secretary would be required to include a multi-year spending plan in budget justification materials submitted in support of the President's annual budget request for FY 2020.

Contingent nonimmigrants and the children of E1, E2, H-1B, and L visas would not be able to obtain a green card if any of the funds are unobligated or rescinded, under the newly created merit-based program. If the money is rescinded, children of certain visa holders could still pursue a green card through existing pathways.

This title would also state that the budgetary effects of this act shall not be entered on either PAYGO scorecard.

DIVISION B – IMMIGRATION REFORM

Title I – Lawful Status for Certain Childhood Arrivals

Contingent nonimmigrant status eligibility and application.

This legislation would create a six-year indefinitely renewable status for "DACA eligible" individuals – those brought into the nation illegally as children, prior to 2007.

Eligible applicants include those physically present at the time of application, were physically present in the U.S. on June 15, 2007, were younger than 16 at the time of initial entry, are of good moral character, were under the age of 31 on June 15, 2012, has maintained continuous physical presence in the U.S. since June 15, 2002, had no lawful immigration status on June 15, 2012, and has requested the release of all records regarding their status and any juvenile court proceedings to be released to DHS.

It has been estimated that this population would total about 1.8 million individuals, including about 680,000 individuals who received DACA status. However, many conservatives may have concerned that there is no way to know the size of the eligible population. Further, conservatives may be concerned determining who is actually eligible could be susceptible to fraud and could serve as a magnet for future illegal immigration.

Applicants must demonstrate that they have enrolled in and are attending an educational institution in the U.S., or, they have acquired a diploma or degree from a U.S. high school or the equivalent. Either option must be proved with evidence, such as a diploma or certificate.

Individuals are ineligible for contingent nonimmigrant status if they:

- Have been convicted of a felony, an aggravated felony, a misdemeanor involving child abuse, domestic violence, assault resulting in bodily injury, or the violation of a protection order, misdemeanors involving driving under the influence, two or more misdemeanors that did not involve driving under the influence or bodily injury, any offense under foreign law other than purely political offenses, that would render an alien inadmissible if committed in the U.S.;
- Have been adjudicated delinquent in proceedings for an offense equivalent to an offense relating to murder, manslaughter, homicide, rape, statutory rape, sexual offenses involving minors, crimes of violence, or crimes under section 401 of the Controlled Substances Act;
- Has a conviction for any other criminal offense for which the individual has not satisfied restitution or any civil legal judgments to victims of the crime;
- are associated with a criminal gang;
- Are ineligible according to the general classes of aliens ineligible to receive visas and ineligible for admission under Section 212(a) of the Immigration and Nationality Act, with certain exceptions including those pertaining to Labor certification, aliens present without admission, stowaways, student visa abusers, certain document requirements, and other subsections pertaining to aliens unlawfully present;
- Are deportable under section 237(a) of the Immigration and Nationalist Act except in certain circumstances;
- Were an alien lawfully admitted for permanent residence, was admitted as a refugee or granted asylum, or is lawfully present in the U.S. under another nonimmigrant status;
- Have failed to comply with a removal order or voluntary departure agreement;

- Have been ordered removed in absentia;
- Have, if over the age of 18, failed to demonstrate that he/she is capable of supporting him/herself at 125 percent or above the federal poverty level throughout the period of admission as a contingent nonimmigrant, unless they are enrolled in and attending an education institution fulltime, except under limited circumstances;
- Are not delinquent in a tax liability;
- Have at any time been convicted of sexual assault.

Any period of time spent outside the U.S. authorized by the Secretary would not be considered a break for the requirement of continuous physical presence.

This section details the application process, requiring aliens to fill out an electronic application within one year of the date on which the interim final rule is published. The application would collect as much information as the Secretary deems necessary. The secretary could conduct in person interviews. Applicants would be required to furnish one or more of the following documents: passport or national identity document from country of origin, certified birth certificate with photo identification, a state-issued ID card with name and photo, a DoD issued Armed Forces ID card, a DHS issued Coast Guard ID card, a document issued by DHS, or a travel document issued by Department of State; a certified copy of the alien's birth certificate or certified school transcript; a certified transcript demonstrating compliance with (b)(3).

Applicants would be required to pay a processing fee, that will at minimum, result in recovery of any costs incurred in the process. Fees collected would be deposited into the Immigration Examinations Fee Account.

