

S. HRG. 113-875

**THE BORDER SECURITY, ECONOMIC  
OPPORTUNITY, AND IMMIGRATION  
MODERNIZATION ACT, S. 744**

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**HEARING**  
BEFORE THE  
**COMMITTEE ON THE JUDICIARY**  
**UNITED STATES SENATE**  
ONE HUNDRED THIRTEENTH CONGRESS

FIRST SESSION

---

April 22 and 23, 2013

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**Serial No. J-113-15**

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Printed for the use of the Committee on the Judiciary



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**THE BORDER SECURITY, ECONOMIC  
OPPORTUNITY, AND IMMIGRATION  
MODERNIZATION ACT, S. 744**

MONDAY, APRIL 22, 2013

UNITED STATES SENATE,  
COMMITTEE ON THE JUDICIARY,  
*Washington, DC.*

The Committee met, pursuant to notice, at 10:03 a.m., in Room SH-216, Hart Senate Office Building, Hon. Patrick J. Leahy, Chairman of the Committee, presiding.

Present: Senators Leahy, Feinstein, Schumer, Durbin, Whitehouse, Klobuchar, Franken, Coons, Blumenthal, Grassley, Sessions, Graham, Cornyn, Lee, Cruz, and Flake.

**OPENING STATEMENT OF HON. PATRICK J. LEAHY,  
A U.S. SENATOR FROM THE STATE OF VERMONT**

Chairman LEAHY. Good morning. We welcome everybody here, and I am glad we have so many who are here. We have many others who are watching. We are, of course, live streaming this on the Judiciary website, as I always do, and I assume that others are covering it.

I would note there are many people here. There are some very strong feelings, and I appreciate that. Certainly there are T-shirts that give different views, and you have every right to do that. But I would urge, as I always do in hearings, whether it is supportive of my views or opposed to my views, that there will be no demonstrations, no blocking of people who have waited in line for a long time to be here at this hearing. We want to make sure that you are respectful of those near you and especially behind you.

We resumed the hearings on comprehensive immigration reform legislation last Friday. Secretary Napolitano was scheduled to appear then, but I think everybody understands that with what happened in Massachusetts, she could not be here. She will be before the Committee tomorrow morning.

Today's hearing is our fifth immigration hearing this year. It will add to the more than 40 hearings—four-zero—that Senator Schumer, Senator Durbin, Senator Coons, Senator Hirono, and I have chaired during the last few Congresses on these matters.

On Friday, we received testimony about the economic impact of the bill. Today we will hear about how the bill will impact our farming, construction, service, and technology industries. We will hear the views of those who have long fought for immigration reform and those who oppose the proposal. We will hear from the re-

ligious community and the business community. We will hear from scholars, law enforcement, and advocates. We will also hear from witnesses who believe that equality for all under our immigration system is not only right, but in our Nation's interest.

You know, it is long past time to reform our immigration system. We came close in 2006 when Senator Kennedy and Senator McCain led a bipartisan effort. In the course of those efforts, Senator Kennedy said the following:

We believe that immigrants, like women and African Americans before them, have rights in this country, and the time is ripe for a new civil rights moment. We believe that a nation of immigrants rejects its history and its heritage when millions of immigrants are confined forever to second-class status and that all Americans are debased by such a two-tier system. The time has come for comprehensive immigration reform.

Well, my dear friends, Senator Kennedy was right. I wish the House had joined in our efforts in 2006 and we had completed reforms back then. I am glad, however, that Senator McCain has once again joined this effort. It is long past time to get this done. We need an immigration system that lives up to American values and helps write the next great chapter in American history by reinvigorating our economy and enriching our communities—the kind of country that attracted my maternal grandparents here or my wife's parents when they came here and became citizens, productive citizens.

In Vermont, immigration has promoted cultural richness through refugee resettlement and student exchange, economic development through the EB-5 Regional Center program, and tourism and trade with our friends in Canada. Foreign agricultural workers support Vermont's farmers and growers, and many have become a part of the farm families that are such an integral part of the fabric of Vermont communities. Among today's witnesses are two Vermonters who will talk about the needs of farmers and the challenges many face under the current system and the way in which international tourism and trade is critical to border States like Vermont.

Now, let me point out one thing that has troubled me a great deal. Last week, opponents of comprehensive immigration reform began to exploit the Boston Marathon bombing. I am a New Englander. I spent a lot of time in Boston growing up, and still do today, friends and relatives there. I urge restraint in that regard. Refugees and asylum seekers have enriched the fabric of this country from our founding. In Vermont, we have welcomed as neighbors Bhutanese, Burmese, and Somalis, just as other States have welcomed immigrants looking to America for refuge and opportunity. Whether it is the Hmong in Minnesota, Vietnamese Americans in California, Virginia, and Texas, Cuban Americans in Florida and New Jersey, or Iraqis in Utah, our history is full of these stories of salvation.

Let no one be so cruel as to try to use the heinous acts of these two young men last week to derail the dreams and futures of millions of hard-working people. The bill before us would serve to strengthen our national security by allowing us to focus our border security and enforcement efforts against those who would do us

harm. But a Nation as strong as ours can welcome the oppressed and persecuted without making compromises on our security. We are capable of vigilance in our pursuit of these values, and we have seen the tremendous work that the local law enforcement as well as the Federal law enforcement have done in the Boston area, and I am so proud of them.

The bipartisan effort behind the proposal we are examining today is the result of significant work and compromise. In addition to the eight bipartisan Members who led the effort, I also want to thank Senators Feinstein and Hatch for their work on the provisions affecting agriculture. So I urge everyone on both sides to consider their example as we move forward on this.

Too often in the recent past this Committee has broken along partisan lines on compelling issues. Recently we saw all the Republican Senators on this Committee oppose reauthorization of the Violence Against Women Act. Fortunately, with the help of nearly half of the Republicans in the Senate and a great number of Republicans in the House, we were able to enact that important legislation this year.

Now, we had three Committee hearings, four markups and extensive negotiations on gun laws, but we saw all Republicans on this Committee oppose bipartisan efforts to close the gun show loophole and enact a tough law against gun trafficking and straw purchasing.

Let us not let comprehensive immigration reform fall victim to what we saw in the Violence Against Women Act and guns. The challenge now is ours in the Committee. But the challenge is really for all of America. Let this Committee set an example and bring to the Senate, which should be the conscience of the Nation, the opportunity to create an immigration system worthy of American values.

[The prepared statement of Chairman Leahy appears as a submission for the record.]

Senator Grassley.

**OPENING STATEMENT OF HON. CHUCK GRASSLEY,  
A U.S. SENATOR FROM THE STATE OF IOWA**

Senator GRASSLEY. If you want to avoid partisanship, I would say let us be very deliberate, and I think you have been very deliberate so far. If you continue that deliberation, I do not think you will have any partisanship.

I want you to take note of the fact that when you proposed gun legislation, I did not accuse you of using the Norristown killings as an excuse. And I do not hear any criticism of people when there are 14 people killed in West, Texas, and demanding taking advantage of that tragedy to warn about more Government action to make sure that fertilizer factories are safe. I think we are taking advantage of an opportunity when once in 25 years we deal with immigration to make sure that every base is covered.

Today we continue our discussion on the immigration bill that was unveiled last Wednesday in a very good work by a bipartisan group of Senators. And as they correctly stated, a starting point in a process that is going to have to be very deliberative, because we were very deliberative in 1986, and you can see we screwed up be-

cause at that point we only had three million people crossing the border unlawfully. Now there are 12 million people that have.

As some of the authors of that bill have emphasized, the Border Security, Economic Opportunity, and Immigration Modernization Act is a starting point. Now, there are 92 other Senators that must get their chance to amend and improve this bill in a deliberative process.

Let me begin by saying that a critical part of the bill that we are discussing is the first 59 pages. And as people read through this bill, I hope you will pay special attention to those 59 pages.

This is the border security section that triggers the kickoff of legalization, because if we do not secure our borders up front, there will be no political will and pressure from legalization advocates to do it later.

To summarize, the bill requires the Secretary of Homeland Security within 6 months that a bill is signed into law to submit a comprehensive southern border security strategy as well as a southern border fencing strategy. After those so-called plans are submitted to Congress, the Secretary can start processing applications to legalize the 12 million people that are in the United States. The result is that the undocumented become legal after a mere plan is submitted despite the potential that the plan could be flawed and inadequate.

Additionally, the bill provides \$6.5 billion in emergency spending to be available for various border security enhancements to be used under the discretion of the Secretary. While I understand the need for such an investment, there is no congressional input on either the Secretary's plan and the funding that she will have at her disposal.

Now, I have not read every page in this bill yet, but from what I read, I find a great deal of congressional authority delegated to the Secretary. It reminds me of the 1,693 delegations of authority in the health care reform bill that makes it almost impossible for the average citizen to understand what might be coming down the road.

More importantly, the bill does nothing to improve the metrics that this and a future administration will use to ensure that the border is truly secure. Congress passed a law in 2007 requiring that 100 percent of the border be 100 percent "operationally controlled." However, President Obama and Secretary Napolitano abandoned that metric.

The bill before us weakens current law by only requiring the southern border to be 90 percent effectively secured in some sectors, only the so-called high-risk sectors. What about the other six sectors?

Then before green cards are allocated to those here illegally, the Secretary only has to certify that the security plans and fencings are "substantially deployed, operational, and completed." If the Secretary does not do her job, then a commission is created to provide recommendations. This is just a loophole that allows the Secretary to neglect doing the job.

Another area of interest for me is the employment verification measures. As I said before so many times, I was here in 1986 when we, for the first time, made it illegal for employers to hire undocu-

mented individuals. I have been a champion for making the E-Verify system a staple in every workplace. It is a proven and valuable tool to ensure that we have a legal workforce. While I am encouraged that the bill includes E-Verify, I am concerned that the provisions will render the program ineffective as an enforcement tool.

The bill fails to put this system in place for everyone for almost 6 years down the road. After regulations are published, the biggest employers in the country will have another 2 years before they are required to check their employees.

If we are legalizing and providing work permits in 6 months, why must we wait up to 6 years for everyone to comply? The system is ready to be deployed right now nationwide.

Finally, on E-Verify, the bill fails to require or even allow employers to verify their current workforce and is only prospective in nature. I am also concerned about the Secretary's ability to exclude individuals with "casual, sporadic, irregular, or intermittent" employment, however they may be defined. And then why we do not define those terms, I do not know.

I am interested in hearing from our witnesses about whether the bill fixes the problems in our immigration system. Everyone, including myself, says the system is broken. Aside from legalization from those who are here and potentially for the family members who are not and the clearing of backlogs, what does the bill do to fix the system? What improvements will ensure that we are not back here in the hearing room 30 years from now to revisit the issue? Will the new legal guest worker program be effective? Will small business and U.S.-based companies be able to compete and find high-skilled workers to grow the economy? Will American workers truly come first? Will we incentivize people to come here legally and deter them from overstaying their visas once it has expired? These are questions I have.

But in regard to border security, security is what is the basis of the sovereignty of any nation. We must have independent authority over our borders.

Thank you, Mr. Chairman.

Chairman LEAHY. Thank you very much.

We will hear first from Arturo Rodriguez. He has served as the president of the United Farm Workers since 1993. He has spent much of his life working to establish fair working conditions for agricultural workers in the Western United States. He is no stranger to this Committee, and, of course, Senator Feinstein, who has worked so hard on these agricultural matters, I know has met and talked with you a great deal. Please, Mr. Rodriguez, go ahead.

Senator GRASSLEY. Mr. Chairman, I ask that Senator Cornyn be given 5 minutes because he was not here Friday and because he is the Ranking Republican on the Subcommittee.

Chairman LEAHY. Could I ask if he takes that during his question time? And I will—I know you were not here, and, incidentally, I stated publicly that if I was in your shoes, I would not have been here either.

Senator CORNYN. We had 14 dead in West, Texas—

Chairman LEAHY. I said publicly I would have been there—

Senator CORNYN [continuing]. Which is the reason I was there, and I understand and I appreciate the Ranking Member pointing out the reason for my absence.

Chairman LEAHY. I also did.

Senator CORNYN. My only concern, Mr. Chairman, is if I am—that takes away time that I have for questions for the panel. I appreciate—

Chairman LEAHY. No, no. I am going to give you an extra 5 minutes so you can do both.

Senator CORNYN. I will be happy to. Thank you.

Senator GRASSLEY. Thank you.

Chairman LEAHY. And I did state publicly at the hearing that I commended you for being in Texas and that is the place you had to be, as did Senator FEINSTEIN.

Mr. Rodriguez.

**STATEMENT OF ARTURO S. RODRIGUEZ, PRESIDENT,  
UNITED FARM WORKERS OF AMERICA, KEENE, CALIFORNIA**

Mr. RODRIGUEZ. Well, thank you, Chairman Leahy, Ranking Member Grassley, and Members of the Subcommittee. Thank you for the opportunity to testify today. My name is Arturo Rodriguez, and I have the honor of being President of the United Farm Workers of America. Tomorrow will mark the 20th year since our founder, Cesar Chavez, passed away, so we think it is very appropriate that we are here today on this historic day to talk about the future of American agriculture. I want to give a special thank you to Senator Feinstein, with whom we have worked for years to solve this problem, and Senator Hatch, who unfortunately could not be with us here today, with whom we have worked very closely, especially over the last several months, and who helped us in forging this agreement and bringing together the parties to deal with a crisis that we face in American agriculture and to provide stability in the years to come.

Last week, both Chuck Conner, to my left, and I proudly joined other agricultural employers and agricultural workers in supporting a policy proposal put together by Senators Feinstein, Hatch, Bennet, and Rubio that will strengthen our Nation's agricultural industry.

The proposal is part of the broader, more comprehensive immigration policy submitted last week by Senators Schumer, McCain, Durbin, Graham, Menendez, Flake, Bennet, and Rubio. It is great to see so many of you on this Committee today.

Thankfully, many of you on this Committee are very committed to fixing our broken immigration system. As someone born and raised in Texas and with almost all of my extended family in Texas, I am proud that both Texas Senators are on this Committee, and I hope to leave here today knowing that I can count on the support of Senators Cornyn and Cruz to advance this proposal in addition to those of you with whom we have worked so hard.

Both farmers and farm workers have worked together over the last 5 months with the support of Senators from both political parties, representing very different regions of the country, in the interest of improving our Nation's agricultural industry and securing our Nation's food supply.

We have worked so hard to come together, and we ask you as Members of this Committee to come together to support this proposal because America's farms and ranches produce an incredible bounty that is the envy of the world. The farmers and farm workers that make up our Nation's agricultural industry are truly heroic in their willingness to work hard and take on risk as they plant and harvest the food all of us eat every day.

But our immigration system threatens our Nation's food supply. The UFW and our Nation's agricultural employers have often been at odds on many policy issues, but we have now come together to unify our Nation's agriculture industry. We are in a unique moment in our Nation's history, and together with a lot of work, you on this Committee can make the changes we need to secure our Nation's food supply.

Let me speak a little about what is at stake for the women and men who work in the fields. Every day across America, about 2 million women, men, and, yes, even children, labor on our Nation's farms and ranches, producing our fruits and vegetables and caring for our livestock. At least 600,000 of these Americans are U.S. citizens or legal residents. Our migrant and seasonal farm workers are rarely recognized for bringing this rich bounty to supermarkets and our dinner tables. And most Americans cannot comprehend the difficult struggles faced every day by farm worker families. Increasingly, however, America's consumers are asking Government and the food industry for assurances that their food is safe, healthy, and produced under fair conditions.

The life of a farm worker in 2013 is not an easy one. Most farm workers earn very low wages. Housing in farm worker communities is often poor and overcrowded. Federal and State laws exclude farm workers from many labor protections other workers enjoy, such as the right to join a union without being fired for it, overtime pay, many of the OSHA safety standards, and even workers' compensation in several States. Farm worker exclusion from many of these basic Federal laws, such as the right to organize, in the 1930s is one of the sadder chapters of our history.

With any new immigration policy, first and foremost we seek an end to the status quo of poverty and abuse. We should not continue to treat farm workers as second-class workers. We also know that any new immigration policy must consider the future of the workforce upon which American agriculture depend.

I want to thank this Committee very much for the opportunity to be here today and certainly will answer any of the questions that the Committee might have in regards to this.

Thank you very much.

[The prepared statement of Mr. Rodriguez appears as a submission for the record.]

Chairman LEAHY. Well, thank you very much, Mr. Rodriguez.

Our next witness is Charles Conner. He serves as the president and CEO of the National Council of Farmer Cooperatives since 2009. He served as Deputy Secretary and Acting Secretary for the U.S. Department of Agriculture in the Bush administration from 2005 to 2009. I might say on a personal note, both during the time when I was Chairman of the Senate Agriculture Committee and when I was Ranking Member, Mr. Conner was one of the most val-

uable staff people working there. He was relied on heavily by both Republicans and Democrats for his advice.

Go ahead, Mr. Conner.

**STATEMENT OF CHARLES CONNER, PRESIDENT AND CHIEF EXECUTIVE OFFICER, NATIONAL COUNCIL OF FARMER COOPERATIVES, WASHINGTON, DC**

Mr. CONNER. Chairman Leahy, thank you for those comments, and Ranking Member Grassley and Members of the Committee, thank you for the invitation to testify today on American agriculture's need for immigration reform.

As noted in your introduction, I am Chuck Conner, president and CEO of the National Council of Farmer Co-ops. But I am also here as one of the founding members of the Agriculture Workforce Coalition, or the AWC. The AWC brings together nearly 70 agricultural organizations that represent the diverse needs of agricultural employers across the country. The AWC came together because, increasingly, finding enough workers to pick crops and care for animals has become the number one priority for many of our members across the country, in all regions of the country.

I dare say that for many producers, this immigration legislation and this debate before us is more important to the survival of their operations than any other legislation pending before Congress.

We have all seen reports of crops left to rot in the fields because growers lack sufficient workers to bring in the harvest. It is estimated that in California alone, some 80,000 acres of fresh fruit and vegetable production has been moved overseas because of labor shortages here in the U.S.

The problem extends to animal agriculture as well, especially dairy. A study by Texas A&M found that farms are using immigrant labor supplies on more than 60 percent of our farms in this country producing milk. Without these employees, economic output from this study was estimated to decline by nearly \$22 billion, and 133,000 workers would have lost their jobs.

As many of you know, the formation of the AWC represents a significant change from where we have been in the past. For many years, American agriculture has spoken with many and oftentimes conflicting voices on the issue of immigration. Today, as the AWC, we speak with one unified voice. This unity in agriculture extends beyond just the employer side, though. The AWC has also engaged the United Farm Workers Union in arriving at a landmark agreement on agricultural immigration reform. It is a great pleasure that my fellow panelist today, Arturo Rodriguez, president of the UFW, joins us in support of this legislation.

I would also like to emphasize that reaching this agreement would have been simply impossible without the leadership, tenacity, and commitment of Senator Dianne Feinstein. Senator Feinstein, joined in the process, of course, by Senator Marco Rubio, Senator Bennet, and Senator Hatch, fostered a spirit of unity that was ultimately necessary to produce this agreement.

The agricultural provisions in this legislation represent our best chance in over a decade or longer to solve the labor shortage in agriculture. The program outlined in the bill includes two key compo-

nents: a blue card program for current experienced farm workers and a new agricultural visa program to meet future labor needs.

Agriculture today admits the reality that a majority of our current workforce is undocumented, despite producers' good faith efforts to verify the status of their employees. In the short-term, the legislation provides that current undocumented farm workers would be eligible to obtain legal status through this previously mentioned blue card program. But the legislation also realizes that, in time, these blue card workers will likely move on to jobs in sectors of the economy far beyond just agriculture.

To ensure that we do not end up back where we started in 5 or 10 years, the bill includes a new, flexible and market-based agricultural worker visa program. Importantly, the new visa program will be administered by the U.S. Department of Agriculture. This is a significant change from the current regime administered by the Department of Labor, which has demonstrated a complete lack of understanding of agriculture and our labor needs. Additional information on agriculture's unique labor needs as well as the details of the proposal can be found, of course, in my lengthier written statement which was submitted for the record, Mr. Chairman.

I thank you again for this opportunity to testify on behalf of so many in agriculture today, and I do look forward to any questions that you have at a later time.

[The prepared statement of Mr. Conner appears as a submission for the record.]

Chairman LEAHY. Well, thank you, and it is good to see you back here on the Hill.

Alyson Eastman is the president of Book-Ends Associates, agent of H-2A business services for employers of agricultural workers based on Vermont. Her family has a long tradition of farming in Vermont. They currently own a 278-acre farm in Orwell, Vermont. Orwell is not only one of the prettiest parts of Vermont, but it is certainly one of the most significant agricultural parts of our State.

Ms. Eastman, please go ahead.

**STATEMENT OF ALYSON EASTMAN, PRESIDENT,  
BOOK-ENDS ASSOCIATES, ORWELL, VERMONT**

Ms. EASTMAN. Good morning. My name is Alyson Eastman. At Book-Ends Associates we have been assisting H-2A employers since 1993.

First, I would like to thank Chairman Leahy, Ranking Member Grassley, and all Members of the Committee for providing me the opportunity to appear before you today on behalf of the agricultural employers that I represent in Vermont, New Hampshire, and New York as an H-2A Agent. As a member of the National Council of Agricultural Employers and through my work with U.S. Apple, I have traveled to DC on several occasions, including two bipartisan meetings with U.S. DOL officials and Members of Congress, which took up the better part of each day.

There is bipartisan agreement that the current system is broken and that the H-2A program as it stands today is nearly impossible to use. A shared challenge faced by all farmers seems to be finding legal and experienced laborers who can provide the agricultural employers with competence, predictability, and stability. The pro-

posed bill would be useful as it no longer draws a distinction between the seasonal and non-seasonal employers such as dairy farmers. This will allow dairy farmers to hire workers, and also some of their workers could even be considered for legalization.

A common misconception is that H-2A seasonal guest workers are displacing U.S. domestic workers. In our office, we not only facilitate the application paperwork for employers, but in some cases, we also process their payroll. There is a direct correlation between the hiring of H-2A and the hiring of domestic employees. Forrence Orchards in Peru, New York, in 2012 applied and petitioned for 224 H-2A workers. The majority, roughly 200 of these workers, only worked for an 8-week harvest period. These foreign workers created 50 year-round domestic jobs. Their payroll for fiscal year ending 6/30/12 was just short of \$2.4 million.

Without the H-2A workers, employers would not find it possible to harvest the crops according to the quality method and, therefore, would not have a marketable crop. All employers will tell you that it requires appropriate timing and skilled labor to pick produce in such a way that will ensure a quality product and market opportunity.

Employers face many challenges with the current H-2A process, and the majority agree the issues are simply because U.S. DOL does not understand ag. The application process is very time sensitive, starting at 60 days prior to date of need. It is nearly impossible to get the workers here in a timely fashion due to the convoluted process and the unnecessary Notices of Deficiencies. These employers are in the H-2A program because they want a legal, reliable, and experienced workforce. It would be most advantageous for USDA to facilitate the application process as they understand the needs of ag.

I think back to August of 2010 when there was no movement of the workers because Department of State was notified by U.S. DOL not to let any of the Jamaican workers enter the country due to an investigation of Jamaica Central Labor. Thankfully, Senator Leahy's seasoned staff quickly sprung into action. An agreement was reached within a week, and each employer signed an affidavit that they would not take any deductions from the workers' pay for JCLO. Another 48 to 72 hours and we would have seen thousands of bushels of apples on the ground nationwide as a total crop loss.

Needless to say, our office did not get any sleep for a straight week just knowing that crop insurance would not cover this type of loss.

It is important to H-2A employers such as Barney Hodges at Sunrise that he can continue to get his experienced workers back each year. Barney has said, "Without these experienced workers, my orchard would be crippled, and we would be done farming and look at developing."

Please note the term "experienced," and also note the fact that these H-2A workers have returned year after year to the same farm.

In conclusion, the only con I see with the proposed name is the W-2 and W-3 visas since all employees' annual wages are reported on a Form W-2 and the gross employer wages are reported on a Form W-3.

The pros certainly outweigh the cons. I feel that the employers will be in favor of the written part of the bill which refers to an employer's ability to give preference to the loyal H-2A worker who has worked for the employer 3 out of the last 4 years. Also, the logic behind the proposed wage rates seems much more commonsensical and affordable.

I believe that those undocumented workers also follow much of what is said above. It would be a great opportunity for the employers to obtain a legal workforce and provide them with stability. The public does not seem to understand that these undocumented workers have been paying into Social Security and Medicare with the expectation that they would never benefit from it. It seems ludicrous to me to even consider sending all the undocumented workers home as it would significantly impact our Social Security and Medicare funding, while at the same time losing those folks who support our farms by doing jobs that Americans simply do not want to do.

No doubt that whether one is referring to an undocumented ag worker or an H-2A ag worker, they share the following in common: these workers are ambitious, they are here to work, they want to please their employers and improve their lot in life, and they are willing to do jobs that we cannot get Americans to do. Let us not forget through doing these jobs that Americans do not want to do, they, in fact, create jobs on the farm for the U.S. domestic workers.

I conclude by stating a solid immigration bill will solidify and solve many of these ag issues that employers are facing today.

Thank you again for providing me with this opportunity to testify. I look forward to answering any questions.

[The prepared statement of Ms. Eastman appears as a submission for the record.]

Chairman LEAHY. Well, thank you, Ms. Eastman, and I thank you for using those real-world examples. I remember very well the question with the apple pickers. Thank you for complimenting the staff. I may get the credit, but they are the ones doing the work. And I know a lot of meetings we had, a lot of phone calls with you, a lot of phone calls with others, and a number that I could make, but they did the leg work. And as a lifelong Vermonter, I worry about those crops, too.

Ms. EASTMAN. Absolutely.

Chairman LEAHY. They are such a significant part of our bases.

Also, the H-2A program is open to temporary and seasonal agriculture employers. We can take care, assuming it works right, we can take care of apple pickers, but then we have dairy farmers, and Senator Franken and I have both noted that you cannot tell the cows, "We will be back in 6 months to milk you again." They do not react well to that.

So how would the proposed agricultural worker visa in the legislation help both seasonal and year-round workers?

Ms. EASTMAN. Sir, I think it would definitely help in many ways, allowing for the workers to not only be here year-round, milk the cows, and I think, too, when you face both types of visas, whether they are going to come in for one employer or they have the ability to move between employers, all of that seems very advantageous and in effect will take care of dairy farmers.

When I look at how the H-2A works today and I see that, you know, poultry, some of our farms are year-round and they do have the ability to get H-2A seasonal workers only because it is seasonal work that they are doing. However, the milking of the cows does not wait.

Chairman LEAHY. We see a lot of dysfunction in the current H-2A program. Do you think we should be giving the Department of Agriculture a greater role in the visa program?

Ms. EASTMAN. Absolutely, and I think most of us agree on that. I have got a prime example of the U.S. Department of Labor that I think everybody can understand. When we petitioned for 18 peak seasonal workers to come and process turkeys, the job employment period was from 10/13 to 12/3. It was clear they were going to come to process the turkeys for Thanksgiving. We received a Notice of Deficiency from the Department of Labor and they wanted to know who was doing these jobs when these seasonal workers were not here. And we had to respond and show 2 years' worth of payroll and have it notarized as an affidavit saying that it was true to prove that they were needed here to process turkeys for Thanksgiving. So I am not sure really what is on their table at Thanksgiving, but they clearly did not understand that need.

Chairman LEAHY. I understand. I know you have a couple other examples which we will put in the record, because I do want to ask Mr. Rodriguez. I want to set an example and keep to my own time here. I know how he was one of the chief negotiators in discussions over the agriculture title, and I would note again, everybody that has been involved in this has had to give some. I hope people realize on this Committee that there has been a lot of giving on both sides.

There is one area, though, in this legislation, can you tell us how this is going to help prevent the exploitation of undocumented farm workers?

Mr. RODRIGUEZ. First of all, I want to thank the folks from the agriculture industry that we worked with and certainly Senator Feinstein and the rest of the Senators who were there with us, because they really helped fashion the discussions in such a way that we really talked about the various issues that affected all of us.

But I think all of us in the end, Senator Leahy, wanted to make sure that we had an agricultural industry in this country that was viable and that we could all respect and be proud of here in our Nation. It was very important for us to establish an agreement here that would honor the farm workers and the work that they do as well as ensure that the ag industry is going to have the supply of labor that is necessary, the skilled professional farm workers that they so need to harvest their crops, and for the dairy industry and other industries.

And so, you know, we feel that there are a lot of protections that are here in the legislation that will ensure the protection of the existing farm worker labor force that is here right now. The current force are going to have an opportunity to legalize themselves via the blue card program. And that will provide great opportunities for stabilizing families, stabilizing the industry, and providing a good product for American consumers.

Chairman LEAHY. And living conditions.

Mr. RODRIGUEZ. Certainly the living conditions would be very important, and, again, we worked very closely in discussions with the agriculture industry, and they were very open to ensuring that that did exist here within this legislation, such as providing housing or housing vouchers.

Chairman LEAHY. Thank you.

And, Mr. Conner, I know you worked with a number of people, with Tom Nassif of the Western Growers, lead negotiator on your side. I know there was a lot of give and take when you worked with Senators Feinstein and Hatch. But if we get these reforms, do you feel pretty satisfied this is going to be not only better for the country but better for agriculture?

Mr. CONNER. Senator Leahy, there is no question, and let me just underscore, this is a compromise piece of legislation from our standpoint. You know, the negotiations were extremely difficult, but in the final product, we believe we have a balanced proposal that protects those farm worker interests, as Arturo has described, but at the same time provides an opportunity for U.S. agriculture to do what it does best, which is produce high-quality, low-cost products so that we are not continuing to import more and more of our food supply, which is what we are so strongly against.

So there is no question it is the right balance. We believe it provides us that opportunity because of the legalized workforce through the blue card program, for our existing trained, skilled workers. But equally as important is the new guest worker program that contains both an at-will as well as a contract provision so that the seasonal as well as the livestock industry can get the workers they need in the future.

Chairman LEAHY. I thank all three of you, and I will yield to Senator Grassley.

Senator GRASSLEY. I am going to make a little statement before I ask specific questions, and if there is anything in my question or my statement that is incorrect, I hope you will correct me.

It is my understanding that the legalization program for agricultural workers mirrors in part the main legalization program in the bill. It gives undocumented people up to 2-1/2 years to come forward and apply. It provides a blue card for people who can prove that they have worked in agriculture for some time. It gives the same status to spouses and children. Ag workers pay an initial fine of \$100.

Also like the main legalization program, the Department of Homeland Security is required to provide any alien it apprehends after the date of enactment with an opportunity to file an application. Those in removal proceedings get the same benefit. During the time the application is pending, the undocumented person cannot be removed. They cannot even be detained. If an application is denied because it does not have sufficient evidence, the undocumented worker gets another bite at the apple.

Going to my first question, this is the way I read the bill, and so I want you to tell me whether or not I am right or wrong. The bill provides legal status to ag workers right away. Then they must wait 5 years before gaining citizenship. However, the Secretary only has to submit a plan, not implement it. So the border does not have to be secured before millions get citizenship.

Would that be an accurate interpretation of the legislation before us?

Mr. RODRIGUEZ. I would just say, Senator Grassley, that it is my understanding of the legislation is that the agricultural workers will, yes, be given an opportunity to obtain legal status to work in this country immediately. However, it will take at least 5 years to meet the requirements for working in the agricultural industry to gain permanent residency, not citizenship.

Senator GRASSLEY. Okay.

Mr. RODRIGUEZ. And the reason for that, the thinking behind that and the discussions, is that the reality—

Senator GRASSLEY. You do not have to justify that.

Mr. RODRIGUEZ. Okay.

Senator GRASSLEY. It was in relationship to whether or not citizenship for this group of people could be possible without the border being secured because of the time period.

Mr. CONNER. Senator Grassley, if I could just supplement that very quickly, I will tell you, in order to be eligible for the blue card program, which eventually can then be, as Arturo has pointed out, converted into a green card, you have to have a history of substantial agricultural work already in this country.

Senator GRASSLEY. Sure. I got you.

Now, I want to give a quote here from somebody commenting on the 1986 legislation as it deals with agricultural workers and following up on what Senator Leahy said, the extent to which it is better for agriculture—and I do not disagree with what you said about that, Mr. Conner—but because there are lessons to be learned from mistakes that we made in 1986.

This is a quote from Phillip Martin, Professor, Agricultural Economics, Davis: “The exit of illegal immigrants granted special agricultural worker status and subsequent permanent residence from the farm workforce since the early 1990s reflects a different phenomenon. Falling real wages and shrinking benefits encourage special agricultural workers to seek non-farm jobs as the economy improved in the 1990s. The special agricultural workers who left farm work were replaced by newly arrived, unauthorized migrants. By 1997 to 1998, it was estimated that the special agricultural workers were only about 16 percent of the crop workers.”

So, Mr. Conner, are we not afraid or should we not be afraid that giving legal status and eventual citizenship to people who are here illegally will only repeat the mistakes we made in 1986, putting the ag industry in the same position in the long run? In other words, this whole thing comes about because farmers come to us and tell us they need these workers. Okay. We bring in these workers. Then they migrate someplace else, and people illegally came in afterwards. How do we avoid that mistake we made in 1986?

Mr. CONNER. Senator Grassley, your question is a great question, and it goes to the heart of, fundamentally, the basis of our negotiation that has been occurring in Senator Feinstein’s office for the last 3 or 4 months. The blue card program for our current existing trained workforce is an important component, but an equally important component is we do not know with absolute certainty over the next decade or so what is going to be the status of those workers that will be receiving these blue cards. Will they stay in agri-

culture? In order to get the green card, they have to stay in for a very long time. The law requires that. But beyond that, we do not know for sure, and that is why we have had very difficult negotiations over then the second part of that, which is the guest worker program, and to make sure that it is both at-will and contract so that it serves all of agriculture. Because we know at some point we are going to need additional workers beyond the highly trained skilled workers that are currently doing the work in this country, that are likely to get a blue card, there will be additional workers needed down the road.

So we have got to have a viable, workable guest worker program. The current H-2A program is not that program. If we had the blue card program and our existing H-2A, I can assure you we would be back here in a few years, Senator, telling you that we have got a big problem. That is what we have got to avoid.

Senator GRASSLEY. My time is up, but we have got to make sure we do not make the same mistake we did in 1986.

Chairman LEAHY. Thank you.

We have two unique situations on the Committee, as we mentioned, with Senator Cornyn who had to be absent, and all of us understand why. There is no question he should have been in Texas, and he was. The other is Senator Feinstein, who is head of the ag negotiations, both are going to be given some extra time with the consideration of other Senators, and I will yield first to Senator Feinstein, and then we will go to Senator Sessions, I guess.

Senator FEINSTEIN. Thank you very much, Senator Leahy. I very much appreciate this opportunity. Thank you very much, and I want to thank our witnesses here today.

Also, Chuck, I hope you will thank Tom Nassif for the negotiation of those specific wage numbers.

Arturo—it is hard to call somebody by their last name when you have sat for so many hours together. So I want you to know that I do not know a labor leader in this country who cares more about its people, who is more dedicated, more reasonable, and I want you to know that it has just been a real pleasure to work with you. And, Chuck, I can say the same thing. The sessions were long. They were 6, 7 hours at a time. You all negotiated over weekends. We went back and forth.

Through the course of this, it was easy to sort of come out with what was necessary. One was that there was a deep belief that a lot of the BLS studies on wage rates were skewed, and, therefore, we needed a new process. The farmers wanted specificity of wage. We have that for the farm worker. We have a way of increasing it. We have a way of putting all of this under the Department of Agriculture.

The Secretary of Agriculture will make his FSAs, his Farm Service Agencies, which exist in each State, available, which should help farmers.

The thing about the farm workers was to find a way to recognize the skills that exist in farm work and to try through a program to see that what evolves out of this is a professional class of worker who can be proud.

The blue card we expect—and this is very rough—would apply to 700,000 to 1.1 million workers. It exists for 5 years. You have to

have worked ag for a specific number of days and hours for 2 years prior to getting a blue card. You would be vetted. You would have to pay taxes, a fine, et cetera. No major criminal activity. You get your blue card. Then you have to work another 5 years, dependent upon the number of days a year. And then you get a green card.

The H-2A program which exists, only 74,000 workers this past year, will cease to exist within a 2-year period, and it would be replaced by two visa programs. Chuck spelled them out: a contract program which replaces H-2A, and an at-will portable visa program. They are both 3 years. There is a cap on both of 112,000 a year for the first 5 years. That totals 300,000 plus, and then the Secretary of Agriculture in the future sets the cap. The AEWR wage rate, which is the adverse wage rate, is phased out and replaced by this new methodology within—I think it is a year after the effective date of passage of this bill.

This has not been easy to put together, and I appreciate Senator Grassley's comments, but I want him and others to know that we tried to figure what you were aiming at and compensate for it in terms of making the kinds of changes that would have a stable workforce out there for farmers.

My staff has prepared comments from each State that have come in with respect to the need. We have 100 copies, and we would make it available to anyone that would like to provide additional information. But I think every State is in here.

It is as close to coming to a national crisis with respect to retaining this country's agricultural prowess as anything. Farms cannot farm because they do not have a consistent supply of workers. They cannot get their contractors. They do not know what to pay them. I mean, I sat next to a woman who operated a turkey farm in California that between the wage rates and the high price of corn because of ethanol had to shut down her business. That should not be the case in the United States. And we think that we have a solution to that.

Now, let me go to the questions, and whoever would like to answer this. This bill would require all employers to ensure a legal workforce at some point by using E-Verify. Very controversial when it comes to agriculture. Employers with more than 5,000 employees would be required to use E-Verify no more than 2 years after regulations are published. Smaller employers would have 3 years, and agricultural employers would have to comply within 4 years.

DHS Secretary Janet Napolitano shared with this Committee in February that the United States Citizenship and Immigration Services recognizes the need and the unique nature of ag and has developed a pilot program to test the use of E-Verify in agricultural settings. I am waiting to receive an update from DHS on the status of this pilot, but, Chuck Conner, let me ask you this question: Is DHS working with your organization and other ag industry groups to test the E-Verify pilot program?

Mr. CONNER. I am not aware of anything at this point, Senator Feinstein, but we can provide any updates based upon surveying our membership for the record.

Along those lines, I will just say we appreciate the fact that in the legislation there is some recognition of really the small busi-

ness aspect of American agriculture and the fact that producers are moved, if you will, somewhat to the back of the line in terms of that being, you know, fully enforceable under the E-Verify system. Because we will have new programs up and running, we recognize there will be glitches here and there, but ultimately our goal here is to have a program where every farmer, no matter how small, that they have access to the workers they need without incurring enormous expense that we know they just simply cannot do.

Senator FEINSTEIN. Well, then, let me ask everybody here, Arturo and Chuck and Ms. Eastman—I do not know you as well as I do the other two—to please weigh in with DHS. They must work with you. This is controversial in agriculture, and I know there are some bumps in the road that we are going to have to work out. But we should get that done as soon as we possibly can.

The Chair is not here, but I will say to the Ranking Member, Senator, I really believe, with hour after hour and week after week, that we have done the best we could to put together a bill which satisfies your concerns and also enables farmers in America to get a consistent supply of ag workers. So I hope that this will be possible to pass, even unamended—perhaps there will be a few things, but this has been a negotiated agreement over a substantial period of time.

And I know, Mr. Conner, you represent the American farm worker here as well as members of sheep and dairy and all the others, as well as Ms. Eastman.

And, Arturo, there were the Farm Workers Union in this, and you were really outnumbered by farmers. You held your own, and I think you got good protections for your workers, and I think you really perform in the best interests of not only the union movement but the workforce of this country. So I just want to compliment both of you very strongly.

Thank you, and I would like to recognize Senator Sessions—and the Chair is back.

Chairman LEAHY. Thank you. Senator Sessions, go ahead.

Senator SESSIONS. Thank you.

Well, this is an odd conversation, it seems to me, as we deal with this. I believe the interest that needs to be protected is the national interest of the United States, and that includes existing workers today, workers whose wages have been pulled down without doubt by a large flow of labor, low-wage labor into the country, and this bill would continue that in a way that is very disturbing to me.

For example, for the last 10, 15 years, maybe more, wages have not kept up with inflation in America. Julie Hotchkiss, an economist at the Federal Reserve in Atlanta, says, “As a result of the growth in the share of undocumented workers, the annual earnings of the average documented worker in Georgia in 2007 declined 2.9 percent, or \$960.”

So I would say that it is interesting that we have union members, we have business people, they meet and they reach an agreement, and this is somehow presumed to be the interest of the United States. So I would reject that fundamentally. We need to ask what is in the national interest.

I am also dubious about the idea that there are jobs Americans will not do. I worked construction in the Alabama sun, hauling

lumber and stuff. I know Americans do that every single day. It is tough work. It is done every day. Where I was raised, when I was—when they talked about how we should think about that, we were told to respect people who did hard work and not to say it is a job an American will not do. Any honorable labor is good.

The last jobs report showed 486,000 people dropped out of the workforce. We determined that about a fifth of that only is retirements; whereas, only 88,000 jobs were created. And so I worry about these kind of things, and I think we need to ask that.

It seems to me that the ag industry is saying that we are entitled to a certain number of workers, we demand those workers. And, Mr. Rodriguez, this can have the long-term impact of reducing the salary of people who have entered lawfully, people who get legalized today, immigrant workers. So their wages are at risk, too, as the years go by.

So I just would say that the immigration policy of the United States should be established based on the national interest.

Now, we are examining this legislation and found a lot of surprising facts. I am not sure the bill's sponsors fully understand it or not. But I think it could prove fatal to the legislation, and we are going to have to look at a number of those things.

With regard to the ag workers program, Mr. Rodriguez, do you know how many people would be legalized, if you do, under this program immediately?

Mr. RODRIGUEZ. The potential is, as Senator Feinstein mentioned a little bit earlier, Senator Sessions, that somewhere in the range of between 800,000 to 1.1 million, our best estimate right now, individuals that we know that are here in the country.

Senator SESSIONS. Could some of those obtain legal permanent resident status in as little as 3 years?

Mr. RODRIGUEZ. No, sir. They could qualify to be able to do that, but no one will be allowed to gain permanent legal residency until after 5 years in the program.

Senator SESSIONS. So they would get LPR status after 5.

Mr. RODRIGUEZ. That is correct.

Senator SESSIONS. Now, other people in the country would wait 10 years. We have been hearing 10 years. But agricultural workers would be able to get LPR status in 5. Is that correct?

Mr. RODRIGUEZ. That is correct, sir.

Senator SESSIONS. And that entitles them to certain benefits.

Mr. RODRIGUEZ. It actually just gives them an opportunity to be able to stay here, to work in agriculture, to be able to ensure that they do not have to fear immigration services or anything of that nature. So they will be able to stabilize their families as well as provide the skilled labor to stabilize the agricultural industry.

Senator SESSIONS. But in the future, under the agricultural act, immigrants that come to replace people presumably who move on to other jobs under this provision of the act, they will come for what period of time? How long will they get to come and stay in the country initially?

Mr. RODRIGUEZ. The workers that are currently here right now?

Senator SESSIONS. No. In the future.

Mr. RODRIGUEZ. In the future? Well, there is a provision here with the—

Senator SESSIONS. Mr. Conner wants to be sure he has all he needs—

Mr. RODRIGUEZ. Right.

Senator SESSIONS [continuing]. To keep his wage rates at the levels he would like to—

Chairman LEAHY. Let Mr. Rodriguez answer the question.

Senator SESSIONS. I am letting him answer. I am just discussing here.

Mr. RODRIGUEZ. There is a new visa program that has been established that would allow folks to apply for and get 3-year visas as opposed to the way it currently is right now, and that is to deal with issues like Ms. Eastman was talking about a little bit earlier. I mean, we have dairy workers and the dairy industry is now included. It is a year-round business.

Senator SESSIONS. So they would come for 3 years. Would they be able to bring their families?

Mr. RODRIGUEZ. No, they would not.

Senator SESSIONS. And after 3 years, do they have to go home or could they stay?

Mr. RODRIGUEZ. They have to go home for a period of time, and then—

Senator SESSIONS. How long is that?

Mr. CONNER. If I could, Senator Sessions, for the at-will and contract guest workers, they are eligible for a 3-year work visa. They are eligible for one renewal of that visa, so that combined is a total of 6 years. And after that 6-year period, they have to spend at a minimum 3 months, if you will, back in their home area.

Senator SESSIONS. Over 3 years—how many months at home?

Mr. CONNER. No touchback during 3 year period.

Senator SESSIONS. Well, so a person could stay for 6 years. They get pretty deeply attached to this country in that period of time. Are you going to ask them to go home then?

Mr. CONNER. Well, to follow on to that, obviously they have to have—

Senator SESSIONS. Will you ask them to go home at the end of 6 years?

Mr. CONNER. Yes. They will no longer be eligible because they can only get two of those 3-year visas during that period.

Senator SESSIONS. My time is up, but I think that is where we are. I do not think we are going to be hunting down those people and seeking to deport them if they do not leave.

Chairman LEAHY. I am trying to provide time for everybody. Senator Schumer?

Senator SCHUMER. Thank you, Mr. Chairman, and, again, I want to thank you for your continued leadership, support on immigration. I cannot thank you enough for agreeing to consider the bill our little group filed last week. I would like to make a few general comments and then get into ag.

Generally, as an initial matter, I would like to point out that our immigration bill has received widespread support and praise among law enforcement, business groups, labor unions, religious leaders, conservative thought leaders, and immigration groups. It is no accident that all of these folks were standing with us last week as we introduced the bill. This is not just a few narrow spe-

cial interests. These are some of the leading groups that represent tens of millions of people in America.

And, on the other hand, the only witnesses who are willing to testify against the bill today are three individuals from the so-called Center for Immigration Study, an organization whose stated goal is to reduce immigration to the United States and who invented the concept of self-deportation; the author of S.B. 1070, the controversial Arizona law that was so far to the extreme it was stricken down as unconstitutional by the Supreme Court; and the head of the ICE union who has been an outspoken critic of immigration.

So to call all the groups for it, as my good friend from Alabama does, “special interests” and then to have these three witnesses who are far narrower, far more special interest, and, in fact, have opposed any immigration reform for a very long period of time is not right. These three are not mainstream witnesses. The American people are overwhelmingly in favor of immigration reform. That is what every poll says. And they—

Senator SESSIONS. Would the Senator yield?

Senator SCHUMER. No, I will not.

Senator SESSIONS. Would the Senator yield?

Senator SCHUMER. No, no. And they will not be satisfied with calls for delays and impediments towards the bill.

I would say to my colleagues—and I understand their views are heartfelt—that the Chairman has a very open process. So if you have ways to improve the bill, offer an amendment when we start markup in May and let us vote on it. I say that particularly to those who are pointing to what happened, the terrible tragedy in Boston, as, I would say, an excuse for not doing a bill or delaying it many months or years.

Senator GRASSLEY. I never said that.

Senator SCHUMER. I did not say you did.

Senator GRASSLEY. I never said that.

Senator SCHUMER. I did not say you did, sir.

Senator GRASSLEY. I did not say—

Senator SCHUMER. I do not mean you, Mr. Grassley.

Senator SESSIONS. Mr. Chairman, I do not appreciate the Senator—

Chairman LEAHY. We are—

Senator SESSIONS [continuing]. Demeaning the witnesses that have come here.

Chairman LEAHY. Let me finish. We are going to have probably the most open process on this. There will be debate in the Committee. We will have time for it. I have even—as Senator Grassley knows, I have even offered some extra time on this. And let us keep on. We will have the debate. I expect we are going to have a lot of debate.

Senator Schumer.

Senator SCHUMER. And I thank you. I was not intending—those remarks were not aimed at anyone on this Committee or the three witnesses. There are people out there—you have read it in the newspapers—who have said it. And what I am saying is if there are things that come up as a result of what happened in Boston that require improvement, let us add them to the bill, because cer-

tainly our bill tightens up things in a way that would make a Boston less likely. The changes in the exit-entry system of visas, requiring the 11 million people here to register, and all of that make it a tighter bill.

Now, maybe it should be made tighter still. We are open to that. That is all I am saying, because I have heard lots of calls from people out in the country saying delay it.

What our bill does, very simply, is add billions of additional dollars towards border security and border fencing, tracking immigrants who overstay their visas so they can be apprehended, and reforming our immigration courts to expedite deportation of dangerous individuals. Individuals currently here would finally have to register with the Government, give us photos and fingerprints. All of that will make America a safer place, and that is what I am saying here.

So the status quo has none of these things, and, therefore, no responsible person should be aiming to keep the status quo in order. Let us move forward. Let us have this debate. It is an open debate. Let us discuss all amendments from all points of view. But let us not keep our present system, which everyone admits is broken.

On agriculture, I just want to thank Senator Feinstein for her great work, and Senator Hatch and the members of her group. They have done an amazing job, and I thank the three of you. You are a good example of what we need in America, which is people coming together. None of you got everything you wanted, but you knew you each did a lot better than the present status quo. That happened in agriculture, and I hope that will happen in the bill.

And my one question for Ms. Eastman is very quick, because my time is about to run out. Vermont's agricultural market is very similar to New York's. We have the same problems. We have a fellow in Ontario County, one of the largest cabbage growers in the country, who did not plant cabbage this spring because he cannot get labor to pick it up. A huge amount of cabbage, a huge number of jobs, a huge amount of produce that the American people are deprived of. And this bill will rectify that situation and give him and many others the labor they need.

So could you just mention how the bill keeps Northeast growers competitive with growers from the rest of the country and why it is good for the Northeast and New York? To Ms. Eastman.