Aliens applying would also be required to pay a one-time border security fee to DHS in the amount of $1,000.

Applicants apprehended during the application period and that appear to be eligible would be given a reasonable opportunity to file during the application period and may not be removed until their application is denied, or the Secretary determines the removal is in the interest of national security, foreign policy interests, or public safety, or the alien must be released.

Aliens in the removal process during the application period that are eligible for contingent nonimmigrant status would be given the opportunity to file for status, and if they apply within the time period, would suspend their removal subject to a decision on their application.

Aliens that meet the eligibility requirements and have been ordered removed, shall be provided with the opportunity to apply for status, provided that they have not failed to comply with orders under section 239 or 240B of the Immigration and Nationality Act.

Eligible applicants with pending applications may not be removed during the adjudication period unless the Secretary determines that an alien is or has become ineligible, or if the Secretary determines an applicant's removal is in the national security, public safety, or foreign policy interests of the U.S.

Aliens would be required to submit biometric and biographical data, unless the Secretary provides for an alternative procedure for those who cannot supply biometric data.

The Secretary would be permitted to collect biometric, biographic data to conduct national security and law enforcement checks, determine ineligibility factors, perform additional screening if an alien is or was a citizen or resident of a region or country that poses a threat, or contains groups that pose a threat to the national security of the U.S.

DHS would be permitted to authorize work authorization renewals beginning on the date of enactment until a contingent nonimmigrant status is awarded upon application, if they possessed an Employment Authorization Document that was valid as of enactment and was issued pursuant to the original DACA decision in 2012. DHS could also grant employment authorization to aliens that appear prima facie eligible for contingent nonimmigrant status to those who attain the age of 15, after enactment, and demonstrate economic necessity.

Terms of contingent nonimmigrant status

Status would be awarded for six-year, indefinitely renewable terms, so long as applicants remain eligible.

Recipients would be permitted to work in the U.S. Recipients could be authorized to leave the U.S. by the Secretary and retain status and ability to reenter, so long as they are not absent for a continuous period in excess of 180 days during each 6-year period, unless the absence was due to extenuating circumstances beyond their control, or was a part of a recipient's duty service in the armed forces, and is otherwise admissible.

For recipients participating in study abroad programs, 60 of the absence days would not be counted toward the total period.

Contingent nonimmigrants would not be eligible for healthcare subsidies, refundable tax benefits, or public benefits.

Contingent nonimmigrants would not be eligible for naturalization solely because of their military service to the U.S. – though service could give an individual more points in the merit-based system described below.

Contingent nonimmigrants who no longer meet the eligibility requirements would be able to have their status revoked, as would those that use documentation issued in an unlawful or fraudulent manner, or make an unauthorized absence from the U.S.

Five years after an alien becomes a contingent nonimmigrant, the alien would be deemed to have been inspected and admitted into the U.S. for the purposes of an adjustment of status.

Judicial and Administrative Review

This title would provide for sole authority of administrative review.

The Secretary would be required to establish or designate appellate authority for a single level of administrative appellate review of applications/status/renewals. This section sets out the appeals process. Applicants would only be allowed one appeal.

Judicial review would be governed by Title 28, chapter 158.

This title would provide a prohibition on class actions and provides parameters for orders of prospective relief against the government.

Penalties

This title would provide for penalties for false statements in applications, including fines or imprisonment of not more than five years. It would also include a signature requirement for the application.

Information provided in non-fraudulent contingent nonimmigrant applications would not be able to be used to determine the applicant's parents' immigration status.

The Secretary would be required to make interim final rules to implement this title by June 1, 2019.

Title II – Immigrant Visa Allocations and Priorities

Diversity Visa Program

This title would eliminate the Diversity Visa Program and would put the 55,000 visas previously allotted in an escrow account.

Numerical limitations to foreign states

It would remove country caps for employment based visas over a three year period. It would raise the family-sponsored per-country rap to 15%. It would provide for the process for the transition of the allocation of visas for employment-based immigrants, allotting a certain percentage of visas in the spouses and unmarried children/married children categories to countries that were not one of the two states with the largest aggregate numbers of natives admitted in the prior year, through 2021. Visas made available under this section may not exceed 25% for a single foreign state, or 2% for dependent areas, of the total number of such visas. For unreserved visas, not more than 85% should be allotted to immigrants from a single foreign state. If, after following the above protocol, there are visas left over, they may be issued without regard to the protocol.