Ms. EASTMAN. Without much time, I would like to narrow it down to the fact that the bill does actually allow employers at an affordable rate to employ legal workers. The way the H-2A program is right now with the paperwork, the timelines, it is so difficult to comply with, and the wage rates are just exponential. You know, the fact is—I will give you a quick example. 1091 is the adverse effect wage rate in New York and in Vermont, and you take, say, apple producers. The wage rate, piece rate right now in Vermont is \$1 per bushel for handpicked ciders. In New York, it is 62 cents. There is no consistency, and those are done by the Prevailing Wage Survey, and there is nothing overseen on that, nor regionalization of wage rates, the housing, the transportation. It is very expensive. And yet it does provide legal workers. It is difficult to get them here.

So I think, you know—and with the United States Department of Ag facilitating the process, it is going to be transparent, I believe. They understand ag, the need behind this, and keep in mind, I would like to let Mr. Sessions know, Senator Sessions know that we do have employers that open up and they have to, through the H-2A program, hire any willing, able, qualified individual. Anybody is qualified because in the State of Vermont we cannot require experience. The Department of Labor says we cannot require experience. We have orchards—and I would invite you to come visit them during harvest in August. They have everybody that applies start picking apples, and they pick on trellis trees, which are the easiest. They do not have to climb a 20-foot ladder. And by week two, in one orchard, Sunrise Orchards in Cornwall, Vermont, they hired eight pickers, U.S., everybody that showed up. By week two, there was one left, and that one picker asked if he could work in the packing house. This orchard needs 55 seasonal workers to bring in their crop.

So when I say Americans will not do the job, it is true. They are not doing the job.

Senator SESSIONS. Well, there are factors that all go into that.

Chairman LEAHY. Trust me, I know that orchard. I know exactly what Ms. Eastman is saying, and she stated it very, very accurately.

Senator Cornyn, again, our hearts—

Senator SESSIONS. I would note that seasonal workers are more justified—

Chairman LEAHY. Senator Cornyn, again, I think I can speak for all Vermonters, our hearts go out to Texas for what you have gone through, and I appreciate the fact you could be here today, and I understand why—there was only one place you should have been on Friday, and that was Texas. So thank you, and you have extra time because of that.

Senator CORNYN. Thank you, Mr. Chairman, and I know Senator Cruz, who joined me there, appreciates the comments about people's concerns, condolences, grieving with people who lost their life in that terrible incident last week.

I want to use the time you have given me, Mr. Chairman, the 10 minutes—I will actually probably reserve some of that time for the second and fourth panels, with all due respect to the current panel. But I do have a brief opening statement.

The bill introduced last week by the bipartisan group touches on nearly every aspect of our Nation's immigration system. It is truly comprehensive in the sense that it covers a wide range of complex and often controversial aspects of our immigration law. The bill contains major changes to refugees and asylum law, guest worker programs, detention policy, worksite enforcement, and overall permanent immigration, both in terms of family- and employment-based immigration.

I fully expect there will be a healthy and I hope respectful debate about how we should address the 11 to 12 million people here in the United States who came into the country illegally or overstayed their visa in violation of the law, which comprises about 40 percent of illegal immigration, the visa overstays.

That is a conversation we cannot avoid and we must not avoid, because it impacts our national security, public safety, and the health of our national and local economies.

While engaging in that conversation, we must give short shrift to the scores of other critical immigration reforms contained in the bill, including the areas I just mentioned. Those who have read the bill know that the legalization program for 11 to 12 million people takes up less than 100 pages of the 844-page bill.

What is in the other 750 pages? Well, that is important, because it turns out quite a lot. And much of it is at least as important to our national interest as any solution for the 11 to 12 million here.

Mr. Chairman, we have had this bill less than a week, of course, as we all know, and we are still analyzing the scores of major reforms it contains. But I want to say this to my friends who are part of the Gang of Eight. This legislation makes a number of positive improvements to our immigration system. There are things to commend, both in terms of major upgrades to employment-based legal immigration and worksite enforcement. There are reforms in this bill that have the potential to boost innovation and job growth within the United States. And there are reforms that will bolster foreign tourism spending and incentivize foreign investors and entrepreneurs to invest in U.S. companies and workers.

I appreciate the attention given in the bill to expanding resources for improving assimilation and the integration of immigrants in our society, especially in terms of promoting English language and civics education.

But there are a number of areas that this bill need substantial improvement in. For example, while well intentioned, I regret that the border security element falls well short of the sponsors' aspiration to protect the borders and maintain U.S. sovereignty. In fact, without major changes, the bill could do more harm than good.

The bill sets what would superficially appear to be a worthy target of a 90-percent apprehension rate along the southwestern border. But based on our preliminary review, this 90-percent goal only applies to three of the nine southern border sectors and only two out of the five sectors in Texas. And so as I read it, the border security provisions in this bill will necessarily mean that the Border Patrol will shift resources away in a pre-announced fashion from most of the border sectors in order to reach the goals for only a few. We can only imagine what the transnational criminal organizations that move drugs, people, and contraband across our border will do in response.

Border security matters in Texas and along the southwestern border, and the bill does not adequately provide for it. And I hope my colleagues will work with me to help get it right. I think we can do it.

As I said, the bill is comprehensive, but it is not exhaustive. In other words, some important reforms were omitted that I think need to be included.

For example, the bill fails to address the critical needs for improvements at our land-based ports of entry, especially along the southwestern border. The vitality of these land ports of entry is critical both in terms of security but also for the economic pros-

perity that legitimate trade and travel bring to our border communities and 6 million jobs in the United States.

We must use this opportunity to provide meaningful infrastructure investment to the ports of entry in order to reduce wait times for legitimate trade and travel.

I am also concerned that the bill does not do enough to deal with the biometric exit requirement in current law. This is perhaps one of the most concerning areas of the bill because, since 1996, there has been a requirement mandated by Congress for an entry-exit system. Unfortunately, while the entry system works well, the exit system is nonfunctional. I want to learn more about the rationale of why the Department of Homeland Security has been unable to comply with this longstanding mandate of the Congress and why the Department continues to drag its feet in implementing the law already on the books which requires a biometric exit.

If we want to get serious about preventing another wave of visa overstays, then we have to get this exit system right. I remain concerned about the message that this sends by allowing individuals with multiple serious criminal convictions to be eligible for legalization. It should not be a controversial proposition to oppose legalization for someone who, on top of their illegal entry or overstay, was convicted of two misdemeanor drunk driving offenses or two misdemeanor domestic violence offenses or two misdemeanor child abuse offenses.

It is an affront to the rule of law, I believe, to give the Secretary of the Department of Homeland Security the discretion to waive the bar and to allow an illegal immigrant who has committed three or more types of these offenses a pathway to citizenship. So I look forward to working with my colleagues on both sides of the aisle to fix that.

I also worry that the bill's implementation will be frustrated by thousands of lawsuits unless we tighten up the administrative and judicial review portions of the bill. And, finally, the bill falls well short of providing certain employers, particularly in the construction industry, with access to the labor force they need to run and grow their businesses.

So, Mr. Chairman, I look forward to a spirited and respectful discussion of these issues. The challenge before us is to make sure we get all of this right. And I would reserve the remaining 2 minutes and 26 seconds I have.

Chairman LEAHY. Thank you.

Senator KLOBUCHAR.

Senator KLOBUCHAR. Thank you very much, Mr. Chairman. Thank you to the witnesses. As a State that has a lot of agricultural workers, I am really impressed by all the work that you have done and the fact that the Farmers Union, the Farm Bureau, Mr. Rodriguez, your amazing work, that all of these organizations are supporting this bill. It is truly a tribute to your ability to compromise and see the bigger picture.

And I thought I would start with you, Mr. Rodriguez. I have been so impressed by your work, and you can imagine that some people still get concerned about what this could mean for American jobs with the guest worker agreement. And as someone with immense credibility in the labor movement and others fighting hard to pro-

tect American workers, can you summarize why you think this bill is a good thing for American ag workers?

Mr. RODRIGUEZ. Well, first of all, Senator Klobuchar, the workers that are currently here right now in the United States are going to have an ample opportunity to gain legal status through the blue card program and earn legal permanent residency.

Secondly, there is clear language in the bill that calls for no discrimination against U.S. workers in favor of guest workers, and we had lots of discussions with the employers in regards to that. Employers agreed they want to keep experienced farm workers that have the ability and have the skills to pick their crops. As Ms. Eastman mentioned earlier, it does not help the cows to be changing the workforce and have rotating numbers of workers. So we want to do everything we possibly can to maintain that stability here within the ag industry as much as we can.

And so legalization was our number one issue to try to deal with so that we keep the workers that are here right now, keep those professional workers, those skilled workers in the agricultural industry; and, secondly, to put provisions in the bill that there would not be discrimination against U.S. workers as the new visa programs are implemented.

Senator KLOBUCHAR. Thank you very much.

I have been hearing from ag producers for years about the problems with the H-2A program, and I am happy that we are going to find a way with this improved program to make this work better. And sometimes an alphabet soup of immigration programs and the endless rules involved in each can get pretty confusing.

Can one of you explain what you see as the biggest problems with the H-2A program as it is and whether you think the bill addresses these problems? Mr. Conner.

Mr. CONNER. I know your time is short, Senator, so I will just tick off a few here.

Certainly the wage rates that are part of the H-2A program. For your constituency, obviously the fact that it is strictly a seasonal program that provides no value for year-round workers, so it is of no use to the dairy industry at all.

And then, secondly, I would just say the administrative bureaucracy of the program. Small producers, you know, do not have the ability to hire consultants to navigate their way through an H-2A application process.

Senator KLOBUCHAR. That is for sure.

Can someone explain why you think it is important to have the Ag Department oversee the guest worker program instead of the Labor Department?

Mr. CONNER. I will try that as well. Let me just say I think there are a couple different ways to answer that. Certainly there is a structure already in place for not only State level USDA offices, but we all know that there is a virtual USDA presence in every county in America, certainly every major agricultural county. These are offices that producers out there deal with quite often. They are quite familiar with them. There are people in those offices who are used to not only helping the producers but helping them navigate through other processes. We believe that producers will be quick to

use that local system that is well established out there in America today.

Senator KLOBUCHAR. Thank you.

Ms. Eastman, I thought one of the most important parts of your testimony is when you talked about the indirect benefits really of the guest workers, the fact that when they are here and we have some kind of status that works, that they are going to buy things in America. And sometimes they use them here, sometimes they ship them back, whether it is motorcycles, washing machines, you name it. You also mentioned the positive impact for rural areas with stores.

Could you talk more about these indirect impacts that you have seen in your community?

Ms. EASTMAN. Yes. Thank you, Senator. One of the best times that I have is at the end of harvest. We have a baggage truck that has its set route, and it is run by Florida East Coast Travel Service, and it is great because when I get the listing of where it is going to go, the workers actually know before I do. It is like an underground tunnel. They cannot wait. They get their bins together, whether they go to Costco, Walmart, they buy motorcycles, weed whackers, washing machines, and all of this is shipped back because they tell us that it is cheaper for them to buy it here and ship it home. I have witnessed them pay \$200 for a canoe and it costs them \$200 to get it home.

So the point to be made is a lot of the money that they make here in the United States is spent locally here as well.

Senator KLOBUCHAR. Thank you very much, all three of you.

Chairman LEAHY. Thank you very much.

I have consulted with the Ranking Member, and I am told Senator Lee is next. Senator Lee of Utah, please go ahead.

Senator LEE. Thank you, Mr. Chairman, and thanks to each of our witnesses for joining us today. I have got a brief statement, and then I have got a couple of questions.

I recognize that the labor problems facing our agricultural industry are different in kind from those in other industries and are critically important to our Nation's economy. The nature of agricultural work can, of course, deter even the hardest working of Americans. The long sporadic hours, a distant and secluded worksite, the nominal wages that result from low margins for food products and the back-breaking physical labor itself all contribute to a relative lack of interest in and participation in these jobs by American-born workers.

Creating a sustainable guest worker visa is essential for keeping our Nation's farms and ranches fully staffed. That is why I introduced the DASH Act, a bill that would expand access to the H-2A program for additional categories of workers and employers. Addressing problems for agricultural workers and employers must be part of any visa reform, so I am glad that we are having this discussion this morning.

I was wondering if I could start with Ms. Eastman, if you could tell us a little bit why—sort of restate for us why you think that the H-2A program is insufficient, particularly as it relates to some of these industries like dairy farming and sheepherding.

Ms. EASTMAN. I cannot speak to sheepherding—

Chairman LEAHY. Is your microphone on?

Senator LEE. Microphone.

Ms. EASTMAN. Excuse me. I cannot speak to sheepherding because I have not had direct access with sheep.

As far as the dairy farming goes, it is impossible. We have two dairy farms that do have H-2A workers, but they are here to repair fence and work in quarries that are going to be used as pasture. So it is not related to milking cows, which is simply an everyday function at these farms. So in part it is not available to those folks.

Senator LEE. Explain to us why it is not.

Ms. EASTMAN. It is because right now H-2A is limited to a 10-month seasonal, so if you are an employer—and that is limited to the employer. The H-2A employee can stay here longer than that, but they have to transfer. So one individual employer can only have H-2A workers on site for 10 months out of the year.

Senator LEE. Which does not work for some of these areas.

Ms. EASTMAN. That is right, and it is not based on a fiscal year, like you take apples when they come in. You know, it is August and they will stay to pick, prune, pack. They have to be gone by the end of May. So it is not limited to a fiscal year.

Senator LEE. And this bill, in your opinion, addresses that problem?

Ms. EASTMAN. Yes.

Senator LEE. Tell us how it fixes the problem.

Ms. EASTMAN. Well, it fixes the problem because—I think actually Mr. Conner can speak to that better with the different types of visa applications.

Senator LEE. Mr. Conner.

Mr. CONNER. Well, it fixes the problem fundamentally by creating two different groups of the guest worker program. One would be the seasonal at-will program. But the other is a contract program, again, where you would have the ability to bring in workers on a contract. As you noted, to perform those milking functions, the feeding functions on the farm, those kind of things where you—you know, as was noted earlier, the cows do not stop producing milk. They produce 24/7 every day of the year.

Senator LEE. That is the nice thing about cows. They are considerate in that regard to produce year-round.

[Laughter.]

Senator LEE. So looking long term, do you think this solves it for the long term? Do you see this as a long-term fix or something that we would have to tinker with every few years?

Mr. CONNER. There is no question, Senator Lee, that we picture this as a long-term fix. This was fundamental to our coalition's efforts. We were not looking to come back and do this in a few years because we know that that is, you know, not going to happen. This has been a problem that has been developing really since the mid-1980s, and, you know, we believe that the combination of the blue card program for our trained existing workforce and the viable guest worker program, both at-will and contract, administered by USDA, provides that long-term access to the workforce, legal workforce that we are going to need to continue to produce the crops and the food for America.

Senator LEE. Can you tell me how the caps work, the caps on the number of these visas that will be available?

Mr. CONNER. Yes. There is a cap on these visa workers. In year one, that cap would be set at 112,333. As you can note by some of those numbers, this was a product of a lot of negotiation and compromise on both sides in terms of the setting of those caps. Another 112,000 would be then year two and year three so that by year three the cap would be 337,000 workers. From years five onward, there would be no cap, but the Secretary of Agriculture would be empowered then to set a cap based upon need for the number of guest workers that we would have in the country.

Senator LEE. Okay. And that is part and parcel of why you see this as a long-term fix, is because you are then allowing us to respond to changing economic circumstances through the Department of Agriculture.

Mr. CONNER. Absolutely.

Senator LEE. Okay. I see my time has expired. Thank you very much.

Thank you, Chairman.

Chairman LEAHY. Thank you very much, Senator LEE.

Senator Franken.

Senator FRANKEN. Thank you, Mr. Chairman.

I just want to take a moment to respond to those who say that immigration is such a complex problem that we cannot address it with a comprehensive approach. I believe that the complexity of this problem and the connectedness of the issues involved in immigration speaks to the need for comprehensive reform.

Take, for example, border security. I know that border security is critical, and that is why I am very happy to see that the strong provisions in this bill are in it. But if all you did was secure the border with 10-foot walls, if there is still a market for undocumented labor, you would create this huge market for 11-foot ladders. And so you need to verify—you need to be able to verify workers.

So, Mr. Conner and Mr. Rodriguez, first of all, I want to congratulate you two on working with each other. I think it was a great thing. Mr. Conner, one of the important aspects of the bill is the delayed phase-in of the employment verification requirements. Agricultural employers are not required to participate in the E-Verify program until 4 years after regulations are issued, which will be about 5 years after the passage of the bill. This is going to be very important for farmers in Minnesota. Lots of our farmers run pretty small operations. It is going to take time for these programs to get up and running.

Can you, Mr. Conner, identify why this delayed implementation of E-Verify is important for agriculture?

Mr. CONNER. That is a great question, Senator Franken. Let me just say I think the important aspects go to the heart of the program, and that is, we really are creating in many ways, you know, two brand-new programs here. You have the blue card program, and then you have the contract part of the guest worker program, and then the at-will part of the guest worker program. We know that this is going to be administratively difficult. We know there will be bumps and bruises along the way on the implementation.

This ensures, again, that for agricultural production, which is so important in terms of timeliness, seasonality, that, you know, there is going to be a maximum amount of time here before the E-Verify system is kicking in and fully operational, so that we can make sure that these three new apparatuses are working, that, you know, the caps are being set in an adequate amount to provide the workers that we need. You know, it just gives time, because, you know, remember, Senator Franken—and you know this—these are very, very small businesses out there on our American farms and ranches almost by any standard, and, you know, more than anything else, we want to make sure that these small producers know the program, know what it takes to get the legal workforce here before we get to enforcing this thing out on every single farm and ranch in America today. I think that is only fair.

Senator FRANKEN. And especially for these small operations. We need to make sure that the E-Verify program has a higher accuracy rate than it has now. And I am worried that as we introduce millions of immigrants into the system, the error rates tend to get higher when you do that. And when you run a dairy operation or other small businesses, for that matter, you do not have a huge HR department like you might at other businesses.

And so I think this is just very important that we understand how this all fits together and that we do it with our eyes wide open. But to me, it is absolutely essential that we do it at one time because everything is so interrelated.

I am very pleased with what this is going to do again for our dairy industry. Half of all dairy cows in America are milked by immigrant labor. And I have called for this to be fixed for years. I am glad that Senator Feinstein and Senator Leahy have made their efforts to do that.

In your mind, Mr. Conner, in addition to dairy, what are—and, by the way, the Chairman said something about you say to cows, “We are only going to milk you seasonally,” they do not like it. They do not know what you are saying.

[Laughter.]

Chairman LEAHY. They do in Vermont. Maybe not in Minnesota.

[Laughter.]

Senator FRANKEN. Well, okay. I know the Chairman is a Deadhead, so no comment on where he got—sorry, Senator.

[Laughter.]

Chairman LEAHY. Has the Senator finished his questions?

Senator FRANKEN. No. I have no idea where I was—yes, I wanted to—just what are the—aside from dairy, what are the one or two most helpful aspects of this agreement?

Mr. CONNER. Well, again, Senator, you know, we have a problem in American agriculture today, and it is reflected in the fact that, you know, so much of our workforce is currently undocumented. You know, for anything else that we have, recognize that the problem exists today. So the status quo is intolerable. Across all of the agricultural sector, the notion that you are going to give us the ability to actually have a legalized workforce that we know is legal and can verify that—you know, farmers and ranchers are the most law-abiding people on this planet. They want to have access to those workers. They want them to be legal. And more than any-

thing else, I think fundamentally this bill gives us that ability to be legal. And, you know, that is huge because the status quo, again, is—you know, what are the alternatives? I challenge those to suggest that. The current system is broken. We have got to change it.

Senator FRANKEN. Thank you.

Thank you, Mr. Chairman.

Chairman LEAHY. Senator Flake.

Senator FLAKE. I thank the Chairman and thank the witnesses. I just want to thank all of you and Senator Feinstein for working so hard to get an agreement here. We were kept informed, those of us working on the broader agreement, of the progress that was made and the hurdles that you had to overcome, and it is not an easy task, I think we all know, and so congratulations for working together on this and getting this done.

As I mentioned when we launched the broader bill last week, I grew up on a farm, working alongside migrant labor, and I know the motivations that they have. I know how difficult it is. And I know that they were here to make a better life for themselves and for their families. And for the life of me, I have never been able to place all those who come here across the border undocumented in some criminal class. It just has never rung true to me that way. And so I want a solution here. Farm work is tough work. I made it off the farm with almost all of my digits, just lost the end of one in an alfalfa field. But I can tell you, I am here largely in politics because I got tired of milking cows. It is a tough job. You cannot tell them, you know, "We are not going to milk you today." It just does not work. I have tried. I have tried. It does not work.

But I appreciate what you have done here, and, Mr. Conner, I appreciated working with you when you were at the USDA on other issues, and I appreciate the work that you have done.

Let me just say, in your experience, I know that you have been working on a solution just for ag for years now. Why is that so difficult? And why is it important to have this as part of the broader bill? Why is it easier as part of a comprehensive package or at least possible? I know that you have been working on this. Why has it not been possible to achieve on its own?

Mr. CONNER. Well, Senator, you are absolutely correct in that agriculture has—you know, this is not a realization that has come about just in the last few months. We have known we have had a problem for a very, very long time, and, you know, we have worked with Senator Feinstein on solving just agriculture's problems for a very, very long time as well. And I would just say that history suggests that, you know, that did not work, that, you know, the agricultural problem in and of itself probably was not going to produce successful legislation.

So, you know, being a part of this comprehensive effort, again, our negotiations have been very, very limited to just the agricultural piece, but we appreciate the fact that, you know, as part of the broader package there seems to be some momentum to get something done this year because we have been talking and proposing solutions and in some cases even producing legislation for a very, very long time because this has been a problem for a long time. We believe 2013 reflects, you know, what I have described to

many as the best chance in a generation to stop talking about it and finally fix it.

Senator FLAKE. Can you just go on with that? If we fail to reach an agreement here and there is no agreement just with the subset of agriculture, what would the consequence be? How much of our industry do we stand to lose if we cannot reach agreement here?

Mr. CONNER. Well, the consequences are substantial, Senator. Some of those I put in my opening statement, but, you know, again, the status quo means that a large, large percentage of the American workforce—doing nothing means a large percentage of the American workforce is going to continue to be undocumented workers in this country, people that are not here legally. Again, this is untenable to the American producer out there, that somehow we cannot give him or her a legal workforce. So that is first.

Secondly, we do have labor shortages in this country, and it is resulting in crops going unharvested. It is resulting in agricultural production—and I cited the case of the California study of tens of thousands of acres moving to another country. That pattern will continue if we do not fix this problem.

Senator FLAKE. Just in the remaining seconds I have, some will argue that if we do not have a foreign labor force, then that simply means more jobs for Americans. But how does the lack of a program like this affect U.S. jobs or American worker jobs?

Mr. CONNER. Well, several have raised this point, and perhaps Arturo has a comment, too. I know time is running out, but I will just say this issue has been studied and looked at exhaustively. Senator Feinstein has been personally involved in a number of efforts out there to really sort of demonstrate, you know, are we replacing U.S. jobs here? Are there people out there that would really do this but we are just not paying enough or something is wrong and, therefore, we are turning to these foreign workers? It has been proven time and time again, study after study, several cited in my written testimony, that is not the case. They will not do this work. And without this workforce, again, food production will go overseas and crops will be left unharvested in the U.S., period.

Senator FLAKE. All right. Thank you.

Chairman LEAHY. Thank you.

Next is Senator Cruz.

Senator CRUZ. Thank you, Mr. Chairman.

I will note at the outset that I regret I was not able to be here at the hearing on Friday. I joined my colleague Senator Cornyn down in West, Texas, visiting with the victims of that horrific accident, and I want to thank my colleagues and the millions of Americans who have lifted up the citizens of West who have been suffering through that tragedy. Both West, Texas, and obviously Boston have both in the past week had horrific tragedies, and all of us are lifting up those who lost their lives, their families, and loved ones, and the many who are injured and suffering. And so I am grateful for the great many prayers for the citizens of West in their suffering.

I want to thank each of the three of you for being here today, for your very able testimony, and for your hard work and commitment to immigration reform. And, indeed, I would like to thank all of the Members of the so-called Gang of Eight, who I think have

worked very, very hard on this very difficult issue to try to reach a solution to a very difficult problem. And so I comment the efforts of the four Democrats, the four Republicans, who have worked very hard on this.

I think there is enormous agreement in this country that our immigration system right now is broken. I think that is bipartisan agreement. I think it is across the country. I think there are huge challenges. I think those challenges are particularly acute in the agricultural area. And I will note for me this is an issue that is not simply abstract. I am proud to be the son of an immigrant who came from Cuba with nothing, and to be the grandson of an agricultural worker. My grandfather worked in the sugar canes on a plantation in Cuba in very difficult circumstances. And, indeed, I would note—and, in fact, I would like to commend the senior Senator from California for this very substantive report that she has put together. I think it is very well done, and I think it very effectively tells the story of how the current system is not working. Indeed, I made a point of reading the section on Texas, and I will note that what is contained there very much comports with what I have heard from farmers and ranchers throughout the State of Texas. Agriculture is critical to my State, as it is to her State, and I suspect to the States of every Member of this Committee.

I think all of us would like to see a bill that fixes the broken immigration system. And I would suggest, in my view, the strategy that will be effective to pass a bill is to focus where there is wide bipartisan agreement. That is how we will actually get a bill passed. And in my judgment, there are two broad areas where there is bipartisan agreement right now.

Number one, I think there is bipartisan agreement that we have got to get serious about securing the border, that we need to increase manpower, that we need to increase technology, that we need to fix the problem. In a post-9/11 world, I think it does not make sense right now that we do not know the criminal history, we do not know the background of those coming in. And I think there is wide agreement we should fix that, including the problem of visa overstays, which is a significant component of illegal immigration today.

I think there is likewise wide bipartisan agreement that we need to improve legal immigration, that we need to streamline it, that we need to reduce the bureaucracy, reduce the red tape, reduce the waiting periods.

One of the things that all three of the witnesses have talked about today are the difficulties of the existing H-2A system and having that system work, and one of the reasons we see illegal immigration at the levels we do is because our legal immigration system is not working effectively. And I think we should all be champions of legal immigrants, making the system work, and not just welcoming but celebrating legal immigrants.

I think if we are going to see an immigration reform bill pass, that should be the focus of the bill. I think if instead the bill includes elements that are deeply divisive—and I would note that I do not think there is any issue in this entire debate that is more divisive than a path to citizenship for those who are here illegally.

In my view, any bill that insists upon that jeopardizes the likelihood of passing any immigration reform bill.

So it is my hope that passing a bipartisan bill addressing areas of common agreement, securing the border, improving legal immigration, improving agricultural workers to ensure that we have workers who are here out of the shadows, able to work legally, I hope that that reform legislation will not be held hostage to an issue that is deeply, deeply divisive, namely, a pathway to citizenship. In my view, that is how we get something done. We focus on areas of agreement, not on areas of disagreement. And I am hopeful that over the course of consideration we will see some consensus come together to do exactly that.

Thank you.

Chairman LEAHY. Thank you, Senator CRUZ.

Senator GRAHAM.

Senator GRAHAM. Thank you, Mr. Chairman. I will pick up where my friend from Texas left off about consensus.

I may be wrong, but after having dealt with this since 2005, I think we are beginning to reach consensus as a Nation. The first consensus we have reached is the current system is not working. If you are worried about amnesty, that is exactly what we have. We have 11 million people roaming around the country with really no way to find out who they are under the current construct.

Senator Cruz is right. If you are trying to access legal labor, it is incredibly hard to do. The visas run out. It is just too complicated. So I think most Americans believe the status quo will not work. They want their borders secured. There is consensus. There are very few people in this country who think that border security is not a good thing. And visa control, 40 percent of the people here illegally did not come across the border. They overstayed their visas. All the hijackers on 9/11 were visa overstays. And if Boston tells us anything, we need to be aware of who is living among us, whether native born or come in on a visa and become a citizen. We can be threatened by our own people.

So there is a consensus about border security, there is a consensus the status quo should be replaced. I think there is a consensus about what Senator Cruz said, a guest worker program, with this caveat—this is where Senator Sessions and I kind of join forces. I do not want a foreign worker to come into the country and take a job from a willing American worker. The only time I want you to be able to hire somebody, Mr. Rodriguez, is when an American worker will not do the job after you advertise at a competitive wage. And until you get this system kind of under control, we really do not know. Is it because—why are there almost no native-born workers in agriculture? Is it because the work is too hard and we have moved on as a people? Or because the wages are too low and most of them are illegal immigrants? We will not know until we get order out of chaos.

I think the other thing that people have come to grips with—and this is where Senator Cruz and I disagree—is that the 11 million are not going to go away. And most people are okay with a pathway to citizenship, 70 percent, if it is earned, if you do not cut in line of those who have been patiently waiting, if as a condition of staying here you have to go through a criminal background check,

you have to pay a fine, if as a condition of staying here to become a citizen you have to learn the language and hold a job. And we are talking about a 10-year minimum before you can even apply for a green card, and the conditions on the pathway to citizenship are that you have to learn our language, you have to pay a fine for the crime you committed, you have to go through a criminal background check, and you have to keep a job.

I think most Americans would say that is a practical solution, and most Americans, like me, do not want to deal with this 20 years from now. And my goal is to end this debate and get it right. We did not get it right in 1986.

When it comes to the agriculture community, Mr. Conner, do you believe that most people working in agriculture are non-citizens or illegal immigrants?

Mr. CONNER. Senator Graham, I believe the statistics do verify that, you know, the numbers are somewhere between 60 to 70 percent of our agricultural workforce are undocumented—

Senator GRAHAM. Why is that? Mr. Rodriguez, do you agree with that?

Mr. RODRIGUEZ. Yes, sir. That is what I understand.

Senator GRAHAM. Why is that?

Mr. RODRIGUEZ. Well, I think you pointed out some of the reasons, sir. You said that, you know, the current systems that are in place affect not—

Senator GRAHAM. Willing employers cannot get enough legal labor because there are limits on the visas and it is complicated and expensive. Do you all agree with that?

Mr. CONNER. Yes.

Mr. RODRIGUEZ. Yes. We have made changes as a result of that, and the fact that these are dangerous, seasonal, low-paying jobs.

Senator GRAHAM. Everybody said yes, okay.

Do you also agree it appears that meat packing, poultry, agriculture, some of these more labor-intensive jobs, that it is hard to find labor here in our country? Do you agree with that?

Mr. CONNER. Well, Senator, let me just respond. I am not here representing the meat packing industry, but the six categories, if you will, of agricultural workers out there— and there is no question that I wholeheartedly agree with that statement, that you cannot get Americans to do this work.

Senator GRAHAM. Well, and here is the question. If you paid them \$40 an hour, you probably could, but nobody would be left in American agriculture. They would go to Mexico. So we have got to find a way, in my view, to replace our agricultural workforce that is 60 to 70 percent illegal and everybody should be legal. There is no benefit to our economy by having a bunch of illegal workers in any part of the economy dominate that part of our economy.

So what I think we have done with this bill is we have tried to strike a balance, and Senator Rubio and Senator Feinstein in my view have done a good job to replace the illegal workforce with a legal workforce.

And one last thought, Mr. Chairman, just indulge me for a second. The pathway to citizenship has three triggers: there has to be a border security strategy created by Homeland Security before the pathway to citizenship can be fully implemented; you have to have

E—Verify up and running; and you have to have entry and exit control visas before people can transition from a temporary legal status to get a green card. I think those three triggers make sense.

If this Committee can make those triggers more effective, if Senator Cornyn can help us on the exit visa system, count me in. If we can find ways to secure the border better, Senator Cruz, count me in.

At the end of the day, I want to make sure that we do not have a third wave, and getting the agricultural part right, since 60 to 70 percent of the workers in agriculture are illegal, seems to be a good place to start.

So I would like to compliment the authors of this part of the bill and say you have done a good job and let us make it better if we can.

Chairman LEAHY. Thank you.

I want to thank this—

Senator GRASSLEY. May I have 15 seconds?

Chairman LEAHY. Go ahead.

Senator GRASSLEY. I have been where the Chairman has been as Chairman of the Committee, and we have to move on. But I do want the record to show that we were hoping to have a second round, and so we will submit our questions for answer in writing.

Chairman LEAHY. I appreciate that, because I am looking at the number of witnesses we have today. It is going to take some time. Of course, we will have another panel tomorrow with the head of Homeland Security.

[The questions appear as submissions for the record.]

Chairman LEAHY. I want to thank Mr. Rodriguez, Mr. Conner, and Ms. Eastman for being here. Each one of you have been very, very helpful in putting this together. And I wanted to thank Senator Feinstein, Senator Hatch, and others who have worked so hard on the agriculture part of this. So thank you all very, very much.

Mr. RODRIGUEZ. Can we make any final points?

Chairman LEAHY. If you would like to make a brief final point, each of you, go ahead.

Mr. RODRIGUEZ. It will be very brief. Again, we just want to thank the Committee for all their hard work, and we want to certainly thank once again Senator Feinstein for her diligence in all this. But just one closing thought.

I think what we tried to do here in working together over the past few months and years is to really do something that would both honor farm workers in this country and the work that they do do. And, secondly, that we do have an industry, an agricultural industry, that will maintain its viability. I think all of us in America want to see products produced here when it comes to our fruits and vegetables.

Chairman LEAHY. Having had the honor of serving as Chair and also as Ranking Member of the Senate Agriculture Committee, I want the most powerful Nation on Earth that we can supply our own food and our own agriculture, and I want a vibrant, from east to west, north to south, agricultural community. So thank you all very, very much for being here.

Chairman LEAHY. While we are changing, would Megan Smith, Jim Kolbe, Tamar Jacoby, Rick Judson, Brad Smith, Ron Hira, Neeraj Gupta, and Fred Benjamin please come forward? We will set up the table.

[Pause.]

Chairman LEAHY. I thank all the witnesses for being here. Just so everybody will understand, we are going to go straight through the noon hour because of the numbers we have. Some Senators will be going in and out for lunch and other meetings that are taking place.

We will begin with Megan Smith, who is the commissioner of the Vermont Department of Tourism and Marketing. She was appointed by Governor Shumlin in 2011. Before that, of course, she was—well, we know, anyway, that she was in the Vermont Legislature, and before she became commissioner, she and her husband owned and operated the Vermont Inn in Mendon, which is a very nice place—nice town, nice inn—for over a dozen years.

Ms. Smith, please go ahead.

**STATEMENT OF MEGAN M. SMITH, COMMISSIONER, VERMONT DEPARTMENT OF TOURISM AND MARKETING, MONTPELIER, VERMONT**

Ms. SMITH. Chairman Leahy, Ranking Member Grassley, and Members of the Committee, I am pleased to be here today on behalf of the Vermont Department of Tourism and Marketing and the broader travel community to highlight the importance of travel-related provisions included in immigration reform.

Vermont is very dependent on tourism. Our percentage of jobs in the industry is twice the national average, at 38 percent. The majority of our businesses are small and family-owned, and agritourism is growing at a very high rate. We are starting to see a steady increase of international visitors, and it is a market that we are focusing on much more with the support of Brand USA. While we benefit from being a weekend destination for millions of travelers, in order for small businesses to flourish, we need to attract more international travelers who stay longer—an average of 14 days—and spend more money.

Our Nation does not remain competitive in the global travel marketplace. From 2001 through 2010, our market share of the world traveler fell from 17 to 12 percent. This resulted in more than 78 million international travelers going somewhere else and the U.S. losing 467,000 jobs and \$606 billion in revenue over those years.

Understanding the economic importance of growing international visitation, let me highlight some important provisions in the immigration bill that will address some of the most pressing barriers facing inbound business and leisure travelers in the U.S.

We fully support all the provisions in the JOLT Act that were included in the proposed legislation. In particular, we strongly support expansion of the Visa Waiver Program, which is critical to both our national security and our economic health. According to Commerce Department data, VWP visitors spent nearly \$67 billion and supported 525,000 American jobs in 2011.

Easing unnecessary restrictions on visitation from Canada will only enhance the already strong diplomatic and economic ties be-

tween the two countries. Vermont has a distinct and important relationship with our Canadian neighbors. This relationship is especially strong in the northern region where thousands of Canadians own second homes. As these homeowners reach retirement, they are interested in spending more time in the U.S., so we strongly support increasing their time to remain in the U.S. to 240 days.

Vermont has also been a pioneer of the EB-5 program through the unparalleled efforts of Jay Peak Resort's Bill Stenger, making our State the first in the country to successfully utilize this program for resort development and expansion. Jay Peak is a perfect example of this program's benefits for the economy and the local community, where jobs are scarce in that part of Vermont and conventional lending is not an option. We appreciate the inclusion of a permanent authorization of this important program.

We also very much appreciate inclusion of the reforms to the H-2B visa program which is highly important to employers in seasonal tourism industries—most importantly the States with lower populations and dense visitor seasons. Ski resorts in the winter and beach communities in the summers rely on these workers who not only prove to be excellent employees but bring a cultural experience to States that do not necessarily enjoy a great deal of diversity. When a trained employee can return for several years in a row, it is a great benefit to all. We thank you for including Sections 4601 and 4602 in the bill.

In order to enhance security while also facilitating legitimate travel and trade, we strongly support the addition of the 3,500 Custom and Border Patrol officers included in this legislation. In order to ensure the officers are allocated appropriately, we urge the Committee to work with the CBP to identify and specify the number of officers needed at air, land, and sea ports of entry.

Lastly, I would like to highlight one of our areas of concern. The proposal in Section 6 of the immigration bill to gut the funding for Brand USA by 75 percent will stifle the organization's global impact and hurt States like Vermont that depend on Brand USA to reach new markets. The 2010 passage of the bipartisan Travel Promotion act was supported by an overwhelming majority of the U.S. Senate, including Senators on this Committee. I represent the small rural States on the Brand USA Marketing Committee. This organization has allowed those of us that are not gateway States to finally have a voice in the international travel market. Since Brand USA and Vermont have partnered together, it has allowed Vermont to enter the markets of Great Britain and Japan, using Boston, New York, and Montreal as gateways. Partnering with Jet Blue, we have already seen an increase in visitation to Vermont through JFK, and I have been able to hire a PR firm in both of these markets to promote Vermont tourism.

Cutting Brand USA's funding by taking 75 percent of the TPA fees for border security will have an immediate negative impact on the travel community across the U.S. There are excess funds in the ESTA that are not being used by Brand USA. The immigration bill should focus solely on using those funds for new border security initiatives.

In conclusion, if the U.S. recaptures its historic share of worldwide overseas travel by 2015 and maintains that share through

2020, it will add nearly \$100 billion to the economy over the next decade and create nearly 700,000 more U.S. jobs. The positive travel provisions in this bill will help us achieve this goal.

I very much appreciate the opportunity to testify today.

[The prepared statement of Ms. Smith appears as a submission for the record.]

Chairman LEAHY. Thank you very much.

Our next witness is former Congressman Jim Kolbe from Arizona's 5th District, I believe. He served for 22 years. President Obama recently appointed Mr. Kolbe to the Advisory Committee for Trade Policy and Negotiations. He provides policy advice on trade matters, and he and I worked together on a number of significant matters during his years in the House, and we are glad to have you back here.

Please go ahead.

**STATEMENT OF HON. JIM KOLBE, A FORMER REPRESENTATIVE IN CONGRESS FROM THE STATE OF ARIZONA**

Mr. KOLBE. Thank you, Senator Leahy. Senator Leahy and Members of the Committee, thank you for inviting me to testify before you today on behalf of the Border Security, Economic Opportunity, and Immigration Modernization Act of 2013.

I had the privilege of serving in the United States Congress from 1985 until 2007, representing Arizona's 5th and 8th Congressional Districts. Immigration is an issue that has always been in the forefront in this border district.

I applaud the Senators in the so-called Gang of Eight, especially my colleague Senator Flake from Arizona, who spent many months preparing this legislation. The bill currently before the Committee is an excellent start that offers many positive provisions to help U.S. businesses, our immigrant population, and our country as a whole. Others on this panel will discuss various economic considerations, but I want to talk about one particular provision: completing family unification.

I know, as the partner of a Panamanian immigrant, how especially difficult it can be to build a life and protect your family under our current, cumbersome system. While the bill you are considering is an excellent starting point, I submit to you that it is still incomplete. Families like mine are left behind as part of this proposal. Equally important, U.S. businesses and our economy suffer because of the omission of lesbian, gay, bisexual, and transgender families from the bill introduced last week.

My partner and future husband, Hector Alfonso, was born in Panama and came to the United States on a Fulbright Scholarship to pursue graduate studies in special education. He has been a dedicated teacher for almost two decades. Hector was forced to return to Panama when his work visa expired. Our 12-month separation, like that of any American from their spouse, was painful. Hector returned to Panama while he applied for another visa. Eventually, we accomplished this, but it was a long process and it was expensive—far beyond the reach of most families.

Just a month from now, Hector and I will legally marry here in the District of Columbia, surrounded by family and friends. We are immensely fortunate that Hector has now secured an investment

visa that allows him to remain here with me. Many other couples, however, are not so fortunate. Their ability to secure a solution that would allow them to build a home, family, or business together is elusive and difficult to realize. This Committee has an opportunity to fix this problem.

The Uniting American Families Act, UAFA—legislation sponsored by Chairman Leahy and Senator Collins—would make a profound difference in the lives of many Americans and their families. By amending our immigration laws to treat lesbian and gay families as our Nation treats other immigrant families, UAFA would ensure American citizens are not torn apart from their loved ones or forced into exile abroad.

The comprehensive immigration reform bill now under consideration by this Committee includes important provisions to make U.S. businesses more competitive. UAFA does the same, which is why it is supported by Fortune 500 companies like Intel, Marriott, Texas Instruments, and U.S. Airways. The failure to recognize lesbian and gay families in our immigration laws has a direct impact on American business.

In a letter last month to the eight Senators who authored the Border Security, Economic Opportunity, and Immigration Modernization Act, a coalition of 28 of our country's most prominent companies wrote:

“We have each worked to help American employees whose families are split apart because they cannot sponsor their committed, permanent partners for immigration benefits. We have lost productivity when those families are separated; we have borne the costs of transferring and retraining talented employees so they may live abroad with their loved ones; and we have missed opportunities to bring the best and the brightest to the United States when their sexual orientation means they cannot bring their family with them.”

It is not just major corporations that lose out, Mr. Chairman. In Columbia, South Carolina, a restaurant owner with 25 employees recently made the difficult decision to close his business in order to move so he could be with his partner. In Los Angeles, a young entrepreneur who employed 30 U.S. workers shut his doors after his Canadian partner's visa expired and they were forced into exile. These are stories that should give us all pause and cause us to reflect on the price to both American businesses and American families when we choose to leave some of our fellow citizens out of a reform to our immigration laws.

It is time, Chairman Leahy and Members of this Committee, to fix this part of our immigration law. The opportunity is too rare and the positive impact too great to leave anyone behind. Adding UAFA to the Committee bill would be a big step toward making it a truly comprehensive bill.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Kolbe appears as a submission for the record.]

Chairman LEAHY. Thank you very much, Congressman. I appreciate that.

Tamar Jacoby is the president and CEO of ImmigrationWorks USA, a national federation of small business owners working to enhance the immigration law.

Thank you for being here. Go ahead, Ms. Jacoby.

**STATEMENT OF TAMAR JACOBY, PRESIDENT,  
IMMIGRATIONWORKS USA, WASHINGTON, DC**

Ms. JACOBY. Thank you, Chairman Leahy, Ranking Member Grassley, Members of the Committee. Thank you for this opportunity to testify. I am Tamar Jacoby, president of ImmigrationWorks USA.

IW is a national federation of small and medium-sized businesses from across the sectors that hire immigrants, and I am here today on behalf of my members to express our support for this legislation. The less-skilled temporary worker, W-visa program in particular, is a thoughtful, innovative blueprint, and we look forward to supporting passage.

But we also hope the measure can be improved, most importantly increasing the size of the W-visa program so it works to prevent future illegal immigration, diverting today's unauthorized immigrant influx and replacing it with a legal labor force.

I am going to use my time today to address three issues:

Number one, the economic benefits of less-skilled immigration. The U.S. workforce is changing. American families are having fewer children with birth rates now well below replacement level. Ten thousand baby boomers are retiring every day, and the much younger workers coming up behind them are much more educated than their parents.

In 1960, 64 percent of American workers were high school dropouts. Today the number is less than 10 percent. And together these three factors have had a dramatic effect on the pool of Americans available to fill low-skilled jobs.

It is no accident that my members are constantly complaining about their difficulty finding workers. The pool they have to draw on is shrinking alarmingly. For those seeking to hire unskilled men of prime working age, the supply of U.S. workers is literally half the size it was in 1970.

But, if anything, demand for less-skilled workers is growing. In 1955, 25 cents of every dollar spent on food was spent in a restaurant; today it is 50 cents. And one of the fastest growing occupations in America is home health aide.

Bottom line: we need less-skilled immigrant workers. We are going to need them increasingly in the years ahead. And far from taking jobs from Americans, by and large immigrants support and create jobs for U.S. workers. Low-skilled immigrant workers allow restaurants, for example, to expand, creating jobs for U.S.-born chefs, U.S.-born waiters, restaurant managers, and others—farmers, janitors, architects, you name it, up and downstream in the economy.

The urgent question for the Nation is how to fill this need for less-skilled immigrant workers, which brings me to my second issue: the design of the W-visa program. The Gang of Eight Senators faced a daunting challenge in creating a less-skilled worker visa program. The existing programs offered little to build on. Both

are intensely disliked by employers and labor advocates alike. But the Senators largely succeeded, in my estimation. The W is a program is creative, well-crafted blueprint. Among its most innovative features, in contrast to other temporary worker programs, workers would not be tied to specific employers but can change jobs at will, accepting work from any employer enrolled in the program, approved to participate in the program. This was a win-win for workers and employers, most particularly for employers, providing flexibility and the possibility of hiring in real time.

Number two, the size of the program is designed to adjust automatically in response to changing U.S. labor needs, growing in good times when the economy needs more workers and shrinking in down years when Americans are out of work.

Number three, employers who participate in the program are required to try to hire Americans first and pay the same or more than they pay American workers. But in contrast to existing temporary worker programs, applying for a W-visa slot is relatively simple, straightforward, and predictable.

Bottom line: My members and other employers find much to admire in the W-visa program. Our main concern—and this is my last point—is that the program may not be large enough to accommodate U.S. labor needs and as a result may not succeed in replacing the existing flow of illegal immigrants with a legal foreign labor force.

Without a workable temporary visa program, the Nation can have no hope of ending illegal immigration. Of course, enforcement can help control the flow, but ultimately the best antidote to illegal immigration is a legal immigration system that works, meeting unmet U.S. labor needs with an adequate supply of legal foreign workers.

We learned this lesson the hard way since 1986, and if we repeat that mistake again this year, in 10 or 20 years we are going to find ourselves in exactly the same predicament, wondering what to do about a new 11 or 12 million unauthorized immigrants.

Most scholars trying to predict future labor needs base their estimates on the past, and most suggest that in average years to come, U.S. labor needs could attract as many as 250,000 to 350,000 to even 400,000 less-skilled workers.

Will the W-visa program be able to accommodate these workers? Certainly not in its first 4 years, when the quota will range from 20,000 to 75,000. And even the program's upper limit of 200,000 may be too low, even with potential exemptions for spouses and others.

My written statement includes a number of ideas about how potentially to improve and expand the W-visa program, but in closing, I would like to underscore how much I and my members appreciate the work of the Senators who crafted this legislation. We look forward to working with this Committee and others in Congress to improve the W-visa program and pass the Border Security, Economic Opportunity, and Immigration Modernization Act.

[The prepared statement of Ms. Jacoby appears as a submission for the record.]

Senator Franken [presiding]. Thank you, Ms. Jacoby.

Next is Rick Judson, a builder and developer from Charlotte, North Carolina, who currently serves as the Chairman of the Board of the National Association of Home Builders.

Welcome, Mr. Judson.

**STATEMENT OF RICK JUDSON, CHAIRMAN OF THE BOARD, NATIONAL ASSOCIATION OF HOME BUILDERS, WASHINGTON, DC**

Mr. JUDSON. Thank you very much. On behalf of the more than 140,000 member companies of the National Association of Home Builders, thank you, Chairman Leahy and Ranking Member Grassley, for the opportunity to testify today. My name is Rick Judson. I am a builder and developer from Charlotte, North Carolina, and NAHB Chairman of the Board.

The Senate bill takes meaningful steps toward comprehensive immigration reform. NAHB appreciates the work of the Gang of Eight to include a fair and workable employer verification system that honors the direct employer-employee relationship and the current “knowing” liability standard.

American and immigrant workers working alongside each other is not a new development in our industry. The inflow of foreign-born labor into construction is cyclical and coincides with overall housing activity. Their share was rising rapidly during the housing boom years even when labor shortages were widespread then. However, even during the severe housing downturn, the construction labor force continued to recruit new immigrants to replace, for example, native and foreign-born workers leaving the industry.

According to the 2011 American Community Survey, foreign-born workers account for 22 percent of the construction labor force nationally, but it does vary from State to State. States with a larger share of foreign labor are more likely to experience difficulties in filling construction job vacancies as the home-building economy continues to improve.

The improvement in housing markets over the last year represents new labor challenges for us all. In a recent NAHB survey, almost half of the builders surveyed experienced delays in completing projects on time. Fifteen percent of the respondents had to turn down some projects, and 9 percent were lost or cancelled due to the result of labor shortages directly.