Family-based immigration

This title would provide cuts to the existing family-based immigration structure, eliminating the F3 and F4 visa categories for married children of U.S. citizens and siblings of adult U.S. citizens. F3 and F4 petitions would be halted on the day of enactment, though this legislation would provide one year of backlog relief for the categories.

Merit-based immigration system

This title would create a pathway to citizenship for those who have received contingent nonimmigrant status through this legislation and children of aliens admitted under H-1B, L, E1, or E2 visas that entered the U.S. initially as a child under 16 as a dependent of their parent. They must have maintained lawful status for ten years, with continuous physical presence in the U.S., except in accordance with their visa, and was not in unlawful status at the time of petitioning for a visa.

This title would establish a merit based immigration system for these individuals, awarding points for:

- Education

- 4 points for a diploma or degree from a foreign school that is comparable to a U.S. high school
- 6 points for a diploma or degree from a U.S. high school, or the equivalent for such a degree
- 8 points for an associate's degree or equivalent from a foreign school that is comparable to a U.S. higher education institution.
- 12 points for a bachelor's degree foreign school that is comparable to a U.S. higher education institution.
- 15 points for a degree for a recognized postsecondary credential.
- 15 points for a bachelor's degree from a U.S. higher education institution.
- 15 points for a graduate or professional degree, or its equivalent, from a foreign school that is comparable to a U.S. higher education institution.
- 17 points for STEM bachelor's degrees earned in foreign schools.
- 17 points for a graduate or professional degree from a U.S. higher education institution.
- 22 points for STEM bachelor's degrees earned in the U.S.
- 24 points for graduate STEM degrees from foreign institutions.
- 26 points for doctoral degrees from a foreign school that is comparable to a U.S. higher education institution.
- 28 points for a doctoral degree from a U.S. higher education institution.
- 30 points for graduate STEM degrees from U.S. higher education institutions.
- 30 points for doctorates of medicine or its equivalent from a comparable foreign institution.
- 34 points for doctoral STEM degrees from foreign institutions.
- 34 points for doctorates of medicine from U.S. higher education institutions.
- 40 points for doctoral STEM degrees from U.S. higher education institutions.
- Petitioners would be awarded points for each 2-year period of fulltime employment, equal to 1/3 of the points awarded for education for the lowest degree required for the employment position.
- 30 points for service in the regular or reserved components of the armed forces in active duty status for at least three years, and if discharged, was non dishonorably discharged.
- 2 points for the 5th decile on an English language proficiency test.
- 6 points for the 6th decile on an English language proficiency test.
- 7 points for the 7th decile on an English language proficiency test.
- 8 points for the 8th decile on an English language proficiency test.
- 9 points for the 9th decile on an English language proficiency test.
- 10 points for the 10th decile on an English language proficiency test.

Aliens would be permitted to amend their petition at any point with updated information pertaining to points.

The Secretary would be required to verify this information.

The visas eliminated under the diversity visa program and the eliminated family visas would be used for the merit based program. The secretary would award visas first to the applicant that is a

child of E1 and E2 visa holders with the highest total point scores greater than twelve. The Secretary would then do so for the child of an H-1B recipient with the highest total point score greater than twelve, then that of an L visa recipient, then the contingent nonimmigrant with the highest total point score greater than twelve. The Secretary would repeat this process until all visas are awarded. In the event of individuals with the same total point score, the applicant that filed earliest would receive the visa.

Petitioners with total point scores under 12 would not be eligible for a visa.

The worldwide level for contingent nonimmigrants and children of certain visa holders who could obtain visas under this title would be equal to 470,000 for FY2025, and, 78,400 for each fiscal year thereafter, plus any visas under this subsection for the previous fiscal year that went unused.

Contingent nonimmigrants or the children described in this Title may obtain a visa under this title by filing a petition. Contingent nonimmigrants could file a petition beginning on the date on which the alien obtained contingent nonimmigrant status, and ending on the date that is 5 years later. Children of certain visa holders may begin to file on October 1, 2019, and ending on October 1, 2020.

The Secretary of Homeland Security would be required to publish interim final rules by September 30, 2019

This title would provide for adjustments to the worldwide levels for different categories of immigration to reflect the reallocation of diversity visas and F3 and F4 visas to employment and merit-based categories. It would also provide a sunset for the merit-based category, as those visas will not be allocated once DHS has gone through the total number of eligible DACA-eligible and children of certain visa recipients.

Sunset

This legislation would provide for the merit-based program to terminate on the date on which no alien has a petition for visa or adjustment of status or appeal pending.

Repeal of suspension of deportation and adjustment of status for certain aliens

This section would terminate an offset that provides up to 5,000 diversity lottery green cards annually and up to 5,000 green cards for unskilled workers annually. It would also terminate special rules for cancellation of removal for certain individuals under the Nicaraguan Adjustment and Central American Relief Act of 1998, and ends the exemption from the annual limitation of grants for cancellation of removal under that same legislation as of FY2020.

TITLE III – UNACCOMPANIED AND ACCOMPANIED ALIEN MINORS APPREHENDED ALONG THE BORDER

Repatriation of unaccompanied children

This title would allow for the expedited removal of unaccompanied alien children from noncontiguous states in the same manner as contiguous states (Mexico and Canada). Meaning, all unaccompanied minors would be subject to expeditious return, unless they are victims of trafficking

or have a credible fear of persecution. It would provide for special rules for interviewing unaccompanied children. This title would require HHS to provide DHS with information regarding the individual with whom a child may be placed.

Accompanied minors

This title would clarify the "Flores decree." This legislation would clarify that there is no presumption that accompanied alien children not be detained. It would prevent minors from being separated from their parents while charges are pending, if the parent is being charged with a misdemeanor illegal entry and crosses the border with their minor child.

Illegal aliens apprehended crossing with or without their children are charged with felonies for second (and subsequent) offenses. Those charged with felonies or those charged with crimes in addition to misdemeanor illegal entry would not be able to be held as a family unit, and ultimately the children would be transferred to HHS custody.

Presently, children that are separated from their parents at the border are removed because their parent has entered the justice system as a result of illegally crossing the border. When the parent is moved into the custody of the U.S. Marshalls, the children are ineligible for care under by the Marshalls, because children are not being put in American jails. Upon completion of their parent's court case, if a parent receives an expedited removal order, children can be reunited with their parent and removed. If a parent claims asylum, the asylum process would take place, possibly with the parent in custody. Separation of a child only happens when an individual falsely represents themselves as a parent, is a threat to the child, or if the parent is in criminal proceedings. Families that enter through ports of entry and claim asylum are not immediately separated.

On June 20, 2018, President Trump signed an Executive Order calling for families to be detained together while in the custody of the Department of Homeland Security while proceedings concerning criminal improper entry or immigration are occurring, unless it poses a risk to the child's welfare. It would also require the Secretary of Defense to take all legally available measures to aid in the provision of facilities for housing and care of alien families. The EO would further require the Attorney General to file a request with the U.S. District Court for the Central District of California to modify the Flores Settlement, so that alien families can be detained together during proceedings for improper entry and other removal or immigration proceedings. Finally, it would require the Attorney General to prioritize the adjudication of cases pertaining to detained families.

This title would also allow the state department to negotiate agreements with foreign countries regarding unaccompanied minors (UAMs).

Dangerous aliens

This title permits DHS to detain certain dangerous illegal aliens under removal orders who cannot be removed, if their removal is in the foreseeable future, the alien would have been removed if the alien didn't make efforts to not comply, has a highly contagious disease, whose release would have serious foreign policy, national security, or public safety concerns, or if the alien is an aggravated felon, or has committed a violent crime and has a mental condition that makes further violent crimes more likely. The individuals specified above would be detainable for renewable terms of six months.

Aggravated felony and crime of violence

This title would define aggravated felony for the purpose of admissibility and deportability. If conviction records are unclear, DHS would be permitted to consider other evidence to determine if a potentially admissible alien has committed a disqualifying offense. It would also provide additional crimes that would constitute an aggravated felony. This title would further define crime of violence.

Alien gang members

It would further make criminal gang members deportable and inadmissible and would lay out procedures for designating an organization as a criminal gang.

Aliens charged in immigration court proceedings as members of a criminal gang would be held in mandatory custody during the length of the proceeding. Relevant agencies would be permitted to designate specific gangs, for which membership would render an alien inadmissible or deportable.