Despite our efforts to recruit and train American workers, our industry faces a very real impediment to full recovery if work is delayed or even cancelled due to the worker shortages. The W-visa program reflects a very good faith attempt on the part of the negotiators to address a serious matter that has been ignored for decades.

Unfortunately, the program is near unworkable for many segments of the residential construction industry. The distinct set of rules for the construction industry, including an arbitrary and meager cap, not only ignores but often in cases rejects the value of the housing industry to the Nation’s GDP. Our industry should be afforded the same opportunities as any other segment of the economy.

The 8.5-percent unemployment trigger is perhaps the most concerning component of the program. Putting an unemployment trigger in the program ignores the simple fact that immigrant workers

and native-born workers sometimes perform jobs that are dependent upon one another during the process.

The inclusion of a commission in the program is yet another misstep. Only the marketplace can best make wage and worker shortage determinations. The most accurate way to measure whether immigrant workers are needed is for employers to try, and either succeed or fail, to hire U.S. workers.

Moreover, for NAHB members, the concept of prevailing wage is very unfamiliar, and most would be deterred from the complex requirements under such a program.

Another component of the W-visa program that should be addressed is the 90-day attestation requirement. This inflexible rule should simply be eliminated. Construction is project based, and employers must be given flexibility if a project is cancelled, completed, delayed, or by any other means of the employer—something outside his control.

Another concern is the inclusion of complete portability. A registered employer faces the stark reality that a W-visa holder, on the first day of work, has the option to immediately quit and go elsewhere. NAHB believes that employers should have some assurances that after navigating the confusing and expensive process, the visa holder will actually have to show up for work. Employers should be given some sort of credit for lost resources based on that component.

All these issues are complex, and NAHB welcomes a strong legislative debate. Tackling comprehensive immigration reform is an enormous task. Congress should not ignore the importance of the housing industry to the Nation during this critical juncture in the housing industry.

Thank you very much.

[The prepared statement of Mr. Judson appears as a submission for the record.]

Senator FRANKEN. Thank you, Mr. JUDSON.

Brad Smith has served as the general counsel and executive vice president of Legal and Corporate Affairs at Microsoft since 2002. Mr. Smith is responsible for Microsoft's legal work, intellectual property portfolio, patent licensing business, government affairs, and philanthropy work.

Please go ahead.

**STATEMENT OF BRAD SMITH, GENERAL COUNSEL AND EXECUTIVE VICE PRESIDENT, LEGAL AND CORPORATE AFFAIRS, MICROSOFT CORPORATION, SEATTLE, WASHINGTON**

Mr. SMITH. Well, thank you, Senator Franken and Ranking Member Grassley, for the opportunity to be here today and to support comprehensive immigration reform, including changes in the high-skilled immigration area.

At Microsoft and across the technology sector, we are increasingly grappling with a significant economic challenge. We are not able to fill all the jobs that we are creating. The numbers help tell the story.

At a time when unemployment nationally hovers just below 8 percent, the unemployment rate in the computer and mathematical

occupation has fallen to 3.2 percent, and in many States and in many sub-categories, it has fallen below 2 percent.

Unfortunately, the situation is likely to get worse rather than better. The Bureau of Labor Statistics has estimated that this year the economy is going to create over 120,000 jobs, new jobs, that will require a bachelor's degree in computer science. And yet we estimate that all of the colleges and universities in the country put together will produce this year only 51,474 of these degrees. That is why high-skilled immigration and this legislation is of such great importance.

The bill you are considering does three very important things:

First, it addresses the green card shortage. It eliminates or goes very far to reduce the backlog. It eliminates the per country cap. And it creates a new green card category for advanced STEM degrees—all things that are needed.

Second, in the H-1B area, the bill, quite rightly I believe, has improvements in the number of H-1Bs that are available, but accompanies this with changes to ensure that American workers are protected. It raises the wage floor for H-1B employees. It improves portability so H-1B employees can switch employers. It addresses a number of other issues. And even though we have some lingering questions about potential language and potential unintended consequences, we recognize that compromise is needed all around, and we hope to be able to work with this Committee and its staff as you go through the details.

There is a third thing this bill does that is of extraordinary importance, and that is this: It creates a national STEM education fund. The reason we have such a shortage of high-skilled labor is because we have systematically underinvested as a country in the education of our own children.

Consider this: There are over 42,000 high schools in America, but this year, the number certified to teach the advanced placement course in computer science is only 2,250.

Senator Klobuchar, we are very grateful to the work that you and Senator Hatch led to really create the I-squared proposal, the I-squared Act. It creates the model for a national STEM education fund, and this bill follows much of that model. But I hope you might improve it even further. Raise the fees on visas. Raise the fees on some green cards and invest that money in the American people so we can provide our own children with the educational opportunities they will need to develop the skills to compete in an increasingly competitive world.

As a company, Microsoft spends more on research and development than any other company in the world, \$9.8 billion this year. And yet we spend 85 percent of that money in one country—this country, the United States. Our industry has come to Washington because we want to keep jobs in America. We want to fill jobs in America, and we want to help create more jobs in America.

We know that in the short run we will need to bring more people from other countries to America. And we hope that in the long run some of them will follow in the footsteps of the Alexander Graham Bells and Albert Einsteins and Andy Groves, great technologists and scientists and entrepreneurs.

But we want to do more than that. We think the country should seize the moment to invest in our own children as well. And if we are going to do all of that, if we are going to do any of that, we need your help.

Thank you.

[The prepared statement of Mr. Smith appears as a submission for the record.]

Senator FRANKEN. Thank you, Mr. Smith.

Ron Hira is an associate producer—professor. Sorry. Sometimes that slips out, the old career.

[Laughter.]

Senator FRANKEN. Associate professor of public policy—I am the Chair now.

[Laughter.]

Senator FRANKEN. Ron Hira is an associate professor of public policy at the Rochester Institute of Technology in Rochester, New York, where he teaches courses on technological innovation, communications, and public policy.

Professor.

**STATEMENT OF RONIL HIRA, PH.D., P.E., ASSOCIATE PROFESSOR OF PUBLIC POLICY, ROCHESTER INSTITUTE OF TECHNOLOGY, ROCHESTER, NEW YORK**

Professor HIRA. Thank you. I want to thank Chairman Leahy, Ranking Member Grassley, and the Members of the Committee for inviting me to testify here today. I have been studying high-skill immigration policy for more than a decade, so I am honored to share what I have learned with you.

I also want to thank Senator Durbin for his leadership within the Gang of Eight to ensure that some reforms of the H-1B and L-1 visa programs were included in S. 744.

I also want to thank Senators Durbin and Grassley for their long work in trying to provide clarity on how the H-1B and L-1 guest worker programs are actually being used in practice.

Through high-skilled immigration, we have the potential of attracting the best and brightest from around the world and, more importantly, keeping them here. But much of our policy effort is misguided. It has been focused mostly on expanding guest worker programs rather than permanent immigration.

I will focus my remarks today on the deeply flawed H-1B program. Right now, the majority of the H-1B program is being used to hire cheap indentured workers. The bulk of demand for H-1B visas is being driven by the desire for lower-cost workers, not a race for specialized talent or a shortage of American talent. The results show this.

All of the top ten H-1B employers last year used the program principally to outsource American jobs to overseas locations. Outsourcing firms received the majority of H-1B visas issued last year. Globalization and outsourcing will happen, but we should not be subsidizing and promoting it through flawed guest worker policies.

Many claim that the H-1B guest worker program is primarily used as a bridge to permanent immigration. But the top H-1B employers have no intention of ever applying for green cards for their

workers. Accenture, for example, received a remarkable 4,000 H-1Bs last year alone, but it only applied for eight green cards. That is 4,000 H-1Bs, eight green cards. That means 500 H-1Bs for every green card that they applied for. It may be a bridge to immigration, but it is not a very good one.

Outsourcing is only the most visible and obvious symptom of the underlying problems. Program misuse is widespread, even beyond the outsourcing firms. This is due to two fundamental problems. First, H-1B workers are cheaper than American workers; and, second, American workers do not have a first and legitimate shot at jobs and, in fact, can even be replaced by H-1B workers. Simply put, there is no shortage necessary before hiring an H-1B worker.

So how does this happen? First off, Congress sets the wage floor, and it is far too low. H-1B workers can be paid 20 to 25 percent less than an American worker. And there is no requirement for employers to look for American workers before hiring an H-1B. Employers can even displace American workers. This is, again, in the law itself.

S. 744, which we are discussing today, includes safeguards that move in a positive direction, but the bill falls far short. Employers will continue to be able to bring in cheaper foreign workers and bypass American workers. Let me illustrate.

Under the proposed language in the law right now, wages will be set a little bit higher than they are currently. Under this bill, an employer could hire an electronics engineer in College Station, Texas, for as low as \$39,000 a year. This is a job, an electronics engineer, where the starting salary for an entry-level engineer would be \$61,000. So an employer would save up to \$22,000 per year by hiring this H-1B worker. It is no surprise why they want to keep these wage floors as low as possible.

S. 744 also requires a national website for posting of jobs as well as some language that talks about the fact that employers have to hire American workers who are equally qualified. We need a little bit more specificity on how that would be implemented and how that would work in practice. Will American workers be able to ask for—or complain if they are not hired? How is that going to be enforced?

The good news is that some modifications to S. 744 could solve these problems. The provisions contained in Senate bill 600, the H-1B and L-1 Visa Reform Act of 2013, introduced by Senators Grassley and Brown, should be included in S. 744. It achieves these basic principles: American workers will have a first and legitimate shot at these jobs; and, second, it raises the wage floor to the average that Americans get.

Given that the industry claims that they are seeking the best and brightest through the H-1B program, should not those best and brightest be paid at least the average wage?

I look forward to your questions.

[The prepared statement of Professor Hira appears as a submission for the record.]

Senator FRANKEN. Thank you, Professor.

Neeraj Gupta is the CEO and co-founded of Systems In Motion. Previously, Mr. Gupta was a member of the executive team at Patni Computer Systems, an IT services company.

Mr. Gupta.

**STATEMENT OF NEERAJ GUPTA, CHIEF EXECUTIVE OFFICER, SYSTEMS IN MOTION, NEWARK, CALIFORNIA**

Mr. GUPTA. Thank you. I want to thank Members of the Senate Committee for the opportunity to share my perspectives on how our immigration policy on H-1B and L-1 visas—on how our policy is having significant unintended consequences.

I came to the United States as a graduate student, following which a tech company on the west coast applied for my green card. I went on to found an IT services company that was later acquired by an Indian offshore company. That company was number seven on the offshoring leader board, and I went on to lead a \$700 million top line for them with 80 percent of our revenues coming from the U.S.

Most recently, I founded a domestic technology services company to see if it can replicate the model that offshore companies have built with centralized software factors in places like Bangalore and Manila in U.S. locations such as Ann Arbor, Michigan.

As a backdrop to my comments, I wish to emphasize that I support the proper use of H-1B visas to attract the best available global talent to the United States. My comments are largely limited to the use of visas by the technology services industry.

In early 2009, in the midst of the Great Recession and inspired by the wave of hope and change, a group of us left the offshore industry to study and see if we could be a part of a solution that would create American jobs. After having offshored many jobs, we were looking to see how U.S. enterprises could leverage an alternative model here in the U.S.

We knew the key drivers that led to the growth of the offshore industry. The industry had been buoyed by the availability and lower cost of resources and the easy mobility of these resources through the use of the H-1B program. Global services companies had built a model of efficiency with centralized factories, and we were posing ourselves the question: Can we build similar globally competitive technology services factories here in the U.S.?

We looked at the primary drivers for the industry. The first one was economics. If you see the number one use of H-1B and L-1 visas, as Professor Hira mentioned, a large majority of these visas are used by the offshoring industry. Also, the number one reason why enterprises use offshoring programs is for cost reduction. Is there not a direct correlation? How could one miss the linkage that the visas are primarily being used for lower costs? It did not matter who the beneficiary of these visas is. It could be a large offshore company with headquarters in India or the U.S. or a global major like IBM or Accenture. Every one of them was using it for one reason alone: reducing their costs. Economic rationale was the only reason.

The U.S. market is the largest revenue source for offshore vendors. H-1B visas allowed them to create easy mobility and keep utilization rates high. The first question an Indian business would asked was: “Why do we need to hire an American worker when we can get a cheaper resource from India, benched in India at a lower wage, and mobilized on an as-needed basis?”

The offshore majors mostly hired H-1B employees because the current policy provided them a subsidy. It was clear that our policies should change, and the question that we ought to be asking is: Why do we need to hire an H-1B employee if we can train and develop a local worker?

We also looked at the question of supply of U.S. workers. Here is one of the critical findings we found. While the finished goods may not be there, there is a lot of raw material available. What I mean is there is a lot of resources available that we can hire and train here in the U.S. While the specialist resources with degrees in computer science may not be available in abundance, there are a lot of resources that are available with associate degrees and other degrees that we can use for IT services work here in the U.S.

The majority of the work that is done by H-1B employers is really not specialist work. Most of them have between 3 to 8 years of experience, and they go on to do work for large IT departments for U.S. banks, insurance companies, and telecom operators. This is not the work the kind for which we need more H-1B visas such as what Google and Microsoft might need and is not traditionally considered specialized work.

I have a couple of recommendations.

I would suggest the Committee look at the economic abuse and the associated disincentive to hire American workers, potentially some sort of a surcharge that would allow us to use those monies for hiring and training.

I would also request the Committee to look at limiting the use of the visas for the direct use of an enterprise rather than for outsourcing or subcontracting. This would allow us to have more visas available for organizations like Google and Microsoft, not hit the visa caps where the majority of our current visas are being used by the Indian offshore industry, allow us to train domestically, and ultimately reduce visa abuse.

If we challenge the industry, if they really need specialist resources and challenge them by saying let us offer—let us have them offer 125 percent of the top American wage to these H-1B employees, you will notice that a lot of the visa requests will go down, and it will be truly the specialists that will be required for our innovative startups and product R&D organizations for which we will use these visas.

I would submit to the Committee that the policies you institute should truly focus on addressing the true gap of highly specialized skills and put a stop to the use of visas by the offshore industry.

Thank you.

[The prepared statement of Mr. Gupta appears as a submission for the record.]

Senator FRANKEN. Thank you, Mr. Gupta.

Fred Benjamin serves as the chief operating officer of Medicalodges, Inc., a company that currently operates 30 nursing homes in Kansas, Missouri, and Oklahoma.

Mr. Benjamin.

**STATEMENT OF FRED BENJAMIN, CHIEF OPERATING  
OFFICER, MEDICALODGES, INC., COFFEYVILLE, KANSAS**

Mr. BENJAMIN. Good afternoon, Senator Franken, Ranking Member Grassley, and distinguished Members of the Committee. I would like to thank you for holding this hearing and for the opportunity to appear before you today. My name is Fred Benjamin, and I am the chief operating officer of Medicalodges, a company that offers a continuum of health care services which include skilled nursing home care, rehabilitation, assisted living, and services for people with developmental disabilities.

Medicalodges is a member of the American Health Care Association, which in turn is a member of the Essential Worker Immigration Coalition. I thank you, Senators Leahy and Grassley, for bringing the immigration reform debate to the forefront. I also greatly appreciate the efforts of the Gang of Eight for their bipartisan work culminating in the introduction of Senate bill 744.

Medicalodges is employee owned, operating over 30 facilities in Kansas, Missouri, and Oklahoma, employing over 2,300 people. I am honored to have served in the health care industry for over 30 years, including roles in skilled care and hospitals. I also serve currently as the chairman of the board of the Kansas Health Care Association, the leading provider advocacy group for seniors in Kansas.

We have critical staffing needs, and there are chronic shortages throughout the nursing home community. It is a daily struggle to find enough dedicated caregivers, yet we are responsible for the lives of 1.5 million frail and elderly citizens nationwide. And this is the fastest growing sector of our population.

The general causes of the shortage have been explored, but we are also confronted with chronic underfunding through Medicare and Medicaid, which prevents higher wages from being paid to our workers; a newly altered regulatory system that focuses on fines and penalties; dramatically increased competition for caregivers; annualized turnover rates of nearly 100 percent; and an aging workforce. We are almost completely dependent on the Government for payment for our services and, therefore, do not have the ability to raise our prices.

Nearly 80 percent of the residents in our facilities are beneficiaries of the Medicaid or Medicare programs, and while we do not have the ability to raise our prices, we also have little ability to reduce our expenditures.

The Government inspects every nursing home every year to look for errors in compliance with several hundred regulations with fines of up to \$10,000 per day or closure for noncompliance.

Dedicated caregivers in our facilities are the unsung heroes of the American workforce. Because of the difficulty of the job and our inability to increase wages or prices, long-term care has always been a high-turnover industry. My company's turnover rate in lower-skilled categories is approximately 60 percent annually, and that is significantly lower than most companies in the field. We do focus on retention initiatives and employee recognition and involvement, but we need certified nurse's aides, licensed practical nurses, and registered nurses to provide care around the clock, 24/7/365. We provide services in both rural and urban locations. Vacancy

rates for certified nurse's aides can approach 20 percent, LPNs 10 percent, and RNs 10 percent.

So what have we done to address the shortages? Well, historically, we have hired extensively from the welfare rolls. The nursing home industry in general has hired over 50,000 welfare recipients in the last 3 years. Most of them are single mothers whom we train to become certified nurse's aides and put on a career path in health care. And this is the only career path that I know of that can take people from economically disadvantaged situations to the middle class.

We have set up tables in grocery stores to recruit new employees, sent direct mail, posted job openings in newspapers, schools, and even laundromats. We have offered signing bonuses and multiple incentives for recruitment. Yet it is still not enough.

Comprehensive immigration reform should be guided by three basic principles:

First, America must always remain in absolute control of its borders.

Second, new immigration laws should serve the needs of the American economy. As always, American workers should be given the first preference. If an American employer is offering a job that American citizens are not willing or available to take, we ought to welcome into our country a person who will.

Third, undocumented workers who pay taxes and contribute to our labor needs should be given a vehicle to earn legal status.

We currently have a broken immigration system, and that is why the American Health Care Association and EWIC have helped to craft the business community's basic principles of what comprehensive immigration reform should include.

While everyone is still reviewing Senate bill 744, I do believe that it captures most of the needs of immigration reform.

In conclusion, the labor shortage is our most pressing operating problem. If we are to meet the expectations set for us, policymakers must act now to expand access to new pools of staff. I urge you to take a broader look at this staffing crisis and think about the frail and elderly population we serve—our parents, our grandparents, our aunts, our uncles, our neighbors, and yours—those special people who have given so much to us and our country. We owe it to them to provide the best possible care, do we not? I am here to ask you who will care for them if this critical situation is not addressed immediately.

Thank you, and I am happy to answer any questions.

[The prepared statement of Mr. Benjamin appears as a submission for the record.]

Senator FRANKEN. Thank you, Mr. Benjamin. Thank you to all the witnesses.

Mr. Smith, despite the fact that overall undocumented immigration has gone down, the number of children arriving alone at our borders has doubled in recent years. Last year, 14,000 children younger than 18 arrived at our borders without a parent or guardian. Right now, the Department of Health and Human Services is charged with getting attorneys for these children, but about half of them do not get counsel. I recently heard a story by way of the American Bar Association of an immigration judge who told an 8-

year-old boy representing himself that the child had the right to cross-examine the Government's witness. This is an 8-year-old boy, alone in court, and presumably he did not speak English.

For months, I have been calling for changes to our immigration laws that will protect these children, several of whom are now living with friends or relatives in Minnesota. I am absolutely thrilled to see that the bill we are debating contains these provisions.

Mr. Smith, can you tell us a little bit about Microsoft's work on this issue and about the need for these protections?

Mr. SMITH. Well, yes, thank you, Senator FRANKEN. At Microsoft we have been supportive through a pro bono legal effort, and I co-founded and continue to co-chair the Board of Directors of Kids in Need of Defense, or KIND.

The mission of KIND is to provide legal counsel to children who are going through an immigration removal process but have been separated from their parents, precisely the individuals that you referred to. And as you mentioned, there has been an increase in this number in recent years.

We are making heroic efforts across the country through the help of over 160 volunteer law firms, companies, and law schools. There are over 5,200 lawyers now volunteering their time to provide this legal representation.

But as you point out, we have had clients as young as 2 years old. A child who is 2 years old who does not have a lawyer and who does not have a parent is basically defenseless when it comes to an incredibly important legal proceeding. And the bill before you does some very important focused things to help address this, as you pointed out. It mandates to the Attorney General that there be legal counsel appointed to represent a child in this situation, and it moves from HHS to the Department of Justice the responsibility to work on this, which makes perfect sense given the DOJ's responsibility.

As we look to the future, we are going to need to continue to recruit more volunteer lawyers, and we are committed to doing that. But I think that passage of this bill will definitely help.

Senator FRANKEN. Thank you.

Mr. Kolbe, this is not so much a question as a statement that you are not alone. I have heard many stories from my LGBT constituents about how our immigration system is tearing their families apart.

I recently heard from one of my constituents, who I will call "Mark." Mark works for a Fortune 500 company in our State. He is a citizen. His partner, Alberto, is Italian and planned to move to Minnesota to be with Mark under the Visa Waiver Program for Europeans. But when they were identified as a same-sex couple by Customs and Border Protection at the airport, Alberto was interrogated, forced to surrender his personal e-mail password, and eventually told he would not be allowed to remain in the country.

Alberto is now back in the U.S. on a different visa, but it is only a temporary solution, and Mark is prohibited from sponsoring Alberto for permanent residency. Under current law, Mark must choose between his career and the person he loves, which is not fair, it is wrong, and I just wanted to tell you that I and many other Senators on this panel are going to do everything we can to

try to see that we amend this bill to protect all families, including those of LGBT Americans. And I just want to thank you for your work on this issue, Mr. Kolbe.

Mr. KOLBE. Thank you, Senator Franken, for those comments, and I think you have put your finger right on the source of the problem, the fact that it is not possible for me to sponsor my spouse in the same way that it would be for some man and a woman to do for the other there. So it is an unfairness that exists, and we hope that it will be corrected.

Senator FRANKEN. Thank you.

I only have a very short time, but, Ms. Smith, I think Vermont and Minnesota have a lot in common. Tourism contributed a lot to our economy, about \$12 billion, and I am proud to cosponsor the JOLT Act. Senator Schumer's bill will make it easier for Canadians and other foreigners to visit Minnesota and visit the Mall of America and fish in the boundary waters, et cetera. So I just want to say that, and thank you for your testimony on that.

I will turn to the Ranking Member, Senator Grassley.

Senator GRASSLEY. Thank you, and thanks to all the witnesses.

I support H-1B with some changes, and I want to start with Mr. Hira and Mr. Smith with this question. It would be asking for some reaction to what used to be the Durbin-Grassley bill and now is the Grassley-Brown bill, regarding requirements for employers to first attest that they have tried to recruit and hire an American worker before applying for a foreign worker. It is my understanding that our good faith recruitment provision is not in this bill by the Group of Eight.

Why does the business community oppose this simple and straightforward measure that would provide qualified people at home with a chance of high-skilled, high-paying jobs? Mr. Hira.

Professor HIRA. I am not sure. I think you would have to ask the industry why they oppose it so much. But I think it is a very common-sense thing. It certainly goes to the spirit of what the program is supposed to do. And the good faith recruitment requirement is already in law. It just applies to a very narrow set of employers right now, H-1B-dependent firms, so-called H-1B-dependent firms. I see no reason why only a small number of firms should be doing good faith recruitment. All of these firms should be doing good faith recruitment of American workers before hiring an H-1B.

This is an intervention into the labor market, and it seems to me that American workers should have that first and legitimate shot at those jobs. And S. 744 does not go far enough. I think the good faith recruitment that is in S. 600 would work very well.

Senator GRASSLEY. Mr. Smith, please.

Mr. SMITH. Well, I actually think most of the companies that I know do the kind of recruitment you would hope them to do every day. The truth is we have to hire both Americans and people from overseas to fill the jobs that we have. The bill has, as you know, a new requirement that all jobs get posted on a website managed by the Department of Labor. I am not aware of people objecting to that. And when I hear people raise concerns, it is more about other aspects relating to what the Department of Labor might look at years later with respect to the review of an individualized specific

hiring decision: Person A over Person B. And I think that is where you hear more people express reservations.

Senator GRASSLEY. That provision that you said was added about the Internet, do you support that provision?

Mr. SMITH. Yes. I think that we have no problem—we post things all across the Internet. We are happy to post it on one more website.

Senator GRASSLEY. Okay. Thank you.

Professor HIRA. Could I add, Senator? There is another provision in S. 744 that requires American workers who are equally qualified to be hired. I think that is an important provision to stay in, and I would be curious what industry thinks of that.

Senator GRASSLEY. Mr. Smith, do you support that?

Mr. SMITH. Well, I think the real concern that people have, Senator Grassley, is how that determination is made, when, and by whom. If the Department of Labor comes 3 or 4 years after an individualized hiring decision is made—let us say somebody has the opportunity to hire the number one student from the number one computer science department in the country, but that person was in competition from somebody who might have been at the bottom of the class at a less competitive university but has 2 years of work experience. Do you like an apple or do you like an orange? You do not really know until 3 years later when the Department of Labor tells you whether you were supposed to prefer apples over oranges. It is that kind of uncertainty that gives people pause.

Senator GRASSLEY. Then you would suggest we work on that aspect of it.

Mr. Hira, The Washington Post ran a piece about how the bill has a special carveout for Facebook and, quote-unquote, H-1B-dependent employers? Could you explain what provision the article references and your opinion on the carveout?

Professor HIRA. Sure. The carveout is if a firm sponsors H-1B workers for green cards, they just put in the paperwork basically. That will reduce their H-1B-dependent numbers, and they will be less than H-1B dependent. So they will not have to do good faith recruiting, and they will not have to pay the higher wage levels. I think this is a mistake, and it will affect not just Facebook, and we should not be making policy around one firm. It is also going to affect a number of other firms that exploit the program.

Senator GRASSLEY. Mr. Gupta, since you have been on an H-1B visa in the past, your experience with the program is particularly relevant. Why do you say that H-1B visa holders at tech service companies are not really specialized?

Mr. GUPTA. Well, Senator Grassley, the majority of the work that the Indian offshore industry does is back-office IT work for large enterprises here in the U.S. And it does not require the necessary skill to do the traditional product development work that Microsoft might require their engineers to do. So the nature of the work is really less of research and development but mostly applying IT concepts in the context of a large enterprise, and this work traditionally tends to be easier than what may require a bachelor's in computer science or a master's in computer science.

One interesting point to note is that the Indian industry, if you look at the numbers of people they hire and the number of visas

they apply for, has the majority of the visas. Now, in that, they do not have very many Americans, so you have to sort of look at this industry and say this is the industry that is hiring most of the H-1B visas, they are not hiring American workers, why is that? And I think the categorization of the H-1B program for the likes of Microsoft and Google is very different than how it is being utilized by the Indian offshore industry. And that segmentation is very important. My fear is that we look at sort of the larger issue that is raised by Microsoft and in the process we think about the supply issues and pin that as a standard thing across the industry. And in the process, we end up seeing that a majority of the visas end up being used for the wrong purpose. And even if we were to raise this limit from 65,000 to 110,000, what is not to say that 100,000 of those visas will be used by the Indian offshore industry?

Senator GRASSLEY. Thank you.

Thank you, Mr. Chairman.

Senator FRANKEN. According to the early-bird rule, Senator Klobuchar is next?

Senator KLOBUCHAR. Thank you very much. Thank you to all the witnesses, and I appreciate your focus, many of you on the economic advantages of this bill.

Mr. Smith, I wondered if you would take an opportunity to respond to some of the issues raised by Professor Hira and Mr. Gupta.

Mr. SMITH. Well, thank you, Senator Klobuchar. Let me offer a couple thoughts.

First, while the so-called Facebook rule is not going to benefit Microsoft, I actually think it is an important rule for the industry because it encourages companies to do what I think Professor Hira, in fact, has said is a good thing: apply so people can get green cards, and do not count that against the H-1B numbers.

I can tell you at Microsoft we apply for a green card for every single person who comes to us on an H-1B visa, and we initiate that process in the first 30 days of employment. And I do not know what Facebook does, but I bet it is about the same because that is how competitive the industry is.

I do think it is appropriate to recognize that not every company is in the same state. But I think, by and large, it is important to find rules that work well across the board.

That is why, for example, I advocate that we should raise the fees paid by employers. They are paid by companies. They are not paid by individuals.

Senator KLOBUCHAR. Mr. Smith, if we could just follow up on that—

Mr. SMITH. Okay. Sorry.

Senator KLOBUCHAR [continuing]. Because I also want to get to some other issues. I will get to your second point. But on the fees, in the original proposal that Senator Hatch and I had, we increased the fees on H-1Bs by \$1,000. That generated, I think, \$3 to \$5 billion over 10 years for STEM education in the country. It was very important.

I think the current Gang of Eight increases the amount of green cards but not H-1B. Is that right?

Mr. SMITH. Yes, that is right, and I personally would prefer what was in the I-Squared Act. Look, I think you could double the fee on an H-1B. That would raise it from \$2,350 to \$4,700. The visa lasts for 3 years. That would represent between half a percent and 2 percent of what it costs to employ one of these individuals. And it would bring \$517 million in per year, and if it is invested in a STEM fund, you could really help improve education across the country.

Senator KLOBUCHAR. All right. Very good. Thank you. I appreciate it.

And then, Mr. Kolbe as you know, I am a cosponsor of the Uniting American Families Act. What would be the effect if the Supreme Court did overturn DOMA in terms of the need for it? I do not know that answer. That is why I am asking.

Mr. KOLBE. I am not sure that we know exactly, but this, of course, does not deal with the issue of marriage at all. This has to do with the employment provisions. And what this would simply say is while DOMA defines marriage as between a man and a woman for Federal purposes, this legislation simply says for immigration purposes that an individual can be immigrated into the United States. Once you go through the very lengthy process of proving that you are in that relationship and the evidentiary requirements are actually stricter than they are today for spouses coming in with an H-1B permittee. So it really applies only to the immigration side of it, not to the other parts.

Senator KLOBUCHAR. Okay. I just think it is something worth looking at, the interrelationship, if that happens while we are debating this bill and figure out what to do. Thank you.

Ms. Smith, the tourism issue, as you know, that has been near and dear to my heart. I head up the Travel Caucus, and we have done some great things with speeding up visa times as well as getting the Travel promotion Act implemented to advertise our country. I just got from our staff the newest numbers that have come out, and we have actually seen with these efforts an increase in 6 percent of foreign tourism from 2011 to 2012, which, as you know, means many, many hundreds of thousands of jobs. So we are very excited about this since all tourism jobs are in America if people come to see the Mall of America or the beautiful State of Vermont.

Could you talk about the JOLT Act and how this could be helpful in terms of the actual goals? One of them is interviewing 80 percent of all nonimmigrant visa applicants within 3 weeks of receipt of an application, exploring expansion of visa processing in China and Brazil. Could you talk about how this could actually work in reality?

Ms. SMITH. Well, I think that the main point of this is the markets we are looking at right now, China and Brazil, we have—there is huge interest for them to come to our country. We know that. We go to trade shows. We have learned that. So anything we can do to expedite their ability to get these visas is going to help our country greatly.

Senator KLOBUCHAR. Okay. Very good. And, also, you raised quickly at the end this idea that some of the travel promotion money was being siphoned off basically. What would be the effect

of that given these numbers that we are seeing since we started implementing the Travel Promotion Act?

Ms. SMITH. I have been so impressed with Brand USA and what they have been able to do since they got going. It was kind of a startup, and now it is going full speed ahead, and that money, we are just entering markets that I never dreamed, we never dreamed that we would have the support to go into and recruit visitors. So I just think the Travel Promotion Act is a wonderful thing, Brand USA, and keeping that funding is hugely important to our industry.

Senator KLOBUCHAR. Okay. Very good. Thank you.

And, Mr. Smith, I am out of time. I was going to go back to you and have you finish your points, but if you could put them in writing, or maybe someone else will ask you. Thank you very much.

Senator FRANKEN. Thank you, Senator KLOBUCHAR.

I have Senator Sessions next, then in this order: Senators Durbin, Cornyn, and Whitehouse. Senator Sessions.

Senator SESSIONS. Thank you.

Well, these are very complex issues. Each one that we have discussed requires a lot of thought. I would just sum up on our previous agriculture panel that I think a tight, well-managed temporary seasonal worker program can be beneficial to America and should be considered, and we can achieve that.

But I asked the question, what do you do in the off-season? Will people be able to bring their families? And then what will happen if people come for 3 years and they re-up for another 3 years? They have been here 6 years. They are married, they have a child, and then we are asking them to leave? Or maybe they do not have a child but have been here 6 years, are embedded here. So to me it is an unworkable system. We are not going to hunt those people down and try to deport them.

The bill assumes also that and provides for—Mr. Judson, with regard to your workers, people that are here illegally today working would be legalized. They would be able to stay. And then in addition to that, throughout this whole area, people except, I believe, ag workers would be able to transition to any other job—truck drivers, heavy equipment operators, county employees, and that sort of thing. So it will have a ripple effect in competing against American workers for even the high-wage jobs. It just will.

And we know, unless you business people believe the law of supply and demand has been repealed, it will pull down those wages. That is what experts tell us, and I think that is absolutely true.

And then for people that are working at the lower-wage jobs that you are talking about, they will begin over time, when they become a legal permanent resident or a citizen in 10, 15 years, would be at a level where they draw earned income tax credit, all the means-tested social programs. So people would be brought in, businesses would pay them at this level, and the taxpayers would subsidize additionally. And I am not sure that is a bargain for the American worker. We need to think that through.

So those are some of the matters that I am concerned about and we are going to get to the bottom of. We are going to find the numbers. And I got to tell you, it will not strengthen Social Security and Medicare. The numbers are clear. Those reports are in, and

they will be confirmed. It will weaken Social Security and Medicare perhaps by trillions of dollars. That is just what is going to happen.

Mr. Gupta, I appreciate your insight into how the practical program is working for high-skilled workers. I totally believe and statistics and data shows that persons who come to America with 2 years of college almost all do very well. They almost all pay in more taxes than they will take out over a lifetime. And that seems like a pretty—you know, I think that is a matter we ought to consider as we think about the total flow and who is admitted to America.

Professor Hira, the bill would increase the amount of H-1B visas up to 180,000, 3 times the current cap. Some say that there is a dire need for these workers, especially in the STEM fields. You testified that unemployment data does not support that assertion and that raising the cap would significantly harm American workers.

I hear college graduates are having a hard time, even engineering students are not able to be employed frequently in America. What is the status there? And how would you explain your testimony?

Professor HIRA. Sure, I am happy to. Mr. Smith gave some data. He said a 3.2-percent unemployment rate. His data is right. The problem is his interpretation is wrong. What we would expect when we are at full employment in these occupations would be about a 1.5-percent unemployment rate. So we are about twice where we should be at full employment. So he is misinterpreting the data.

I do not think that raising the cap to 180,000 is warranted in any way, shape, or form because businesses do not have to show any kind of need for these workers. And the wage floors are still too low in the current bill, and so what you will see is just an expansion of cheaper labor.

I would also note that the bill expands the base cap, so all you need is a bachelor's degree. It does not really expand the advanced degree cap, the 20,000. It only expands it to 25,000. So it is kind of baffling to me that the high-tech industry, which usually puts up the poster child of someone who graduates from MIT and cannot stay in the U.S., in reality what they fought for was the base cap, which was importing the cheaper workers at the lower levels, not at the U.S. advanced degree graduates floor.

Mr. SMITH. Could I just respond briefly? Just to note that while I said that the unemployment rate for the entire computer and mathematical occupation was 3.2 percent, I said that in many States and sub-categories it is below 2. In Washington State, for example, the last half of last year, it was 1.0 percent.

Senator SESSIONS. I would just say to everyone that is listening, wages have not gone up for the working American over the last 15 or 20 years. My Democrat colleagues have hammered that for a long time, not so much lately, and I think it is a reality.

So we have high unemployment, particularly among low-skilled workers, and we have these highly capable people, particularly on the previous panel, arguing for more low-skilled workers, and I do not see how that can be justified at a time we have high unemployment. And we have got to move people from dependency on the Government into the workforce, and we are going to have to be more aggressive about that.

Welfare offices, unemployment offices, have to be job-creating offices. Americans cannot continue to bring in labor to do work and subsidize people who are not working by the millions.

So, hopefully, we can work through this. I know a lot of the suggestions are good in these areas, and I am willing to work with them. But the reality is that there are some difficult challenges out there.

Senator FRANKEN. Senator Durbin.

Senator DURBIN. Thank you, Mr. Chairman. Let me welcome all the panel, especially my former colleague, Congressman Kolbe. Thank you for being here. I am a cosponsor of UAFA as well, and I hope that we can include it in this bill. I think it should be part of it.

I sat on this Gang of Eight. I kind of hate this “gang” thing. I am sure Senator Flake does, too. But I have been involved in so many gangs, you would think I would have a few tattoos by now.

[Laughter.]

Senator DURBIN. But I would tell you that we spent a lot of time on a lot of subjects. We probably spent as much if not more on H-1Bs than anything else. And I would have been surprised if somebody would have told me that in advance.

And we came to it basically—and I listened to Mr. Smith and Professor Hira, who has been a consultant—thank you for your kind words—on this whole subject. And we came to it with the premise that if we could bring in the talent, even the talent we are educating in America, and keep them here to grow our businesses and grow our jobs, it is in the best interests of the country.

And I would say to my friend and colleague Senator Grassley, yes, it was Grassley-Durbin, Durbin-Grassley for a long time. I did not add my name as cosponsor this time because I was sitting in this group, and I felt that I really had to be open-minded to work toward a compromise. But please do not sue me for any alienation of affection. I agree with you on the principles that you have espoused.

Here is what it gets down to, Mr. SMITH. When Microsoft and other companies come and tell me, “We are going to put our research facility in British Columbia if you do not give us some opportunity in the United States of America to bring in the talent we need to build the products we need to prosper,” I get it.

I have also been a commencement speaker at the Illinois Institute of Technology and watched the graduates from South Asia and China coming across the stage for multiple advanced degrees, thinking we are handing them a diploma and a map on how to get on the Kennedy Expressway out to O’Hare at the same time, which I think is a mistake.

But here is what it gets down to, Mr. SMITH. There are some specific abuses of H-1B. Professor Hira and Mr. Gupta have pointed them out. These outsourcing firms, like Emphasis, Wipro, Tata, and others, Americans will be shocked to know that the H-1B visas are not going to Microsoft. They are going to these firms, largely in India, who are finding workers, engineers, who will work at low wages in the United States for 3 years and pay a fee to Emphasis or these companies. I think that is an abuse of what we are trying to achieve here.

Most people would think, well, Microsoft needs these folks, and they would be shocked to know that most of the H-1B visas are not going to companies like yours. They are going to these outsourcing companies.

I sat at the table and I said, "I am for increasing H-1Bs only if we offer the job to an American first at a reasonable wage so that they have a chance to fill that position, and if they cannot, then we bring in the talent."

Mr. Smith, what is wrong with that? And what is wrong with having a provision in here that says I do not want you to fire an American worker so you can hire an H-1B worker?

Mr. SMITH. Well, first of all, Senator Durbin, I want to thank you for all the consideration you have given, frankly, to our industry's point of view over the last few months, because I appreciate that an enormous amount of work has been done to strike a compromise.

I personally think it is important that we both recognize the need for these firms to evolve their business model. I have had these conversations myself with them in India that encourages them to focus on hiring more people in the United States—

Senator DURBIN. If 50 percent of their employees are H-1B visa holders, if they have more than 50 employees and more than 50 percent are H-1B visa holders, it suggests to you they know their economic model and how they can make money.

Mr. SMITH. Well, look, as you know, the bill will put an end to that.

Senator DURBIN. Thank goodness.

Mr. SMITH. It will say that if they do not change that within 3 years, they will not be eligible for any H-1Bs at all. And I frankly—

Senator DURBIN. Do you support that?

Mr. SMITH. I told them that 3 years ago, they better recognize that. There is no large country in the world that allows companies to employ over half of their people from outside the local population. So I do support that.

I do think it is important that one not eliminate their ability to do good work, because they also do good work. And I do not want to lose sight of that.

Senator DURBIN. But would you buy my premise that if there is a job opening at Microsoft, the first responsibility of Microsoft is to hire an American?

Mr. SMITH. I will buy that premise, but I will qualify it in this one respect: If the number one student in the Ph.D. class at the University of Illinois happens to come from China and that person as a Ph.D. student filed six patent applications and is clearly the pioneer in her field, I want us to hire her.

Senator DURBIN. But—and I know this is subjective. Employers are subjective.

Mr. SMITH. Right.

Senator DURBIN. All things being equal?

Mr. SMITH. If you can equalize everything else in life, then the job should go to an American.

Senator DURBIN. An American first.

Mr. SMITH. Absolutely.

Senator DURBIN. So offering this on a website——

Mr. SMITH. Absolutely.

Senator DURBIN [continuing]. Attesting to the fact that you have done this?

Mr. SMITH. I think as long as we do not get lost in the details that may have unintended consequences, yes, these kinds of things absolutely can work.

Senator DURBIN. I see I am out of time here. I certainly wanted to ask Professor Hira and Mr. Gupta a question or two. But I do want to commend Senator Klobuchar and also you, Mr. Smith, because I think this notion of more homegrown American talent is something we all should applaud, and if it means charging a higher fee to bring in a foreign H-1B worker so that we can create scholarship opportunities for American students to become tomorrow's engineers, I think that is what America wants us to do. And I am glad that Senator Klobuchar led in that effort, and I am glad you have endorsed it.

Mr. SMITH. Thank you.

Senator DURBIN. Thank you.

Senator FRANKEN. We will go to Senator Cornyn.

Senator CORNYN. Thank you, Mr. Chairman.

Ms. Smith, you and I both come from border States, and I want to ask you a little bit about the importance of security, but also maintaining trade, tourism, and commerce between our trading partners, in your case primarily Canada, in my State's case primarily Mexico.

Do you find anything mutually exclusive between our desire to have a secure border and our desire to make sure that legitimate trade, commerce, and tourism flows across those borders smoothly?

Ms. SMITH. No, I do not.

Senator CORNYN. And I believe the figure that I have read is about 6 million American jobs depend on cross-border trade and commerce with Mexico. Do you happen to know what the economic impact of cross-border trade at Canada is?

Ms. SMITH. I am sorry. I do not.

Senator CORNYN. Well, I am sorry. I did not mean to pop that on you, but——

Ms. SMITH. That is all right. I know it is very, very relevant, especially to the border States, but, you know, really all the way down. I understand the importance.

Senator CORNYN. And have you found that the staffing at the borders and the infrastructure both need to be improved?

Ms. SMITH. Very much so.

Senator CORNYN. And that will not only provide a more secure border, but it will also enhance that cross-border commerce and trade in a way that helps grow jobs and grow the economy here in the United States. Would you agree with that?

Ms. SMITH. I agree, and we have a situation right now where we have airlines in Toronto that cannot—we do not have the Border Patrol agents to have them come year-round. They can only come in the winter because in the summer those agents are put onto Lake Champlain. So we have to stop the service, and it is four flights a week bringing 60 people, 70 people per flight from Toronto to our State.

Senator CORNYN. Mr. Judson, we heard the first panel—and I know you were in the audience—talk a lot about agriculture and its important to our economy and what percentage of the workforce in agriculture is undocumented, and you alluded to the dependency of the construction industry in the United States on this workforce as well, and I know you want it to be a legal workforce.

But you also described the cap on construction jobs as “arbitrary and meager.” Can you explain to me why Congress would want to discriminate against the construction industry and treat them any differently than the agriculture industry?

Mr. JUDSON. I cannot answer the rationalizations why that would be the case, but I can give you statistical support data. We are in the worst economic recession/depression our industry has ever experienced. So just to hypothetically say we are at 50 percent of where we were construction-wise, that is 50 percent of where the demographic demand for housing would be.

There are three jobs created for every house that is built, so if we are half a million houses short of production today and we go back over the next 12 or 18 or 24 months to economic demographic demand, 500,000 houses at three jobs per house, that is a million and a half jobs.

Our 30,000 jobs are not going to quite get that done, and we are going to be right back in that situation of having a labor shortage and not having a way to solve it.

Senator CORNYN. And you alluded to the provision of the bill that dealt with prevailing wages. I am just guessing that you believe the market ought to set the wages in the construction industry, like it does in most of our economy. Did I understand that correctly?

Mr. JUDSON. As Senator Sessions alluded, the supply-demand scenario in law still applies in construction very vehemently. Our houses are clearly a product of supply-demand. We are not necessarily interested in a lower price as much as we are in meeting the demand of the public. Components of a home are generally done on a square foot basis, \$3 for painting or \$4 for brick or whatever it might be, and that is within general parameters. It will vary by locale and certainly by quality. But we are saying that that local market would drive the product price and the labor that you pay more so than with an arbitrary this is the prevailing wage and consequently you are generating greater productivity because you are paying a higher wage.

Senator CORNYN. And if I could just conclude, would you be satisfied with being treated like any other sector of the economy in this bill?

Mr. JUDSON. Very simply, yes.

Senator CORNYN. Rather than being targeted for special treatment, as you have been?

Mr. JUDSON. Yes, sir.

Senator CORNYN. Thank you.

Senator WHITEHOUSE [presiding]. In the order, I am up next, and then Senator Flake follows, and that concludes the panel.

My first question is for Ms. Jacoby. Ms. Jacoby, a lot of this comes to us by what we have seen. I give pretty regular community dinners in Rhode Island. I listen to folks, and on a couple of occa-

sions, people have come up afterwards to talk to me, and they have described—these are mid-level professional people, and they have described working for large, well-known companies that have an office in Rhode Island and being laid off and having people brought in from out of the country in order to do their jobs, people who live in hotels, get brought in from the hotel in a bus in the morning, do the work, go back, live in the hotel. And, obviously, the calculation for the company is that it is cheaper to lay off the American worker, avoid whatever benefits and costs there might be associated with them, and bring in people from out of the country to do the same work. Obviously, very distressing and very discouraging for the American mid-level professional who got laid off and in some cases had to help train the people who are here from out of the country.

Are you satisfied that this sort of activity, there is enough teeth in the bill to prevent that from continuing? Because I think we can all agree that that is a very unfortunate choice, and if we do not take away the incentives for corporations to behave that way, it seems to me they will continue.

Ms. JACOBY. The situation you described is deplorable. The W-visa would not apply to the people in the circumstance you are describing. The W-visa is only for people with less than a bachelor's degree. So the W-visa is for a much less skilled pool of workers.

The requirements that you are talking about, the concerns you are expressing, of course, apply in that less-skilled tier of the labor force as well. No one wants a situation where there are Americans available for the job to be turned away and immigrants to be hired instead.

The W-visa does have, I believe, adequate protections against that. Employers do have to try to find Americans. They have to pay the immigrants at least as much as they are paying comparable Americans or more. There will be robust back-end audits to make sure that they do the kind of recruitment they are supposed to do.

Senator WHITEHOUSE. And you are satisfied with the strength of those audits?

Ms. JACOBY. We have not seen them yet, but the point is that we are replacing—in the less-skilled category, we are replacing what is now a completely unregulated Wild West unauthorized market with a legal market, and that should prevent and remedy, to the degree it goes on, the kinds of things you are talking about rather than invite it. That is the beauty of this, is it would replace that Wild West environment with a legal situation.

Senator WHITEHOUSE. Let me ask another question. This is at the highest tech end. I guess Mr. Smith and Professor Hira, let me ask you. I am thinking of a Rhode Island small business that has a very high technical level of accomplishment. They do not have a colossal HR department. They work in a very particular niche. When they can identify the person whom they need as the person whom they need, there may be no person with that skill set quite like them anywhere to be found. If you need a specific, so to speak, pro from Dover, does this bill give you the capability to reach out and recruit that person? And the concern that I have heard from these businesses is that even if you have identified that person and start recruiting them through the existing H-1B process, it creates

so much uncertainty and so much delay and so much havoc that, if they have an international capability, they will go wherever. They will go to Germany, they will go to India, they will go to China. Why go through that here?

Are you comfortable that we can compete for those kind of people where there is a very specific person that you are looking for?

Mr. SMITH. Well, I think the bill takes a number of important steps to help precisely that type of employer. I think one of the points you hit on which is really important, a Rhode Island employer may find a foreign candidate just by going to Brown or a local university; 54 percent of all the Ph.D.s in computer science are going to foreign individuals.

I think that the new STEM green card helps. I think that the H-1B numbers help. As long as we avoid unintended consequences in some of the language, I think it is a system that will work, and all of this will benefit from continued discussion—

Senator WHITEHOUSE. Microsoft is enormous and has a huge HR department that can plow its way through a fair amount of complexity. Professor Hira, what do you think for a small business?

Professor HIRA. Well, I think the numbers just show that 37,000 different employers got H-1Bs last year, and the H-1B program was oversubscribed again. There are lots of very small businesses that have easy access to the H-1B program. There is no indication that there is any real difficulty, and I do not think what has been proposed in S. 744 would make it any more complicated or more difficult to get access to those workers. And, in fact, I think the good faith recruitment should be included in there.

You have to strike a balance. You want employers to be able to get those specialized skills. And there is no one that I know of who is arguing against that. The question is you have got to have the right balance, have access to the program, but have the right kinds of safeguards in place.

Senator WHITEHOUSE. Thank you.

Senator Flake.

Senator FLAKE. Thank you.

Mr. Smith, you mentioned in your testimony the 25,000 figure in Washington State, the gap between jobs available and the workforce. Can you touch on the multiplier effect? You did not touch on that in your testimony. I would just be interested in your assessment of the multiplier effect.

Mr. SMITH. Yes. In our industry, study after study has pretty much shown that each job that we add has a multiplier effect of 4.3, meaning that it leads to the creation of 4.3 additional jobs in the economy.

So, for example, this recent study that was done in Washington State showed that over the next 4 years, unless something is done, there will be 50,000 open high-tech jobs, and when you add it all up, it adds up to 160,000 jobs that the economy loses the opportunity to create.

Senator FLAKE. Well, thank you. That is significant.

Mr. Judson, you talked about the E-Verify program. That was something that we wanted to make sure in drafting this legislation that it worked for employers and it worked for employees as well

and for our system here. Do you think that we have struck the right balance there, or what, with regard to E-Verify?

Mr. JUDSON. We are cautiously optimistic with that program. We support the concept. It is moving in the right direction. We think it does a couple of things very constructively, which is to solidify this separation between legal and illegal, which ultimately leads to an improvement of the social and economic fabric for that worker. So we are supportive in the direction, yes.

Senator FLAKE. Okay. Thank you.

Ms. Jacoby, I know that you noted in your testimony you feel the W-visa program needs to be a lot bigger. I think a lot of us would prefer it that way. But you mentioned at the end, though, that, "Most of the ImmigrationWorks members I have consulted agree: the W-visa program is significantly better than the status quo [which is] no program." Do you want to elaborate on that at all?

Ms. JACOBY. Well, I believe that creating a program for less-skilled immigrant workers is the most important—is the heart of immigration reform. The reason we have 11 million unauthorized immigrants in the country is because there is no way for an unskilled work who does not have family here who wants to work year-round to come to the country. So the way to prevent illegal immigration in the future is to create a usable legal program for less-skilled immigrant workers. The W-visa is such a usable program. I believe it is the heart of the fix that we need. We talk about fixing the broken system. It is creating a program for less-skilled workers. And I believe the W-visa program is, as I said, a very thoughtful and ingenious and creative, break-the-mold program. I do wish it was bigger, but it is certainly better than nothing.

Senator FLAKE. Right. And there is nothing to suggest that 5 years from now, if we just realize that it is completely out of whack with labor needs, that we cannot revisit it and up the numbers. Is that right?

Ms. JACOBY. Well, one thing, one of the suggestions I make in my written statement is that we might put something in—one might put something in the bill that suggests that Congress come back and revisit it, at least look at the workings of the entire bill, in fact, in a few years. This is a vast new change in the system. Congress does not want to start over again in 5 years, but at least some sort of reconsideration of some of the things, including if these low quotas go through, whether they have proved adequate.

Senator FLAKE. All right. Thank you.

Congressman Kolbe, we have been through this before years and years ago.

Mr. KOLBE. We certainly have.

Senator FLAKE. The Kolbe-Flake-Gutierrez bill, if I recall it right. Do you want to make any comments about where you think this particular legislation is—I know you came to testify on something specific, but more broadly, do you see this as a workable program overall in terms of matching labor needs and the border security needs, which you are all too familiar with, as well as respect for the rule of law?

Mr. KOLBE. Senator Flake, yes, we certainly have worked on this for a number of years, and I have not had a chance to study this

in detail as, of course, the bill that you and I and Congressman Gutierrez drafted years ago, which I might say many of the pieces of that find their way into this bill. It is very clear that the core of it, I think, is still there, and so in that regard, I think it is a good and a workable piece of legislation.

Several suggestions along here today by the other panels I think are things that need to be looked at, including the level of the H-1B visas, how you define when the border is actually secure, which really puzzles me as to how you are going to really define that in a meaningful way. I think all of these things really have to be addressed, but that is what the purpose of these hearings and the work that is being done now is, and I commend you and the others and all the Members of the Senate for taking this matter up.

I can say quite safely that a year ago I would have said there was no chance this was going to happen, and here we are today. So I think it is progress, and I think it is moving definitely in the right direction.

Senator FLAKE. All right. Thank you.

Thank you, Mr. Chairman.

Senator WHITEHOUSE. Senator Graham is recognized.

Senator GRAHAM. Thank you, Mr. Chairman.

Congressman Kolbe, if we fail this time around, what do you think the consequences for immigration reform would be?

Mr. KOLBE. If we fail this time around, if we take it up and we fail this time around, it is going to be a lot tougher. It only gets more difficult with the passage of time.

Senator GRAHAM. Okay. You have got a high-skill workforce problem, you have a low-skill workforce problem. Here is one common denominator, from my point of view. I want American businesses to have access to labor that we cannot find here at home only after you have tried to find an American worker at a reasonable price, competitive wage, and that endeavor does not result in finding the worker.

Mr. Smith, from the Microsoft perspective, do you prefer to hire American workers?

Mr. SMITH. Well, Senator Graham, as I was saying earlier, we do 85 percent of our worldwide research here in the United States. I think that tells you how enthusiastic we are about hiring American workers.

Senator GRAHAM. So the answer would be yes.

Mr. SMITH. Yes. But I will also add that the key to having a globally world-class research and development center in the United States is to be able to combine world-class American talent with some world-class talent from other countries as well.

Senator GRAHAM. As I understand the H-1B program, there is a requirement that you try to find an American worker first. Is that correct?

Mr. SMITH. There are some requirements, and, look, we will go and we recruit every day on over 100 college campuses, among other places, for American candidates.

Senator GRAHAM. Ms. Jacoby, is there a desire in your part of the economy to hire American workers if you can?

Ms. JACOBY. Absolutely, and the overwhelming majority of employers would rather hire an American. You do not have cultural issues—

Senator GRAHAM. And under our legislation, you are required to go out and seek that American worker. Is that correct?

Ms. JACOBY. Yes, you are. But in a situation where you have tried to hire an American worker and you cannot find them, employers need a fast, legal, orderly way of—

Senator GRAHAM. Well, there you go. That is the goal of this bill. If an American company is trying to find labor to stay in America, not leave the country, we want to make sure that they can do business in America.

Do we have graduates at our major universities in the advanced science fields from overseas?

Mr. SMITH. Well, Senator Graham, just to give you an example, 54 percent of all the Ph.D.s issued this year in computer science went to foreign students; 46 percent of all the master's degrees in computer science went to foreign students. So the answer is yes.

Senator GRAHAM. And so here is the goal of the legislation: to incorporate those talented people into the American business economy. Is that correct?

Mr. SMITH. Yes.

Senator GRAHAM. We do not want to educate them in our finest universities and they go back to the country of origin and open up businesses against us. We would like for them to be part—use their talents as part of the American enterprise system. Is that correct?

Mr. SMITH. I wholeheartedly agree.

Senator GRAHAM. Okay. Well, that is what we are trying to do. And do you believe this bill accomplishes that?

Mr. SMITH. I am a strong supporter, we are a strong supporter of this piece of legislation.

Senator GRAHAM. Okay. Mr. Judson, from the home builders' point of view, I know we do not have as many visas as you would like, but do you prefer to hire an American worker if possible?

Mr. JUDSON. To overuse the phrase that has been used already today, all things being equal, the answer is yes. Our industry has been deglamorized over the past few years, as Ms. Jacoby pointed out. Educationally, the construction industry is not viewed as being the most glamorous of careers. So, consequently, people have moved away. That has been our difficulty in filling some of our entry-level positions.

Senator GRAHAM. Under this bill you have to advertise and you have to seek out an American worker before you can get a foreign worker. Do you understand that?

Mr. JUDSON. I do.

Senator GRAHAM. Okay. Do you agree that that is a fair concept?

Mr. JUDSON. That is reasonable, yes.

Senator GRAHAM. Okay. To my colleagues, what we are trying to do is make sure that the best and the brightest throughout the world who come to America to receive an education can stay here because it is to our benefit that they stay. When it comes to building homes and running the economy in the low-skill area, we are trying to make sure that American businesses can access labor only after an American worker is not found at a competitive wage.

So if we do not get this part of it right, do you agree with me that our economy is going to be in trouble because we are not growing the workforce in America fast enough to meet our needs? Does anybody disagree with that concept? If you disagree, say so.

Okay. Well, nobody said so, so you must all agree. Thanks.

Senator WHITEHOUSE. I am told that Senator Lee is seconds away and wishes to ask some questions, so we will give him a few minutes, and if—

Senator GRASSLEY. I have a question for—

Senator WHITEHOUSE. There we go. The Ranking Member is recognized until Senator Lee arrives.

Senator GRASSLEY. Okay. You can finish your answer, I am sure.

In addition to creating a new temporary working program, the bill sets up an electronic monitoring system that will require employers to keep track of visa holders whom they employ. Presumably this would mean that employers must report to the Department of Homeland Security when a visa holder shows up on the job or when he fails to report. The language in the bill lacks clarity and detail in this matter. While E-Verify is an established tool, this monitoring system does not even exist today.

So, Ms. Jacoby, do you think that employers will be able to comply with this new electronic monitoring requirement? And who do you anticipate will pay for the creation and maintenance of this new electronic monitoring system?

Ms. JACOBY. Thank you, Senator. The new monitoring system you are talking about I understand is modeled on the SEVIS system that tracks foreign students. No, low-skilled employers do not have to comply with anything like that at the moment. They do not have to comply with applying and getting visas. But the overwhelming majority of my members would rather be on—want to be on the right side of the law. They try to be on the right side of the law, and they want to be in the future. And I believe that if a program is provided, they will use it and they will get used to some of these hurdles, including having to monitor workers and use this system to track when they take a job and leave a job and that sort of thing.

Senator GRASSLEY. Okay. You can go ahead and call the new panel.

Senator WHITEHOUSE. All right. It looks like Senator Lee is a little further out than we thought, so I will discharge this panel. I want to thank you all for participating in what is a very helpful and wide-ranging hearing, and we will be in recess just for 2 minutes while the next panel comes up and the signs are changed.

[Pause.]

Senator WHITEHOUSE. Good afternoon to the new panel, and thank you for being here. Welcome to the immigration hearing of the Senate Judiciary Committee.

I am going to introduce all of the panelists very briefly, but the first person that I am going to be introducing is Gaby Pacheco, who is a DREAMer and an immigrant rights leader currently serving as the director of the Bridge Project in Miami, Florida. She is a co-founder of Students for Equal Rights as well, and I know that Senator Durbin wished to say a few words, so I will defer to him for a moment. Then we will go across the rest of the panel.

Senator DURBIN. Thanks, Mr. Chairman. I thank you for this. At 2 o'clock, the Senate goes in session, and I have a bill on the floor, so I have to be there, and I explained that to Gaby in advance. I would not want her to think I was leaving in her time of testimony.

Gaby Pacheco has been such an important part of this effort on passing the DREAM Act. She came to the United States from Ecuador at the age of 7. She was the highest-ranking junior ROTC student in her high school. She served as president of Florida's Junior College Student Government, and then she got actively involved in the DREAM Act.

I have been at this for 12 years. Gaby, I do not know how many you have been, but it has been a few. It involved a number of students from Florida who would be eligible for the DREAM Act who literally walked from Miami to Washington, and along the way gathered students of like mind, some eligible, some who were not eligible but wanted to support the cause. And it is a cause that has grown in intensity because of your leadership, Gaby, and so many others like you.

So I want to thank you for being here today, and I will stick around as long as I can and try to come back for questions. But the DREAM Act is where it is today because of the courage of young people like yourself. Thank you.

Senator WHITEHOUSE. The rest of the panel is Janet Murguía. She is the president and CEO of the National Council of La Raza, the largest national Hispanic civil rights and advocacy organization in the United States. You do a wonderful job. I am delighted that you are here.

Dr. David Fleming, the senior pastor at the Champion Forest Baptist Church in Houston, Texas, where he has served since 2006.

Mark Krikorian, the executive director at the Center for Immigration Studies, who has worked there since 1995, a veteran in the field.

Laura Lichter, Esquire, currently serves as president of the American Immigration Lawyers Association based in Denver, Colorado.

And the Honorable Kris Kobach, Kansas' Secretary of State. From 2001 to 2003, he was also counsel to U.S. Attorney General John Ashcroft at the Justice Department.

Welcome, and we are delighted to have you here. Please proceed with your statements. Ms. Pacheco?

**STATEMENT OF MARIA GABRIELA "GABY" PACHECO,  
IMMIGRANT RIGHTS LEADER, DIRECTOR, BRIDGE PROJECT,  
MIAMI, FLORIDA**

Ms. PACHECO. Thank you, Chairman. I also would like to recognize Chairman Leahy, Ranking Member Grassley, and the Members of this Committee for giving me the opportunity to testify today in support of S.744, the Border Security, Economic Opportunity, and Immigration Modernization Act of 2013.

My name is Maria Gabriela "Gaby" Pacheco and I am an undocumented American. I was born in 1985 in Guayaquil, Ecuador. In 1993, at the age of 8, I moved to the United States with my parents and three siblings.

Out of everyone who is here testifying today, I am the only one that comes to you as one of the 11 million undocumented people in this country.

My family reflects the diversity and beauty of America. We are part of a strong working class, a mixed-status family who are your neighbors, classmates, fellow parishioners, consumers, and part of the fabric of this Nation.

My father is an ordained Southern Baptist preacher who currently works as a window washer. My mom is a licensed nurse's aide, but due to health conditions, she has not been able to work for the last couple of years. Their hope is to continue to support their family while at the same time contributing to this country's economic growth.

My oldest sister, Erika, is eagerly counting the days when she is able to apply for citizenship later this year. She is married to a United States citizen and has two United States citizen children, Isaac and Eriana. She will be able to vote in the next national election.

Mari, my second oldest sister, currently works managing a construction company. And although a DREAMer, she did not qualify for the Department of Homeland Security's new initiative, Deferred Action for Childhood Arrivals, DACA, because she is over the age of 30. However, the DREAM Act provisions under S. 744 will provide her a permanent path forward.

My younger brother is a proud business owner; he has a car-washing business. Last month, at the age of 27, and because of DACA, he was able to get a driver's license and buy his first car. However, DACA is not a permanent solution.

Last, I am the wife of a Venezuelan of Cuban descent, who has lived in the United States for 26 years. Miraculously last year, after 18 years of waiting, he was able to obtain his legal permanent residency. My husband's process shows how our immigration system is broken, outdated, and desperately in need of modernization.

My family is not alone. In 2009, my friend Felipe Souza Matos, co-director of "Get Equal," asked me to join him on a journey and campaign to seek immigration reform. In my heart I knew that in order to put an end to the separation of families, heal the hurt and the pain of our communities, we needed to peacefully demonstrate and courageously bring to light our (lack of) immigration status. On January 1, 2010, Felipe, Juan Rodriguez—now Juan Souza Matos—and Carlos Roa, and I began the Trail of Dreams, a 1,500-mile walk from Miami to Washington, DC.

Through this walk we wanted to show our love for this country, which we consider our home. We risked our lives, put everything on the line. We walked in the cold and felt the pain in our bodies and the blisters and callouses forming on our feet. We walked in faith knowing that before us in our country people had put their lives at risk to fight for freedom, for legal reforms, and the American values that this country was founded on and aspires to.

We did not allow anything to stop us, including the fringe elements of American society. We witnessed firsthand how misinformation and fear mongering confused people about immigrants. The phrasing and images that some use to portray people like me, undocumented Americans, have created a false perception of who

we are. It was also during the trail we saw firsthand how fear translated into hate. I vividly remember how robes of white, in a KKK demonstration, had colored the streets of a small town in Georgia. In fact, an event eerily similar happened this past Saturday in Atlanta, Georgia. America's history, however, shows that we have been here before and we have overcome.

Since the walk, I have carried the stories and dreams of thousands of people we met along the way. People working in the fields, people working in chicken farms, day laborer centers, homes as domestic workers, newspapers as journalists, small businesses as owners, and health clinics as doctors and nurses. These people are mothers, fathers, children, and neighbors. Their dreams are held in the hands of this Committee and the rest of Congress. Their dreams now lie in the Senate bipartisan bill S. 744.

Legalizing people like me, the 11 million of us, will make the United States stronger and will bring about significant economic gains in terms of growth, earnings, tax revenues, and jobs. It is time to set fear aside and deal with an issue that is affecting the entire Nation, and doing nothing is no longer acceptable.

Americans deserve a modernized immigration system. Individuals who are citizens in every way except on paper ask for a road map to citizenship,

In the words of my good friend, journalist Jose Antonio Vargas, who testified in front of this very Committee: "What do you want to do with me? What do you want to do with us?"

With dignity and faith I surrender my talents, my passion, my life. I ask you to give me, my family, and the 11 million of us an opportunity to fully integrate and achieve our American Dream.

Thank you.

[The prepared statement of Ms. Pacheco appears as a submission for the record.]

Senator WHITEHOUSE. Thank you, Ms. Pacheco, and welcome, Ms. Murguía, to you. Welcome. Please proceed.

**STATEMENT OF JANET MURGUÍA, PRESIDENT AND CHIEF EXECUTIVE OFFICER, NATIONAL COUNCIL OF LA RAZA, WASHINGTON, DC**

Ms. MURGUÍA. Thank you, Mr. Chairman. Thank you to Chairman Leahy and Ranking Member Grassley and all the Members of the Committee for the opportunity to appear before you all today.

I want to thank the bipartisan group of Senators who worked to find common ground and a common-sense solution on this very difficult issue. Senate bill 744 is a significant milestone and presents a historic opportunity to move forward on immigration reform.

First, there is a clear path to legalization and eventual citizenship at the core of this bill. The sponsors of Senate bill 744 recognize that the U.S. has been successful as a nation of immigrants because we allow and encourage those who come to our shores to fully participate in American life. This legislation seeks to ensure that the best interests of our country continue to be served. A key step in achieving this is requiring the 11 million undocumented immigrants who are already here and who want to earn legal status to come forward, pass background checks, learn English, and eventually apply for citizenship. But I do want to express our concern

to the Committee that the process may be too long and too costly for many who have been working and raising families in the U.S.

Second, unlike previous immigration reforms, this bill would create a 21st century legal immigration system intended to be responsive to U.S. labor needs in a regulated, orderly fashion while breaking precedent by providing labor rights and protections. This is the best way to prevent the Nation from having yet another debate in the future about legalizing another group of workers. It is imperative that our legal immigration system keep pace with our economy and our changing society.

And while the legislation thoughtfully addresses worker-based legal immigration, it does send mixed messages on family immigration.

Make no mistake, our country has had a historic commitment to family unity because it is good for society and for our economy. We are glad that the bipartisan legislation seeks to reduce the unnecessarily long backlog for certain family visas. But eliminating visas for groups such as siblings and adult children fails to take into account that families today come in all shapes and sizes and includes siblings pooling their resources together to buy a home or to start a business, adult children taking care of their elderly parents, and also binational same-sex families.

Finally, Americans hold immigrant integration in high regard and want to see immigrants pledge allegiance to our country. So we are very pleased to see that the bipartisan legislation also includes many measures and the resources necessary to achieve the successful integration of immigrants into American society. Immigrants want to learn English and make greater contributions to the Nation. I know it because my organization and our hundreds of affiliates help immigrants on this journey every day.

In conclusion, I would like to acknowledge that compromises will have to be made by all parties. Significant concessions have already been made in this legislation, many that cut deeply into the interests of immigrants and Hispanics. If each of us was looking at only individual pieces of this bill from our own parochial perspective, there is much we would be forced to oppose. But just as we are asking others to set aside some of their priorities to advance our Nation's interests, we recognize that all of us have to accept some compromise to advance our common goal of producing a bill that reflects a strong, effective, and sustainable immigration policy for the 21st century.

A bright line will soon emerge between those who seek to preserve the status quo, which serves no one except those who profit from a broken immigration system, and those who are working in good faith to reach compromise and deliver a solution the country desperately needs.

Put in stark terms, those who oppose progress are not just advocates for doing nothing. In essence, they are advocates for worse than nothing. Opponents of progress would ignore the growing gap between the needs of a 21st century society and a legal immigration system that has remained unchanged for nearly three decades. They would be opposing a level playing field for American workers and the accelerated integration of immigrants. In short, many offer

the same feeble failed policies that may advance their political interests but do not produce real results.

This bright line will be seared into the minds of Latino voters, those voters who created the game-changing moment for this debate in November and the additional 14.4 million U.S.-born and -raised prospective Hispanic voters that will join the electorate between now and 2028.

Our community will be engaged and watching closely to ensure that the legalization process is real, enforcement is accountable, and families and workers are protected.

Thank you.

[The prepared statement of Ms. Murguía appears as a submission for the record.]

Senator WHITEHOUSE. Thank you, Ms. Murguía, and thank you also for the important role that the National Council of La Raza has played in this discussion and will continue to play.

Ms. MURGUÍA. Thank you.

Senator WHITEHOUSE. Before we get to Pastor Fleming, Ranking Member Grassley has a statement from the National Association of Former Border Patrol Officers. That will, without objection, be placed into the record.

[The prepared statement of the National Association of Former Border Patrol Officers appears as a submission for the record.]

Senator WHITEHOUSE. Now we will hear from Pastor Fleming. Please proceed, sir.

**STATEMENT OF DAVID FLEMING, SENIOR PASTOR,  
CHAMPION FOREST BAPTIST CHURCH, HOUSTON, TEXAS**

Pastor FLEMING. Thank you, and good afternoon, Senators, and thank you so much for the privilege and the opportunity to participate in this process as you work towards a bipartisan solution to our Nation's current immigration crisis.

As a pastor, I got involved in this debate simply as a result of my everyday ministry responsibilities. My personal encounters with hurting people have just compelled me to work towards improving a system that just is not working. It is not working for a young father with children back home, for a widow and mother of two teenagers, for a family that has done everything to come legally but is caught in a system that is painfully slow, inefficient, and often simply unfair.

I have spoken to law enforcement officials, immigration attorneys, and government officials at every level. Everyone agrees as to the magnitude of this problem.

But when it comes to proposed solutions, the ones we have heard typically have come from one of two opposing poles. From the one pole we have heard what sounds like a call for open borders and amnesty with little regard for the rule of law or our national security. From the other pole, we have heard a call for closed borders and deportation, which seems to have too little regard for human dignity and potentially comes at the expense of our national identity. We are a nation of immigrants. With such strong and opposing forces, we have heard plenty of rhetoric but seen no workable solutions until perhaps now.

In the midst of this confusion, I as a pastor have wondered what God has to say. I read in Romans 13, "Let every person be subject to the governing authorities. For there is no authority except from God, and those that exist have been instituted by God. Therefore whoever resists the authorities resists what God has appointed, and those who resist will incur judgment." God is a God of order, and our Nation must be a Nation of law, and our laws must be just.

But I also read in Leviticus 19, "When a stranger sojourns with you in your land, you shall not do him wrong. You shall treat the stranger who sojourns with you as the native among you, and you shall love him as yourself, for you were strangers in the land of Egypt." God expects us to treat all people with compassion, each person having been created in His image.

So which is it, Senator? The law and justice or mercy and compassion? And the answer is: Yes. There is balance in the tension between the two. We ought to be guided in all that we do by a relentless commitment to protect the inherent value and the dignity of human life, and to alleviate human suffering whenever and wherever we can.

Senators, there is more at the heart of this debate than millions of undocumented immigrants. There are millions of real people with names and faces. I can assure you that each one matters to God, and each one should matter to us. So we need a legal system and public policies that are certainly just but that are also humane.

I recognize I am not in the majority perhaps at time and maybe not everyone shares my convictions, but I want you to know there are a great many Americans who do. I am a local church pastor, but I have the privilege to stand with thousands of pastors from across the country who represent a growing tide of support for a bipartisan effort and a comprehensive approach to immigration reform.

In my city, the Houston Area Pastors Council wrote a Declaration on Immigration Reform, and more than 1,000 pastors representing the great diversity of Houston and of Texas signed on. The Southern Baptist Convention, of which I am a part, with 45,000 churches and more than 16 million members, passed a resolution in 2011 calling for just and humane public policy with regard to immigration. And most recently a national coalition of Christian denominations and organizations has been formed. It is known as the Evangelical Immigration Table, with thousands of Christian leaders representing millions of members. It is calling for bipartisan comprehensive reform that: respects the God-given dignity of every person; that protects the unity of the immediate family; that respects the rule of law; guarantees secure national borders; ensures fairness to taxpayers; establishes a path toward legal status and/or citizenship for those who qualify and who wish to become permanent residents.

That is why I am grateful to see the introduction of this legislation. While this bill may not be perfect yet, it appears to be an excellent starting point for a bipartisan discussion that moves the debate forward toward real solutions that work for real people.

In a passionate debate with opposing views, some of us are called to speak for those who cannot speak for themselves. In the end I will stand before the Lord and give an account, and it will be clear whether or not I cared about what God cares about and whether I did what I was supposed to do, not because it was popular with men, but because it was right with God.

And so I am calling on you, our representatives and our leaders, who no doubt share my sense of calling and responsibility. Let us not waste this opportunity to do the right thing under God and for the sake of people created in his image. And we want you to know that we are supporting you, we are praying for you, and we are with you as you work through this bipartisan and comprehensive reform.

Thank you.

[The prepared statement of Pastor Fleming appears as a submission for the record.]

Senator WHITEHOUSE. Thank you, Pastor.

Next is Mr. Krikorian, the executive director of the Center for Immigration Studies. Please proceed.

**STATEMENT OF MARK KRIKORIAN, EXECUTIVE DIRECTOR,  
CENTER FOR IMMIGRATION STUDIES, WASHINGTON, DC**

Mr. KRIKORIAN. Thank you, Senator. I will be talking about the legalization parts of the bill, but since Senator Schumer had taken my name in vain, as it were, at the beginning of the hearing, I wanted to respond very briefly to a comment he had made.

The Boston bombing is not an excuse for delay of considering this immigration bill, but it is an illustration of certain problems that exist with our immigration system. And I will just touch on a few of them before I move on to the main body of my comments.

Why were the Tsarnaevs given visas to come to the United States to begin with? This is a question nobody seems to have answered.

Why were they given asylum since they had passports from Kyrgyzstan? And especially why were they given asylum since the parents have moved back to Russia, the country supposedly they were fleeing and wanted asylum from?

What does it say about the automated background checks that this bill would subject 11 million illegal immigrants to that in-person interviews by FBI agents of Tamerlan Tsarnaev resulted in no action even though it was actually based on concerns about terrorism.

And what does it say about our broken patriotic assimilation system that legal, relatively privileged immigrant young people became so alienated that they engaged in this kind of mass murder against Americans.

Let me move to the legalization part of this bill, S. 744.

There may actually be circumstances under which amnesty for certain illegal aliens can make sense. The question is: Do you do it before or after the problems that created the large illegal population have been solved?

Unfortunately, S. 744 puts the legalization of the illegal population before the completion of the necessary tools to avoid the creation of a new illegal alien population in the future.

What is more, the legalization provisions of the bill make widespread fraud very likely if this, in fact, goes into effect.

Much has been made of the triggers that would permit the registered provisional immigrants to receive permanent residence. And those triggers are clearly a step in the right direction—improvements in exit tracking, employment authorization, border security.

The problem is, with regard to legalization, those triggers are essentially irrelevant, because the only trigger that matters to the legalization is the presentation of two border security plans by Homeland Security. And, frankly, given the number of similar plans that have passed before this body and elsewhere, it is not much of a hurdle.

Unfortunately, it is the only hurdle that matters because receipt of this RPI status is the amnesty. That is to say, it transforms the illegal immigrant into a person who is lawfully admitted into the United States. The rest of it is an upgrade from one legal status to another legal status, not the amnesty itself.

Essentially, the other triggers would trigger an upgrade from “Green Card Lite,” if you will, which is to say work authorization, Social Security account, driver’s license, travel papers, et cetera, Green Card Lite to Green Card Premium, which is the regular green card.

And, unfortunately, as far as the incentives, the political and bureaucratic incentives, to get those benchmarks enforced, that upgrade does not really create much of an incentive to get things done. Once illegal immigrants are out of the shadows and no longer undocumented, the urgency on the part of amnesty supporters to push the completion of those security measures essentially evaporates.

What is more, many of those who receive this RPI amnesty are likely to do so frequently. In reading the requirements in Section 2101 here in the bill, it harkens back to the Immigration Reform and Control Act, which the New York Times rightly called “one of the most extensive immigration frauds ever perpetrated against the United States Government.”

Just to touch on a few of the things that would result in such fraud, IRCA created a crush of applications, according to the Department of Justice Inspector General. That was only 3 million people. What kind of crush will we see with 3 or 4 times that many applicants.

The bill does not require interviews of amnesty applicants, and, in fact, we have seen with the DACA amnesty that is going on now very few people are interviewed, 99.5 percent of applicants have been approved so far.

The bill permits affidavits by non-relatives regarding work or education history. Fraudulent affidavits were extremely widespread in IRCA and created much of the fraud that we dealt with in that program.

The current bill also includes a confidentiality clause, essentially a sanctuary provision, prohibiting any information to be used against the applicant.

Likewise, it does not require the deportation of any failed applicant, essentially creating a heads-I-win, tails-you-lose situation

where the applicant can simply apply and know he can never be deported.

And just to end, the consequences of this kind of fraud is very serious. We do not have to speculate. We saw from last time Mahmoud the Red Abouhalima, an Egyptian illegal immigrant driving a cab in New York, fraudulently received amnesty as a farm worker, and that legal status permitted him to travel to Afghanistan, get his terrorist training, and help lead the first World Trade Center attack.

So I would encourage this panel to look hard at these legalization provisions and see if there is any way to salvage them and to avoid the kind of problems that we are almost certain to get.

Thank you.

[The prepared statement of Mr. Krikorian appears as a submission for the record.]

Chairman LEAHY [presiding]. Thank you, Mr. Krikorian. I do not want to take from the time of the others.

The next witness is Laura Lichter, who currently serves as the president of the American Immigration Lawyers Association based in Denver, Colorado.

Ms. Lichter, thank you very much, and thank you, Mr. Krikorian. Please go ahead.

**STATEMENT OF LAURA L. LICHTER, ESQ., PRESIDENT,  
AMERICAN IMMIGRATION LAWYERS ASSOCIATION, DENVER,  
COLORADO**

Ms. LICHTER. Thank you, Mr. Chairman, and thank you for the opportunity to address you today on this exceedingly important and historic moment.

I will not use up my time to argue with Mr. Krikorian about his conclusions on these things, but I can tell you that the mess we have today in our immigration laws, frankly, sirs and madam, is the mess that we designed. We have been living with a failed experiment now for almost 20 years, and I would suggest that if your head hurts from banging your head against the wall, the solution is not to bang your head harder.

The architecture of this bill shows great creativity, great courage, and I would argue that the Gang of Eight has shown great perseverance in reaching a very good bipartisan architecture. Our concerns at this point, however, are that we not lose sight of some very core values that aid in our communities.

Families really are the cornerstone of our communities, and it is a tragic irony that our current system places road blocks in the face of the people that have the most significant and deepest ties to our communities. Family applications are plagued by long delays. I just pulled up the visa bulletin this morning to see what those delays were, and the adult child of a U.S. citizen would wait over 7 years to even begin the process. If that individual is from Mexico, we are talking over two decades.

If we start talking about categories which are now apparently under siege, the Family Third Preference for married children and siblings of U.S. citizens, those backlogs go back decades as well.

It should be clear that we should not recognize a false dichotomy between business immigration and family-based immigration. They

interrelate. Many of our most important innovators and entrepreneurs actually came through the family system, not merely the business system. Less family-friendly policies may actually dissuade highly skilled immigrants who have families from choosing to immigrate to the United States, and especially in the case of individuals who are members of the LGBT community, it may force us to lose our own citizens who will immigrate to other countries in order to keep their families intact.

The best thing I can do is give you examples to tell you in my experience how this actually impacts people. We see families torn apart. We see people without options. We see adult children of people who could be sponsored who are left out, those brothers and sisters, folks who might have no ability to immigrate on their own, even through the proposed merit-based system.

We can see that for LGBT couples, for example, an individual who is married in the United States but does not have another way to stay in the country, that that individual is at a road block and cannot immigrate under the current system or even under the proposals.

We do want to thank the Gang of Eight and especially Senator Leahy for your leadership in the asylum arena. Streamlining this process, providing more due process, increases efficiencies, and getting rid of the arbitrary 1-year filing deadline for asylum cases will increase the fairness of this process, which is at the key of our vision in the world as the upholders of freedom and fairness.

Immigration court has been described as something on the corner of byzantine and absurd. It is death penalty consequences with traffic court rules. We see backlogs that remain well over 300,000 cases despite significant efforts by ICE to prioritize the cases that are in removal proceedings.

We are encouraged by the effort to include more counsel for people going through proceedings, especially individuals who are detained. An expansion of the legal orientation program provides a win-win-win impact for the courts, for the DHS, for the justice system, and for the immigrants themselves.

We need to ensure that we do not resort to draconian bright-line limits. They simply do not work. They do not deter behavior, and they do not accommodate the need for humanitarian consideration of cases on a case-by-case basis.

Immigration detention also needs a more significant eye towards it. Right now, we have seen an incredible increase in spending on detention and an increase in the number of beds, and I would like to see that we have more alternatives to detention as we go forward under the new bill.

I would like to make one brief comment as to the concern for fraud going forward under the legalization program. What we have seen under deferred action actually is a very important effort by the Government, and kudos to USCIS for actually presenting incredibly useful information on its website and administering the program in an intelligent way so that the public cannot be victimized.

There has been an incredible partnership by the immigration bar, by community-based organizations, and others to make sure good, solid information gets out there. And good, solid information

and representation are going to be the keys to making sure that a program does not suffer from fraud or any other abuses.

Thank you.

[The prepared statement of Ms. Lichter appears as a submission for the record.]

Chairman LEAHY. Thank you very much, Ms. Lichter.

Our next with, Kris Kobach, is the Kansas Secretary of State. We know him on this Committee; from 2001 to 2003 he was counsel to U.S. Attorney General John Ashcroft.

Please go ahead, sir.

**STATEMENT OF HON. KRIS W. KOBACH, SECRETARY  
OF STATE, STATE OF KANSAS, TOPEKA, KANSAS**

Mr. KOBACH. Thank you, Mr. Chairman.

This bill has been portrayed as a balance between an amnesty or legalization and enforcement, and in my testimony I want to stress to you that it is not a balanced bill. In my written this I offer nine reasons why this bill is problematic and not at all balanced. I want to just stress the most important six here—three problems with the amnesty provisions and three problems with the enforcement provisions.

The first one with the amnesty provision is that the background checks in this bill are insufficient to prevent a terrorist from getting the amnesty. The biggest problem is this: The bill has no requirement that you provide a Government-issued document that says you are who you say you are. So what that does is it allows the terrorist to create a new fictitious identity, invent an unusual name—Rumpelstiltskin, for instance. He gets an identity card from the Government under this bill, verifying and giving credibility to that new identity. He also gets legal status, which allows him to travel abroad under that new identity.

Now, the Tamerlan Tsarnaev example demonstrates how important an alien's ability to have freedom of movement and to travel abroad for terrorist connections and terrorist training is and how dangerous it can be for Americans.

Now, it should be pointed out that even if a terrorist attempts to use his real name to gain the amnesty, the background check in most cases is unlikely to stop him. Again, the Tamerlan Tsarnaev example illustrates the point. As was mentioned by Mr. Krikorian, most of these aliens are not going to have personal interviews. Tsarnaev had at least two background checks, and he had a personal interview with the FBI, yet they still were unable to conclude that he might have terrorist intentions and should be barred from the country. And that was far more scrutiny than these aliens are going to have.

Under the last amnesty in 1986, we had multiple terrorists who were amnestied out of 2.7 million amnesties granted. This is much larger. It is simply a mathematical likelihood that it will happen again on a greater scale.

The second problem, absconders and people who have already been deported are legalized under this amnesty. I am not aware of any amnesty in our country's history where we have reached back and grabbed people who have already been removed from the United States and brought them back in to gain the amnesty, and

perhaps even worse, absconders are made eligible for the amnesty. Now, for those of you who do not remember the term “absconder,” it is someone who has already been removed by a immigration court, had his day in court, but he becomes a fugitive and remains in the United States and disobeys the court order. This amnesty allows the absconders to remain. What kind of perverse incentive will that be going forward? Our immigration courts will be basically sending a meaningless message: “We are ordering you to be removed from the United States, but if you hang out and you can remain a fugitive until the next amnesty, you will be able to stay in the United States.”

The third problem with the amnesty is it legalizes dangerous aliens who received deferred action under DACA. As you know, the DACA directive was enacted by the—not even enacted—proclaimed by the Secretary of Homeland Security in June of 2012. It is now in effect. Large numbers of people have gotten it. It violates Federal law at 8 U.S.C. 1225, certain aliens must be placed into removal proceedings. That is what this Congress said in 1996. The DACA directive says, no, you do not have to put them in removal proceedings.

There was a hearing in April, on April 8th in Dallas in Federal district court. We learned at that hearing that, under the DACA directive, multiple dangerous aliens who had been arrested but not yet convicted of serious crimes had been released back onto the streets—one for assault on a Federal officer, sexual assault on a minor, trafficking in cocaine. Those dangerous aliens will be eligible for the amnesty under this bill.

Now, three quick problems why the enforcement provisions are not serious.

First, the 90-percent threshold is meaningless. This bill promises an effectiveness rate of 90 percent. But it is 90 percent of the individuals who attempt to come into the country, that they will be stopped or turned back. But there is no way of knowing the denominator. We have never had the ability to calculate the number of people who evade border security enforcement, and we probably never will.

The second problem with this point is that it does not measure 90 percent over the whole border. It only does so at supposedly the high-risk areas where the apprehensions are over 30,000. As we know, over the past few decades, every time the Border Patrol does something different here, the smugglers move their networks to a different part of the border. So DHS may report, hey, we have got 90-percent success here, however they are measuring it, but, in fact, the smugglers have long abandoned that part of the border and they have gone to a different part of the border.

And, finally, third, DHS, as was recently revealed in that same April hearing, we now know has been cooking the books as far as its removal numbers. They were claiming a record number of removals of 410,000 in fiscal year 2012. We now know that that number is overreported, inflated by about 86,000. If they are not fairly calculating their numbers now, why should we expect them to fairly calculate the 90-percent figure?

The second problem with the enforcement provision: It hobbles State enforcement efforts. This bill has a preemption clause in it

that says State efforts to discourage the employment of unauthorized aliens in the workplace will be preempted. Many of those State efforts have been the only enforcement in the workplace during the last 4 years to speak of. Most notably in Arizona, the Legal Arizona Workers Act was implemented at the beginning of 2008, and in those first 3 years of implementation, Arizona saw a drop of 36 percent in the illegal alien population compared to a 1-percent drop nationwide. Those State efforts will be gutted if this bill becomes law. Indeed, there could be a vacuum, because while this new electronic verification system is being created, States will be prevented from doing absolutely at. That is an important flaw in the bill.

And then the final flaw I would mention is that the bill scraps the E-Verify system. We have over 400,000 employers using E-Verify. Four States mandate it. Many other States require it for businesses who are receiving Government contracts. But, inexplicably, this bill scraps that proven system and replaces it with something else, some other electronic verification system, even though E-Verify gets over 98 percent approval ratings among employers who use it. One has to wonder why they are doing this. Why is the bill written this way? The only explanation I can see is delay. Because of the prolonged phase-in periods and the fact that E-Verify regs probably do not even have to be in place until 5 years from enactment, you are talking about a 9-year period at the minimum before this thing is likely to be in effect, the new E-Verify, the new electronic verification system is likely to be in effect.

In short, this bill does not seem to be a good faith effort to bring enforcement to the workplace. If it were serious, it would simply say make E-Verify mandatory now, give large employers 1 year, give other employers 2 or 3 years, like the States have done very successfully.

Thank you.

[The prepared statement of Mr. Kobach appears as a submission for the record.]

Chairman LEAHY. Well, I am sorry you feel that the four Republican Senators and four Democratic Senators did not work in good faith. I know all eight of them very well. They have met with me. I think they worked very, very hard to work in good faith.

Ms. Pacheco, in 2010, you were part of a courageous march to Washington pursuing your dream. That made me think of the civil rights marches of the 1950s and 1960s, and I am old enough to actually remember them. Since then, you have inspired an entire generation of young people who were brought to the United States through no fault of their own. You taught them to come out of the shadows. You do this even though you risk being taken out of the only country you have ever known as home.

What inspires you to do that? What inspires you to step forward that way?

Ms. PACHECO. Thank you, Senator Leahy, for your question. And it is simply put in one word: love. The love that I have for this country, the love that I have for my family, for the community that I grew up in, and the love that I have for myself, because I do have a dream. I have three degrees. I have a bachelor's in special education, and I want to be able to open a music therapy center to

work with people with Down's syndrome, autism, and mental disabilities. And that is what drives me, and I think what drives a lot of undocumented young people who are in this country, who are seeking an opportunity for themselves and for their family. And in that 1,500-mile walk, all we did was talk to people, everyday people, and after two seconds of telling our stories and sharing with them what was really happening with our immigration system, we were able to change a lot of hearts and minds.

Chairman LEAHY. Thank you.

Ms. Murguía—I am so used to calling you by your first name when we see each other, but you are the president of the largest Hispanic civil rights organization in the United States, so I think that carries a lot of weight with Hispanics in America.

As you know, I have supported immigration reform for years and years. Even though that is not a major issue in Vermont, I think it is a major moral issue for this country. But I worry about a proposal that contains false promises. I have always wanted something straightforward and fair and achievable.

Is the legalization proposal in this bill, drafted by the eight Senators, do you consider it straightforward, fair, and achievable?

Ms. MURGUÍA. I do believe that there was a good faith effort to modernize our legalization program, and I think that is a really important step, because I think what we failed to do in 1986—and it was a failure to acknowledge—was that, on the one hand, we did not create the flexibility, the foresightedness, to look at how we might be able to make adjustments in terms of our economy and the needs of our country and its workforce. This program seems to build that in, and we want to make sure that that is something that can be done.

On the one hand, I think this also reduces the backlog for many who have been waiting a long time for family visas, and for us I think that is a really important step.

On the other hand, we do have some concerns about the elimination of the program for siblings and adult children. I think that when you look at the bill as a whole and all the parts that it has, there is a lot to like and dislike, but overall I think right now this presents a framework that we can build upon as we move forward. So I am very encouraged by what I have seen.

Chairman LEAHY. Well, thank you.

Dr. Fleming, you currently lead a church in Texas, and I believe before that in Florida. You spoke about the moral imperative to reunite families and help millions of people, and I have referred to the moral aspects of it, and earlier I mentioned being the grandson of immigrants. My wife is the daughter of immigrants. And on the other side of my family, I am the great-grandson of immigrants. I remember my grandparents speaking of the morality of people coming to this country and being—they always insisted we work hard to be good citizens.

What brought you to speak out publicly in this matter? You have a lot of issues as a pastor that you might speak out on. What brought you to speak out on this one?

Pastor FLEMING. Well, thank you, Senator Leahy. In my remarks, as I mentioned, it is the human aspect for me, and it is the strong sense of God's movement and working in this as it relates

to the humanity side. I am not a politician. I am not an attorney. I am certainly woefully unqualified to speak in terms of policy and how do we work out these details. But what I have a sense of calling for in this is just to keep reminding us that there is no solution at either pole or either extreme. We have got to come together to the middle of this thing, and we have got to keep the humanity of those involved very much in the front of our minds.

I am excited to say there has been a rising middle voice in this debate, and I am excited to see that. We have made a lot of progress, and I am grateful that we are here talking about it today. I really feel something good is going to happen.

Chairman LEAHY. My final question of Ms. Lichter: Do you think this will bring people out of the shadows and register?

Ms. LICHTER. Absolutely. We see this on a daily basis. People want to know how do they pay their taxes, how do they join the military, how do they start a business. They want to be fully functioning members of their communities.

Chairman LEAHY. Thank you.

Senator Grassley.

Senator GRASSLEY. My first question is to Mr. Krikorian. My understanding of the bill so far is that undocumented immigrants will get every opportunity to apply for legalization, and they will have more opportunities if this bill were to pass to appeal the decisions that the Homeland Security officials make. Would you discuss that part of the bill, please?

Mr. KRIKORIAN. The bill permits the people who are in deportation proceedings to apply for the amnesty, people who have already been deported, at least who were deported over the past roughly year and a half, certain ones of them, to apply for the amnesty. If they are turned down initially because of some inadequate documents, they are allowed a second bite at the apple.

So, you know, this—I do not mean to be flip about it, but this subheading—I mean, you know, this section could have subheaded, “No illegal alien left behind.” I mean, the goal really seems to be to get amnesty for as many people as is physically possible.

Senator GRASSLEY. Okay. Mr. Kobach, I am going to quote a section of the bill and then ask you to tell us what you think it means. On page 330 of the bill—and this is in the Legalization Title—it says, “The Secretary may exercise discretion to waive a ground of inadmissibility if the Secretary determines that such refusal of admission is against the public interest or would result in hardship to aliens, United States citizen or permanent resident parent, spouse or child.”

Mr. KOBACH. Thank you, Senator GRASSLEY. That provision on page 330 of the bill I think is a huge loophole, and I do not think the DHS Secretary should have this immense discretion. And this is a massive increase over the discretion we see in current law. It radically expands current law, which allows waivers in cases of extreme hardship. This little change of language can have huge consequences. Now we are just down to hardship.

It also expands the hardship to the alien’s parent as well. That is not part of current law.

Now, two pages before that, on page 328, the same unprecedented discretion is also given to immigration judges in immigra-

tion court proceedings, and they would have the authority to terminate those proceedings, again, on this very low threshold of hardship to a wide variety of people.

Now, we should also note that the waiver can also be applied to people who have already been deported and are inadmissible. So, for example, a person who has been removed and perhaps has been convicted of some form of domestic violence or spousal abuse could come back in and try to claim eligibility under this waiver.

So this is a loophole that might seem small enough, but it is actually very big.

Senator GRASSLEY. Again, do people that apply for legalization, this means RPI status, and get denied have an opportunity to appeal the decision? And if so, what is that appeal process? What impact would it have on the Federal court system?

Mr. KOBACH. Well, I think you are going to find—the answer is yes. As Mr. Krikorian also mentioned, they do have this right to appeal. And we already see the immigration courts, you know, overflowing with cases, and this is a constant complaint that the immigration courts—it is one that goes back all the way to the time when I was at the Justice Department over 10 years ago and we were trying to deal with the issue then. Now you are going to be sending all of the people who are denied this amnesty into the immigration court system, and you are going to be overloading it even further. And I think you are going to find that the system is—there is going to be a tendency now with this discretion for judges to look for easy outs to clear their docket. And I think the excuse for many immigration judges will be to go ahead and exercise discretion if anyone related to the alien within the defines of that family unit, as is in the bill, can say that they are suffering hardship.

So I think the combination of overloading the system plus this wide discretion is going to be problematic.

Senator GRASSLEY. Again, some may say this bill is a boon to immigration attorneys and that it creates more loopholes than it closes. Do you know of any specific provision that will only create loopholes down the road?

Mr. KOBACH. There are a number that jump to mind. In the employment provision, it does not—the employment restrictions do not apply to “casual, sporadic, irregular, or intermittent” employees. Intermittent employees is clearly intended to refer to day labor, which is what a huge number of—a large percentage of illegal aliens perform right now. One could argue that because of the discretion in applying the word “intermittent,” that might even be applied to seasonal labor. So, again, that could be a huge loophole.

There is also a loophole for employers who make a good faith attempt to comply with the verifying of employees, but that good faith attempt seems ill-placed here because E-Verify under the current system is so easy to comply with. It is not like people have a problem when they sign up on the Internet and then they run names through the E-Verify system. So one wonders what could possibly be a good faith failure. “I tried to look for the DHS website, and I could not find it”? Is that good enough to be good faith?

There is also a clear and convincing evidence standard for employers who violate the provisions of this bill. That elevates the standard very high, unnecessarily high.

So I think employers are, again, given lots of leeway. These are just a few of the loopholes, and I could go on.

Senator GRASSLEY. My time is up. Just let me make a closing comment. And the use of waivers came up several times in my questioning here.

I think, you know, we cannot blame the President if he has certain authority and he uses it. So I do not want to use the word "abuse." But I think we can say that this President has taken more advantage of opportunities that have been given to him under law. And when we consider the 1,693 delegations of authority to the President under the health care reform bill, I think that we ought to be very careful in this legislation, as important as it is that we have immigration reform, not to overdelegate authority and waivers and things like that.

Thank you, Mr. Chairman.

Chairman LEAHY. Thank you. I will turn to Senator Klobuchar, but before I do, I would note that wherever we are as we approach 10 of, I am going to pause for a couple minutes. The Senate—in fact, I preside at the opening of the Senate wearing my other hat as President Pro Tem, and it was decided that at 10 minutes of 2:00 the Senate and the Committees would hold a moment of silence, and I will announce that as we are closer to 10 minutes of 2:00.

Senator Klobuchar, go ahead.

Senator KLOBUCHAR. Thank you very much, Mr. Chairman.

With the last panel, I really focused on the economics of this bill and how important it was to our country's economy to move forward on reform. And here I want to get out an issue that I think is equally important. I guess I will start with you, Ms. Murguía, about the U-visa part of this bill. I am a former prosecutor, and I saw firsthand dozens of cases where immigrant women would be victims and then their perpetrator of either domestic violence but mostly rape, mostly young women, would then hold over them that they would be deported if they reported it to the police or if they allowed a prosecutor to go forward with the case. Sometimes they would report it, though they would have to because law enforcement knew about the case, but then they would try to get them to back down and change their story and other things like that based on legal threats.