Criminal gang members would be ineligible for asylum, special immigrant juvenile status, and temporary protected status. Aliens convicted of driving while intoxicated leading to serious bodily injury or death, would make an individual deportable and inadmissible. Two or more convictions for driving while intoxicated would also make an individual deportable or inadmissible.

Special immigrant juvenile status

This title would clarify special immigrant juvenile status, requiring a minor to prove abandonment by or loss of both parents, in order to obtain this form of permanent residence.

Clarification of Authority Regarding Determinations of Convictions

This section clarifies that certain evidence in a conviction record can be used to determine if an alien is deportable based on the crime committed. It would also prevent aliens that obtain post-conviction relief cannot do so to skirt immigration consequence.

Attempt and Conspiracy to Commit Terrorism-Related Crimes

It would also add attempt and conspiracy to commit terrorism related act as rendering someone inadmissible for engaging in terrorist activity.

ICE detainers

This title would clarify ICE detainers and would require ICE to transfer custody of an alien within 48-96 hours, excluding weekends and holidays, from the time an alien is to be released. It indemnifies jurisdictions that are sued for complying with detainers, unless the jurisdiction acted in bad faith.

This legislation also allows victims of certain crimes committed by illegal aliens in sanctuary jurisdictions to have a private right of action against the releasing jurisdiction. It would also prohibit certain federal funding to jurisdictions that refuse to comply with detainers.

DHS Crime databases

Finally, this title would allow DHS access to crime information databases.

TITLE IV – ASYLUM REFORM

Credible fear interviews

This title would elevate the standard for asylum, requiring those in expedited removal proceedings with a credible fear, must demonstrate a "significant possibility" exists that the alien would likely get asylum or have removal put on hold. Because a significant number of individuals were found to have a "credible fear" under the Obama Administration, leading to asylum claims that were baseless, this heightened standard would ensure only those truly facing persecution would go through the asylum process. It would close a loophole that provided unaccompanied minors two chances for asylum review.

Recording expedited removal interviews

DHS would be required to standardize questions pertaining to credible fear interviews, recording responses in a uniform manner. DHS would be required to record expedited removal interviews.

Safe third country

This title would permit DHS to remove asylum seekers to safe third countries in which they could apply for asylum without the need for bilateral agreements. Under this provision, asylum seekers from central America could be returned to Mexico.

Renunciation of asylum by returning to home country

If an asylum seeker returns to their home country, they would be ineligible for asylum.

Fraud

This title also includes provisions regarding notice of the consequences for frivolous asylum applications and penalties for asylum fraud.

Statute of limitations for asylum fraud

DHS would be permitted to conduct necessary investigations surrounding asylum claims and their supporting documents to cut down on asylum fraud. The statute of limitations for asylum fraud would be extended from 5 years to 10 years.

This title would not have clarification found in Goodlatte/McCaul that taxpayer funds could not be used to provide counsel. This provision is also missing in the provision addressing unaccompanied minors.

TITLE V – U.S.CIS WAIVERS

This title provides for waivers from the Administrative Procedure Act and the Paperwork Reduction Act with a three-year sunset.

OUTSIDE GROUPS OPPOSED:

Heritage Action (Key Vote No)
FAIR (Key Vote No)
NumbersUSA (Key Vote No)
American Academy of Pediatrics
American Immigration Lawyers Association
CATO Institute
Center for Immigration Studies
Evangelicals for Biblical Immigration
Interfaith Immigration Coalition
Libre Initiative
Microsoft
National ICE Council
Presidents' Alliance on Higher Education and Immigration
Presidents' Immigration Alliance

OUTSIDE GROUPS IN SUPPORT:

U.S. Chamber of Commerce

COMMITTEE ACTION:

H.R. 6136 was introduced on June 19, 2018, and was referred to the House Committee on the Judiciary.

ADMINISTRATION POSITION:

A Statement of Administration Policy is not available.

CONSTITUTIONAL AUTHORITY:

"Congress has the power to enact this legislation pursuant to the following: Clause 4 of Section 8 of Article I of the Constitution—The Congress shall have Power to establish a uniform Rule of Naturalization, and uniform Laws on the subject Bankruptcies throughout the United States."