We tried really hard in the Violence Against Women Act. We did keep the U-visa program in there and extended it to also stalking victims, which was important. But we did not expand the number of U-visas. And in this bill, the Gang of Eight, realizing the importance that this tool has for law enforcement, did expand them. And so could you talk about why this is so important for law enforcement? And if you want to add anything, Ms. Lichter?

Ms. MURGUÍA. Thank you, Senator Klobuchar. Thanks for your leadership on the VAWA act. I know that was a huge victory for many of us and wanted to support that. But you are right, we have seen incidents that are higher than normal. In many of these communities, the stresses on these families are enormous, and yet we

have not had the assurances that these protections would be built in. And with this bill, we have seen a major effort to allow for more of those visas and allow for folks to come forward when they feel that they are at risk and to not violate their status.

So this is a huge step forward for us, and we really are appreciative of the Gang of Eight and their thoughtfulness in that regard.

Senator KLOBUCHAR. Thank you.

Did you want to add anything, Ms. Lichter?

Ms. LICHTER. Yes, and, again, thank you very much for your leadership on this. This is a critically important piece, frankly, of law enforcement because it means that immigrant victims of crimes can step forward and help prosecute their abusers, whether it is something, as you said, a rape or domestic violence or something even more heinous.

The one thing that I think we need to see a little more attention to is the removal of the need to have a law enforcement certification. What we find is that the victim him- or herself ends up being sort of the victim of the political tenor of the particular area in which they were victimized, and that should not have any place in this. If a victim is courageous enough and brave enough to come forward and testify and assist in prosecution, then that should stand on its own.

Senator KLOBUCHAR. So that is something you would like to see added?

Ms. LICHTER. Yes, ma'am.

Senator KLOBUCHAR. Ms. Lichter, another subject. Most of the focus we had with the last panel on visas and green cards was on engineering, science, and those types of technology visas and green cards. But as you know, the U.S. is also facing a daunting shortage of doctors. One of the things I have worked very hard on with this bill and want to improve is the funding for homegrown science, technology, engineering, and math degrees and getting more scholarships and getting the high schools and getting big money into this based on the fees that are being paid for these visas, which should temporarily help us bridge the gap.

But one of the areas which I have seen in the rural parts of our State is the need for doctors, many of them trained in the U.S. but happen to be from other countries, to be able to work in rural and inner-city areas, underserved areas. In the last decade, my State alone has recruited over 200 doctors through the program called the Conrad State 30 program to our State. I reintroduced this bill, led the bill with Senators Heitkamp, Moran, and Collins, and this is also included, along with many other good things, in this Gang of Eight proposal.

Could you talk about how important it is when you have a rural area and you do not—we had one hospital that almost was not going to be able to deliver babies anymore because they did not have a doctor that could perform a C-section. So especially in rural areas, this is very important.

Ms. LICHTER. Thank you also again for your leadership on this area. This is another area of critical importance. We have a high number of medical graduates who are foreign born. They are willing and eager to take these jobs out in rural areas and in some un-

derserved urban areas as well. And anything we can do through the immigration laws to assist them with that process really is going to inure to the benefit of our communities.

Senator KLOBUCHAR. One last question. You mentioned going after fraud and abuse in your testimony in Government programs, how important that is, including in the immigration context, that DHS, the Department of Labor, and the Justice Department should use their auditing and prosecutorial authorities to combat the misuse of all visa programs and protect foreign workers from abuse, which in turn protects American workers.

What does this bill do to improve the tools the Government has to prevent potential misuse of our visa programs?

Ms. LICHTER. Well, my understanding is that there are numerous opportunities and numerous elements of this new bill that would allow us to combat abuse, and numerous mechanisms to, frankly, just investigate that abuse. I think at this point in time, under the law as we currently have, that is where I think things are a bit anemic. We need to have more process in there.

I would caution, though, that that process needs to be fair, it needs to be balanced, and it needs to make sure that all sides are heard.

Senator KLOBUCHAR. Very good. I appreciate that. I think people have to hear these parts of the bill as well as the important pathway to citizenship and other things. There are actually things that we are doing that make it more possible to enforce against fraud and other things that just are not in existing law.

Thank you.

Chairman LEAHY. I told Senator Sessions that I wished to interrupt his time if speaking, and we are now within a minute of the time. Just so everybody will understand who came in late, the Senate agreed by consent this afternoon when it came in that at this time we would observe a minute of silence in memory of the people, the police officer, and others who were killed and those who lost life and limb at the Patriots' Day Boston Marathon. So I would ask those who wish to join, if you would please join me and stand for a moment of silence.

[Moment of silence.]

Chairman LEAHY. I thank you all. As one who lives in a State bordering Massachusetts and who has probably walked by the corner where the bombs went off dozens of times, I have a feeling that the expressions here and elsewhere in our Government will mean a lot to the people there.

Senator Sessions.

Senator SESSIONS. Thank you. And, of course, I assume we will at some point recognize those volunteer firefighters and all in Texas who responded to help their community and then—

Chairman LEAHY. I was going to leave that to Senator CORNYN.

Senator SESSIONS. I know that we will be dealing with that.

Well, I thought the first panel showed that we had problems with ag and low-skilled workers in that portion of the bill, and I think the second panel on high-skilled workers indicated there are problems there. And I think your testimony indicates we have problem here that need to be dealt with.

I just would ask Dr. Fleming, you know, I do not believe there is scriptural basis for the idea that a modern nation state cannot have a lawful system of immigration and is somehow prohibited from enforcing legitimate laws once they have been passed. I really feel strongly about that.

I would just as a matter of pursuing it a little bit note that Nehemiah, when he came back to Judah, asked the king to give him letters to the governors beyond the—provinces beyond the river that “I might pass through and come to Judah.” And then he was given that. And he said, “Then I came to the governors of the province beyond the river and gave them the king’s letters.” And Moses at Edam, he is in Kaddish, and he says, “We are in Kaddish, a city on the edge of your territory,” he says to the king of Edam. “Please let us pass through your land. We will not pass through a field or vineyard or drink water from a well. We will go along the king’s highway. We will not turn aside from the right hand or to the left until we have passed through your territory.”

“You shall not pass through,” he said.

He asked again. He said, “You shall not pass through.”

And so thus, Edam refused to give Israel passage through the territory, so Israel turned away from him and did not go through the territory.

So I think this idea that somehow the love statements in Leviticus 19 is not the kind of thing that would indicate that nations should not have laws. And I think it is not healthy to lead little ones astray. Some people have been citing Scripture I think pretty loosely, it appears to me.

And in Genesis, Abraham and Isaac, they had to negotiate treaties to sojourn in the territory of and obtain water rights from local kings. In Genesis, Joseph requested permission from Pharaoh for his family to sojourn in Egypt. And I would note that when the phrase “sojourn” is used, at least one scholar, Dr. Hoffmeier, a professor, says that “sojourn” means lawfully to be in that area.

Do you have any—I will give you a chance to respond to that.

Pastor FLEMING. Thank you, Senator Sessions, and I so appreciate you doing my job for me today. My members would like you to come and share with us sometime as well.

I could not disagree at all with what you have said. I completely agree. That is why we have been asking for legislation that respects the rule of law, that secures our national borders. I wholeheartedly agree with that. And, by the way, Dr. Hoffmeier is a personal friend of mine, and so I appreciate you quoting him today as well.

However, that being said, surely if our system currently as it is structured were true to those Scriptures that you just quoted, we would not have 11 million plus illegal or undocumented immigrants in our country with us today. So clearly we do not have the system you described.

Senator SESSIONS. Well, I would just acknowledge that I have said since 2007 we need to deal compassionately with people who have been here a long time in this country. They all cannot be deported and should not attempt to be deported, and so we need to wrestle through all this and try to do it in a way that is appropriate.

You know, I believe Senator Rubio issued a facts check today that said that my statement about 30 million people being legalized is not accurate. Well, I first would ask all of those who support the bill, what is the number that will be legalized under this system? The amnesty itself would provide legalization for 11 million. The backlog is 4.5. It is an accelerated backlog elimination that would add 4.5. According to the Los Angeles Times, the future flow will be 50 percent above current future flow, at least, and that would be another 15 million. So over 10, that is around 30, and that does not include other chain migration, family migration.

Mr. Krikorian, do you want to comment on that?

Mr. KRIKORIAN. Well, I have not done the numbers, but it makes sense, and there is one thing—

Senator SESSIONS. Has anybody promoted numbers that they say it would—

Mr. KRIKORIAN. No. I mean, that is one of the issues I think people have in this, is to get actual numbers. But one thing I think you left out that would increase numbers also is that this legislation would make unlimited the immediate relatives of green card holders as the immediate relatives of U.S. citizens are now admitted. And so that would necessarily increase numbers as well.

Senator SESSIONS. Millions, perhaps?

Mr. KRIKORIAN. Over time, certainly. Absolutely.

Senator SESSIONS. Mr. Kobach, thank you for your work in this area over time. I would just note that your comment about the hardship definition and some of the other definitions, all of us need to listen to that because if you get to the point where you do not have clarity in these cases and every case has got to be tried now over whether or not there is a hardship allegation, I do think, do you not, as a practical lawyer who knows how these systems work, that that could be terribly destabilizing to the whole legal system and the ability to proceed?

My time is up, so if you—

Mr. KOBACH. I would simply say this: When you have a modifier like “extreme,” in most courts of law that tells the judge, okay, exercise your discretion very carefully here, as opposed to just the word “hardship,” which is a very open-ended term and it invites a lot of leeway, and I think it would be, you know, very problematic in our immigration court system.

Chairman LEAHY. What I am going to do is yield now to Senator Durbin, who will take the gavel for a bit, but I would note, as much as I enjoy being Chairman of Judiciary I just want to amend the U.S. Code. I am not trying to amend Genesis or any other part of the Bible.

Senator SESSIONS. You do not have that power.

Chairman LEAHY. Well, I know. I do not even suggest I do. So I appreciate the Bible lesson, but we will stick to the U.S.—

Senator SESSIONS. Your brother is a priest. I know you understand where the ultimately authority lies.

Chairman LEAHY. He does it a lot better than I do.

Senator Durbin.

Senator DURBIN [presiding]. Thank you very much, Mr. Chairman.

Gaby Pacheco, thank you for being here, and thanks for all you have done on behalf of the DREAMers. My staff has asked me to read the stories of some more DREAMers. I have done that 54 times on the floor of the United States Senate. Each one of these stories is amazing in its own right. The accomplishments of these young people, the fact that they have known no other country in their lives and they want to be part of America's future, they have extraordinary educational achievements that they managed to put together in American schools, schools that were open by American taxpayers. So their education has been supported by our country. And now with all the skill and talent, they are just asking us to give them a chance.

So, Mr. Kobach, do you think the DREAMers deserve a chance to become legal in America?

Mr. KOBACH. Well, that, of course, involves a lot of calculations because, you know, we are talking about—for example, in the DREAM Act part of the bill, we are talking about resources, places. For example, the DREAM Act portion of the bill, like many of the DREAM Act we have seen before Congress since 2001, says that the current provision against giving in-state tuition rates to illegal aliens has to be removed as part of the DREAM. And so we are talking about—

Senator DURBIN. So you want to get into—I just want to ask a matter of principle. Let us go down to basic values here. These young people were brought to America, Gaby at the age of 8. It was not exactly her decision to come from Ecuador. It was her family's decision. And time and again, we are finding cases where children were brought in and the parents did not file the right papers or overstayed a visa, and the child knew nothing about it.

So getting beyond immigration policy and the specifics, which we could talk about for a long time, as a basic matter of justice and fairness, do you believe that these young people should be penalized for the wrongdoing of their parents?

Mr. KOBACH. And that is exactly where I was going to go to that biblical metaphor, that biblical verse. We are not supposed to punish the children for the sins of the parents. But, similarly, we probably should not reward the children for the sins of the parents. I would say treat the children neutrally without respect to the sins of the parents. And treating them neutrally, I think that would be the most just thing to do.

Senator DURBIN. So how would you treat them neutrally?

Mr. KOBACH. I would treat them neutrally by treating them the equivalent of other people who hold the same nationality. And so, therefore, do not allow them to jump ahead—which is what it is—jump ahead of the line by retaining their presence in the United States. Allow them to have the same opportunity. That might be include getting rid of the 10-year bar—I think that might be a reasonable proposal for DREAMers—and go back and get in line with the rest of their countrymen.

Senator DURBIN. Well, you see, we debated that, and it is interesting, because eight Senators—four Democrats, four Republicans—and some pretty conservative Republicans, I might add—basically came to the opposite conclusion. They said what you are suggesting is punishment. What you are suggesting is that they

should be punished and put to the back of the line, and they have never done anything wrong.

I have been at this for 12 years. I have met hundreds, maybe thousands of these young people. And to suggest that somehow they are guilty, culpable, should pay a price for what they did wrong, it just defies basic compassion, which I feel is part of this calculation, as well as justice.

And I would say to you that this notion that we heard in the last campaign of self-deport—I think that might have been one of your points of view at that time—I mean, overlooking the obvious, America will be a stronger Nation when we acknowledge who we are. My mother was an immigrant to this country, brought here at the age of 2. She was a DREAMer of her generation. Her son is now a United States Senator. That is my story. That is my family's story. That happens to be America's story. She was given a chance to naturalize at the age of 23, and she did. And I have got her certificate sitting on the back of my desk. I am so proud of it.

I think America is a little better because Ona Kutkin came over on a boat from Lithuania and managed to live here and make a life. And you know what? My story is not unique. And what happened to her, what was given to her, that opportunity, made this the country it is today.

And I think many people who resist and fight back against immigration are ignoring who we are, our birthright as a nation. We went through 3 months of debate over this at least, 24 separate meetings, trying to figure out what was a just and fair way to resolve this. But this notion that immigrants are somehow negative or bad for America, that is not a fact at all. Never has been.

And I think what we come up with is a fair approach. Can it be improved? Sure. I am open to improvement. But when it comes right down to Gaby Pacheco and hundreds of thousands just like her, Mr. Kobach, she has never known any other country. This is her home.

Mr. KOBACH. May I briefly respond.

Senator DURBIN. Of course.

Mr. KOBACH. I do not think it is fair to characterize those of us who think we should restore the rule of law as saying we are resisting immigration. We are resisting illegal immigration, and we are resisting a system where we have essentially the national interest of the United States not being promoted in deciding who may enter the country, who may stay in the country, and the rules for coming in.

And self-deportation is not some radical idea. It is simply the idea that people may comply with the law by their own choice. Whenever we have a law enforcement problem, self-deterrence is basically the typical solution law enforcement adopts; that is, you increase the penalties so that people start complying with the law. Self-deportation is something that Arizona has proven that if you ratchet up the penalties for violating the law, people will choose to leave. And it has been proven that they do that.

Senator DURBIN. You were an elected official in Kansas, correct

Mr. KOBACH. Correct.

Senator DURBIN. So am I. I am an elected official in Illinois. And what we have basically said is ultimately the voters have the last

word. The voters had the last word on self-deportation on November 6th. So we are beyond that now. I mean, you can stick with that theory as long as you would like, but I think that what we are talking about now is whether America is a better country if we have an immigration system that brings 11 million people out of the shadows to register with this Government so we know who they are, where they are, do a criminal background check, or whether we leave them in the shadows. I think it is pretty clear. We are a better Nation when we have these 11 million people coming forward.

And for these DREAMers, yes, they are being treated differently, given perhaps a better chance toward legalization. But it is still not an easy path. Most of them have spent their lives in hiding for fear of being deported. And they have achieved amazing things despite that.

So we just come down to this with a different point of view, and I am going to stop now because—and I think I have the gavel if I go over and retrieve it. Are there other Members who would like to make a comment or statement? Who is next? Senator Cornyn, please.

Senator CORNYN. Mr. Chairman, as long as you have the gavel, you can go as long as you want.

I am going to ask Mr. Kobach and Mr. Krikorian to answer this question. Is there anything short of removal that you would consider not to be amnesty?

Mr. KRIKORIAN. No. Amnesty means an illegal immigrant gets to stay. It is the definition we have always used as far as immigration goes, and there is actually an academic literature of comparative immigration amnesty—

Senator CORNYN. I understand what it means.

Mr. KOBACH. Right.

Senator CORNYN. How about you, Mr. Kobach? Anything short of removal is amnesty to you.

Mr. KOBACH. I would argue that declining to remove an unlawfully present alien is actually amnesty plus, because you are giving, if you will—if you liken it to theft, you are giving the person what he has taken, namely, presence in the United States. He has taken it unlawfully. So you are not only declining to punish, you are allowing the person to have what he has taken. You could in theory define amnesty as not prosecuting, but this is more than just not prosecuting. This is not prosecuting and allowing the person to keep what he has unlawfully taken.

Senator CORNYN. Some have said that the status quo represents de facto amnesty. Would you agree with that, Mr. Krikorian?

Mr. KRIKORIAN. The status quo, to the degree that this administration, and, frankly, others, have deliberately chosen not to enforce the law, that is kind of a de facto amnesty, yes. But the only way to resolve that is not necessarily through statute but through Executive action.

Senator CORNYN. Mr. Kobach.

Mr. KOBACH. I would argue that we have more than just a de facto amnesty, which, you know, people use the term “de facto” to describe the situation of facts that we have on the ground. But we have more than a de facto amnesty. The DACA directive of June

15, 2012, is an Executive directive, an order, if you will, that declares that the current provisions of U.S. law, specifically 8 U.S.C. 1225, will not be enforced and that the officers who are ordered by U.S. law to place certain aliens in removal proceedings shall disobey the law.

So we have got more than a de facto amnesty. We have an executive branch that is ignoring the statutes that this Congress has written.

Senator CORNYN. I would like to have Ms. Murguía and Ms. Lichter respond to this. There are a number of people, including me, who believe that the representations that the border will be secure and that we will have an effective system of monitoring and addressing visa overstays has been adequately—there are those who say it has been adequately addressed in this bill. You know especially, Ms. Lichter, that since 1996 Congress has said that the executive branch should create a system of effectively monitoring visa overstays. Yet today, all these years later, 40 percent of illegal immigration does not come across the border. It is people coming legally and then overstaying.

So I just ask you, Ms. Murguía and Ms. Lichter, can you understand those who have seen this movie before and who have said these promises and assurances that this is the last time this will ever have to happen because we are going to institute a system of border security and enforcing the law against people who come in legally but overstay their visa, that has never come to pass? Can you appreciate the skepticism that people feel when they hear that again? Ms. Lichter, go ahead.

Ms. LICHTER. Sure. Thank you, Senator. I think maybe the better way to look at this is to—

Senator CORNYN. Just look at it my way first, okay?

[Laughter.]

Senator CORNYN. Then you can look at it a better way. Can you understand the skepticism that—

Senator SESSIONS. Judge Cornyn.

Senator CORNYN [continuing]. Of people who have heard these representations before only to find that they did not work as advertised?

Ms. LICHTER. Right. And in order to avoid that sense of disenchantment with the new method going forward, I would like to draw your attention to what the real cause is of the overstay or the illegal entry. It is not for lack of enforcement. It is not for lack of a tracking system. It is for lack of a lawful path for people who wish to change from their nonimmigrant status to extend—

Senator CORNYN. You are kidding me. When you come in on a 30-day visa, you do not know when your visa expires that it is time to go home? And you are saying it is for lack of a path to citizenship?

Ms. LICHTER. I did not say it was for lack of a path to citizenship. I said it was for lack of legal immigration options. What happened—

Senator CORNYN. We have legal immigration options. You know better than most, Ms. Lichter. We naturalize as many as a million people a year in this country. We have a path for people to function through the legal system. But you are telling me that some people

have no option but to come in and overstay their visa and to melt into the great American landscape?

Ms. LICHTER. We have had 3 hours of testimony as to why that path is inadequate and does not work. And I believe that the architecture that the Gang of Eight has come up with would do much to provide an intelligent, common-sense system. And if our focus instead shifts to making those pathways achievable for low-skilled workers, for high-skilled workers, for family, having fairness and due process in our laws, then I think the rest of it will actually fall into place. And I do honestly believe that because I believe I am the only person on this panel that actually practices in this, and I have been doing it for nearly two decades. I believe that because I see it every single day.

Senator CORNYN. Ms. Murguía, out of fairness to you, I asked a question. Would you care to respond?

Ms. MURGUÍA. Yes, I would, and I appreciate it. And I do understand the perspective, and I think, you know, the fact that you have someone representing viewpoints like mine and Gaby and Secretary Kobach down at the end, I think we know that there are different views on how to get to maybe perhaps the same end goal, which is making sure our borders are secure as well as making sure that we have a process that is regular, orderly, and fair to bring in new immigrants. I get that. And I really appreciate the fact that we need to give ourselves this space to have this discussion without pointing fingers about people's motives.

Let me say to you that I do believe that Senate bill 744 includes many painful lessons learned from the past. As you know, the 1986 law had a number of issues, and for one thing, the legalization program did not cover everyone. So there remained a large undocumented population afterwards.

Second, it did not include changes to legal immigration to address our future needs. Both of these omissions I think contributed to the growth of the undocumented population since that time.

And I think, third, clearly its enforcement measures were not strong enough. But as I had noted in my written testimony, the enforcement system we now have in place is by several orders of magnitude much stronger than anything in place or even contemplated in the 1986 Act.

By combining a legalization process that does lead to citizenship with a modern immigration system and real accountability for employers, we will have immigrants that are here legally, immigrants in the future will have real channels to enter through, and those hired in the future will be here legally.

So our goals are the same, and that is to have an immigration system that works and reflects our values as a Nation of immigrants and as a Nation of laws. And my favorite section from the Bible is the Beatitudes, and I say, "Blessed are the peacemakers," and I hope that we all can find peace in our common goals around immigration reform.

Senator CORNYN. Mr. Chairman, may I ask for you to exercise your discretion and allow me to ask my constituent one question, please?

I got so involved, Dr. Fleming, with these other witnesses, I meant to ask you a question. First of all, welcome.

Mr. Fleming. Thank you, Senator.

Senator CORNYN. We are glad you are here. I know you care deeply about the people you come in contact with, and I believe that justice and fairness and compassion are not incompatible with the rule of law. I think it enhances our ability to demonstrate justice, fairness, and compassion when we operate within a legal framework, and that is certainly what we are trying to do here. At least I believe that.

But there is a provision in this bill that would allow somebody who has committed multiple offenses of domestic violence, of drunk driving, and of child abuse. It draws the line at two. You can do it twice, and you are still eligible. But if you do it three times or commit a felony, you are not. Does that cause you any concern just in terms of the welfare of the victim of that drunk driving, the domestic violence, or child abuse?

Mr. Fleming. Thank you, Senator CORNYN. It is a great question. I know a lot of people will be asking that very question.

It does cause me some concern. What we have said throughout this conversation is that we are advocating for legal status and/or citizenship to those who qualify? I do not believe that everyone will qualify or should qualify. I feel woefully inadequate to say what the exact and express qualifications should be, but I do recognize that is a very important issue.

I would be uncomfortable with multiple offenses and felonies. I think there has to be some line to where we are allowing those who are going to be productive, taxpaying, contributing to their community, great neighbors, and those who either by lack of attention or intention cause us harm. There has to be a line, surely.

Senator CORNYN. Thank you very much.

Mr. Fleming. Thank you.

Senator DURBIN. Senator Franken.

Senator FRANKEN. Thank you, Mr. Chairman.

Before I turn to my questions, I just wanted to say that I am really glad to see you here, Dr. Fleming. A lot of Minnesotans I know who support immigration reform do so out of—see it as an issue of faith.

At this point, Mr. Chairman, I would like to enter into the record a list of three dozen—actually three dozen plus one Minnesota faith groups that support immigration reform. If you look through this list, you will see Lutherans and Muslims and Catholics, Jews, Episcopalians, Methodists, you name it, unitarians.

Senator DURBIN. Without objection.

Senator FRANKEN. Thank you.

[The list appears as a submission for the record.]

Senator FRANKEN. A lot of Minnesotans do not just think that this is a smart thing to do. They think that this is the morally right thing to do.

Ms. Lichter, the bill we are debating will make E-Verify mandatory for almost all employers within 5 years. Unfortunately, the last independent audit of the system revealed that it wrongly rejected a legal worker about one out of every 140 times. It does not sound that high, but it would not be acceptable for you, the credit card errors or starting your car. And I am worried about how this is going to affect Minnesota small businesses, a small business that

does not have a big HR department or the human resources person may be their accountant, may man the front desk and may be the spouse of the small business owner.

In February, the American Immigration Lawyers Association issued a press release highlighting these problems and saying that any mandatory employment verification system should “protect the interests of small businesses and provide mechanisms to suspend the rollout of the employment verification program if patterns of errors develop.”

Can you tell us why AILA made these recommendations and if AILA continues to stand by them?

Ms. LICHTER. Thank you, Senator. Yes, we do continue to stand by those recommendations, and it is simply because, as you note, this is not an issue just for the employer. It is for the entire workforce. It could be an issue for that person who is applying for a job, and simply because the paperwork does not clear, you have just gone on to the next individual. And now that individual is out there hitting the streets looking for another job.

It does sound like a small percentage, but we are talking about tens of thousands of people who are wrongly, tentatively nonconfirmed, been told that they are not eligible to go forward with employment.

In terms of what the best metrics would be, I think we have a good chance here to look at slowing this down, potentially, to see if there are ways to evaluate whether we are having a high number of errors. There needs to be some method for reporting and correcting those. And let us not lose sight of the fact that this sort of additional regulation facing small business has a disproportionate effect. It literally costs a small business twice or nearly three times as much as it does a larger corporation to institute E-Verify and go through these checks.

Senator FRANKEN. Thank you.

Ms. Murguía, in 2007, the National Council of La Raza released a powerful study on the impact of immigration enforcement action on children. Your study revealed that immigration raids often left children abandoned without anyone to care for them. Let me quote the study’s description of the aftermath of two raids.

“In one case, a youth spent several days alone because both parents were arrested in the raid. In one household, three adolescents were left to fend for themselves after both parents were detained. Neighbors provided occasional supervision. People only found out about those cases because the youths subsequently showed up at food banks to ask for assistance. Another adolescent spent months in the care of a pastor of a local church where his parents worshipped.”

There have been cases like this all across the country. After a 2006 raid in Worthington, Minnesota, a second grader came home from school to find his mother and father missing and his 2-year-old brother alone. For the next week, this child stayed home from school to take care of his brother.

After a 2008 raid in Postville, Iowa, a local newspaper reported that “children went as long as 72 hours without seeing their parents, not knowing or understanding where they were.”

Thankfully the days of massive immigration raids are over, but in the past 2 years, over 200,000 parents of citizen children were deported. I have a bill, Ms. Murguía, that I plan to offer as an amendment to the immigration bill that we are now debating. It will institute some basic humanitarian protections for children during immigration enforcement actions and during the detention of their parents.

Ms. Murguía, do you think we need to do more to protect our children in the course of immigration enforcement actions?

Ms. MURGUÍA. I so, and I appreciate you highlighting that report, which I think was eye-opening for many people because I think when you hear about the impact of these deportations and as a result of our broken immigration system, we are not talking about individuals, we are not even talking about just about families. We are talking about communities that really are devastated by this broken system.

But the fact that I could not even articulate for you the pain and the suffering that has occurred across this country as a result of those raids and that continues to exist as long as we have these kinds of deportations in place is really for me not consistent with the values that we have as Americans in this country. There is a better way for us to do it. This bill, this compromise, offers us a path to get to that kind of a more rational and sane and humane resolution on this. So I appreciate you highlighting that there is real pain being inflicted, and these are not just statistics that we are talking about. There are families that have been devastated, communities that have been devastated, and to their credit, many people in the faith-based community across the board have stepped up to fill in where we ought to understand that there are collateral costs that are to be paid in this.

Senator FRANKEN. Thank you. Thank you so much to all of you. Mr. Chairman, thank you.

Senator DURBIN. Senator LEE.

Senator LEE. Thank you, Mr. Chairman, and thanks to each of you witnesses for joining us today.

As we started this discussion, I was reminded of the words of Stephen Covey, a prominent Utahan and author of "The Seven Habits of Highly Effective People," who used to tell people to think, "Win-win." That was followed up on by a guy named Michael Scott, a character on a TV sitcom called "The Office," who told his employees to think, "Win-win-win." So I want to thank Ms. Lichter for telling us to think, "Win-win-win-win," which sounds even better, and I hope we can get to that point, and I think that is really the point of this discussion, how we can find a way to make a difficult situation better. And I hope that through this legislation or some modified form of it, we can get to a point where we improve our legal immigration system. We are Nation of immigrants. We always have been. I hope and pray that we always will be.

For that to work effectively, we have got to have an effective front door through which immigrants to this country can be welcomed into this country under the terms of our laws.

There is a lot in this bill to be praised in this regard. There are some things that concern me, and I would like to discuss a couple of those with Mr. Kobach for a moment.

A couple of things that you mentioned have got my attention, one of them dealing with your assertion that the Department of Homeland Security may have been shaping some of the removal numbers. Can you speak more of the suspect activity of sort of changing—I think you said they are changing the denominator such that the overall ratio can be manipulated.

Mr. KOBACH. Two points. One is that you are kind of putting them in an impossible position if you say calculate 90 percent—if you are at 90-percent success, because you can never know the denominator of people that we missed because, almost by definition, we missed them and, therefore, we probably did not have surveillance of them. So it is almost impossible.

And so my second point to that was, well, if you are going to force them to come up with this number, this effectiveness ratio, then should we trust them to do so? And I would say based on the reporting of the last 2 years, there is serious reason to consider perhaps not, and that is, we have been told repeatedly in the last 2 years that fiscal year 2012 saw a record number, 410,000 approximately, of removals from the United States. Well, it turns out that about 86,000 of that number we have learned because of evidence disclosed in a Federal judicial proceeding, 86,000 fall under the ATEP program, and that is, these are aliens who previously would have been—they were apprehended by the Border Patrol. Previously they would have been turned around right at the border and called a “voluntary return.” Voluntary returns were never counted as removals. But since 2011, what they have been doing is taking these individuals and, for a good reason, they have been saying, well, let us transport them a few hundred miles down the border and then return them there so that they have a harder time reconnecting with a smuggling network; but we are going to count that as a removal, because ICE touched the alien for a few hours or maybe 24 hours during the process of helping to transport him.

And so now we have got what are basically voluntary returns with a transit in place being counted as removals, and that inflates the statistics to 410,000. So, really, removals are way down. ICE ERO, Enforcement Removal Operations, the core removal unit, has seen a massive decrease in removals over the last 4 years.

Senator LEE. So part of the problem with this is not necessarily that you should not be able to count that figure, because those are resulting from the efforts of DHS. It is the fact that it was a change compared to prior—

Mr. KOBACH. Right. Those never would have been counted as removals before.

Senator LEE. Okay.

Mr. KOBACH. And so one way to look at it is, well, calculate all of the alien turnarounds, removals, and everything, and look at that, ICE and Border Patrol combined over the past few years, and you see a decrease.

Now, some will say, oh, well, that decrease is because fewer people are attempting to come in, that is why Border Patrol numbers are down. But the point being the numbers are being manipulated in a misleading manner. And the President himself even used the word “misleading” when he was talking to a group of Hispanic reporters about these removal numbers, and he said, well, it is not

really—it is misleading because it is not really like old removals, what we would count them as.

So my point would be, if you are going to have metrics and you are going to have triggers, then pick something that is a very hard, indisputable number, maybe miles of fence constructed or specific numbers, as opposed to these very fuzzy percentages and success factors that this bill contemplates.

Senator LEE. And you think it is possible to identify objective, verifiable metrics that could do that? And so if you were to improve this bill, you would propose something that is less subjective?

Mr. KOBACH. Absolutely. But there are not that many things—one is miles of fence. That is something that is verifiable. But when you start talking about operational control, that is another one of those fuzzy factors that it is so virtually impossible to define.

Senator LEE. Do they really call those “voluntary removals,” by the way?

Mr. KOBACH. Voluntary returns. Yes, they call them “voluntary returns.”

Senator LEE. I suspect that those people who were actually the subject of such returns would not think of them as voluntary.

Mr. KOBACH. They probably would not. They were told return or else. But, yes, “voluntary” might be a misnomer.

Senator LEE. Okay. Perhaps in a subsequent round we can get back to the casual, sporadic, irregular, or intermittent standard, but my time has expired for now, so thank you.

Thank you, Mr. Chairman.

Senator SCHUMER [presiding]. Senator Coons.

Senator COONS. Thank you, Mr. Chairman. I want to start by just thanking the broad and bipartisan group of eight Senators who have worked so hard and over many months, and obviously all the different groups and individuals who have brought forward their stories and their views to help shape this bill, and the staff who have worked so hard on it. I think that this bill is a vital, an important first step towards moving our country away from our current broken, outdated, and in many ways unequal and unjust system to one that will work, and work in a way that comports with American values.

There are many important aspects of this bill to support that are encouraging: the resolution of the concerns of DREAMers, an earned path to citizenship, dramatically reducing backlogs, dealing more fairly with those seeking refugees—refugees seeking asylum. And coming with a system that more successfully keeps highly talented individuals who have been educated in this country here to contribute to our economy.

Like others who have spoken before me, I think there is still work to be done: additional due process protections, ensuring that all families, including LGBT families, are equally valued in this bill, and an emphasis on investing in education for U.S. nationals to address the skills gap over the long term. I think there are a number of areas we can work on together.

And I appreciate Chairman Leahy’s commitment to having an open and transparent process and to the length at which this panel has testified today.

Ms. Pacheco, if I might first just thank you for your story, your testimony. This is the second time I have heard you testify to this Committee, and it is a reminder of the individual stories that make up the broad fabric of the concerns that we are dealing with.

Ms. Lichter, if I might, I am interested in hearing you speak specifically to the need for appointed counsel or for an expanded legal orientation program. I was struck in a previous hearing I chaired to learn that more than 80 percent of detainees are unrepresented in any way, even if they are children, if they are mentally incompetent, if they are asylum seekers, and that, frankly, the absence of counsel for the overwhelming majority of non-citizens who are too poor or vulnerable to get them bogs the system down and actually makes it harder for immigration judges to do their job. And I would also be interested if you would speak concretely to your experience representing individuals with long past minor criminal offenses that have been deemed “aggravated felonies” for the limited purpose of the immigration law. If you can speak to both of those, I would appreciate it.

Ms. LICHTER. Thank you, Senator Coons, and you have hit upon probably the dirtiest little secret of our immigration proceedings, which is that this is one of the most complicated areas of law I think one can practice, and it is a forum in which we willingly throw people that do not have a sophisticated legal background. They might not even speak English. Most of them, as you noted, especially detained cases, do not have legal counsel.

The existence recently of legal orientation programs, where we advise people as to in general very broad terms, what they are facing, why, for example, they are detained, what avenues for relief there might be, have been extremely successful not only in promoting what would be, I think, important to many in the fair interest of justice and fair administration of the immigration laws, but there is an efficiency here as well. If we can explain to an individual that because of their lack of ties to the United States or because of their history that they do simply not have any relief in front of the immigration court, that case can be moved on very quickly. And, in fact, the legal orientation of programs themselves have been responsible for a significant amount of savings in terms of detained case processing and case processing in general.

It is clear also in this context that we have individuals coming to removal proceedings only because they have old minor crimes. And when we hear the words “aggravated felony,” I think many of us think, well, that sounds bad, it is aggravated and it is a felony. But what that really means in immigration is something else. It can involve something for which the individual never spent a day in jail, where there was not actually even any physical harm. It could be something that is 20, 30, 40 years old. I have had people facing removal proceedings for crimes that were that long in the past. And, unfortunately, the system that we have currently does not provide almost any path out of removal for those individuals, but for the very, very extreme cases where they might be facing persecution if they were returned home.

Senator COONS. Thank you, Ms. Lichter.

Ms. Murguía, if I might, you have spoken about the potential economic benefits as well as the moral imperative to establish an

earned path to citizenship and the possible benefit to our economy of having 11 million people be able to fully participate in our economy. If you would, just talk a little bit further about that and about this bill as a compromise. Can you help us understand what would happen on these fronts if the hurdles to earned legal status are too high, and for a significant number of those currently here in undocumented status, what would the consequences be?

Ms. MURGUÍA. Well, sure, and I will just reiterate a piece on the economic impact, and that is that even on Friday this Committee heard that there would be an overall net gain to our economy by moving forward with a comprehensive immigration reform bill to the tune of \$1.5 trillion to the U.S. GDP over a decade. And we know that, in addition, there would be billions added in terms of earned wages by many. So we do see this as net gain.

I will tell you that as we look at the legalization program right now—and, again, we see this path to citizenship and legalization that has been put forward there—I think for us the fact that we can build on that as a way to move forward is really important, because it is essential. What I mentioned earlier was that we do have some questions about the length and, again, the costliness of—the high cost, perhaps, with the fees and provisions there. And I think what we want to make sure we are doing is that we are not undermining our very goal of achieving legalization and citizenship by creating some of these barriers, which could be the length of time or could be the fees. There will be several fees. And, in fact, we know immigrants want to learn English, and if we are going to have the standards for them to learn English, we just need to make sure those supports are there for them to be able to have access to English classes and to the citizenship classes, which in the past has been a problem. But we are encouraged by what we see here. But if all of those pieces are not in place and if there is not attention to the potentially high cost and the length of time, I think we could undermine our very goal of seeing that citizenship become a reality.

Senator COONS. Thank you, Ms. Murguía.

Thank you.

Senator SCHUMER. Senator Blumenthal.

Senator BLUMENTHAL. Thank you, Mr. Chairman. And I want to first join in thanking Senator Schumer and others who have participated in the Group of Eight—I hesitate to call them a “gang”—that have produced such a very promising and important and really historic consensus solution to a topic that I think is probably the most important—among the most important that we face today in the United States and will determine the America of our children and our grandchildren. And I will be very proud to vote for immigration reform. I do not know that it will be exactly the bill that has been proposed, and I want to thank this panel and others that have been here before and will be here after for making the suggestions that they do. But I think we can be a better America, juster, freer, and more productive, if we bring those 11 million people out of the shadows and do the background checks. We may figure out better ways to do them. And I am a law enforcement guy. I believe that background checks can always be improved. But those background checks will make us safer. And enlisting and recruiting

those 11 million people in a path to earned citizenship I think will be good for them.

And I do not know, Mr. Krikorian or Secretary Kobach, whether you have spent a lot of time with the DREAMers, but I sort of think the DREAMers are ground zero. They are the basic—you know, who could be against giving these people citizenship? I have spent a lot of time with them. I have come to know them. I try to go to the floor whenever I can with pictures of them and their stories so that people understand who they are.

Let me begin, Mr. Kobach, Secretary of State Kobach, by asking: What is your position on people who are born here whose parents are here illegally? Should they be U.S. citizens?

Mr. KOBACH. Well, under current Federal law and under current practice, long practice that the executive branch has had for many administrations, they are treated as U.S. citizens.

Senator BLUMENTHAL. And I take it you would oppose that policy?

Mr. KOBACH. Well, there have been a number of bills introduced in Congress, and some of them I think have some merit, that would say that, for example—I am remembering Nathan Deal as the author of one of these that would say that if a person is born and at least one of his parent is either a green card holder or a U.S. citizen, that would be truer to the intent of what the writers of the 14th Amendment had that the individual, to gain U.S. citizenship—

Senator BLUMENTHAL. But do you not in your opposition to DREAMers having eventually this expedited path to citizenship have to oppose anybody who is born here whose parents are here illegally being denied citizenship and having to go to the back—

Mr. KOBACH. No, you do not—

Senator BLUMENTHAL [continuing]. Because they are—they are really no different in terms of their intent, their basic circumstances, than someone who is brought here by their parents without any choice on their part.

Mr. KOBACH. No, I do not think you do have to. One does not necessarily imply the other. There are a lot of reasons in the law why the current way we define natural born citizenship is simple and easy, so we can know instantly if a person is a U.S. citizen based on the place of their birth. And so there are lots of balances on both sides of that question, and so I am simply saying that proposals in Congress to, you know, define that more narrowly, who would have access to instant natural born citizenship, they may be more consistent with the Framers of the 14th Amendment, what they meant by that, but there are also other costs, legally. So I do not think one necessarily implies the other.

You know, looking at the green—

Senator BLUMENTHAL. Because the criteria are too complex if they are brought here?

Mr. KOBACH. Well, you then have this problem of determining citizenship is much more difficult than if you have to obtain other verifications.

Senator BLUMENTHAL. Well, let me just suggest to you, because my time will shortly expire, that I think the benefits of setting definitions that serve the national interest of having those people who

are brought here without any choice of their own, much like they are born here without choosing to be, are very, very much the same. And the DREAMers who are contributing to this country, are in school, serving in the military, are in, if anything, in terms of equity, a better position in deserving that kind of treatment of being given a path to expedited citizenship.

Mr. KOBACH. One very brief response. Past versions of the DREAM Act have included an upper age limit, and, you know, the idea is if you get—the closer you get to somebody who is actually a minor, you can say, well, that person is not responsible for his or her actions, I think we would all agree. But this bill has no upper age limit, so a person who is 40 could say, “Well, I am a DREAMer,” and, of course, he does not have to prove that he was in the—there is no documentary—

Senator BLUMENTHAL. With an age limit, you would not oppose it?

Mr. KOBACH. No, I think I would still oppose it, but my point is that this one does not have any age limit, and so it makes it less tolerable, you know, the more open-ended it is. And so I think, you know, people will fall on different places on the spectrum, but I think most people would agree that if you do not put an upper age limit on it, that is extremely problematic.

Senator BLUMENTHAL. Thank you.

Thank you, Mr. Chairman.

Senator SCHUMER. Thank you, and I guess I will just ask one question here since I have not had a chance. I take it, Senators Cornyn and Lee, you have had the opportunity to ask this panel questions. Yes, okay.

My one question is to Mr. Krikorian. The organization you are executive director of, that is called the Center for Immigration Studies. I just want to clarify. You advocate lower levels for both illegal and legal immigration. Is that correct?

Mr. KRIKORIAN. Well, ideally no illegal immigration, and lower overall immigration, yes.

Senator SCHUMER. Okay. But you would want the legal level to be lowered as well?

Mr. KRIKORIAN. Yes.

Senator SCHUMER. Okay. So when some on the other side say I am not for any illegal immigration but I want to have more legal immigration, that would not be your position?

Mr. KRIKORIAN. No. But the first priority has to be to regain control of the system, because if we do not enforce the laws, it does not matter what the laws are. So in a sense, it is almost a second priority issue. It is an important issue, but it has to come after we regain control.

Senator SCHUMER. You may not think we have done it effectively enough, but that is our goal as well, to prevent—I have always said Americans—and this disagrees with the second proposition, but Americans will be fair and common sense towards legal immigration and the 11 million who are here in the shadows, provided they believe that there will not be future waves of illegal immigration.

Mr. KRIKORIAN. I actually agree with that.

Senator SCHUMER. Yes, and we attempt to do that in our bill. You obviously think we do not meet the mark, but that is okay.

All right. With that, then, let me call up the next panel and thank this panel for their comments and expertise. I thank my colleagues for their good questions, and we will move on to the next panel.

[Pause.]

Chairman LEAHY [presiding]. Thank you. Everybody here we are going to have is on this list:

Mark Shurtleff, Bill Vidal, Janice Kephart, Chris Crane, Steven Camarota, and Grover Norquist.

The first witness will be Mart Shurtleff, who served three terms as Utah Attorney General. He is currently a partner at Troutman Sanders, a Washington, DC-based law firm, and first I do want to thank again Senator Schumer, who has not only spent so much time on this but has also filled in to chair it, and Senator Durbin, also part of the so-called Gang of Eight, who has been chairing in my absence. Unfortunately, like everybody here, we all sit on so many different committees, and they all seem to be meeting at the same time. So I appreciate that.

Mr. Shurtleff, you go ahead.

**STATEMENT OF MARK L. SHURTLEFF, PARTNER, TROUTMAN SANDERS LLP, AND FORMER ATTORNEY GENERAL FOR THE STATE OF UTAH, WASHINGTON, DC**

Mr. SHURTLEFF. Thank you, Mr. Chairman and Members of the Committee. It is an honor to be here today in these historic hearings.

I am very pleased to see that there are four former Attorneys General who sit on this Committee, and two of my mentors, frankly, Senator Blumenthal and Senator Cornyn, a few years back when I first became Attorney General. It is a pleasure to be with you today.

Beginning with my service as a prosecutor in the United States Navy right out of law school up until just leaving office as Attorney General a few short months ago, I have dedicated and committed my life to public safety and to law enforcement, and I am very, very thankful for the opportunity today to speak on behalf of the criminal justice system on the issue of comprehensive immigration reform.

I am also a student and an author of history, and I love what the Founders said when they wanted to form a more perfect union. The first two things they wanted to do were to establish justice, which was obviously all about equal access, equal opportunity, equal treatment under the law; and to ensure domestic tranquility—both of what law enforcement and the criminal justice system are all about. And I believe that is what this proposed Senate bill 744 does.

Having been a long time also a Republican advocate for comprehensive reform of America's immigration system, I applaud the sponsors, I applaud this Committee for moving so quickly with the strong bipartisan purpose in holding these hearings and moving forward on this.

From my experience on the ground at the State and local level dealing with the impact of a broken system—in fact, that is where it is felt, at the local and community level, where law enforcement

and public safety address these interests. It is not only a moral imperative of this Committee and of this Senate and of this country to move forward with appropriate reform, but I think it also demonstrates what is best about America, and that is the ability to pull together for the good of the whole—and not the least of which is to enhance national security and local public safety. I believe that not just the very important provisions about increased border security do that, but the entirety of the bill is about fixing a system in order to reduce illegal immigration, so that by modernizing our system and making legality and accountability our top priority, our Government can take control and make immigration once again work for America.

I am very pleased, Mr. Chairman, if I could, to be able to introduce two letters and ask you that you would introduce them. They have already been sent to the Committee. One is an April 15th letter. It is the official position of the National Association of Attorneys General. Having had 36 signers, it becomes the official position of the National Association in support of comprehensive reform.

I am also very pleased to have worked with a couple of my former colleagues, the former Republican and Democratic Attorneys General of Arizona, Grant Woods and Terry Goddard, and 76 other former Attorneys General—my predecessor, Jan Graham, a Democrat—a bipartisan letter dated April 21st, also in support of this comprehensive immigration reform.

Chairman LEAHY. They will be included in the record.

Mr. SHURTLEFF. Thank you.

[The letters appear as submissions for the record.]

Mr. SHURTLEFF. Now, beginning in 2010, as Arizona 1070 passed and the States are trying to respond to the lack of comprehensive reform by Congress, the State of Utah, in particular law enforcement in the State of Utah, was very concerned about the huge negative public safety implications of State-by-State, enforcement-only, drive-them-out self-deportation-type laws. And so we in Utah knew that that was coming to Utah, and we wanted to try and do something different. We knew we had to do more than just say no to a 1070-type law. But we needed to get together with other important groups, and in this case law enforcement got together with those who carry Bibles, members of the faith communities, as well as chambers of commerce and business leaders and others who knew the terrible negative and the terrible community—family and community negative impacts of these State-by-State law enforcement measures to oppose 1070 and did something extraordinary in Utah. We came together and passed something called the Utah Compact, which we felt helped support a different approach in the State of Utah, to do things like a guest worker program and some other issues towards comprehensive reform and to oppose these negative aspects.

You know, in Utah, by the time 1070 passed, we decided to focus our law enforcement efforts on going after the true criminal—what we call “criminal aliens,” those who are in our country illegally to commit other crimes—drugs, guns, human trafficking, and all these other things. And, you know, we found that 90-plus percent of our confidential informants were otherwise undocumented, otherwise

law-abiding members of our community. And we understood that by making our law enforcement officers into ICE agents would terribly impact our ability to work together as a cohesive community with undocumented residents to go after the worst of the worst.

And so we brought those groups together. Our very brave, I believe, Republican majority in the House and Senate in Utah passed comprehensive reform. They were threatened. They were told by some of the groups actually who have been on these panels today that they would be kicked out of office at Republican conventions and primaries. The truth of the matter was they stepped up and did the right thing, and every one of those brave, in our case Republican legislators were re-elected. They did the right thing for the right reason, and the people of Utah recognized that, and I believe the people in this country will do so as well.

Now, obviously border security is very important, and there is much to be said about what this bill does. But our point is that we believe in law enforcement that the best defense is a strong offense, and there are so many provisions in this bill that will encourage—or discourage illegal immigration that we create the first choice in those who want to come to this country to work, to benefit their own lives or to benefit this great country, and that is to choose a pathway that is correct and legal. So all those other provisions in this law are those that help, in addition to securing our borders, in addition to those provisions with regard to a more—a stronger border.

Thank you very much.

[The prepared statement of Mr. Shurtleff appears as a submission for the record.]

Chairman LEAHY. Thank you very much.

Bill Vidal, former mayor of Denver, Colorado, currently serves as the president and CEO of the Hispanic Chamber of Commerce of Metro Denver.

Good to have you here, Mr. Mayor.

**STATEMENT OF HON. GUILLERMO “BILL” VIDAL, PRESIDENT AND CHIEF EXECUTIVE OFFICER, HISPANIC CHAMBER OF COMMERCE OF METRO DENVER, AND FORMER MAYOR OF DENVER, COLORADO**

Mr. VIDAL. Thank you, Mr. Chairman, Members of the Committee. My name is Guillermo Vidal—I am also known as “Bill”—and I am here to lend support to the Border Security, Economic Opportunity, and Immigration Modernization Act of 2013.

Before I go on, I know as Coloradans we send our prayers and support to our neighbors in Texas and Massachusetts, and in solidarity, we stand with you as Americans as you try to make a better day for your communities.

I am the president and CEO of the Hispanic Chamber of Commerce of Metro Denver, an organization of over 2,000 business members. And although I represent the business community today, I also bring over 36 years of experience as a public servant that culminated with my service as the 44th and first foreign-born mayor of the city and county of Denver.

I am a proud American, but I am also a Cuban immigrant who, in 1961, at the tender age of 10, was sent by my parents to the

United States with my two brothers as part of a program called Operation Peter Pan that sent 14,000 Cuban children to this country unaccompanied by their parents to escape from Castro's Cuba.

For this reason, my testimony today is rooted in everything that I am, everything that I have, and everything that I have ever represented, that was a direct result of the door I was able to walk through when I first stepped onto American soil.

My personal story represents two great truths about this country:

First, that anyone, regardless of the most humble beginnings, can become anything they set their mind to, like the mayor of a large city or perhaps even greater.

Fifty-two years ago, I arrived in this country parentless and was sent to live in an orphanage in Pueblo, Colorado. Every day I woke up not knowing what suffering awaited me. Many nights I cried myself to sleep and asked a merciful God to take my life and spare me from the great sorrow I was experiencing.

Yet here I am today in this great hall in front of you, the Senate Judiciary Committee. It is a wonderful testimony to this country.

The second truth that my story represents is that immigrants make positive contributions to the success of this country daily, especially when they can live out of the shadows, as I have been able to do.

Did you know that over 40 percent of Fortune 500 companies were started by immigrants and their children?

Immigrants built America. We came escaping the desperation of poverty or to free ourselves from oppressive regimes that violated our human rights. We came in search of education and opportunity.

We chose a new destiny, the United States of America, a beacon of hope and promise of a brighter future, a place where we can live in freedom and contribute to the success of our families and our communities.

Unfortunately, over the years, indecisiveness and lack of action on comprehensive immigration reform has resulted in a dysfunctional system that, I believe, has confiscated the respect we once held for immigrants and replaced it with a fear and ignorance that has dehumanized these individuals to the point that they are looked down upon as human throwaways.

Now, there are many business reasons to improve our system and why the chamber and I are encouraged by the bipartisan effort that emerged to craft this legislation. But after all my years in government developing public policy, I know that no legislation will ever be perfect enough to satisfy every nuance from all political sides.

But hopefully we can agree on one thing. Fixing our immigration system will contribute to the greater good of our country by: securing our borders and providing a safe, fair, and orderly process into this Nation; giving a clear set of rules and realistic timeline for future immigrants to live and work here; providing legal status and a path to citizenship to undocumented immigrants already here so that they may openly contribute to our society; keeping families together; providing immigrant children who came here following the will of their parents a stable home and their own opportunity at the American Dream.

This comprehensive immigration reform will bring people out of the shadows, which is a good thing, to: provide a skilled and dedicated workforce that will grow our economy; invite entrepreneurialism and innovation that will create more businesses and jobs; bring in new revenues in the form of taxes that will help us run our country and strengthen our government; bring out into the open a new group of consumers that will spur new business growth.

My parents made an unfathomably courageous sacrifice in sending their children to this country, and I am better for it. My life has been filled with hope, opportunity, meaning, and purpose. I am fulfilling their American Dream for me. But although it was not perfect at the time, the America I was sent to as a child would never have tolerated the things I have seen as mayor of a large city where many immigrants must live in fear of being deported or being separated from their families, or having their wages stolen by a deceitful employer, or having no legal recourse when crimes are committed against them.

I ask you to support comprehensive immigration reform. Let us brighten that light that America has always proudly displayed for the rest of the world.

Thank you, and I will be happy to answer questions when the time comes.

[The prepared statement of Mr. Vidal appears as a submission for the record.]

Chairman LEAHY. Thank you very much.

The next witness is Janice Kephart, former counsel of the September 11 Commission and a principal of 9/11 Security Solutions.

Ms. Kephart.

**STATEMENT OF JANICE L. KEPHART, FORMER BORDER COUNSEL, 9/11 COMMISSION, AND PRINCIPAL, 9/11 SECURITY SOLUTIONS, WASHINGTON, DC**

Ms. KEPHART. Chairman Leahy, Members, thank you so much for having me here today. I appreciate very much this Committee's continued interest in reform and securing our borders and protecting our national security. I further appreciate being back as an alum of the Committee I was so privileged to staff.

I begin by putting the bill in context of both the illegal border problem and issues with legal immigration processing.

On the legal immigration side, in light of the Boston Marathon terrorist attack, we were reminded once more that border security is indeed essential to national security. Historically, the 1986 amnesty program was fraudulently used five times by terrorists in attempts to establish residency. Three of five succeeded in attaining the benefit, but the key for each of them was that simply applying for the benefit allowed them to embed long enough to commit the terrorist act.

The effect of today's bill unfortunately will not be that much different than the 1986 bill. Why? Two recent examples of the immigration system serving up immigration benefits to terrorists show the system is not much better now at discerning terrorists than it was in 1986.

First, Boston Marathon terrorist 19-year-old Tsarnaev just received his naturalization on September 11th of this past year. Was there really no way to learn of his terrorist leanings just a few months ago?

Less well known, a Syrian known deeply affiliated with the 9/11 hijackers and assassinated Yemen's al Qaeda leader Al-Awlaki was recently granted asylum on his third attempt, despite Federal law enforcement reopening the case.

Second, the illegal problem is big. The southwest border is far from secure. Over both the Texas and Arizona borders, we are seeing a huge surge in illegal crossings, with the Texas Border Patrol saying it is looking at tent cities to deal with the onslaught, and central Arizona witnessing a 494-percent increase in illegal crossings from August of last year to November.

Here is the issue: There is no way that illegal entrants who have never encountered our immigration or criminal system can be vetted as to who they say they are. And with 10,000 to 20,000 foreign-born terrorists that Federal law enforcement know reside in the United States, that creates a serious concern for more terrorists, using the compassion that we have for the DREAMers, to embed here illegally using the legalization in this bill.

There are problems with the border security triggers as well. Overall, the concept of a comprehensive southern border strategy is really useful, but since the Homeland Security Secretary is not really required to assure border security, just state that it exists, that does not really help us assure that our borders are indeed more secure.

The metric used in the bill to determine a 90-percent effectiveness rate depends on a 100-percent detection rate of apprehensions and turnbacks, which is not even close to being able to occur today. If there is not a 100-percent detection, then the 90-percent effectiveness rate set forth in the metric is going to be inaccurate.

So how would a 100-percent detection rate be best achieved? We are not really told in the bill at all. And, unfortunately, that makes the metric fail.

Moreover, the metric only applies to three of nine border sectors. That is an open invitation for smugglers to realign with the new metric and use whatever other six sectors are not considered high risk.

The bill's version of a mandatory E-Verify holds no consequences for illegal aliens who fail E-Verify. Moreover, E-Verify's construct adds three more levels of review to a non-confirmation, culminating in an alien receiving four opportunities to get authorized. The practical result is that this appellate process for the alien creates a really difficult atmosphere for the employer to terminate an employee even when the grounds for authorization do not exist.

In terms of the exit system requirement, this Nation most certainly needs to fulfill the mandate to complete a comprehensive exit system that includes air, land, and sea ports of entry. However, S. 744's exit component fails to include the largest volume of crossings, which is at land borders. In addition, the exit component is unnecessary for two reasons, I believe. One, six prior inconsistent exit laws have already complicated the exit requirement enough. We do not need another one. And, second, just a few weeks

ago, congressional appropriators used their purse strings very wisely to realign exit implementation to Customs and Border Protection. CBP owning exit implementation may be the game changer we need to get the program done, because not only does CBP need that exit data to conduct admissions, but its sister agency, State, use it for visa adjudication and ICE needs better data to determine its overstays as well.

Thank you so much for the opportunity to testify, and I am happy to receive your questions.

[The prepared statement of Ms. Kephart appears as a submission for the record.]

Chairman LEAHY. Thank you.

Our next witness is Chris Crane, president of the National Immigration and Customs Enforcement Council 118 of the American Federation of Government Employees based here in Washington, DC.

Mr. Crane, go ahead.

**STATEMENT OF CHRIS CRANE, PRESIDENT, NATIONAL IMMIGRATION AND CUSTOMS ENFORCEMENT COUNCIL 118, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, WASHINGTON, DC**

Mr. CRANE. Good afternoon, Mr. Chairman and Members of the Committee. I would like to begin by thanking the Senators on this Committee who have met with me and expressed concerns for law enforcement officers and the needs of law enforcement officers; in particular, Ranking Member Grassley, thank you.

Americans should understand that this legislation only guarantees legal status for illegal aliens. It contains no promise of solving our Nation's immigration problems, no guarantee of stronger enforcement on our Nation's interior or its borders. It ignores the problems that have doomed our current immigration system to failure.

I testify today without having the opportunity to read this bill in its entirety as the Gang of Eight's rush to pass this bill denies their fellow Americans the time and means of effectively studying the bill and adding input.

This legislation was crafted behind closed doors with big business, big unions, and groups representing illegal aliens—groups with their own interests, groups that stand to make millions from this legislation. Anyone with a significantly different opinion on immigration reform was prohibited by the Gang of Eight from having input.

Lawmaking in our Nation has indeed taken a strange twist as Senators invite illegal aliens to testify before Congress and groups representing the interests of illegal aliens are brought into the development of our Nation's laws, but American citizens working as law enforcement officers within our Nation's broken immigration system are purposely excluded from the process and prohibited from providing input.

Last week, desperate to be heard, border sheriffs, interior sheriffs, deputies, and immigration agents all came to Washington, DC, with the hope that the Gang of Eight would hear their concerns.

They held two meetings on two separate days. Not one Member of the Gang of Eight attended.

Last week, when I respectfully asked a question of the Gang of Eight at their press conference, I was escorted out by police and Senate staff. I was spoken to with anger and disrespect. Never before have I seen such contempt for law enforcement officers as what I have seen from the Gang of Eight.

Suffice it to say, following the Boston terrorist attack, I was appalled to hear the Gang of Eight telling America that its legislation is what American law enforcement needs.

Since 2008, President Obama has ignored many of the immigration laws enacted by Congress and has instead created his own immigration system that unlawfully provides protections for millions of illegal aliens. Of course, Congress has done nothing to stop the President, and I submit to everyone that America will never have an effective immigration system as long as Presidents and their appointees are permitted to ignore the United States Congress and pick and choose the laws they will enforce and indeed enact their own laws without Congress through agency policy.

This bill does nothing to address these problems. In fact, unbelievably, it gives far greater authority and control to the President and the Secretary of DHS—exactly the opposite of what our country needs to create a consistent and effective immigration system.

If the laws enacted by Congress are not enforced by the Executive, America has no promise of future enforcement. That much is certain.

Currently at ICE, immigration agents have filed a lawsuit against DHS and ICE because both have refused to enforce the immigration laws enacted by Congress. Agents cannot arrest individuals for entering the United States illegally or overstaying visas. Agents are prohibited from enforcing laws regarding fraudulent documents and identity theft. Agents are not permitted to arrest public charges. Agents are forced to apply the Obama DREAM Act not to children in children in schools but to adult inmates in jails, releasing criminals back into communities, criminals who have committed felonies, who have assaulted officers, and who prey on children.

At an alarming rate, ICE deportation numbers have plummeted since 2008, evidence that interior enforcement has in large part been shut down, contrary to reports by Presidential appointees at ICE and DHS.

In closing, my initial impression of this bill thus far is that in large part it appears to have a lot of loopholes. Everything from gang activity to arrest records to criminal backgrounds and fraudulent activities at many levels are acceptable or waiverable under this bill. The entry-exit system does not even utilize biometrics, making it ineffective yesterday. We already know that aliens are engaged in illegal activities that will bypass this system.

At a time when Congress is proposing legalization for millions, I think Americans expected a stronger enforcement across the board that would prevent another wave of illegal immigration. Unfortunately, in terms of enforcement and providing for public safety, I think this bill is going to fall short in terms of legalization and

eventual citizenship. For 11 million illegal aliens, I think its success is guaranteed.

Thank you, and that concludes my testimony.

[The prepared statement of Mr. Crane appears as a submission for the record.]

Chairman LEAHY. Thank you.

Dr. Steven Camarota is the director of research at the Center for Immigration Studies here in Washington, DC. You focus, I understand, on the economic and fiscal impact of immigration. Is that correct, Doctor?

Mr. CAMAROTA. Yes, that is correct.

Chairman LEAHY. Please go ahead.

**STATEMENT OF STEVEN A. CAMAROTA, PH.D., DIRECTOR  
OF RESEARCH, CENTER FOR IMMIGRATION STUDIES,  
WASHINGTON, DC**

Mr. CAMAROTA. Well, I would like to thank the Committee for inviting me. I am going to focus today on the fiscal side of things with some mention of the economics.

In the modern American economy, those with relatively little education—immigrant or native—earn modest wages on average and by design pay modest taxes. Their lower income also means that they often benefit from welfare and other means-tested programs. As a result, the less-educated in general, immigrant or native, use more in services than they pay in taxes. There is simply no question about this basic point.

The relationship between educational attainment and net fiscal impact is the key to understanding the fiscal impact of immigrants. The National Research Council estimated in 1996 that an immigrant who arrives in the United States without a high school education will use \$89,000 more in services than he pays in taxes during his lifetime. If you adjusted that for inflation, obviously, it would be much bigger now. For an immigrant who comes with only a high school education, the net fiscal drain is \$31,000. However, more-educated immigrants, just as you would expect, pay more in taxes than they use in services.

In the case of illegal immigrants, the vast majority have modest levels of education, averaging only about 10 years of schooling. This fact is the primary reason illegal immigrants are a fiscal drain, not their legal status.

My own research indicates that if we were to legalize illegal immigrants and they began to use services and pay taxes like legal immigrants with the same level of education, the net fiscal costs at the Federal level would roughly triple because they remain unskilled.

Now, the figure to my left here illustrates the strong relationship between fiscal impacts and education. The figures show self-reported—this is what people said—use of major welfare programs and tax liability for immigrant households from 2011 Census Bureau data. The figures show that 59 percent of households headed by immigrants who do not have a high school education used one or more major welfare programs. And 70 percent of those same households have no Federal income tax liability. So the Census Bu-

reau calculates how much they should be paying in taxes, and 70 percent of those whole households would pay none.

Since roughly 75 percent of illegal immigrants either have no high school education or only a high school education, the chart illustrates what is so problematic about illegal immigration from a fiscal point of view.

Now, it is worth pointing out that less-educated natives also have high rates of welfare use and low rates of tax liability. It is also worth pointing out, of immigrant-headed households using welfare, 86 percent—let me say that again—86 percent had at least one worker. These figures, these high rates of welfare use, are not the result of a lack of work. Rather, they reflect educational attainment and resulting low incomes and low tax payments and, thus, eligibility.

Now, advocates of amnesty and high levels of immigration have two main responses to this situation. First, they argue welfare and other programs used by U.S.-born children living in immigrant households should not count. Now, that makes little sense, obviously, because the child is here as a direct result of their parents having been allowed into the country, so it must count as well.

In addition, I would point out that the National Research Council statistics I cite did not include the children. It was only for the original immigrant, and they still found very large net fiscal drains for less-educated folks.

Now, the other argument advocates of high immigration and amnesty make is that immigration creates such wonderful benefits for the economy that it offsets the fiscal cost. But the National Research Council estimated both the fiscal effect and the economic effect and found that the fiscal drain from immigrant households was actually slightly larger than the tiny economic benefit that we got from immigration.

As the Nation's leading immigration economist George Borjas of Harvard points out in a recent paper, immigration makes the economy larger, significantly larger, but it does not make Americans richer. It does not increase the per capita income of natives.

Now, advocates for the amnesty respond that the National Research Council and the academic research is wrong. The Cato Institute, for example, commissioned a study a few years back using a model originally designed to estimate the impact of trade, and they found that the economic benefits were bigger. But it is not at all clear that that model even applies to immigration, and they largely ignore the actual fiscal characteristics of immigrants, like their use of social services.

Now, more recently, Douglas Holtz-Eakin in an article for American Action Forum argued that immigrant-induced population growth would be a big economic benefit and, thus, generate large fiscal benefits or increases in per capita GDP. But he, too, ignored the academic literature. He ignored the development literature that looked at the impact of population growth on per capita GDP that does not show a big benefit. And he never mentions even in his paper the impact of legalizing illegal immigrants—

Chairman LEAHY. Thank you.

Mr. CAMAROTA. Could I just say one more sentence?

Chairman LEAHY. One more sentence.

Mr. CAMAROTA. One more sentence.

In conclusion, if we decide to go ahead with this, we have to be honest with the American people and make it clear it comes with very large fiscal costs.

Thank you.

[The prepared statement of Mr. Camarota appears as a submission for the record.]

Chairman LEAHY. Our next witness is Grover Norquist, the president of Americans for Tax Reform, a taxpayer advocacy group here in Washington, DC.

Mr. Norquist, you have been here patiently all day. Go ahead.

**STATEMENT OF GROVER NORQUIST, PRESIDENT,  
AMERICANS FOR TAX REFORM, WASHINGTON, DC**

Mr. NORQUIST. Good to be with you. Thank you, Mr. Chairman, thank you, Senators.

People are an asset. They are not a liability. America is the richest country in the world. It is also the most immigrant-friendly country in the world. This is not a coincidence. It is our history, and it is what we have proved again and again. Those of us who would change our history and would make us less immigrant friendly would also make us less successful, less prosperous, and certainly less American.

I am delighted that at a time when people talk about Washington not being able to get something done and coming together, we have seen a lot of movement on this issue because we have a growing consensus—I will speak from a center-right perspective. The Reagan Republican movement understands the need to come to legal status for those who are here. We have seen the business community go from silence to strong advocacy for making this progress. Farmers, ranchers, the dairy people, the high-tech industry, all the communities of faith—Evangelical, Protestants, the Southern Baptist Convention, the National Association of Evangelicals, the Mormon Church, the Roman Catholic Church, the Jewish organizations—all are moving in this direction, and this is a real opportunity for Congress to get together and make progress.

Now, however you look at this, it is important that we use dynamic scoring when we ask how we handle some of these statistics. People who do not like immigrants want to look at costs and not benefits. They want to imagine that 20-year-olds stay 20 years old all their lives. But I would point out that people, as they come here, one, they accumulate skills; two, they get older, 30-year-olds make more than 20-year-olds. And ask yourself—we know that from 1986 there was a 15-percent jump in the income of the people who got legal status who had been illegal by becoming legalized. Well, how does this happen?

Well, imagine what would happen to your siblings or your children if somebody said, “Go out in the world and do the best you can, but no driver’s license. Go out in the world and do the best you can, but do not get on a plane. And go ahead and go do what you want, but live in fear that when you do an interview, somehow you might get deported at the end of the interview.”

I would argue, I think common sense tells us, that people who can live without that fear, people who can get a driver’s license,

people who can fly on a plane because they have earned legal status and the immigration reform that you have put together and are looking at has all the protections against bad guys coming in, going through people who are bad guys who need to leave, and this is tremendously helpful. And, again, taking a look at what Doug Holtz-Eakin has talked about, this is not just some increase in the economic health of the country. It is \$2.7 trillion in advantage, reducing the deficit by having more people working. More people working, more people paying taxes is not a tax increase. It is deficit reduction without a tax increase. And I think it is the kind of deficit reduction that we can get bipartisan support for in the country.

Now, people also throw up all sorts of other issues in order to throw marbles at the feet of a serious discussion about immigration. What about public education? The public schools do not teach kids how to read English well, and they do not teach them American history. Well, if that is a problem, then we need education reform, and that is being worked on State by State, but that is a problem for kids who are born here as well as everybody else in terms of what the quality of education they are getting is.

What about the welfare system? Well, there are 185 means-tested welfare programs. Bill Clinton, a Democrat President, worked with the Republican Congress to reform Aid to Families with Dependent Children. We can make progress on the others as well. Reforming welfare is important, needs to be done, saves a lot of money, keeps people out of getting locked into welfare dependency. But none of those are arguments for getting in the way of immigration reform.

And then there is the question of entitlements. Somebody is going to pay \$100,000 in Medicare and get \$400,000 in benefits because they are born. That is not a question of immigration. That is a question of an entitlement system that is out of whack and needs to be reformed.

So let us reform public education, let us reform the welfare system, let us reform entitlements, but let us move forward first, now, on immigration reform as well.

Thank you.

[The prepared statement of Mr. Norquist appears as a submission for the record.]

Chairman LEAHY. Thank you very much.

You know, Mr. Vidal, you talked about—this is not a question, but you talked about so many immigrants who are not legal, that they have no legal recourse when something happens if they are told, “I will pay you \$20, if I hire somebody else, I would have to pay them minimum wage, but I will just pay you \$20,” you have no legal recourse.

My wife is a registered nurse. We were driving near Los Angeles once, and a well-dressed person with a large dog was walking down the street. A very large dog. A person who appeared to be in sort of workman’s clothes and appeared to be Hispanic was walking up the street. The dog runs over, bit him. As we were driving by, we just saw the blood gush from his leg. Well, we turned around and zipped back to see if there was any way we could give any aid. He had left. The woman who had the dog was walking blithely down the street knowing this person could never make any complaint.

And I tell you, that has stuck in my mind for years and years since then.

Mr. VIDAL. If I may add, Mr. Chairman, people suffer even greater happenstance than that, greater crimes, and have no legal recourse to go after the perpetrator.

Chairman LEAHY. Trust me, I was a prosecutor for 8 years, and I know those who were afraid to come forward and report a rape, report a batter, report a robbery, which meant that the rapist, the robber, the person who committed the battery got away scot free, and that is wrong, because they are out there and they could do that to anybody else and it is wrong.

Mr. Norquist, you have addressed this, but I want to emphasize that some have said we cannot afford to reform our broken immigration system because of the current Federal deficit. I have heard 50 reasons why we cannot do something. It is very easy in the Senate to find reasons why we cannot do something. It is kind of nice to try to find a reason why we can.

Do you believe the current proposal before the Committee would compound the budget and deficit challenges we all agree we face in this country?

Mr. NORQUIST. No, quite the opposite. First of all, it is very clear that people who earn legal status are not eligible for many Federal benefits for 10 or more years going into the future. So you avoid that.

Second, that gives you plenty of time to reform some of these programs that need to be reformed and that the folks over on the House side have already passed a number of reforms in the Ryan budget, which I commend to the Senate. But it certainly shows that it can be done, and I think it will be done.

But, also, when you tell somebody that you are going to tell them go ahead and, you know, look for work, without papers, but you cannot get a license, you cannot fly, I mean, the number of things you cannot do, of course it depresses their wages and makes it more difficult for people to do better. I think you will see in this case, as we have in the past, tremendous increases.

Let me just suggest, if we go back in history, this argument that people that come over will be wards of the state was used against the Irish Americans, about the Eastern European Jews, about Southern Europeans, about Asians. I mean, we have heard this again and again, decade after decade, and the people who said it have always been wrong.

Chairman LEAHY. My father was a grandchild of Irish immigrants and began with a very thriving business in Montpelier. My maternal grandfather came here from Italy, and he also put together a business in stone carving that employed a whole lot of people in a small town with very good wages.

Now, Mr. Shurtleff, you mentioned that many of us have had a law enforcement background here, and, of course, you were Attorney General. We all ask these questions on bills like this. Is it going to help the efforts of State and local law enforcement to combat crime in their communities?

Mr. SHURTLEFF. Absolutely, Mr. Chairman. We are very concerned, and, by the way, I talk to Federal and State law enforcement officers all the time. I attend funerals. I work with—I have

created a foundation to treat police officers who are sick from busting meth labs without proper protection. Those people do not see these efforts at bipartisan reform and comprehensive immigration reform as any kind of disrespect or attack on law enforcement. Quite to the contrary, they see it as a support to assist them in their jobs and what they are trying to do.

The people they work with in their communities, the whole concept of community-based policing which is so critical to success in our communities mandates that people feel safe and able to work with law enforcement and trust that when they are hurt, when they are seeking help, they are going to have that from their local law enforcement officer.

Chairman LEAHY. But it is the trust they have to have.

Mr. SHURTLEFF. Absolutely need that trust. It disappears when—

Chairman LEAHY. And is it not possible we could have immigration efforts that might destroy that trust?

Mr. SHURTLEFF. Absolutely. You know, we in law enforcement deal with the pragmatics, what is happening on the ground, not theoretics. And I have heard no proposals from the other side who are against immigration reform suggest anything that will work. Everything that is being done and proposed by this law that will discourage illegal immigration will encourage those people to come out of the darkness, to pay their back taxes, they will not have to steal Social Security numbers anymore simply because now they are going to be recognized. They are going to pay a penalty. This certainly is no amnesty as those in law enforcement understand what amnesty means. And it would be, I believe, a boon to public safety in this country as well as a moral imperative to go forward.

Chairman LEAHY. Thank you very much, and I am going to yield to Senator Grassley and hand the gavel over to Senator Schumer, who will hand it on to whomever he wishes. I have to go prepare for—

Senator GRASSLEY. Does that count if there are only Republicans here?

Senator SCHUMER. I would be happy to hand the gavel over to you for—

[Laughter.]

Senator GRASSLEY. Okay.

Chairman LEAHY. I have handed the gavel over to him on more than one occasion, as you may recall. There you go.

Senator GRASSLEY. I am going to start with Ms. Kephart if that is okay with you. Can you talk a little bit more about the need to include land ports environment with identifiers in the entry-exit system?

Ms. KEPHART. Sure. The land borders right now, as we all know, have the largest daily and national—annual crossing rate, much more so than the air and sea ports.

Strangely, the exit component here does not include the land ports of entry. Perhaps that is because the infrastructures are really difficult to deal with, and that is understandable. But they need to be included because people can come in by air or sea and leave by land, and then we still do not have the data that we need for

ICE to do its job, for CBP to have its admissions data, for the State Department to do visa adjudications.

The biometric piece of this is something that the 9/11 Commission was very, very interested in. We learned, in our findings and all my subsequent work with terrorist identities, that one of the best ways to determine a terrorist identity is through biometrics, because they will often change their name and change their identity. And without that biometric component, you will not evolve national security to the height that it can be.

Biographic is very helpful. It gets us part of the way. It is a good first step. That is what the appropriators just did when they moved exit over to Customs and Border Protection to implement. That is a helpful first step. But biometric would be very helpful to have down the road if you really want to try to assure national security.

Senator GRASSLEY. Mr. Crane, in my opening statement, I talked about how the bill does not necessarily require the border to be secured before those here illegally are provided legal status or even citizenship. Is that your reading of the bill?

Mr. CRANE. Yes, Senator, it is. And, you know, I think in my comments I tried to point out that, you know, we currently have a situation where the Secretary of DHS and the President of the United States do whatever they want to do. They ignore the law, and they manipulate data. All of these things that, you know, are critical to making sure that there is some kind of system of integrity in place to monitor what DHS and ICE are doing down there and to stop the border—none of those things are going to happen, and all we have to do is look at what is happening right now. Everything this administration has done, everything this DHS Secretary has done, we can see right now this is not going to happen.

Senator GRASSLEY. Mr. Norquist, you know I agree with you most of the time, and I am surprised to see—

Mr. NORQUIST. Good plan.

Senator GRASSLEY. I am surprised to hear you backing a bill that has emergency spending in it.

Mr. NORQUIST. Well, I am a Jack Kemp-Ronald Reagan Republican, and I think that this is a bill that will spur economic growth, give people more opportunities, make the economy stronger. There is a downside that all these people who have been here undocumented will now pay taxes and pay fines and the Government will get all this money and do something horrific with it. But that is the downside of the project, and I understand that others think that that is a positive—

Senator SCHUMER. We are good up until now.

Mr. NORQUIST. Yes. So, look, the Government is going to get a whole bunch of revenue from people who have not been paying taxes and will be required to to earn legalization. There are fees involved, not exactly amnesty, as some people like to say. You wonder why they keep saying it. It is like a 14-year-old with a dirty word. They keep saying it again for shock value. It just is not true. You cannot hit people with fees and fines and all sorts of hoops to run through and act like you have not done anything.

When we had the 55-mile-an-hour speed limit, there were an awful lot of illegal driving going on, and we did not decide to enforce that law. We decided to come up with a reasonable speed

limit and then enforce it. We did not even go back—we gave amnesty to all those people who had been illegally driving. This goes back and gives fines to everybody who had been illegally driving throughout the 1970s, which is a rather rough thing. It certainly is not amnesty as it was then.

I think we should move forward, do the fines, do the back taxes. Let us get these people continuing to work. They are working now, but do so in the light of day so that they are protected from any sort of abuse or exploitation. And let us get control of the border, which is what this immigration reform does in addition to improving our immigration policy.

We have problems. We have high-tech workers that do not come here. They go to other countries and compete with us. We need more people on farms. We need more people in a number of areas, from ranchers to dairy to farmers. This bill makes a step there. I do not think it goes far enough as a robust enough guest worker program. I would like to see more. But this is progress.

Senator GRASSLEY. Ms. Kephart, your statement mentioned several examples of how terrorists take advantage of our system. You even mentioned how some terrorists have applied and received asylum. You also mentioned that the bill would allow people who have filed frivolous asylum applications to benefit under the legalization system.

Do you know how many people fall into that category? And how does the bill before us make the current system weaker?

Ms. KEPHART. I do outline in my written testimony a number of pages of terrorists who have taken advantage of asylum. We have most notably the case just a few weeks ago of the Syrian national who has been here since 9/11, who was known to help and support materially the 9/11 hijackers, who also was affiliated deeply with Al-Awlaki, and his immigration—his asylum went three times before the judge. The Federal law enforcement officers tried to reopen the case, and the judge considered it final.

Senator GRASSLEY. I will ask you to go to that part of my question about how the bill might change this.

Ms. KEPHART. I do not see the bill changing it very much at all and helping the system that is in place right now, make it more secure. I do not—it is just not there, Senator.

Senator SCHUMER. Senator KLOBUCHAR.

Senator KLOBUCHAR. Thank you very much, Senator SCHUMER. Thank you to all of you.

I want to start with you, Mayor, as you are focusing on the economic advantages of this bill, which I think people do not always think about firsthand and how important they are.

What do you see as the two or three biggest economic benefits of this bill?

Mr. VIDAL. Well, I think the first thing that we seldom talk about is that we need the workforce. I mean, even if we hired all Americans, we still would be short of that workforce, and we need it.

I also think that immigrants tend to bring with them new ideas, new entrepreneurialism. You know, in Colorado, 60 percent of small businesses right now are Hispanic-owned businesses; a ma-

majority of those are immigrants. So if we talk about small businesses being job creators, this certainly will create jobs.

I think in addition we will have new consumers. We will have folks who can apply for home mortgages, buy cars, and do the kinds of things that spur business growth in our country. So I think that there are many benefits to that.

As the former mayor of a large city, I know that we are always short of funds for government services, therefore, I believe that the new tax and fee revenues that will be generated by this immigration reform will help us fund those services and thereby strengthen our Government.

Senator KLOBUCHAR. Just to add to that, our State is actually second per capita for Fortune 500 companies, and one interesting fact is that of Fortune 500 companies, 90 of them are headed up by immigrants. Just to reinforce your view not only with small businesses but big businesses, and another double that are kids of immigrants. So I think people have to understand that this is more than just about legalizing people, bringing people in. It is the jobs that it will create in our own country.

You also, I know, are a fan of the Invest Visa for foreign entrepreneurs. Can you comment on that quickly? Because I have one more.

Mr. VIDAL. Well, I think, again, it is that foreign entrepreneurs can invest in companies here in the United States. I think we should welcome that. We compete in a global economy. It is something that would certainly be to our economic advantage to allow.

Senator KLOBUCHAR. Thank you.

Mr. NORQUIST, welcome. I was teasing you outside that we welcome you for your bipartisan debut, but you quickly corrected me that you, in fact, have testified before on evening out the penalties on crack cocaine and that that was a bipartisan effort.

Mr. NORQUIST. Unanimous in the House.

Senator KLOBUCHAR. Well, thank you. So this is what happens when you get involved in a bipartisan effort.

The thing that I was going to ask you about was the H-1B cap. There has been a lot of testimony on that today. How do you see it improves the employment-based immigration generally? We want to focus on allowing American companies to grow here and add jobs here. And how do you see increasing that cap helps?

Mr. NORQUIST. Look, we need to increase the H-1B cap. It is not high enough. You know, within days it was reached just this year. There is an awful lot of talent around the world that American firms would like to hire and bring here to work to create additional jobs here from Silicon Valley to across the country in all 50 States. These are people who come and create other jobs for themselves and other people, and it is a number that ought to be higher. It has increased in this legislation. It is a very important step. I think it should be increased more than in this legislation. But this is a real opportunity.

You want to know how does it create jobs? It allows people to come here to create jobs. These people are bright, they are hard-working. They are going to be working somewhere else, either in other countries, a number of people have brought them up to Canada because they cannot bring them across the border here. No-

body should be stuck in Canada. It is not fair. We should let them all come here—

Senator KLOBUCHAR. Oh, come on. I can see Canada from my porch in Minnesota.

[Laughter.]

Mr. NORQUIST. Oh, a foreign policy expert.

So this is an opportunity to bring these people—allow them to come to the United States and work here, and raising that H-1B visa is an important part of why this is a pro-growth policy.

Senator KLOBUCHAR. Very good. I noticed in your testimony that your testimony ends with a quote from President Reagan's farewell address, in which he described "a shining city on a hill," and he said this: "If there had to be city walls, the walls had doors, and the doors were open to anyone with the will and the heart to get here."

I think this quote is a good reminder that we have to keep working on this bill, and I wondered if you want to comment on why that quote was meaningful to you in this context.

Mr. NORQUIST. Well, I think it is important to remember that the Reagan Republican/Jack Kemp Republican position has always been immigrant welcoming, and that this is—you see this now coming stronger, both in the business community and in the religious community, communities of faith. In 1999–2000, I was at a meeting with the head of the Republican Party, the Republican National Committee. Ten major trade associations—Chamber, NAM, NFIB, Retailers—and I was there as the taxpayer guy. And they went around the table, what is important? And they said, "Do something icky to all the trial lawyer, cut the capital gains tax." And they went back and forth between those two important projects.

And then at the end, the RNC Chair said, "Thank you very much," and he got up to leave, and a gentleman from the Chamber said, sort of like they do in the "Colombo" shows just in the last minute, he said, "There is this other thing." "Well, what is it?" "Well, I do not know how to bring it up." "What is it?" "Well, we have never mentioned it before." "What is it?" He said, "We are running out of workers. The economy is growing. We need immigration reform. We have never worked on this before. We do not know how to address it."

Everybody around that table, from the truckers to the restaurateurs to the retail people, all said, "Actually that is a bigger issue for us than the stuff we talked about." And the business community did not talk about it for years. They are now talking about it again and focused on the importance of reforming it. H-1B visas, a guest worker program—all of these things are steps in the right direction. Very helpful for the economy. This is the most—this is real stimulus. This would be the best thing that the Senate and the House and the President could do for the economy and for deficit reduction, and it really should be a high priority.

Senator KLOBUCHAR. Thank you very much. I appreciate it.

Senator SCHUMER. Senator Sessions.

Senator SESSIONS. I will yield to Senator Cornyn.

Senator SCHUMER. Senator Cornyn.

Senator CORNYN. Thank you, Mr. Chairman. I appreciate my friend Senator Sessions letting me go next.

Ms. Kephart, you were very much involved with the 9/11 Commission, correct?

Ms. KEPHART. Yes, sir.

Senator CORNYN. And I seem to recall that at least six of the 9/11 hijackers came into the country legally but overstayed their visa. In other words, they were part of that 40 percent today, roughly, of illegal immigration that occurs when people come in legally but overstay. Was that a major concern of the 9/11 Commission?

Ms. KEPHART. Well, actually, in my findings, most of the hijackers worked extremely hard to stay within their legal admission time frame. So you had the pilots going in and out many, many times. But the "muscle hijackers," as we called them, the support hijackers, basically came in April and May and June of 2001 to stay within the 6-month time frame that they had. There was only one that came in, and he was given a business visa of 2 weeks, and he was an overstay. So the overstay issue, like the land borders, was not a big issue for the 9/11 Commission because they did not become part of the story.

When they became a part of the story was when we insisted on looking at a pattern of activity of terrorists and how they abuse the immigration system. As we started looking into it, and we realized there was as pattern of terrorist travel, we asked to look beyond that. Our executive director gave us the ability to do that, and that is when we saw all the other issues evolving.

And I did a major report subsequently on 94 terrorists and how they managed to embed and assimilate in this country, and the visa overstay piece of it was a large part of it.

Sorry for the long answer.

Senator CORNYN. Mr. Norquist, you know there is a lot of skepticism about the Federal Government in general and Congress in particular. I think Congress' approval rating hovers around 11 percent, maybe 15 percent today. So it seems to me the last thing we would want to do is to confirm that lack of confidence that many of the American people have about Congress and promise something we are not going to deliver. And I am concerned particularly about the border security element and the visa overstay element. With 40 percent of the illegal immigration occurring because of people who enter legally and then since we are not keeping track of them—and I am very concerned about the lack of an exit program at the land-based borders, particularly in my State with 1,200 miles of common border with Mexico. But are you concerned at all that the border security component of this, about the credibility of it, which only provides that three out of nine southern border sectors will require the 90-percent effectiveness rate in terms of apprehension, when, in fact, we know that as you tighten the border in one place, the human smugglers, the drug dealers, and others come through other less guarded places? Is that an important issue?

Mr. NORQUIST. Look, border security is important to the country. Border security is important to this bill holding together. The way we in the past have dealt with border security issues, we used to have over 800,000 people apprehended at the border with Mexico, and then we had a guest worker program put in by Eisenhower.

And then it went down to about 45,000. And as long as that robust guest worker program was there, people crossed legally, not illegally. The most important thing you can do to reduce illegal entry is to have a serious, grownup, robust guest worker program and a way for people to get her legally to do work that needs to be done with willing employers and willing workers. Then you only have to worry at the border about bad guys, not about guys that want to work.

Senator CORNYN. Well, I agree with that last comment. I agree that if people want to come here and work, then having a legal system for them to do so is important. But I do not think that is going to deter the drug traffickers, the human traffickers, and other people that deal in contraband.

Mr. NORQUIST. But, sir, it frees up the officers at the border to focus on bad guys instead of trying to go after people who are coming here to work because they would have a legal way to come here and work. That is what happened when Eisenhower did it, and I think there was a lot of wisdom. Eisenhower had a very big success there. And when the Federal Government does something well, it would be a good idea to study it because it is kind of rare.

Senator CORNYN. Mr. Shurtleff, it is good to see you again, and I just had a question about the provision of the legislation which, again, I am not sure how many of you have had a chance to read all 844 pages of it, but it does provide that people who have been convicted of multiple domestic violence offenses, drunk driving offenses, and child abuse offenses, that they could take advantage of this legalization pathway.

Would you be concerned about where that line is drawn in terms of whether that should be available to those folks?

Mr. SHURTLEFF. Yes, Senator, absolutely. You know, some of the concerns we have had in law enforcement, local and State law enforcement officers, with some of these State-by-State requirements of acting as ICE agents was it took away from their responsibilities to protect the public from other type criminals. And so, yes, I am concerned about that. I think that needs to be looked at and resolved. Truly, these—we are going to give this opportunity to be given to those who are truly the law-abiding members of our community.

Senator CORNYN. Mr. Vidal, thank you for your kind comments about the people of West, Texas. I think the President is going to be there on Thursday as part of the memorial service for the first responders at Baylor University, but thank you for your kind comments.

Thank you.

Senator SCHUMER. Senator Blumenthal.

Senator BLUMENTHAL. Thank you, Senator Schumer, and thank you all on this panel. It has been a very thoughtful and very worthwhile panel, and let me begin where my former colleague, former Attorney General, now Senator Cornyn, began, by asking you, Mr. Norquist, your point really is— and I think it is a very profound and fundamental one—that enforcing a broken system, a bad law or set of laws in the sense that it is irrational and arbitrary is very difficult to do effectively. In other words enforcing a bad law is very difficult for law enforcement to do.

Mr. NORQUIST. Absolutely. And, again, the example that people can remember because most of us do not come in touch with real crimes day to day, but when we were all busy doing illegal driving because there was a 55-mile-an-hour speed limit, we realized that was an unreasonable law, it needed to be reformed. We reformed that law, and then we enforced the law.

We have a need in this country and can welcome many more immigrants legally than we have, and this is a debate about how many immigrants and how welcoming we are going to be. We are losing internationally because we are not bringing—or allowing in many of the best and brightest who then go work somewhere else and start companies somewhere else. Forty percent of the Fortune 500 CEOs that were born elsewhere or are the children of people who were born elsewhere, do you really want those in other countries? Why not here? This is a jobs program. This is about economic growth. And people misunderstand that, do not see it. They need to focus on the fact that this is how our country grew.

The idea that more people make us poor is nonsense. We used to have 3 million people. We lived on farms. We now have 300 million people. We are not a hundred times poorer. We are more than 100 times wealthier. More people in a free society increase wealth because people are an asset. When you hear, oh, we have got more oil and natural gas in North Dakota, we do not go, “Oh, that is too bad.” We say, “Good.”

More people are an asset in a free society. And, yes, we can afford to be choosy on who we have in because so many people in the world would like to live here.

Senator BLUMENTHAL. And I appreciate that point, and the potential contributions especially among the higher-skilled people are one of the reasons that I am supporting the I-squared legislation that my colleagues Senator Klobuchar and Senator Hatch have taken the lead on.

Mr. NORQUIST. Very important legislation.

Senator BLUMENTHAL. And I am very proud to be supporting it, and I am proud to welcome my former colleague, Mark Shurtleff, and thank you for your excellent testimony here today as well as your terrific work as a law enforcer. And your point that also it is a broken system and as a law enforcer as well as a moral imperative, you believe that this kind of reform is necessary. And I do not know whether you were here for the testimony that was provided on the prior panel about the supposed impossibility of these background checks working. I wonder if perhaps you have an opinion on that point.

Mr. SHURTLEFF. Well, certainly they can work and will work. But there is no other answer to what we ought to do. Again, we have to deal in pragmatics in law enforcement, what is happening on the ground. For example, in Utah, we knew people were there driving without driver's licenses. They are all over this country driving without driver's licenses. But it became imperative, we felt, for law enforcement, knowing they are there, as a public safety measure, to make sure they took a test and understood the law. We gave them an authorization to drive. Eighty-five percent of those who we gave authorization to drive had insurance so that if they ran into us, their insurance would cover it. We knew where they were. It

was pragmatic. The same thing with in-State tuition in Utah. I have taught in fifth grade classes, kids how to stay away from gangs because the gang bangers, which are 70 percent Latino in Utah, way disproportionate to the population, are telling these kids, "You can never succeed, you cannot go to college, you will not be able to work, join the gang." And I am telling the kids, "Stay away from gangs, stay away from drugs, study, and in Utah you get to pay in-State tuition just like the kid sitting next to you and who walks down in the graduation."

I mean, these are practical solutions, and that is the same thing with those who are working and dealing with those who are here, that we are able to do those background checks. And I think we can do it effectively.

Senator BLUMENTHAL. Thank you.

Let me finish with you, Mayor. You know, your story is a very inspiring one, and I think your being here to share it with us is enormously meaningful, and I want to thank you particularly for being here. I know you have a long career of public service but I think you have done us a great service by sharing with us. And I think it makes a point that we too often overlook, which is that people who want to come to America are often among the best and the brightest everywhere in the world, and they choose to come here because they want that opportunity.

You know, when I am feeling down and discouraged, and I was pretty down and discouraged last week for various reasons, not the least of which were the disasters in Boston and Texas and then the vote here on gun safety, as I often do, I went to some immigration and naturalization ceremonies. And they are just enormously inspiring and uplifting because, as you know, people come with tears in their eyes, their families, their friends. It is a tremendous celebration. It is one of the high points of their life. And your story about your parents sending you to this country, involving huge sacrifice on their part, but knowing that it would be great for you as an opportunity is very inspiring, and I just want to thank you for being here today and for making that points.

Mr. VIDAL. If I may just respond for a second, I know we hear today a lot of bad things about immigrants, but the overwhelming majority of them bring with them an iron will to succeed, a tireless, steady work ethic, a tremendous gratitude for being given a second chance in a new country, and that always—always—triggers in them a tremendous desire to contribute to this country. And I think we have seen that time and time again through generations.

Senator BLUMENTHAL. And they appreciate citizenship in a way that many Americans do not. Thank you.

Senator SCHUMER. Senator Lee—Senator Sessions. I am sorry.

Senator SESSIONS. Thank you.

Mr. Crane, thank you for your leadership. Mr. Crane represents 7,000 Immigration and Customs Enforcement agents. He is a former marine. You can tell he has got the courage of his convictions. That association unanimously voted no confidence—and Mr. Morton, who is the head of the ICE group—because they have undermined their ability to enforce the law. They filed a lawsuit in Texas—or I think it is in Texas—a lawsuit in Federal court to try

to force them to allow them to follow the plain requirements of the law.

So I think your criticisms of the President and your criticisms of this process, your repeated requests—you repeatedly requested the right to participate in these discussions, advise and give your opinion on how to craft a system that would actually work. You were denied that, and I thank you for your speaking out. I think it is very much important.

We certainly had the pro-immigrant groups really active pushing. We had the people with similar interests, and that is, the business community to have more workers. But the law enforcement people who have got to actually enforce the law, make sure it stays on a sound basis, were shut out of the process. So I want to thank you for that.

Dr. Camarota, I want you to talk with us a little bit about some of the statements that have been made here by others today. With regard to legal immigrants who have low education, high school or below high school education, that are legal, do we have data that shows how they compare to the same cohort of people in the country who are American citizens with the same educational level? And what are the implications of that?

Mr. CAMAROTA. In general, the immigrants have relatively high rates of work, but also high rates of welfare use, and relatively low rates of Federal income tax and other tax liability. But as a general proposition, the less-educated immigrant or native do not come close to paying what they use in services.

The Heritage Foundation, looking at both immigrant and native households together, estimated about \$20,000 a year, and that was several years ago, the difference between what the least educated pay in taxes and use in services. And you can see that same phenomenon here.

In my testimony, I have the statistics for less-educated natives, and in some ways, the immigrants look a little worse, but the important point is that both less-educated populations have this negative fiscal impact.

Now, if I could just say, I do not think we should see this as some kind of moral defect or moral failing; rather, the way to see it is simply reflecting the realities of the U.S. economy, which does not offer much in opportunities to people with less education, including American citizens, and at the same time the existence of a well-developed—

Senator SESSIONS. Well, are we not counting kids in high school if they do not get a high school diploma and even try to go on further, they have a hard time getting a good-paying job in America? And should we not, therefore, when we seek to accept people legally into the country, should seek those who have education levels that will allow them to be most successful?

Mr. CAMAROTA. Right, exactly. About 40 percent of all the high school dropouts in the United States today are foreign born, and very roughly, about half are legal and half illegal.

Senator SESSIONS. Well, tell me about—let us say Social Security and Medicare. How will this law, if passed, impact the viability of those programs? Social Security now has a \$7 trillion unfunded li-

ability debt out there over the next 75 years. What would this do to it?

Mr. CAMAROTA. Right, the thing to understand about Social Security is it is partly redistributive, paying more generous benefits back relative to what is paid in to the low income. So what this bill does, by allowing all the illegal immigrants to stay and get legal status, is it adds lots of new claimants on the Social Security system who are low income.

Yes, we hope that their wages would rise with legalization, but it does not change the underlying educational attainment of the immigrants, and that is why it creates negative long-term implications for Social Security and Medicare, because you are adding lots of low-income people to that system. You cannot fund the welfare state and you cannot fund social services with low-income folks. It is just that simple. It does not make them bad. It does not make them evil. And it does not mean they do not work, and it does not mean they all came to get welfare. But the reality is what is on this chart, that there are very high use rates of public services from the less educated and very low tax contributions.

Senator SESSIONS. Well, I just would say that there are possibilities for us to reach some agreement on higher-skill entrants and immigrants, but this bill does not make sufficient changes in that regard.

Senator SCHUMER. Senator LEE.

Senator LEE. Thank you very much, Mr. Chairman, and I want to thank the witnesses for coming and enduring our questioning.

I especially want to thank and welcome my friend Mark Shurtleff. He has been a friend for a long time. I have known him as a lawyer, as a client, and just a fellow resident of Utah, so it is a pleasure to have you here.

I am very concerned with the near-complete discretion that would be granted to the Secretary of Homeland Security through this bill, and especially in connection with the border security provisions of this bill.

This certainty that should accompany the border security triggers tends to dissolve, I think, with the delegation of our decision-making authority to an agency that has demonstrated a certain level of disregard for congressional guidance—I should not call it “congressional guidance.” It is law—particularly in the field of immigration.

Many conservatives are genuinely willing to discuss fundamental immigration reforms, so long as that reform is founded on a truly secure border and a renewed commitment to enforce our current immigration laws. And I fear that while this bill does a lot of things and it does a lot of things that would be good, it does not do nearly enough to establish that foundation that I am talking about. And so I am always looking for ways that I can look to reform something, but to reform it to make it better, we have to understand what it is that is lacking. So I have got some questions that I would like to ask about this.

First of all, Mr. Crane, from the date of enactment of this law, assuming it is enacted into law, until the end of the RPI period, this bill would seem to, as I understand it, prevent anyone from being detained or deported, even if apprehended, so long as they

appear prima facie eligible for RPI status under the bill. Is that your understanding?

Mr. CRANE. Absolutely, Senator.

Senator LEE. And is it also your understanding that the RPI period, once you factor in the automatic discretionary extension period that the Secretary is allowed to invoke, will take it up to 3½ years?

Mr. CRANE. I saw it as 3 years, sir, but it could be 3½ years.

Senator LEE. Okay. Now, you have testified before this Committee that the work of ICE agents has been hampered with a similar prohibition on pursuing cases against those who merely claim eligibility, you know, with nothing other than their own word at the moment for DACA. That is, once an alien in custody says that they qualify for DACA, ICE agents just cannot process them, that that shuts it down.

Now, if this same approach is used by an illegal alien who has entered after the enactment of this law, assuming it is enacted into law, will not this 3- or 3½-year period, whichever it is, amount to a de facto enforcement holiday during which time ICE will not be able to apprehend anyone once they claim to be eligible for RPI status? Am I understanding that correctly? Or am I missing something?

Mr. CRANE. No. You nailed it, sir, and I mean, that is a big concern for us, too, because we feel that even the people that are now making the run on the border are going to be included into that group as well.

Senator LEE. Now, the legislation also says that anyone in this category has to be given what the bill describes as a “reasonable opportunity” to file an RPI application. Do we know what that reasonable opportunity consists of?

Mr. CRANE. I do not, sir.

Senator LEE. Can you tell me, you know, based on your experience with law enforcement in this area—you know, you come to this with a unique background that enables you to sort of forecast where some of the problems might be and where some of the good things might be. In what ways can you tell me that this bill, the one we are now considering, will tend to improve or enhance your ability to enforce the laws?

Mr. CRANE. Well, Senator, it is real difficult for us, I think, to say at this point because, like everybody else, we are struggling to read through this monster and reference back and forth in terms of what improvements it makes for us. And to be quite honest with you, I have not—I know there are some improvements in here, but I really have not seen a lot of them, and I am confused by some of these things with regards to the three misdemeanors and the CIMT standards, the Crimes Involving Moral Turpitude, that we have now that could be misdemeanor offenses, you know, one within 5 years of admission, two at any time thereafter. How does that mix in with these three misdemeanors? What are significant misdemeanors? That is not a legal term that we are familiar with. It is something we struggle with out in the field already.

So this thing for us right now makes a lot more questions, I think, than it provides answers. So like I said, it is going to take a lot of digging through this.

You know, I have seen some things with regard to gang affiliation, the general concept, of course, we are all about that. We have been asking about it forever. But if I understand the legislation correctly, it seems to say things like if the person says, "I am no longer part of the gang," you know, that they get to have this probationary period. I find that highly problematic. It seems to say that people under 18 years of age could possibly continue to be gang members. I do not know. It is very confusing.

The DUI thing is something we have been asking for, for a long time. To give someone three DUI convictions, if I understand that correctly, I find that, again, extremely problematic. You know, these are folks that are driving in one ton of metal down the highway at high speeds. They are dangerous. It is happening a lot. We all know that. To give them three shots at that, a felony DUI, as a law enforcement officer I think that is a no-go.

And when I look through this as well that these folks that are on probation, you know, first of all, to even get on the probationary status, if I understand this correctly, they get three misdemeanor criminal convictions that are not traffic offenses. And then once they get on the probation, we continue to let them get criminal convictions, if I understand it correctly.

And so I guess—I know we are redefining a lot of words here, "amnesty" and all these different things, but if that is the case, I think we have redefined "probation" as well. I do not understand why someone has committed a Federal crime by entering the United States illegally—and it is a crime, not just an administrative offense. It is a crime. And so we give them probation for that, and now we allow them to continue to break our Nation's criminal laws and stay in the United States? Just I do not understand it.

But like I said, I apologize. I wish I could give you a better answer, but we are struggling to sort through this thing.

Senator LEE. Well, it is only 844 pages.

Mr. CRANE. Yes.

Senator LEE. Thank you, Chairman.

Senator SCHUMER. Thank you. I would just correct the record. Any felony conviction or DWI—in almost all States by the time it is the third conviction, it is a felony.

Mr. CRANE. Yes, sir.

Senator SCHUMER. So it is rare that you would have three DWIs and people would not be deported.

Senator Flake.

Senator FLAKE. Thank you.

Mr. Shurtleff, I want to commend what you have done in Utah with the Utah Compact. That has provided a blueprint and a model for a lot of people in Arizona who have been looking for a rational, humane approach to this problem. And so thanks for helping to lead the way there.

Mr. Crane and Mr. Camarota, would you agree with those on the last panel who said that they would define amnesty as anything that allows anybody who has crossed the border illegally to stay under any form, whether it is RPI status or anything else? Is that what constitutes amnesty for both of you?

Mr. CAMAROTA. Yes, anytime you set aside the rule of law and you give someone a chance to—some other special thing, whether

they pay a fine or something, that would be amnesty. That does not necessarily make it a bad idea, but I do believe in truth in advertising.

Senator FLAKE. Mr. Crane, you would agree with that? It is amnesty as long as somebody—regardless of whether they are paying a fine or earning their way to legal status?

Mr. CRANE. Well, in my statement I refer to it as “legal status.” I did not use the word “amnesty.” But if you are going to kind of put me to it, I guess, sir, I would have to say that I do believe that once you allow that person to stay in the United States after they have come here in violation of law, I would believe that most Americans would think that that would be an amnesty.

Senator FLAKE. All right.

Mr. CRANE. Thank you.

Senator FLAKE. Mr. Norquist, your organization has a big grassroots presence around the country. I suppose since you have taken quite a public role here on this that you have heard from them. What are you hearing?

Mr. NORQUIST. Look, people understand that the system we have is broken. We do not have the number of high-tech workers coming into the country that we need to. We do not have a guest worker program that we need to. We do not have a secure border. We need to have protection to know who is in the country. And people understand that if people have to go through paying fines, back taxes, that that is not amnesty or not nothing. It is a lot of money. Some people may be so rich they think a couple thousand dollars is nothing. But it is not for most people. And with earned legal status, they are willing—you see it in the polling data, but you certainly see it in the center-right movement. I mean, I see that the business community, the small businesses in particular—this is not a Fortune 500 issue. This is a small business issue. Farmers and dairymen and ranchers around the country have been explaining that they need this. You see this with the various communities of faith. All of the various communities of faith have focused on this and are saying that we need to move forward on this.

So from a center-right perspective in terms of the Reagan Republicans around this country and conservatives, absolutely yes, it is very powerful. The arguments against it are the arguments of Malthus and the left, and they do not really carry a lot of weight with Reagan Republicans.

If you want to go through the myths, one of the things that I used in my testimony today were the nine myths of immigration, which the Heritage Foundation put out. Julian Simon was their senior fellow at the time. This is back in the 1980s during Reagan’s Presidency, and it walks through all of the canards that you hear from people who did not like the Irish and did not like the Jews and did not like the Asians and did not like all the previous groups, and now we are told that this new group is going to be a problem coming into the country. Every time we have been through this, on whether they are criminals or all go on welfare or do not want to work, we have found that not to be the case. And the Heritage Foundation did a very good study under the Reagan years, and another extremely good one in 2006 which made the case that, of course, immigration and more immigration makes us a richer

country, not a poorer country, and helps out on questions of deficits and economic growth.

So from a center-right perspective—and one of the groups we have talked to has been law enforcement as we go State to State. The Austin chief of police, a big advocate of comprehensive. When we were in Indianapolis, the same thing. The groups we always talk to are the police officers, the guys with badges, as well as the business community and the religious community.

Senator FLAKE. Thank you.

Thank you, Mr. Chairman.

Senator SCHUMER. Thank you. I will do the last round. I know it has been a long day for the witnesses.

First, this is to Ms. KEPHART. When the FBI was investigating Tamerlan Tsarnaev's travel, it did not find his trip to Russia—this is after he got back—because Aeroflot, the Russian airline, typed in his name incorrectly. Our bill requires that travel exit data be based by swiping the passport or making sure it is machine readable upon exit.

DHS says this would have helped the FBI in this case. Do you agree?

Ms. KEPHART. Yes, absolutely.

Senator SCHUMER. Okay, good. That is one example of many where we are tightening things up. That would have been relevant since people want to focus on Boston.

Now, to Mr. Camarota, I mentioned this to the previous witness from your group. I guess you are the second witness from CIS. You folks are not only against illegal—you are against illegal immigration, but you are for reducing—or you want to reduce the amount of illegal immigration, so do we. And we go to great pains in our bill to try and do that. But you also want to reduce legal immigration. Is that correct?

Mr. CAMAROTA. Yes, we basically come down on the issue where Barbara Jordan, your former colleague, did when she headed a commission in the 1990s that a more moderate pace of immigration would make sense economically and so forth.

Senator SCHUMER. Okay. Now, let me ask you—you have a lot of those economic levels. What do you think of the H-1B and the high-tech visas that we have proposed? Are you against that part of our proposal?

Mr. CAMAROTA. Yes, I think that you—

Senator SCHUMER. You are? You are against it?

Mr. CAMAROTA. No, no. Let me say this. You can allow in highly skilled workers and not worry about a fiscal consequence. Something very different from letting people in with very little education.

Now, there might be other concerns. Are you displacing Americans? Are you discouraging Americans from going in? Are you making American business increasingly indifferent to what is going on in the American education system? There are maybe a lot of negatives. But you do not have to worry about a fiscal consequence.

Senator SCHUMER. And you saw that we do make provisions in there that they have to hire Americans first. So just let me ask you, I mean—Mr. Crane says he is having trouble going through it. I understand it is a long and complicated bill. It has been online

for 6 days. It will be online for 3, 4 weeks before we mark up. That is unusual for a complicated bill to be out there and available for as long as it is.

But, Mr. Camarota, from what you have seen, if you had to say you support or do not support the H-1B sections of our proposal—well, let me ask you this: Would you support giving a green card to any foreigner who graduates, gets an M.A. or Ph.D. in STEM in an American university?

Mr. CAMAROTA. Sure, it is about 5,000 or 6,000 people a year, and we can give all those green cards—

Senator SCHUMER. It is more than that.

Mr. CAMAROTA. For just Ph.D.s. We can certainly do that. An M.A.—

Senator SCHUMER. We do it for M.A.s.

Mr. CAMAROTA. Is a very different thing. Ph.D.s is rigorous and specialized.

Senator SCHUMER. Okay. So you would do it for Ph.D.s.

Mr. CAMAROTA. Sure. But they mostly all stay now anyway.

Senator SCHUMER. Okay. So there is one part of the bill we agree on.

Mr. CAMAROTA. It would not be a big issue.

Senator SCHUMER. How about for M.A.s? You do not agree with that?

Mr. CAMAROTA. No, because obviously an M.A. is a very different kind—having had both, it is very different, and you can easily imagine—

Senator SCHUMER. This is just in STEM. Just in STEM—

Mr. CAMAROTA. Right.

Senator SCHUMER [continuing]. Science, technology, engineering—

Mr. CAMAROTA. But you can easily imagine a kind of visa mill there where people are just issuing M.A.s exclusively so that someone could get a visa. I do not think that would make sense. But for Ph.D.s, sure, you can give them all green cards.

Senator SCHUMER. Okay. And—well, I think we have gone over time. I have a minute left, and I am going to—do you want, Senator Lee—because I know—

Senator LEE. If we could have one more round.

Senator SCHUMER. Well, we have not had rounds, and the Chair has to be gone. We said we would finish at 5:00. But I will give you one more question. How is that? And you can submit—by the way, the record will stay open until Wednesday. Any Member can submit questions in writing, which have to be answered—a week later?

Okay. Questions have to be submitted by 5 o'clock Wednesday, additional questions. But go ahead, Senator Lee.

Senator LEE. Okay. Ms. Kephart, what specific border security measures does this bill require in the non-high-risk sectors?

Ms. KEPHART. I have also struggled to review the bill in that level of detail. In terms of the non—the other six sectors, they are not emphasized, so what I do not understand about the bill is why are we saying three of nine. Why are we not saying all the sectors need to attain a 90-percent effectiveness rate and then make that

effectiveness rate something that we can actually have a 100-percent detection rate—which we cannot right now.

And also, I have another problem with the effectiveness rate, too. If we are only focusing on apprehensions and turnbacks, what happens to the Border Patrol work on contraband, on weapons, on drug loads? Does that roll back and because a non-priority because they have to focus on the apprehension number?

So I added that in as well, Chairman. I hope that is okay. But I do not understand why we do not have it as a broad-based—every sector can be a high risk because we know that the flows move. And it is a very stiff rubric as well, because it is only annual. That shift can only happen between sectors as determining them high risk on an annual basis. Smugglers move every few weeks.

Senator LEE. Okay. Thank you very much.

Thank you, Mr. Chairman.

Senator SCHUMER. I would just add that we do not just add new responsibilities but \$3.5 billion for personnel, detection equipment, drones, you name it, which is a lot. We added about six—Senator McCain and I added about \$600 million to border in 2010. The overall effectiveness rate went up from 68 to 82. We are adding 3.5 times that, if you include the fence—or 3 times that, and if you include the fence money that Senator Rubio pushed in the bill, that is 4.5 billion, 4.5 times that. And so most experts think you are going to get a much higher effective rate without deterring people from doing those other charges. We are not just giving them new responsibilities. We are giving them new personnel, new equipment, things like that.

With that, I want to thank my colleagues for staying. I want to thank our witnesses. It has been a long day. I want to thank Chairman LEAHY. This has been a thorough, extensive hearing. All different points of view were able to be spoken about. And tomorrow at 9:30, Secretary Napolitano will be here. Again, until Wednesday evening to submit questions in writing, and then the panelists will have a week to answer those, long before we go to markup in early May.

With that, the hearing is adjourned.

[Whereupon, at 5:16 p.m., the Committee was adjourned.]

[Additional material submitted for the record for Day 1 follows Day 2 of the hearing.]

**THE BORDER SECURITY, ECONOMIC  
OPPORTUNITY, AND IMMIGRATION  
MODERNIZATION ACT, S. 744**

**TUESDAY, APRIL 23, 2013**

UNITED STATES SENATE,  
COMMITTEE ON THE JUDICIARY,  
*Washington, DC.*

The Committee met, pursuant to notice, at 9:33 a.m., in Room SH-216, Hart Senate Office Building, Hon. Patrick J. Leahy, Chairman of the Committee, presiding.

Present: Senators Feinstein, Schumer, Durbin, Whitehouse, Klobuchar, Franken, Coons, Blumenthal, Hirono, Grassley, Hatch, Sessions, Graham, Cornyn, Lee, Cruz and Flake.

**OPENING STATEMENT OF HON. PATRICK J. LEAHY,  
A U.S. SENATOR FROM THE STATE OF VERMONT**

Chairman LEAHY. Good morning everybody. I know we are running a bit of a tight schedule. The Secretary has to testify on Appropriations later today, but I do want to commend you, Madam Secretary, and the men and women of the Department of Homeland Security who worked so hard on the coordinated national security effort in Boston.

I have had middle of the night, early morning, middle of the day briefings on what has happened. The way your department, local and State police, the FBI worked together is a model for the rest of the world, especially how quickly everybody was able to move. The Patriot Day bombing, identification and successful capture of the remaining suspect of course is why you were not here that day when we talked. I well understood what your schedule looked like and it was time for you to be in the command post.

Now, a number of Republican senators were not part of the bipartisan legislative effort for comprehensive immigration reform demanded in March that you return to the Committee to testify about the workability of this. You had been here in February and you testified extensively about this effort, but I thank you and I asked you to come back and you said you were perfectly willing to. I think it is a testimony to your longstanding commitment to reforming the immigration system, you are willing to return just two months after your last appearance here and of course some sleepless nights with what has happened in the last few days.

It would be an easy thing to just talk about last week. I would remind all Senators that this is their opportunity to ask you di-

rectly about the Border Security, Economic Opportunity, and Immigration Modernization Act which of course is why you are here.

This is a member of the cabinet that is going to be directly involved in implementing this legislation. I repeat, as I have said before, that you and President Obama have done more in the administration's first four years to enforce immigration laws and strengthen border security than in years leading up to this administration.

You have more than 21,000 agents in the border patrol, more than any point in history, new technologies have been deployed to the border. Apprehension along the border is the lowest we have seen in decades because people are deterred from trying to cross.

According to the report by the Migration Policy Institute, the United States now spends more money on immigration enforcement agencies than it does in all our major Federal law enforcement put together. I think it is time to start talking about reforming the immigration system.

We are doing more enforcement than ever before, but that should not be a bar to having good immigration reform. It is long past time for us to reform our immigration system. We need an immigration system that lives up to American values, one that allows families to be reunited and safe, one that treats individuals with humanity and respects due process and civil liberties, one that shields the most vulnerable among us, including children and crime victims and asylum seekers and refugees, one that helps to reinvigorate our economy and enrich our communities.

I have commended Senators Schumer and McCain, Durbin, Graham, Menendez, Rubio, Bennett, Flake and Feinstein for their extraordinary work here. I am concerned that what some are calling triggers could long delay green cards for those who want to make full and contributing participation in our society. I do not want people to move out of their shadows but then be stuck in some kind of an underclass once they have moved out of the shadows, just as we should not fault DREAMers who are brought here as children. We should not make people's fates and future status depend on border enforcement conditions over which they have no control.

I am disappointed the legislation has not treated all American families equally. I believe we have to end the discrimination to gay and lesbian families facing our immigration laws. I am concerned about changing the visa system for siblings and I am concerned about how the new point-based visa system will work in practice. I really have to question whether spending billions more on a fence between the United States and Mexico is really the best use of taxpayer dollars in a country that we are furloughing air traffic controllers because we cannot pay for them.

Throughout our history, immigration has been an ongoing source of renewal of our spirit of our creativity, our economic strength. Young students brought to this country by their loving parents seeking a better life, hardworking men and women who play by the rules supporting our farmers, innovating for our technology companies or creating businesses of their own, Google, Intel, Yahoo, other companies that then hire hundreds of thousands of Americans. Our Nation continues to benefit from immigrants. So let us uphold the

fundamental American values of family, hard work and fairness. Values my parents inculcated in their children and my immigrant grandparents inculcated in theirs.

The dysfunction in our current immigration system affects all of us. It is time to fix it. The opportunity is now.

[The prepared statement of Chairman Leahy appears as a submission for the record.]

Senator Grassley.

**OPENING STATEMENT OF HON. CHUCK GRASSLEY,  
A U.S. SENATOR FROM THE STATE OF IOWA**

Senator GRASSLEY. Without repeating the Chairman, I thank you for the work that you were involved in in Boston as well. We welcome you, Madam Secretary. I appreciate your being here today to discuss the immigration bill that this Committee will be taking up in about 16 days.

The bill before us is a starting point. Most, if not all, of the Members of the Group of Eight have acknowledged that the bill is not perfect. It will go through an amendment process. I am encouraged to see that one cosponsor of the bill is taking suggestions on his website of how to improve the legislation. We hope to have the opportunity to do just that. There are 92 other Senators that must get their chance to amend and improve the bill.

As I said yesterday, we have a duty to protect the borders and the sovereignty of this country, but I am concerned that the bill we are discussing repeats the mistakes of the past and will not secure the border and stop the flow of illegal migration.

Yesterday I brought up the border security language contained in the bill. Not one person disputed the fact that legalization begins upon submission of both a southern border security and fencing strategy. Thus, the undocumented become legal after the plans are submitted despite the potential that the plan could be flawed and could be inadequate.

Once the Secretary certifies that the security and fencing plans are substantially deployed, operational and completed, green cards are allocated to those here illegally. There is not much of a definition of substantially in the bill. Agricultural workers and Dream Act youth however are put on a different and expedited path.

If enacted today, the bill would provide no pressure on this Secretary or even any future Secretary to secure the borders.

Madam Secretary, you have stated that the border is stronger than ever before. You have even indicated that Congress should not hold up legalization by adding border security measures and requiring them to be a trigger for the program. Every Senator that I have heard on this subject has said that borders must be secured. Short of that, this bill makes the same mistake that we did in 1986 and surely we do not want to screw up like we did 25 years ago.

I am interested in hearing from you, Madam Secretary, about what problems the bill fixes in our current immigration system, aside from legalizing those who are here illegally and potentially for their family members who have yet to arrive and the clearing of backlogs, what does the bill do to fix the system?

I am concerned that the bill provides unfettered and unchecked authority to you and your department and your successors. On al-

most every page there is a language that allows the Secretary to waive certain provisions of the law. I have not encountered it yet but I have heard every other page has some sort of a waiver in it, so that could add up to 400.

Worse yet, the Secretary may define terms as she sees fit. The Secretary has \$6.5 billion immediately at disposal with no accountability to Congress, she can excuse certain behavior, determine what document or evidence is successful, exempt various criminal actions as grounds of inadmissibility and of course it reminds me as I said yesterday of the 1,693 delegations of authority in the Health Care Reform Bill that makes it almost impossible for the average citizen to understand or predict how the law would work.

I think it does not apply just to this bill, but we have got a situation that Congress ought to legislate more and delegate less. There is a lot of talk about immigration reform in the light of recent terrorism cases. I have not advocated that we quit talking about immigration reform, rather I am advocating that we carefully review the immigration laws and the administrative policies in place to ensure that we are addressing critical national security issues.

The tragic events that occurred in Boston and the potential terrorist attacks of the U.S. Canadian railroad are reminders that our immigration system is directly related to our sovereignty and national security matters.

For example, we know that the 9/11 hijackers abused our immigration system by overstaying their student visas. We also know that people enter illegally and stay below the radar. It has been reported that the older Boston bomber traveled to Russia and his name was misspelled on his airline ticket, so how could authorities not realize that he had departed the United States?

The bill before us weakens the entry/exit system because it does not require biometric identifiers and does not deploy a biometric system to land ports. If this bill were to pass as is, we will continue to rely on airline personnel to properly type a name into a computer and not on biometric identifiers.

Moreover, if the background checks on the 12 million people who are here illegally are anything like they were in the Boston bomber, we are in serious trouble. If these two individuals used our immigration system to assist their attacks, it is important to our ongoing discussion. Moreover, if the background checks on the 12 million people who are here illegally are riddled with problems that appear to be involved in this case, it raises serious questions about the Department's ability to properly investigate such individuals.

Yesterday we heard testimony that the immigration bill would weaken asylum law. The asylum fraud is a serious problem. Courts are clogged with asylum cases and it is no secret that terrorists are trying to exploit the system.

The bill would do away with one year bar that makes aliens come forward in a reasonable time frame if they are seeking asylum. It also allows any individual whose case was ever denied based on the one year bar to get their case reopened. Those who file frivolous asylum applications can still apply for legalization program despite the current provision that bars any relief under the immigration law.

One witness also testified that the bill provides exemptions for certain criminals, making some eligible for legalization under this bill. Those who have been convicted of serious offenses may still have the ability to apply for the registered provisional immigrant status.

We also heard testimony from an immigration and customs enforcement agent about the inability of our agents in the field to do their jobs. The group that devised this bill refused to hear from enforcement agencies. It seems unthinkable that law enforcement would be left out of the room when the bill was put together.

Finally, nothing in the bill deals with student visas or improving the way we oversee schools who accept foreign nationals. Yesterday over a decade after 9/11, a terrorism case has come to light that may involve an individual who overstayed student visas. These are important national security matters and are worthy of our discussion as we work on the comprehensive immigration bill. I look forward to the testimony today.

Thank you, Mr. Chairman.

Chairman LEAHY. Thank you. Madam Secretary, it is over to you.

**STATEMENT OF HON. JANET NAPOLITANO, SECRETARY, U.S. DEPARTMENT OF HOMELAND SECURITY, WASHINGTON, DC**

Secretary NAPOLITANO. Thank you, Chairman Leahy, Senator Grassley, Members of the Committee. I appreciate the opportunity to appear again to discuss the need for common sense comprehensive immigration reform. First let me say a few words about the attack in Boston.

Our thoughts and prayers remain with the victims, their families and with the City of Boston. DHS continues to support the ongoing investigation, working closely with the FBI, our Federal and our State and local partners, and I know all of us here are committed to finding out why this happened, what more we can do to prevent attacks like this in the future and making sure those responsible for this unconscionable act of terror face justice.

We will learn lessons from this attack, just as we have from past instances of terrorism and violent extremism. We will apply those, we will emerge even stronger. In this case, law enforcement at all levels joined together and shared knowledge, expertise and resources. Many had been specifically trained in improvised explosive device threats and many had exercised for this very type of scenario.

The response was swift, effective, and in many ways will serve as a model for the future. I think the people of Boston and the greater Boston area showed tremendous resilience over the past week and so did America.

Today, after ten years of investments and training and equipment and improved information sharing, our cities and communities and our Nation are stronger, more prepared and engaged and better equipped to address a range of threats.

This legislation will build on these gains, strengthening both our overall national security posture and our border security. The draft bill captures the core principles announced by President Obama

in Las Vegas and reflects the bipartisan spirit necessary to achieve comprehensive immigration reform.

The bipartisan work reflected in this bill will strengthen security at our borders by funding the continued deployment of manpower, infrastructure, air cover and proven effective surveillance technologies along the highest traffic areas of the southwest border.

These efforts have already significantly reduced illegal immigration and increased our seizures of drugs and contraband. They must be strengthened and sustained. The draft bill does this. The bill also helps eliminate the jobs magnet that fuels illegal immigration. It holds employers accountable for knowingly hiring undocumented workers and requires the mandatory use of employment verification.

Employment verification actually supports strong border security. It also supports the integrity of our immigration system and the American economy by providing businesses with a clear, free and efficient means to determine whether their employees are eligible to work here.

By helping employers ensure their work force is legal, we promote fairness, prevent illegal hiring that serves as a magnet for undocumented migration across our borders, and we protect workers from exploitation.

Consistent with the President's principles, the bill also provides a pathway to earn citizenship for the millions of individuals currently in our country illegally. We must bring these people out of the shadows. Many have been here for years raising families, paying taxes and contributing to our communities and to our economy.

Knowing who they are is critical to public safety. Indeed as we just saw in Boston, information from our legal immigration system often supports response and investigation. It must be evident from the outset that there is a pathway to citizenship, one that will not be quick or easy, but that will be fair and attainable.

Individuals will need to comply with many requirements, including documenting a history of work, paying penalties and taxes and learning English. DREAMers and immigrant farm workers will also be included, and those who complete the rigorous requirements will be able to achieve lawful, permanent resident status more quickly.

Lastly, the bill will improve our legal immigration system. It raises the arbitrarily low caps on legal visas so that the visa system as a whole better matches the needs of our growing economy. It continues to protect vulnerable immigrants, including victims of crime and victims of domestic violence and it creates new temporary worker programs to enable critical industries to address labor shortages while protecting American workers.

Businesses of all kinds and sizes must be able to find and maintain a stable, legal workforce if our economy is to continue to grow.

As we make it easier for businesses to get the workers they need legally and more difficult for undocumented workers to find jobs, this will relieve pressure on the border and reduce illegal flows.

The majority of Americans support these common sense steps and DHS is ready to implement them within the time lines that the draft bill provides. We can and we will achieve the core provisions of the bill. The time to modernize our immigration system is

now. We stand ready to work with this Committee and with the Congress to achieve this important goal.

The introduction of this legislation is indeed a milestone, so I thank the Committee for your progress in developing a comprehensive immigration package. I look forward to continuing to work with you and to answering your questions today. Thank you, Mr. Chairman.

[The prepared statement of Secretary Napolitano appears as a submission for the record.]

Chairman LEAHY. Well, thank you and thank you again for what is an extraordinary busy time in being here. The bipartisan bill before us requires an additional \$1.5 billion be spent to build more portions of a fence along the southern border.

We built 650 miles of fence along the border. DHS estimates that cost at \$2.5 billion. I remember you saying in 2005, show me a 50 foot wall and I will show a 51 foot ladder. More fencing would not have done anything about the case in Boston.

We have limited resources. Considering that significant gains have been made in the last 4 years, is \$1.5 billion the most cost effective way to spend what are, after all, limited resources?

Secretary NAPOLITANO. Mr. Chairman, obviously if the Congress decides that is where they want to put some money, we will comply. But I will share with you that we would prefer having money not so designated so that we can look at technologies, they can be ground based, air based, what have you, manpower, other needs that may be more fitting to actually prevent illegal flows across the southwest border.

If we had our druthers, we would not so designate a fence fund per se.

Chairman LEAHY. You would like flexibility?

Secretary NAPOLITANO. We would like flexibility.

Chairman LEAHY. I assume that there is an annual maintenance cost to \$1.5 billion worth of fence?

Secretary NAPOLITANO. Yes. There is operation and maintenance cost, and when you drive the fence or ride the fence, there are holes put in it, et cetera, et cetera. We are very good at building the infrastructure now. We know what works better than what we started with, but it is not just building, it is maintaining.

Chairman LEAHY. We also have environmental questions, wildlife questions, people's property along the border.

Secretary NAPOLITANO. Yes. In fact the last remaining mile that we have not completed of the fence that the border patrol has designated has not been completed because it is still tied up in property litigation.

Chairman LEAHY. Former Secretary Chertoff waived a range of Federal environmental and historic preservation and other laws for purposes of fence construction. This bill also provides waiver authority.

What goes into your thinking of when and if you waive that authority?

Secretary NAPOLITANO. Well, it is a very careful process and I will begin by saying that we now have MOUs with the Department of Agriculture, Department of Interior concerning the Federal lands that are along the border that grant us, for example, access to

build infrastructure, access if we are in pursuit and those sorts of things. So some of those logistical problems that existed before have really been worked out.

Obviously when you build a fence and it goes right through the middle of a downtown area or right through a university campus, and we have had those situations, there are lots of values to be considered.

Chairman LEAHY. When you were here a couple of months ago speaking of immigration, I explained my concern about proposals and where citizenship is always over the next mountain. I want the pathway to be clear. I want citizenship not to be just available but attainable. Sometimes they are two different things.

This legislation has several triggers that have to be met before people could earn green cards. People come forward, wait for ten years to get their green cards, but then they go in a state of limbo. That worries me.

Are the triggers in the legislation truly attainable?

Secretary NAPOLITANO. As I review the legislation, there are really three triggers. One is the submission of the plans and their substantial completion as Senator Grassley referred to, one is the implementation of a national employer verification system, and one is the implementation of an electronic entry/exit system. Those particular triggers, if you want to call them that, are already part of our plans and I believe that we can satisfy them in the upcoming years.

Chairman LEAHY. Well, and lastly I want to keep on time here. In the wake of the Boston bombings, some have raised concerns about the security screenings we have in place for those that are seeking asylum here in the United States.

Now, I do not believe the Boston bombing is a reason to stop progress or consideration of this legislation. I trust our law enforcement people to be able to handle that case and our courts are the best in the world. I have no worry about that, but even those who oppose this legislation, they have got to recognize there are several provisions to make our country safer.

Can you tell us about the security screening that is currently in place for refugees and asylum seekers and does this legislation help or hinder that?

Secretary NAPOLITANO. Well, if I might, let me start with what the process is now and share with the Committee that over the past four years, we have increased both the number and the coverage of the vetting that goes on. But if someone is seeking asylum, they first have a so-called screening interview to see whether they have presented any sort of credible fear of persecution.

That includes collection of biographic information and biometric information. That is all run against all law enforcement holdings and also the holdings of the NCTC and also virtually every DOD holding.

At the second point in the process, they submit to a full scale interview. This can be several hours. It is usually accompanied by affidavits and other supporting documentation. One of the things we do there, by the way, is we re-fingerprint the individual to make sure it is the same individual who originally presented, so we

have identify verification. We again vet, we run through all the databases and so forth.

After the presentation to the asylum officer, there is review by a supervisory officer as well to look at consistency. All the way through they are looking at things like country conditions, other information that we gather.

After a year, you can convert to LPR status, green card status. At that point you are vetted yet again, run against all the law enforcement databases, all the NCTC databases and so forth.

After five years, you can apply for naturalization. At that point, you are vetted again and you are re-interviewed again. Lastly, if you are granted naturalization between then and the actual ceremony, right before the ceremony we re-vet everyone for a final time. That is the current situation.

The existing bill builds on that. One of the important things the existing bill does, quite frankly, from a law enforcement perspective is bringing all of the people out of the shadows who are currently in the shadows. That RPI process is very, very important.

Chairman LEAHY. Thank you.

Senator GRASSLEY.

Senator GRASSLEY.

We heard testimony yesterday and I think I would have to say that I share this feeling that there is principle behind this legislation of legalize now, enforce later. Now, you can disagree with that, but that is where I am coming from.

Secretary NAPOLITANO. Yes.

Senator GRASSLEY. I also assume that you read the bill and if I am wrong on that, let me know because my questions come to some specifics within the bill.

Do you agree with my opening statement that upon enactment, the bill simply requires security and fencing strategy to be submitted by your department before legalization begins?

Secretary NAPOLITANO. It requires submittal of the plans both for infrastructure and for border security, two different plans—

Senator GRASSLEY. Yes.

Secretary NAPOLITANO. And substantial completion.

Senator GRASSLEY.

All right. Can you tell the American people now why they should trust the purposes of legislation to secure the border after 12 million people get legal status, driver's licenses, work permits and the ability to live and work freely in the country?

Secretary NAPOLITANO. Well, I think a couple of very important things. Number one, the bill builds on the very large investment the country has already made in the southwest border and sustains that. I can say as a former Governor and Attorney General from that area, it is the sustainment part that is so very important because that is where we have experienced gaps in the past, so the bill guarantees that we build on that.

Secondly, the bill actually supports border security in a way I suggested in my opening comments, which is to say two major drivers of illegal migration across that southwest border are labor and the fact that it takes so long to get a legal visa. The bill deals with both of those problems in a way that gives us more measurements, more metrics, more identities, more things that we can use from

a law enforcement purpose, so it actually supports in that fashion the border security measures already in place.

Senator GRASSLEY. The bill prohibits immigration officers from removing aliens who “appear eligible” for legalization until a final decision has been made on the application.

Does this bill tie the hands of immigration agents in the same way that the 1986 amnesty prevented them from enforcing the immigration laws?

Secretary NAPOLITANO. I do not believe so, Senator. I think that what the bill does in effect say get the RPI process up and running, move it as quickly as possible, do the background checks, do the security checks, get the identifications out and during that period do not remove somebody who is not a priority individual.

Senator GRASSLEY. Yes. I thank you for starting out your statement in reference to the Boston situation, so I feel comfortable asking this question.

Several media outlets have reported that two individuals responsible for the tragic bombings were immigrants from Chechnya. Before the brothers became the focus of the investigation, authorities questioned a Saudi student who reportedly was on a terrorist watch list.

I sent a letter to you this morning asking for answers to questions about the bombers and how they interacted with your agency. I trust that you would promptly respond given the impact that this could have on the immigration debate questions.

With regard to the Saudi student, was he on a watch list? And if so, how did he obtain a student visa?

Secretary NAPOLITANO. He was not on a watch list. What happened is this student, really when you back it out, he was in the wrong place at the wrong time. He was never a subject. He was never even really a person of interest. Because he was being interviewed, he was at that point put on a watch list and then when it was quickly determined he had nothing to do with the bombing, the watch listing status was removed.

Senator GRASSLEY. All right. In regard to the older brother of the two people, was your department aware of his travels to Russia? If you were not, the reason.

Secretary NAPOLITANO. The travel in 2012 you are referring to?

Senator GRASSLEY. Yes.

Secretary NAPOLITANO. Yes, the system pinged when he was leaving the United States. By the time he returned, all investigations had been—the matter had been closed.

Senator GRASSLEY. Is it true that his identity document did not match his airline ticket? If so, why did TSA miss the discrepancy?

Secretary NAPOLITANO. There was a mismatch there. By the way, the bill will help with this because it requires that passports be electronically readable as opposed to having to be manually input. It really does a good job of getting human error, to the extent it exists, out of the process.

But even with the misspelling, under our current system there are redundancies, and so the system did ping when he was leaving the United States.

Senator GRASSLEY. I am done, but can I make a correction in my statement?

Chairman LEAHY. Certainly.

Senator GRASSLEY. It might leave a mis-impression. Where I said yesterday over a decade after 9/11 a terrorism case has come to light that may involve an individual who overstayed his student visa, I would have to say we just simply do not know. So my statement was incorrect on that point.

Chairman LEAHY. Thank you.

Senator FEINSTEIN.

Senator FEINSTEIN. Thank you very much. Welcome, Madam Secretary. I have five questions, so I am going to try and go very fast.

Secretary NAPOLITANO. I will try to answer very fast.

Senator FEINSTEIN. Great. The first one is on E-Verify. It is our understanding from your testimony in February that you are planning to develop a pilot E-Verify program for agriculture.

I asked Chuck Connor who was representing the agricultural industry yesterday if they had heard of this and they had not. When will this begin and who is responsible for that implementation?

Secretary NAPOLITANO. It is under the implementation of CIS. We are exploring things like mobile sites that can be moved around to different fields and other rural areas that may not have offices. My dream would be to actually have some sort of app. But the bill, as you know, does not have the E-Verify for ag workers until year four.

I am very comfortable sitting here today telling you that by year four we will have multiple ways by which employers can verify legal presence for work purposes.

Senator FEINSTEIN. Good. Will you have your people talk with Mr. Connor?

Secretary NAPOLITANO. Yes.

Senator FEINSTEIN. Thank you. Flight schools. A GAO report released last year found that many flight schools obtained student and exchange visitor program certification from Immigration and Customs Enforcement without being certified by the FAA.

According to GAO, 167 out of 434 flight training schools, 38 percent today do not have the required FAA certification. I am told ICE is often unaware of instances when the FAA revokes certification for flight training providers.

I understand that ICE is working with FAA to address this issue. What updates and assurances can you provide about ICE's efforts to improve its communication with the FAA to address this issue?

Secretary NAPOLITANO. I think we are very far along. By the way, Senator, we are also moving from SEVIS I to SEVIS II which is a new system governing education institutions that educate student visa holders. This will also help solve that problem.

Senator FEINSTEIN. Yes, good. I will get to that in a minute. The asylum screening process in this bill. Under the present system as I understand it, applicants for asylum must undergo a credible fear interview to determine whether the applicant has a credible fear of persecution in his or her country of origin.

If the screening officer determines that the individual has a credible fear, the application moves along for further consideration. This bill as I understand it streamlines the refugee and asylum screening process partly by allowing a screening officer to grant asylum immediately following a screening interview.

If this provision were to become law, how would the Department ensure that asylum applicants are adequately screened for national security threats? Current DHS regulations permit USCIS to confer with the State Department to verify the veracity of an asylum applicant's claims.

To what extent does USCIS use that authority and are there barriers that prevent full information sharing between the agencies? My concern is that it is not streamlined to the point where the checks are not adequate.

Secretary NAPOLITANO. First as I mentioned, we have greatly improved the information available from the get go in terms of what databases are checked. The law enforcement, the national security databases and so forth, and that starts from the beginning when we collect the initial biographic and biometric information.

Secondly, with respect to the State Department, we have extensive and very good relations with the State Department in the refugee asylum area where the issue is credible fear.

Senator FEINSTEIN. All right, but you will check whether that is an accurate statement, whether credible fear exists?

Secretary NAPOLITANO. Yes. We do not take it at face value. There are a number of ways we look into it.

Senator FEINSTEIN. All right. Well, the concern is that this bill truncates the process as I understand it. I would just ask you to look at that.

Now let me turn to what you just mentioned, the student visa fraud. This is something that I have been interested in since 9/11 when there was a lot of it in the country.

I just looked at some schools going back to 2008, most in 2011, some 14 schools, I am sorry to say 8 of them in my State of California where there are very suspicious activities going on.

Now, if I understand this correctly, you have got 10,500 schools approved by DHS to accept non-immigrant students and exchange visitors. Last year Senator Schumer and I sent a letter to Immigration and Customs Enforcement to express our concerns about student visa fraud and the lack of information sharing among various Federal agencies.

The response letter that we received noted that ICE is developing a new database system called SEVIS II that will improve, theoretically, ICE's ability to monitor international students and the schools they attend.

SEVIS II is expected to improve the ability to avoid fraud, of which there still is plenty. Is it on track to be fully operational by 2013 when this bill goes into effect?

Secretary NAPOLITANO. That is my understanding, yes, Senator.

Senator FEINSTEIN. We will count on it.

Secretary NAPOLITANO. It needs to be part of this. Again, it goes to the fact that this bill actually improves and builds on the security matters we already have at hand. So yes, we are well under way on SEVIS II and my anticipation is yes, it will be implemented by the end of the year.

Senator FEINSTEIN. Thank you.

Chairman LEAHY. So everybody knows, we are going to Senator Cornyn next and then Senator Klobuchar and then Senator LEE.

Senator Cornyn.

Senator CORNYN. Good morning, Madam Secretary. I want to start with something that I agree with you on and that is the set aside for border fencing. Texas is different, as you know, from Arizona and California and other places. While the border patrol has recommended some tactical use of fencing there, I do not believe and I do not think you believe, you can speak for yourself, that building a fence across a 2,000 mile southern border is the answer, that it is really a combination of tactical infrastructure, technology and boots on the ground.

I would like to see a little more flexibility for the Department in coming up with the best strategy to actually achieve the goal, so you and I agree with each other on that, right?

Secretary NAPOLITANO. Let the record show we agree.

Senator CORNYN. That is good. Good start. All right, now here is the harder part. That is in the bill, as you point out, there are different measures for effective control of the border and it calls for a 90 percent effectiveness rate.

The problem I have is do you know how many people actually cross the border unbeknownst to the Department and effectively get away? In other words, we do not know the denominator, but we know the numerator because we know the people who are detained, but we do not know the people who actually attempt to get across and who are successful in doing so unbeknownst to the border patrol, do we?

Secretary NAPOLITANO. That is one of the problems with using effectiveness rate as your only measure. Now as we continue to buy and put in place all the technology according to the plans that we have now submitted to Congress for each sector along the border, I think we will have greater confidence that we will have situational awareness as to that denominator.

I will share with you, Senator, that that is an inherent problem knowing the actual denominator.

Senator CORNYN. I have always thought it kind of bizarre that we measure our success by the people we catch and do not focus on the people who got away as a measure of our lack of success, but it is an inherent problem as you point out.

Secretary NAPOLITANO. It is a number that is used as one of the many that taken together when you look at all the other statistics along the border give you kind of an overall picture.

Senator CORNYN. Under the bill, the Department would have to gain effective control over high risk sectors along the border, and right now based on 2012 numbers, that would be Tucson, the Rio Grande sector and the Laredo sector, obviously two in Texas and one in Arizona.

The problem with that is that if the cartels and the human traffickers know where the Department of Homeland Security is going to concentrate its efforts, they are going to reroute and redirect their efforts into the areas that are not as hardened and are not as secure. Would you not agree?

Secretary NAPOLITANO. This is the way I think it will work, Senator, which is to say first of all all sectors will have protection in them. The question is where you have basically surge, or even more protection and you want to put your resources where the traffic is greatest.

If the traffic shifts, the resources will shift. The ability we have now is we are much better able to kind of predict ahead of time where we think some of that traffic is going to move and pre-position.

Senator CORNYN. The bill provides for an annual review in terms of identifying which of those sectors, where the Department would concentrate its resources.

Secretary NAPOLITANO. Yes.

Senator CORNYN. My concern is the cartels and the human traffickers are far more nimble and are able to—an annual decision just seems to me to be unworkable.

Secretary NAPOLITANO. If I might, Senator. That is what the draft bill provides, but we regularly review those numbers and make decisions, so we would not wait for an annual review to make adjustments.

Senator CORNYN. Again on the number of people who get across who get away so to speak, there was a story in the Los Angeles Times, I am sure you are familiar with, talking about radar technology, VADER I think it is called.

Secretary NAPOLITANO. VADER. Yes, sir.

Senator CORNYN. VADER, the story suggests that as many as half of the people who cross the border get away undetected by the Department of Homeland Security. Do you have any reason to disagree or differ with that estimate?

Secretary NAPOLITANO. Oh, yes. That story was unfortunate and misleading. It did not understand the technology which was just being tested, it has not even been used yet. We are taking something that was used in the battlefield and transferring it to the border and there are adjustments that have to be made.

But it also did not take into account the fact that there were apprehensions being made around the aperture of the VADER. So I can give you a more detailed briefing in a more private setting which I think would be more appropriate, but I will tell you that article was very incomplete and very inaccurate.

Senator CORNYN. I would welcome that. My last question, if I may. Since 1996, the law of the land has mandated the implementation of an automated entry/exit system. Here we are 16 years later and it still has not been done.

My question is what gives you any confidence that it will be done now under the terms in this bill if it has not been done over the last 16 years?

Secretary NAPOLITANO. Two things. One is that we have now enhanced our ability to, as I said before, use different databases and link them in different ways. We have already submitted to the Congress our plan for moving toward electronic verification upon air and sea exit. So that is the plan we are already implementing.

In terms of a biometric exit, we have piloted that in Detroit and Atlanta. There were a lot of issues about it. One of the issues quite frankly, Senator, is our airports really are not designed to have those kind of exit lanes. Just a plain old architecture problem.

We think we can basically achieve that with the electronic records verification that we are already putting into place according to a plan we have given to Congress, and that will be for both air and sea.

Chairman LEAHY. Thank you.

Senator CORNYN. Thank you. I hope we get to land at some point in the future, too. Thank you, Mr. Chairman.

Chairman LEAHY. Thank you.

Senator KLOBUCHAR.

Senator KLOBUCHAR. Thank you very much, Mr. Chairman. Thank you, Secretary, for being here. Thank you for all your good work last week.

Last year a bipartisan group of Senators including myself introduced the JOLT Act which modernizes and expands the visa waiver program, reduces visa wait times. I think you know as the former Governor of Arizona which is a great tourism State, although not quite as good as Minnesota with our current foot of snow in April, but we have introduced this bill to speed things up and there have been some dramatic changes made already.

I wanted to know if you support this part of the bill and if you think it is a good idea and what you think of using video conferencing more to try to speed up the numbers. As you know, we have lost 16 percent of the international tourism market since 9/11. We are finally seeing some improvements without changes to our security in terms of speeding up the times. Every point we add is over 160,000 jobs in America.

Secretary NAPOLITANO. Well, the administration is supportive of the JOLT Act. We are supportive of the visa waiver program with appropriate safeguards for security and video conferencing, we are using it in several other areas. So that is something that is really just a tactical decision. By the way, it was 90 degrees in Phoenix today.

Senator KLOBUCHAR. I get the message. But we have them all over America. Many local and State law enforcement officials, particularly those in border towns have had their resources stretched very thin.

Can you speak to the potential benefits of this bill and the resources to State and local law enforcement agencies of passing this comprehensive reform and improving security on the border?

Secretary NAPOLITANO. Yes. I think the bill does an excellent job of putting more resources at the border and specifying resources to be used in a Stonegarden type of arrangement with our State and local law enforcement authorities along the border.

I think there are some special provisions in there for Arizona, but it is a good and very supportive of State and local law enforcement provision with respect to the border security title of the bill.

Senator KLOBUCHAR. Very good. Going after fraud and abuse in Government programs is extremely important, including in the immigration area. DHS, the Department of Labor and the Justice Department have to use their auditing and prosecutorial authorities to combat the misuse of all of visa programs and protect foreign workers from abuse which really in turn protects American workers.

Does this bill improve the tools and resources that the Government has to prevent or identify abuses and problems with our immigration system? What are the components of this bill and how do you think this helps?

Secretary NAPOLITANO. Yes. It really helps. The bill just increases the body of knowledge that we have available to us because it requires more by way of verification, by employers and employees. It requires a secure identification to be issued. It gives us more biometric capacity.

We will also be able to take the RPI database and dump it into our photo matching database and that in and of itself will be very helpful.

Senator KLOBUCHAR. Right. I think that is something where we have all been talking about in the past week the difference of actually knowing who is here and being able to get that information which really eludes us right now.

Secretary NAPOLITANO. I think one of the real significant improvements made by this bill is to bring people out of the shadows, we know who they are, we know where they are. By the way, from a police perspective, once these people know that every time they interact with law enforcement they will not be subject to removal, it will help with the reporting of crimes, the willingness to be a witness and so forth.

Senator KLOBUCHAR. Right, and that gets to the last thing I was going to ask you about was an U visa program. As you know, we worked had to try to get that in the Violence Against Women Act. It is in there, but we were trying to expand the U visas available. You are a former prosecutor, I am a former prosecutor and we understand how perpetrators, especially rapists and domestic abusers use the law against victims. They basically say well, if you are going to report this, I am going to have you deported.

Could you explain how the work of the Gang of Eight helps with public safety by protecting these victims so they are not afraid to come forward?

Secretary NAPOLITANO. Well, what the bipartisan bill does is it expands the number of U visas that are available and also the T visas that are available. So from a crime victim protection standpoint and our ability to prosecute those who are abusers, traffickers and so forth, it is very helpful.

Senator KLOBUCHAR. Thank you very much.

Chairman LEAHY. Thank you. I would just remind Members again that on Thursday we are going to meet at 9:30 instead of at 10:00 because of a security briefing we are having, a closed door briefing. At 10:30 we will have the bill that Senator Lee and I have, the Electronic Communications Privacy Act. I think it will go through well in the Committee, but we will need the quorum.

Senator Lee, you are next.

Senator LEE. Thank you, Mr. Chairman. I do look forward to that hearing. It is going to be a fun one. Thank you, Madam Secretary, for joining us today.

Some of the questions that I have as I have read through this bill over the last few days relate to the amount of discretion that you were given, you and your successors and interest will be given over time should this become law. Some have suggested there are as many as 400 instances of discretion.

I do not mean to suggest that administrative discretion is categorically bad. Sometimes it is necessary. But I want to look at a

couple of instances where you have got discretion that would be vested in your office and ask you about how that might work.

In establishing the border fencing strategy, you will have a certain amount of discretion as to how much additional fencing might need to be deployed on the southern border region. You will have discretion to certify when your fencing strategy is substantially complete.

As I understand it, President Obama stated in a speech in El Paso in May, 2010 that he believed the border fence was basically complete. So one question I have for you, if you determine that little or no additional fencing along the southern border is necessary, when do you think is the soonest that you might certify that that has been completed?

Secretary NAPOLITANO. Well, if that part of the bill is passed as it is currently written, and Chairman Leahy and I already had a little colloquy about that, I think we would move very quickly.

We have, as I said before, sector by sector technology plans. We have not been sitting back waiting for an immigration bill to pass to secure this border. So we would move very quickly to look at the overall fencing requirement.

Senator LEE. Do you agree that the discretion that is granted to you under this bill should it be enacted into law could permit you to make a finding that it is complete, it is substantially complete without building any additional fencing?

Secretary NAPOLITANO. Well, right now the border patrol already pursuant to existing law and appropriations law has done an extensive study of where fencing makes sense along the southwest border. They determined that there were 653 miles where it actually makes sense, and as Senator Cornyn mentioned, there are vast stretches of the border where it does not make a lot of sense.

Senator LEE. Sure, sure.

Secretary NAPOLITANO. Six hundred and fifty two miles of that have been completed. So I think what we would do should the bill pass is go back, look at the kind of fencing we have and say do we want to make it triple what it is, or taller than what it is, or something of that sort.

But, we have continually looked at the infrastructure along the border from a security perspective.

Senator LEE. All right. You also have discretion to waive grounds of inadmissibility on the part of would be RPIs related to criminal background. The language of the bill I believe says that you can do that for humanitarian purposes to ensure family unity or if such waiver is otherwise in the public interest.

Once you decide to make such waiver, you have to apply it to the entire class of any persons who might be similarly situated with respect to their own eligibility or lack thereof for RPI status.

In what situations do you think you might consider granting that waiver? The kind of waiver discussed at page 65 of the bill?

Secretary NAPOLITANO. Right. I am going to caveat all my answers as of what I know today versus what the bill may change to, so just with that in mind.

Senator LEE. Right.

Secretary NAPOLITANO. But I could see that there would be consideration based on the age of a conviction, the type of a conviction,

whether the individual was the primary wage earner for a family, not just a family member, the records since a prior conviction, that kind of inclusive evaluation of an individual.

Senator LEE. All right. According to the bill at page 81 of the bill, an applicant for RPI status may not file an application for that status unless the individual has satisfied all tax obligations to the IRS, meaning Federal income tax since the date on which the applicant was authorized to work in the United States as an RPI.

If the alien was authorized to work in the U.S. during the time in which he or she was legally authorized, would not those taxes have already been collected?

As I understand it, as I read that language in the bill, it runs from the moment that the would-be RPI was made legal to work in the country. If they were not legally authorized to work in the country, is that really a significant restriction?

Secretary NAPOLITANO. Well, I think the issue, the intent of the bill is to make sure that anybody moving to RPI and then ultimately from RPI to LPR has paid all taxes and is paying all taxes.

If the language has to be clarified, that is what the Committee process is for.

Senator LEE. All right. Great. Thank you very much. There is more we could ask but I see my time has expired. I thank you. Thank you, Mr. Chairman.

Chairman LEAHY. Thank you very much. I see Senator Franken is not here, so Senator Coons.

Senator COONS. Thank you, Chairman Leahy. I just wanted to at the outset thank you very much, Secretary Napolitano. DHS has a complicated, difficult, broad-ranging mission, and though it is just one department, it is responsible for a vast array of important goals at the same time and I am grateful for you doing your very best and for everyone in the Department doing your very best, particularly at this time when we opened this hearing with reflections on the tragedies in Boston and in West Texas, we are reminded of how grateful we are for everyone in law enforcement and public safety who helps protect us.

I am from the Mid Atlantic, a region with many ports, and with the significant allocation of additional resources under this bill to the southwest border, what assurance could you give us that comprehensive immigration reform will not further degrade CBP's ability to perform its customs inspection mission at some of our vital ports around the country?

Secretary NAPOLITANO. Well, I think it is important, and as I review the bill and the intent behind the bill, it is to make sure that the additional activities are paid for through fees and fines and the like.

Again, Senator, the other parts of the bill, the employment verification, the opening up and clarifying of the visa process, making more visas available both on a permanent and temporary worker basis, this will help the economy grow in every State.

Senator COONS. There has been some discussion back and forth about discretion. Under current practice, DHS uses its discretion authority very sparingly. I think studies have shown roughly 1 percent of all cases. This legislation provides the Department with

some additional discretion in deportation cases but with very significant limitations.

Given what is proposed in the bill, how much more should we expect the Department to exercise its prosecutorial discretion say in cases where a U.S. national child would be directly affected?

Secretary NAPOLITANO. Well, I think we already do that pursuant to policy. That was one of the points of building some discretion into the enforcement of current law. So I think the intent of the bill, again, is to simply memorialize some of that in statute.

Senator COONS. Under current practice, immigrants spend a significant amount of their time and resources obtaining basic information about their own cases before appearing in front of an immigration judge, and DHS has to spend significant staff time and resources because there is no discovery process.

Each request for their own files has to go through a FOIA process. Would the Department have any objection to streamlining this process through simply providing appropriate portions of an immigrant's A-file in advance of a hearing?

Secretary NAPOLITANO. Provided we had the resources to pull the A-files, I would have no objection to that. We would have to see the actual language. One of the real logistical issues is some of these old A-files as you know are contained in large warehouses of paper files and caves.

But given the resources, anything we can do to streamline the FOIA process would be something to be considered, yes.

Senator COONS. Thank you. My impression is that following a 9th Circuit decision in this area, the Department may have actually seen some benefit in terms of the overall efficiency, recognizing the resource limitations you point to.

Secretary NAPOLITANO. That is right.

Senator COONS. My last question is about the E-Verify system. What privacy protections need to be put in place or are already in place to ensure employers do not misuse the system and how would this legislation improve on it?

Given that DMV's in many States do not comply with their existing obligations under the so-called motor voter law, do you believe it would be constructive or appropriate to give these States additional funds with the assumption that they will meet their obligations to assist in E-Verify implementation?

Secretary NAPOLITANO. I believe the bill actually constructs an incentive program for States to have their DMVs put their driver's license databases into the E-Verify database, and that of course is something we greatly support. I think it would be very helpful.

Senator COONS. Great. Madam Secretary, thank you very much for your leadership in this difficult and important area. Thank you for your answers today. Mr. Chairman?

Chairman LEAHY. Thank you very much.

Senator Graham.

Senator GRAHAM. Thank you, Mr. Chairman. Thank you, Madam Secretary. It has been a real pleasure working with you and your staff on this very important topic of border security.

Let me start with the waiver provisions as inquired by Senator Lee. It is my understanding that there is no waiver for an aggra-

vated felony or felony or national security problem, that those three areas are not waivable, is that correct?

Secretary NAPOLITANO. That is my understanding as well, Senator.

Senator GRAHAM. I think the waiver he was talking about is in other areas and again, I think that is good to know that there is some discretion, but not in these areas.

Now, about what we are trying to accomplish here. How much money have we spent on border security since 2005 or 2006?

Secretary NAPOLITANO. Billions.

Senator GRAHAM. All right. Multiple billions.

Secretary NAPOLITANO. Yes, sir.

Senator GRAHAM. I think we have 21,000 border patrol agents down at the border now?

Secretary NAPOLITANO. 21,370 I believe is today's count.

Senator GRAHAM. I think that is double what we had in 2005 or 2006. Is that correct?

Secretary NAPOLITANO. At least doubled, yes.

Senator GRAHAM. At least doubled, and this bill adds 3,500 more, is that correct?

Secretary NAPOLITANO. Well, it adds 3,500 more CBP officers. Yes, it does.

Senator GRAHAM. It adds more people to help secure the border.

Secretary NAPOLITANO. Who are stationed at the border. They may be at ports, not necessarily between ports.

Senator GRAHAM. But to enforce border security?

Secretary NAPOLITANO. Yes, indeed.

Senator GRAHAM. So we have doubled the number of border patrol agents since 2005 and 2006. This bill we are adding 3,500 more customs and border patrol officers to help secure the border.

Under this bill we are also trying to achieve a 24-hour a day, 7-day a week presence, situational awareness at the border by having more unmanned area vehicles, is that correct?

Secretary NAPOLITANO. Yes. I would mention there that I would include not just UAVs, but also different kinds of sensor and radar systems that work better in partial areas of the border.

Senator GRAHAM. We are going to spend \$3 billion I believe on carrying out the border enforcement strategy?

Secretary NAPOLITANO. The initial phase, yes.

Senator GRAHAM. Initial phase, \$1.5 billion to try to complete the fencing?

Secretary NAPOLITANO. Yes, and we have already had a colloquy about that.

Senator GRAHAM. All right, and flexibility is fine with me. We are also going to allow the National Guard to continue to be deployed to secure the border, is that correct?

Secretary NAPOLITANO. That is right. As the Governor who was the first to ask for the National Guard at the border, I really appreciate that mission assignment.

Senator GRAHAM. We are going to increase funding to increase the number of border crossing prosecutions in the Tucson area?

Secretary NAPOLITANO. Yes. I think it basically triples those under something called Operation Streamline.

Senator GRAHAM. So that is what we are doing to enhance the border itself. Do you agree with me that controlling jobs inside the country is just as important as securing the border?

Secretary NAPOLITANO. At least as important. As I have testified several times, that magnet of illegal labor is a major driver of illegal migration. Dealing with the worker side of this is so very important.

Senator GRAHAM. Eleven million are coming for employment. We are not being overrun by 11 million Canadians. They come to visit, they go back home, they live in a stable country with a stable government and a good economy.

We are being overrun by people from corrupt and poor countries. They come here to work. Our theory is that not only should you secure the border, but the second line of defense is controlling a job so that if you get across the border, you cannot find a job because of E-Verify. Is that correct?

Secretary NAPOLITANO. That is the intent of the bill, yes.

Senator GRAHAM. All right. Now, 40 percent of the people here illegally never came across the border, they came in through a visa system at airports and seaports. One of the triggers in this bill is to get an entry/exit system up and running so we will know when a visa expires, is that correct?

Secretary NAPOLITANO. Yes, an electronic entry/exit system—air and sea, yes.

Senator GRAHAM. So the 19 hijackers on 9/11 were all students here on visas. Their visa expired and the system did not catch that, is that correct?

Secretary NAPOLITANO. That is correct. There are a number of ways that those hijackers would be revealed under the bill.

Senator GRAHAM. Now we have a pretty robust guest worker program providing legal labor to employers who cannot find American workers. That is part of the bill, is that correct?

Secretary NAPOLITANO. Right. Both for ag, but unskilled and high skilled.

Senator GRAHAM. So the combination of systems work in concert. Increasing border security through fencing, technology and manpower, controlling finally at a national level who gets a job plus providing access to legal labor as a multi-layered approach to trying to achieve border security.

Do you agree that they all work in concert?

Secretary NAPOLITANO. It is an interwoven system, absolutely.

Senator GRAHAM. All right, and if we can make it better, let us do it. One last question. You said I think to Senator Grassley that the older brother, the suspect who was killed, when he left to go back to Russia in 2012, the system picked up his departure but did not pick up him coming back, is that correct?

Secretary NAPOLITANO. That is my understanding. I can give you the detail in a classified setting, but I think the salient fact there, Senator, is that the FBI TECS alert on him at that point was more than a year old and had expired.

Senator GRAHAM. The point I am trying to make is after having talked to the FBI, they told me they had no knowledge of him leaving or coming back. The name was misspelled. So I would like to talk to you more about this case, how this man left, where he went.

When we say there was no broader plot here, I just do not know how in the world we know that at this early stage. As to the person giving information, suspect two, the 19-year-old, I would imagine he is going to tell us that his brother was the bad guy and he was a player and that was not that big a deal. I would be shocked if that is not the information received from the suspect. That is why I want more time to interview him outside of having a lawyer and investigate the case in a more thorough way. So we will talk about that.

Secretary NAPOLITANO. If I might, Senator.

Senator GRAHAM. Please.

Secretary NAPOLITANO. As you know, this is a very active ongoing investigation. All threads are being pulled. My understanding is there will be a classified briefing for the Senate this week.

Senator GRAHAM. I look forward to hearing it. Thank you.

Chairman LEAHY. Senator Hirono.

Senator HIRONO. Thank you, Mr. Chairman and Madam Secretary, thank you for returning to testify before this Committee. We know that you have had and continue to have urgent matters that require your attention.

I want to thank you for pointing out once again to this Committee that there are two main drivers of any goal of border crossings and one is labor and the second is that it takes so long to get a legal visa to come into our country and that this bill addresses both of these issues in ways that should have the effect of decreasing illegal border crossings. Is that correct?

Secretary NAPOLITANO. It does, and I think also by doing that allows us to focus our resources on those who are smugglers and narco traffickers and others who really are public safety or national security concerns.

Senator HIRONO. I think it allows our priorities to be where they ought to be in terms of enforcement. This bill overhauls the current system in ways that will certainly help millions of families reunite with their loved ones, but it will also dramatically restrict the abilities of some families to reunite with certain loved ones, and this is a particular concern to those who are on the wait list from Asia which is where the major backlogs are.

I would like to continue to work with the Members of the Committee and with all of you to seek improvements on the family provisions to include LGBT families and children of the Filipino World War II veterans. These veterans have been waiting for decades to reunite with their children.

I know that compromises needed to be made, but I do believe that there are some areas of this bill where it went farther than it needed to. Specifically this bill eliminates, after 18 months, the sibling category and adult married children category and it replaces it with a merit-based point system.

I believe that the new merit-based visa system will exclude many immigrant family members from reuniting with their U.S. citizen siblings, and of course we know how important siblings are as part of a nuclear family structure because they provide assistance with jobs and emotional and financial support. They provide care for family members.

In addition, there are many times when for immigrants a sibling may be the only remaining member of their nuclear family. In fact I have met a number of people who have been waiting to reunite with their siblings.

I am concerned that this bill will no longer provide a meaningful opportunity for U.S. citizens to petition for their siblings. My question to you, Madam Secretary, is what opportunities will siblings have of U.S. citizens to be able to immigrate to the United States under the provisions of this bill?

Secretary NAPOLITANO. Well, I think what the intent of the bill is in exchange for allowing the spouses and children of green card holders to be excluded, in exchange for the recapture provisions of unused visas and in balance with the increase in economic related visas, the sibling category was greatly restricted if not eliminated.

But as you mentioned, there are other avenues such as the different work related visas that a sibling would be eligible for regardless. So there will be other avenues that a sibling could pursue.

Senator HIRONO. I know that this bill allows siblings to under the merit basis to get some points for being siblings. However, I had a hearing of this Committee relating to comprehensive immigration reform impact on women and children and it became clear that the majority, 70 percent, of immigrant women obtain legal status through family based immigration system.

What do you think would be the impact of the merit-based system on women who have not had the kinds of education and employment opportunities that give them additional points that would allow them to score high enough to be able to come in under the merit-based system?

Secretary NAPOLITANO. I think it is difficult to answer that hypothetical right now. I think obviously again since spouses no longer count against caps, that is a big improvement where family unification is concerned, spouses of LPRs and children as well.

I think that in and of itself is a major improvement and will deal with a lot of the backlog where women are concerned.

Senator HIRONO. I think there are probably some ways that we can allow for these kinds of family members to come in with—so that a nuclear family that consists just of sibling or of older married children, that issue can be addressed. I look forward to continuing to work with you. Thank you, Mr. Chairman.

Senator FEINSTEIN [presiding]. Senator Cruz.

Senator CRUZ. Thank you, Madam Chairman. Madam Secretary, thank you for joining us and thank you for the excellent work that you and your agency have done, in particular over the last week in dealing with and apprehending the Boston bomber. It has been a time of great trauma for the country and we are all celebrating that he was apprehended so quickly.

Secretary NAPOLITANO. Thank you.

Senator CRUZ. I would like to ask questions both dealing with process on this legislation and then also dealing with border security. Starting with process.

My office received the text of this bill at 2:25 a.m. on Wednesday, April 17th, five days ago. The bill is 844 pages long. It is dealing with a very complicated topic.

My first question is when did your office receive a copy of the bill as filed?

Secretary NAPOLITANO. About 3:00 in the morning. I think that is about right.

Senator CRUZ. In the five days since then when you have obviously been heavily focused on matters such as the Boston bombing, and quite properly focused on matters such as that, have you had the time to read all 844 pages of the bill?

Secretary NAPOLITANO. Actually, I have read the bill. I know many sections of the bill fairly well, so I was able to skim those sections, but I have been able to review the bill, yes, sir.

Senator CRUZ. All right. Then that has been a busy weekend for you.

Secretary NAPOLITANO. Yes, sir. Very busy.

Senator CRUZ. Let me shift to the question of border security. Metrics of border security are sometimes interesting because at times, public officials point to an increase in apprehension as demonstration that border security is working well, and at other times it seems officials point to a decrease in border apprehensions as evidence that border security is working well.

I guess I am always a little skeptical of a statistic that regardless of what it demonstrates proves the end being put forth.

Let me just ask an initial question. Have apprehensions increased or decreased?

Secretary NAPOLITANO. From when to when?

Senator CRUZ. From say last year to this year.

Secretary NAPOLITANO. Overall, apprehensions have stayed the same except with respect to the southern Rio Grande valley where we have had an increase primarily in illegal immigrants from Central America, not from Mexico.

I can give you kind of chapter and verse on all that is being done there, but it has basically stayed the same in all the sectors except for that one geographic area.

Senator CRUZ. I guess I am a little puzzled because earlier this month you told reporters in Houston, and I believe this is a quote, I can tell you having worked that border for 20 years, it is more secure now than it has ever been. Illegal apprehensions are at 40 year lows.

Secretary NAPOLITANO. That is true.

Senator CRUZ. I want to understand. It goes back to the point I said that sometimes saying apprehensions are down is signs of success and at other times the argument seems to be apprehensions are up.

Which is accurately describing what is happening at the border?

Secretary NAPOLITANO. Well, both are accurate. If you look at the border, San Diego to Brownsville, apprehensions are at 40 year lows. The key thing is to sustain that.

We know that we are currently having—

Senator CRUZ. Madam Secretary, if I can ask. You just said a minute ago they were higher this year than last year, so I am trying to understand how it can be a low and a high at the same time.

Secretary NAPOLITANO. One is referring to border-wide, one is referring just to the southern Rio Grande sector. In that sector, ap-

prehensions are higher now. We know that traffic is higher now. Actions are being taken to turn that traffic back.

Senator CRUZ. So your testimony is border-wide, apprehensions are down. Is that right? I am trying to understand.

Secretary NAPOLITANO. I think what I just said, Senator, is it is about level with last year except with respect to south Texas.

Senator CRUZ. How does DHS measure border security? Prior to fiscal year 2011 DHS used a metric called operational control, and as I understand it, DHS is not using that anymore. Obviously this bill relies upon DHS having a sound metric for who is attempting to cross this country illegally and who is being prevented from doing so or apprehended.

How does DHS actually figure out what is happening and measure success? As a component of that, why is it that the Department no longer uses the metric of operational control?

Secretary NAPOLITANO. We look at a number of things. We look at apprehensions, but not in and of themselves. We look at crime rates. We look at seizures, both inbound and outbound. We look at reports from those on the ground at the border.

So it is a whole host of things. One of the things we are really looking for, Senator, is what is the trend? Is the trend pretty much all in a positive direction meaning the border is more secure or not?

When we look at all of those things, then we can also make decisions about where we need to put even more resources.

Chairman LEAHY [presiding]. Thank you.

Secretary NAPOLITANO. For example, right now we know south Texas is problematic for us, but we are already and have been moving more technology, manpower, et cetera, in there. I bet we will see those numbers shift very quickly.

Chairman LEAHY. Senator Schumer.

Senator SCHUMER. Thank you, Madam Secretary. First I want to thank you for the outstanding job that you are doing not only on this legislation but on so much else in terms of securing the border and all the other mandates that your position has.

Second, I would just reiterate, this bill is going to be available for everyone to read for three weeks from the day it was introduced which is actually six days, not five days since Wednesday at 2 a.m. I was there, I introduced it.

I would also say that we had Senator Grassley, and this is not casting an aspersion on Senator Grassley, he introduced an 80-page gun bill at about 11:00 as I remember it on the day we voted on it at 2:00 or 3:00. It was a complicated bill. I did not hear any cry about it. The main point I want to make, there is going to be plenty of time for everybody to read the bill thoroughly and prepare amendments both for Members of this Committee and Members of the floor.

I know there is sort of this view, well, this is just like health care, and it is not. The health care bill we started debating before it was even introduced. That is not happening here. We want just to say this—I think I speak for the eight of us who helped put this together. We want a robust Committee process because last time we did not have a Committee process and the bill collapsed on the floor.

Now perhaps if the amendments that were offered on the floor would have been offered in Committee, compromises could have emerged, discussions could have emerged and we might have avoided that.

To have an open, robust Committee process which the Chairman has agreed to is in our interest. No one is trying to rush this bill through in any way. I want to make that clear and I think I speak fully on behalf of the eight of us here.

I would now like to talk about the border. Back in 2010 you may remember that Senator McCain and myself sent you the border bill that had a supplemental appropriation of about \$600 million, is that right?

Secretary NAPOLITANO. Yes.

Senator SCHUMER. At that time the southern border as a whole had an effectiveness rate of 68 percent which meant that of every 100 people that our authorities saw, they were able to catch or turn back 68. After the border bill was passed and after that money was spent, it went up to 82 percent, is that correct?

Secretary NAPOLITANO. It sounds about right, yes.

Senator SCHUMER. I believe that is the case. The immigration bill we are passing today actually appropriates \$4.5 billion and up to \$6.5, minimum of \$4.5, the maximum of \$6.5 over the next five years.

Given that the \$600 million we appropriated made such progress, can you tell us what kind of security impact we will have by appropriating more than ten times the amount in that bill? Does it not seem to you very logical that we are going to get a much higher effective rate than we have now?

Secretary NAPOLITANO. Yes, Senator. I think that is true. I think in particular in my view the key here is technology and air cover. Our ability to procure, install and implement the best available technology at that border as we are doing so now, but to be able to speed that up can only improve where we all ready are.

Senator SCHUMER. Yes. Look, I went to the border. It was a revelation to me. Senator Flake and Senator McCain led a trip that Senator Bennet and I went on and it is clear that it is a huge vast border. I am from a little tiny State of New York. You cannot do it by just lining up people, you do not have enough.

It is amazing, if you use air and particularly drones, you can actually figure out where the people are going and force them, apprehend them, 20, 30, 40, 50 miles inland and the drones have the ability to follow that. We certainly need more drones, we need more air, the people on the border made that clear to us and should increase the effectiveness rates dramatically in my opinion at least. Do you disagree?

Secretary NAPOLITANO. I do not disagree, and the technology I think as it is implemented will give us more confidence in the denominator which has always been one of the major problems in calculating effectiveness rates.

Senator SCHUMER. Finally I just want to clarify, and Senator Grassley actually brought this up again, how we tighten up security. It is clear that Tamerlan Tsarnaev, they had no record of him going to Russia or coming back because his name was misspelled

by Aeroflot where we do not have regulations, it being a foreign airline.

Under our bill, everything would have to be passport or machine read so that type of mistake could not occur. So if our bill were law, is it a pretty safe guess that the authorities would have known that Tsarnaev left to go to Russia and knew when he came back?

Secretary NAPOLITANO. If I might, Senator, there are actually redundancies now in the system, so there was a ping on the outbound to customs. This is my understanding and this has been kind of a changing picture. But even regardless of that, anything that makes a requirement for machine readable gets manual inputting out of the system, improves security.

Senator SCHUMER. Right. Thank you, Mr. Chairman.

Chairman LEAHY. Senator Flake.

Senator FLAKE. Thank you. It was a revelation to go down on the border. We actually watched an illegal border crossing while we were there.

Secretary NAPOLITANO. And an apprehension.

Senator FLAKE. As you heard, and an apprehension. And a quick one, too.

Senator SCHUMER. They knew exactly where the person was climbing the fence would go. They said we are going to catch her in 20 minutes. And they did. It was amazing.

Senator FLAKE. I think the woman who crossed heard Senator Schumer's accent through the fence and thought I am in New York, where is the Statue of Liberty? I am here.

[Laughter.]

Senator FLAKE. But, anyway, It was a good trip. It is always good to see the border and see what needs to go on there. Let me just touch on that for a second. You have talked about apprehension rate and there has been concern for awhile about the metrics.

Is it true that what we are calling for in the legislation, the effectiveness rate, is pretty much what you do now in terms of—because Senator Schumer quoted some statistics from a couple of years ago. That is within what you are doing now, but now you will have more resources to do it, correct? Is that the net effect?

Secretary NAPOLITANO. Yes.

Senator FLAKE. We know the denominator, the number of people who have crossed, but with better technology, particularly surveillance, we will be able to get a better figure there.

Secretary NAPOLITANO. Right. But realize too that no one number captures the evolving and extensive nature of the border. So that is why I keep saying there is no one metric that is your magic number 42 or something of that sort.

These are indicators which taken as a whole give you a picture of the border and then are informed by what we are actually seeing.

Senator FLAKE. I take it from your testimony you are comfortable that given the resources that are provided given where we are already that you will be able to achieve the 90 percent effectiveness rate in the high risk sectors?

Secretary NAPOLITANO. Well, if we are not, the border provides then for the commission and additional resources, but let me just share with you that it is not just what is at the border. It is the

E-Verify, it is the visas, it is improving the overall system so that we lessen the drivers of illegal migration.

Senator FLAKE. Right. That is what I want to focus on next, the so-called second border or employer enforcement.

Do you see any issues with moving ahead with being able to have E-Verify mandatory in the time table called for by the legislation? Is that achievable?

Secretary NAPOLITANO. It is achievable assuming the resources are available to CIS, but yes as I testified, assuming resources we will implement the bill with the time lines you have given us.

Senator FLAKE. Identify fraud is kind of the Achilles heel of employer verification at present. The provisions called for in the bill, the photo tools and whatnot, do you see those as having an effect or helping in that regard?

Secretary NAPOLITANO. Absolutely. We are already doing photo match with things like passports, but putting for example all the RPI IDs into the employee verification database, very, very helpful. Also incentivizing States to put their motor vehicle records, their driver's licenses in the database, also very helpful.

Senator FLAKE. Current concern is that E-Verify can tell if the social security number is valid, it just does not do very well in determining whether that is being used six times in other States. How does this legislation deal with that in your view?

Secretary NAPOLITANO. It allows us to implement a system that basically creates a lock on a social security number so if the same number is being used in several places, that gets flagged.

Senator FLAKE. All right. So an individual can say all right, I have my job, I am going to lock my number so it cannot be used elsewhere?

Secretary NAPOLITANO. That is correct.

Senator FLAKE. And if a number does pop up in Montana or New York or somewhere else, then that is flagged now where it currently is not?

Secretary NAPOLITANO. That is my understanding of the bill, yes, sir.

Senator FLAKE. All right. Thank you. Thank you for your testimony.

Chairman LEAHY. Thank you.

Senator Sessions.

Senator SESSIONS. Thank you, Madam Secretary. This bill gives the Secretary, you, extraordinary discretion if it were to become law in making many, many decisions about how the law would be carried out.

In light of what has been happening in recent months and years, that causes me a great deal of concern. In October of 2011 in an oversight hearing, I shared with you the concerns that your ICE officers, your immigration customers enforcement officers, they described how your department has been more focused on meeting the special interest pro-immigration groups than supporting them and helping them accomplish what the law requires in this country.

Since then, I have asked you have you met with those officers and you said no. Today have you met with the officers and the ICE Officer's Association?

Secretary NAPOLITANO. Have I met with union leadership? No. Have I spoken with ICE and border patrol officers in the field? Yes.

Senator SESSIONS. Well, I think you should have met with them. I think there is a real problem there. We have a very real problem. In December of 2012, a few months ago, a survey of Federal agencies showed that morale of ICE employees had dropped in rankings to 279th out of 291 Federal agencies.

Were you aware that the morale at ICE has plummeted?

Secretary NAPOLITANO. Yes. In fact, employee morale is a real concern of mine and it is not just with ICE, it is throughout the Department.

Senator SESSIONS. Are you aware that a lawsuit has been filed? Are you aware that really two years ago a vote of no confidence in ICE Director John Martin was held and nothing has been done apparently to deal with his failed leadership at that agency?

Secretary NAPOLITANO. Senator, under his direction, ICE has actually increased its enforcement efforts. It has installed real priorities for the first time. He actually gets criticized for deporting too many people as opposed to not enough people.

It is a difficult, difficult job to have, but when you look overall at the operation of ICE and where it was four years ago, they have removed more people, they have installed real priorities and we now have secure communities installed nationally. So I think—

Senator SESSIONS. Well, I could not disagree more. I cannot disagree more about that. That is not what the officers are saying. That is not what Chris Crane, the head of the association testified to yesterday.

Let me ask you this.

Chairman LEAHY. Let her answer the question.

Senator SESSIONS. She was interrupting my comment.

Secretary NAPOLITANO. I apologize. I did not mean to interrupt.

Senator SESSIONS. I just would say that I do not believe that is accurate. He testified that agents are prohibited from enforcing the law and indeed the ICE officers have filed a lawsuit.

I started out as a Federal prosecutor in the Department of Justice in 1975. I have never heard of a situation in which a group of law officers sued their supervisor and you for blocking them from following the law. They were not complaining about pay, benefits, working conditions. They were saying their very oath they took to enforce the law is being blocked by rules and regulations and policies established from on high and that this is undermining their ability to do what they are sworn to do.

Secretary NAPOLITANO. May I respond?

Senator SESSIONS. Yes.

Secretary NAPOLITANO. There are tensions with union leadership unfortunately, but here is what I expect as a former Federal prosecutor and attorney general.

That is that law enforcement agents will enforce the law in accord with the guidance they are given from their superiors and that is what we ask of ICE, that is what we ask of border patrol, it is what we ask throughout the Department and I believe that would be consistent with all law enforcement.

Agents do not set the enforcement priorities, those are set by their superiors and they are asked then to obey that guidance in accord with the law.

Senator SESSIONS. Well, what Mr. Crane testified to was that there are law provisions that say agents shall do this, that and the other and that the policies set by their political supervisors refuse to allow them to do what the law plainly requires.

You are not entitled to set policies, are you, that violate the mandates of congressional law?

Secretary NAPOLITANO. If I might, Senator. I disagree with almost everything you have said, but we will just have to respectfully disagree with each other.

But I think it does point to why this bill needs to be passed, because what we want our officers doing is focusing on narco traffickers and human smugglers and money launderers and others who misuse our border and our immigration system by having a process by which those in the country illegally can pay a fine, pay fees, register so we know who they are by dealing with the employer demand for illegal labor, by opening up the visa system.

That will have the effect basically of confirming the focus of resources where they need to be.

Senator SESSIONS. Madam Secretary, I appreciate that but I am really worried about the vigor of this department and your leadership and Mr. Morton. I would note removals by ICE are down 40 percent than when Director Morton issued his 2011 prosecution memorandum that basically undermined prosecutorial ability to function.

Chairman LEAHY. I think the Secretary has answered.

Senator SESSIONS. That is why the morale is so low.

Chairman LEAHY. I think the Secretary has answered the question and of course filing a lawsuit does not mean the person filing it wins the lawsuit. Let us see how the lawsuit comes out.

In the meantime, Senator Franken was here very early on? Please go ahead.

Senator FRANKEN. Thank you, Mr. Chairman. Before I begin, Secretary Napolitano, I want to thank you for your department's response to the Boston bombings. Our thoughts and prayers have been with you and all law enforcement and national security professionals in Boston and across the country. You did an outstanding job in quickly tracking down and capturing the perpetrators. Thank you for your work.

Turning to immigration reform, I am going to focus my questions on some things I am a little worried about in the bill, but I just want to be clear that this overall package is a giant step forward, a giant step forward.

I really believe this is going a long, long way to fixing a broken immigration system and it will help Minnesota businesses and families alike. My first question, Madam Secretary, is about the E-Verify mandate in this bill.

I am worried that errors in the system are going to hurt legal workers and small businesses. Big companies have the resources to deal with this. They have big human resource departments. But I am worried about the small family business where the human re-

sources department may also be the accountant, may also be the sales force, may also be your spouse.

You do not have the time to deal with a system that is not working 100 percent properly. One in five businesses in Minnesota is a small business with 20 employees or less. The Department is currently self-reporting an error rate of 1 out of 380 workers. For every 380 people run through the E-Verify system, the Department says that one legal authorized worker is wrongly rejected, at least temporarily.

Madam Secretary, that error rate is a lot lower than the last independent audit. Will the Department be able to maintain this kind of error rate in five years when the E-Verify mandate would apply to all American businesses?

Secretary NAPOLITANO. Senator, that is certainly our intention, and even to drive that error rate down. One of the other things we have added to the system is the ability of individuals to self-check where they are in the E-Verify so they can go online and check and see if their entry is adequate before they even apply for employment.

We have also set up a very quick system where things can be corrected if an error rate occurs. But when you look at the history of the E-Verify system over the last six years, you have seen that error rate really substantially diminish. We are going to continue to work in that regard.

Senator FRANKEN. So you believe you can be there on that error rate or better?

Secretary NAPOLITANO. Yes.

Senator FRANKEN. All right. Good. Because an independent audit in 2009 as you know had a higher error rate, 1 out of every 140 kicked out a false negative. Someone who was a legal worker, and that sounds low, but you would not want that working on your credit card 1 out of every 140 purchases or your car starting or something.

In the 2009 audit it took legal workers an average of 7 to 13 days to get those errors fixed. I heard one account of a U.S. citizen, a former captain in the U.S. Navy with 34 years of service and a high level security clearance, he was flagged as an illegal worker and it took him two months to resolve that issue and I have heard similar complaints from employers in Minnesota.

Madam Secretary, is it not critical that E-Verify have these low error rates and lower error rates if it will be mandatory for every business in the country including small businesses?

Secretary NAPOLITANO. Yes, and it will be important to continue to achieve that, Senator, that CIS get the resources needed for implementation of national verification.

Senator FRANKEN. That was that old 2009. I know that DHS has its own figures showing the lower error rate, but I think independent audits are what we need here and we are a matter of days to starting—we are discussing this bill now. We cannot legislate on a basis of a study that no one has seen. Would you pledge to us to release that data of that study?

Secretary NAPOLITANO. I do not know the specific data to which you refer, but let me—

Senator FRANKEN. The report. The report that you—

Secretary NAPOLITANO. If there is a report, we will make it available to you.

Senator FRANKEN. All right. Thank you. Finally, Madam Secretary, I wanted to thank you and your staff for providing me feedback on my bill, the Help Separated Children Act. This is a priority for me and so I hope I can count on you and your continuing help with that.

Secretary NAPOLITANO. Yes, sir. Absolutely.

Senator FRANKEN. Thank you so much. Mr. Chairman.

Chairman LEAHY. Thank you. Before I go to Senator Lee, I understood that Senator Durbin was here and wished to ask some questions. Senator Lee, if you could hold just a moment because Senator Durbin had been here earlier. I think he may have had to step out for a phone—he is not here? Senator Lee, go ahead. I promised you a second round. Please keep it to five minutes because the Secretary does have to go another—

Senator LEE. Thank you, Mr. Chairman. Thank you, Madam Secretary. I wanted to correct something I said earlier. I cited that to page 81 when we were talking about the tax liability issue. That one does talk about the tax liability issue, only in the context of the renewal of the RPI status.

What I should have referred you to was pages 68 to 69 of the bill, what would become Section 245BC2. The standard as it is stated is ambiguous as to when it would trigger the back tax liability. We will move on from that, but I just wanted to acknowledge that I had given you a citation error. The standard is in fact broad enough that it would give you discretion to identify as the Secretary what documentation they would have to prove in order to show that they had fulfilled their obligation to pay any back taxes. But we will move on from there.

I wanted to talk about another provision, this one is on page 63 of the bill that deals with who is eligible and who is not eligible for RPI status.

It waives ineligibility, inadmissibility for RPI status for those who have received orders of deportation but have thereafter either absconded, meaning they did not leave the country but they fled after having been ordered deported or they had returned to the United States following an order of deportation after which they had returned to their home country or to another country.

I am a little bit concerned that this provision in particular, separate and part from what anyone thinks about the rest of the path to legalization and eventual citizenship, that this might reward conduct that seems to be in pretty clear violation of a court order.

Do you agree with this policy? Is this policy something that causes you concerns from an enforcement standpoint as the cabinet official in charge of enforcing our laws?

Secretary NAPOLITANO. Right. I have read the bill. I have not memorized the pages of the bill, but I believe the intent of the provision that you are citing is kind of a family unification provision in a sense that if somebody has been removed from the country and they would otherwise have qualified for RPI and they meet certain other criteria, they would be allowed back in the country or I can allow them back in the country.

I think that is one of the balances struck in the bill, family unification versus economic benefit and enforcement.

Senator LEE. All right. So your recollection of that provision is that it is discretionary and it is not automatic?

Secretary NAPOLITANO. I would have to look at the bill itself, but my understanding is that the intent is to give us the ability to waive someone in who was previously removed under certain limited circumstances.

Senator LEE. All right. I will check that as well and will follow up in writing with any follow up questions.

From the date of the enactment until the end of the RPI period, the bill as I understand it prevents anyone from being detained or deported or even apprehended as long as they appear prima facie eligible for RPI status.

The RPI period as I understand it could last as much as three or three and a half years if the extension is granted which you have the authority to extend. We have heard from some ICE agents in hearings before the Committee that their work has been hampered at times with the similar prohibition under DACA wherein people will claim prima facie eligibility for DACA simply by saying I qualify under DACA, and at that point enforcement stops.

The concern has been expressed that this could amount to a defacto three to three and a half year enforcement holiday wherein nobody as long as they know to invoke these provisions may be detained, deported or even apprehended so long as they utter the magic words.

Do you share that concern?

Secretary NAPOLITANO. First of all, it is not my intent to take all of those extensions assuming I am here or my successor, we have every interest in implementing this as quickly as possible.

Secondly, if someone has an aggravated felony conviction, a felony conviction, if they are a public safety risk or a national security risk, they already fall within our priorities. They would not prima facie qualify for RPI. Again, since we want to focus on those who have those kind of records and get them removed from our country, I think we would handle that very effectively as we enforce and begin to enforce this new regime.

Senator LEE. All right. Thank you, Madam Secretary and thank you, Mr. Chairman.

Chairman LEAHY. Thank you, Senator LEE.

Senator Durbin is one of the ones who has written this bill.

Senator DURBIN. Thank you, Mr. Chairman, Madam Secretary. Your title says it all, Homeland Security.

In light of what happened in Boston, everyone is more sensitive to this issue this week than they were ten days ago. It is certainly understandable.

I have said and I am sure you have said it but I want to confirm here as a closing Senator to ask questions, do you believe that the passage of this immigration reform bill will make America safer and more secure?

Secretary NAPOLITANO. Yes, absolutely.

Senator DURBIN. First, the notion that up to 11 million undocumented people will step forward, be identified by our Government

as to who they are, where they live, where they work, be subject to a criminal background check?

It seems obvious to me that with that knowledge, we will be a safer nation.

Secretary NAPOLITANO. Senator, yes, we will have more identifications, more metrics, more biographics reviewed not just against law enforcement holdings, but NCTC holdings. So it increases security at that end and then as a number of police chiefs have told me, right now for that group that is kind of in the gray area, limbo, what have you, they are reluctant to come forward when they have been the victim of a crime, the witness to a crime and so forth, allowing them to get RPI status and then begin that pathway will help alleviate that law enforcement problem as well.

Senator DURBIN. I will not dwell on the border aspects of the bill. It is clear that we have made historic investments in the security of our border between the United States and Mexico and this bill will go further. I would like to address a couple other areas that are topical.

One relates to those coming to the United States seeking asylum. I want to make it clear for the record that there is nothing in this bill that weakens the authority nor the responsibility of your department and the agencies of our Federal Government to establish through rigorous, biometric and biographic checks, through law enforcement and intelligence checks including the FBI, Department of Defense and other agencies whether those seeking asylum would pose any threat to the United States.

Secretary NAPOLITANO. That is right. As I shared with Chairman Leahy at the beginning of the hearing, as you go through that asylum application process, there are a number of times where individuals are re-checked, re-vetted against law enforcement and national security databases, re-interviewed, and then information is also gathered to help ascertain the credibility of the claim of persecution.

Senator DURBIN. I know that you are aware of my interest in the Dream Act and I also want to applaud you and the President again for DACA and ask you to respond to the criticism which was lodged yesterday by one of the witnesses from Kansas about whether or not those who have gone through the DACA check should be closer to provisional status than those who have not.

Secretary NAPOLITANO. I thought that was a really good part of the draft bill which is to go ahead and put these DREAMers on an accelerated schedule. We have already checked them a variety of ways.

Actually, Senator, the DACA process itself really gives us a good pilot on how we would do the much larger RPI process.

Senator DURBIN. One of the other aspects, I know E-Verify has been discussed here which is an important linkage between employment, identification and security, but I want to go to the other, and that is one that has been worrisome and challenging for more than ten years, and that relates to visa holders who come to the United States, being told you can stay for a certain purpose or a certain period of time and the fact that our system at least up to today has been unable to track their departures, so we closed the loop. They arrived, stayed and left as promised.

Part of this immigration reform moves us to a new level, a new stage where to increase security and safety in the United States, we will develop the technology and the means to establish that.

Can you tell me in light of what we have been through in trying to reach that goal your level of confidence that we can reach it in the near future?

Secretary NAPOLITANO. Well, the electronic exit system for air and sea in the bill is very consistent with the plan we have already submitted to the Congress and what we are implementing now. It is an achievable goal as referenced or stated in the bill as drafted.

Senator DURBIN. I will just close by saying I have stated publicly and I hope that you will agree, the worst thing that we can do at this moment in America's history is nothing. To step back and say we will just accept this broken immigration system, the weaknesses in our security and safety that are associated with it and resign ourselves to that as our future.

I think that is the worst outcome. I invite you to respond.

Secretary NAPOLITANO. Senator, I could not agree with you more. As I said at the beginning of the hearing, I think the draft bipartisan bill really embraces the principles, the President announced it is a much better system than the one we have now.

It deals with security but also economic growth and vitality, so it is a bill that I am very hopeful can move forward.

Senator DURBIN. Thank you very much.

Chairman LEAHY. Just so everybody will know, Senator Blumenthal and Senator Whitehouse, Senator Grassley has asked for a second round. Senator Lee has already had his second round and nobody else has asked for a second round, so we will go Senators Blumenthal, Whitehouse, Grassley and then wrap up because I know you have to get to another matter.

Senator Blumenthal.

Senator BLUMENTHAL. Thank you, Mr. Chairman. Thank you for being here today and for your really excellent and very helpful testimony.

I would like to ask a question that perhaps you may have answered in a different way during the course of your testimony. If you had one or two or three points where you think this bill should be changed as you have read it so as to be improved, and it is a bipartisan bill, it advances the debate I think immeasurably and I am a supporter and I believe very strongly with Senator Durbin that the worst thing to do now would be to do nothing.

Every measure can use some constructive scrutiny and I wonder if you would have any suggestions about how this bill might be improved.

Secretary NAPOLITANO. One we have discussed and that is rather than create a separate fence fund per se, is to have one security fund out of which fencing and other things can be paid for so that the Secretary and the operators who actually have to manage that border have more flexibility with those monies. I would recommend that.

The second area, and we will work with Committee staff on this, Senator, is to make sure the language about funding flows in which accounts and so forth is accurate and clear because we want to

make sure it is consistent with appropriations and the Budget Control Act. So we will work with your staffs on that part.

Senator BLUMENTHAL. In terms of the detention or the judicial process or semi-judicial process in some instances by which these cases are prosecuted so to speak, can you suggest changes in the procedure that would make it either fairer or more expeditious?

Secretary NAPOLITANO. No. I think one change in the bill actually reflects a policy change we are installing right now which is counsel for those who are deemed mentally incompetent. But I think overall the due process protections in the bill are pretty robust.

Senator BLUMENTHAL. In terms of the impacts of the most recent incident in Boston, I know that you have addressed those in the course of your testimony already. But I wonder if there is anything we can do to raise these issues so that they do not become embroiled in the short term misperceptions that may result.

Secretary NAPOLITANO. Senator, what I would hope is that—there is a lot of misinformation out there as to the two brothers and of course this is an ongoing criminal investigation, so all threads are being followed.

There is going to be a classified briefing on Thursday for the Senate. What I would recommend we do is let us have that briefing and then see what, if any, questions arise at that point that may have any relevance at all to immigration legislation.

Senator BLUMENTHAL. Thank you. Thank you, Mr. Chairman. I guess Senator Whitehouse, you are presiding.

Senator WHITEHOUSE. I call on myself. Welcome, Madam Secretary.

Secretary NAPOLITANO. Thank you, Senator.

Senator WHITEHOUSE. It is good to have you here, and let me join many of my colleagues in expressing my appreciation through you to the American law enforcement community for the stellar way that they responded to the incidents in Boston.

We were attorneys general and U.S. attorneys together and I know you have a soft space in your heart for law enforcement folks and so I am sure you saw with the same pride that I did the way people pulled together, the lack of turfiness and the very impressive deployment of a wide range of local, State and Federal capabilities very rapidly, very comprehensively and very smoothly.

I know as one of the law enforcement leaders, you were an important participant in that and so to you and to the law enforcement community, let me say well done.

Secretary NAPOLITANO. Thank you, Senator.

Senator WHITEHOUSE. We have in the context of the immigration debate heard considerable complaint about the lack of border enforcement, the problems of continued illegal immigration across particularly the southern border and so forth.

I think that is a refrain that departs a little bit from the facts and I wanted to give you the opportunity to recap some of the accomplishments of the Obama administration in border security. So if you could briefly give us the highlights reel on some of the statistics and some of the metrics that you look at that show improved and increased border enforcement under this administration's

watch, I would like to have that be part of the record of this proceeding.

Secretary NAPOLITANO. Just very briefly, I have worked at border for a long time. The border now is very different than the border then. Not to say that we are ever done, but this has to be sustained and that is an important part of this bill, it sustains our efforts there. We have record manpower now between the ports of entry, we have technology, we have air coverage. We have completed all but one mile of fence, the last mile is in litigation. The end result is that apprehensions border-wide, I talked with Senator Cruz about south Texas, we have a problem there right now which we are fixing, but border-wide are at 40 year lows.

Our seizures of drugs and contraband, because we are able to focus there more, are up. So with the great help of the supplemental appropriation several years ago, we have been able to do quite a bit at that southwest border.

Senator WHITEHOUSE. So the short answer if I could summarize is that the deployment of resources to protect that border has significantly increased?

Secretary NAPOLITANO. To record levels, yes.

Senator WHITEHOUSE. The enforcement results in terms of additional seizures and prosecutions are up?

Secretary NAPOLITANO. Are all in the positive direction, yes.

Senator WHITEHOUSE. And the amount of illegal immigration as a result has been reduced?

Secretary NAPOLITANO. That is correct. There are probably a number of other reasons; illegal migration has a number of causes, but law enforcement is certainly one reason.

Another major reason however is the driver to try to get a job, which is why this bill really helps us at the border because it deals with that driver.

Another major driver is how difficult and long a period it takes to get a visa. That is why this bill helps because it deals with that problem. So it is a system that needs to work together.

Senator WHITEHOUSE. Good. Thank you very much, Mr. Chairman, for holding this hearing. Thank you, Secretary Napolitano for being here and I do think it is important that the record of the hearing reflect that this administration has actually substantially brought up this country's game in terms of border enforcement and suggestions to the contrary, again, they have the appeal of a familiar refrain but they are not factual.

Chairman LEAHY. I was just curious, I have got to ask the Senator from Rhode Island. Did you and the Secretary serve at the same time together either as U.S. attorneys or as attorneys general?

Secretary NAPOLITANO. Yes, both. I think we may have actually gone to the same law school.

Senator WHITEHOUSE. We did that as well.

Chairman LEAHY. As the outsider on this Committee, Senator Grassley.

Senator GRASSLEY. Before I ask you the first question, I want to make a statement here. It involves the discussion you had with Senator Graham. You said that Tamerlan's name did not ping against your database, but the FBI told Senator Graham that it did

not and I am not sure if it was just a case of your department not telling the FBI, but that is something that in the days to come, I want to get to the bottom of.

Let me go to the first question. In regard to high risk sectors, the bills border security goal only applies to high risk sectors. You define high risk based on the number of apprehensions in a particular sector, but we know from a 2011 GAO report that your department has no operational control of more than half of the border, meaning apprehensions will remain low in those sectors because your department does not have control.

Do you think it is acceptable for the border to only be secured in certain areas?

Secretary NAPOLITANO. Senator, that is why we do not use the term operational control. Operational control is a phrase that should properly be associated with the ability to deploy resources to your highest risk areas.

There are parts of that border we do not need all the same resources that we need in other parts, as you well know. What we want is the ability to have manpower and technology and air cover and to be able to focus those and move those around to the areas where the risk is the highest. That is not operational control per se, but it is looking at a whole range of statistics and measures.

Senator GRASSLEY. In taking off on the term high risk, is it not really high risk for the bill to ignore large sections of the border?

Secretary NAPOLITANO. Well, Senator, we divide the border into nine sectors, and there are some sectors that have a lot of miles in them but are very sparsely populated and rarely crossed. They are not near any population centers, they are not near any roads, they are just very difficult. We do not leave them bare, we have resources there. But where we want to surge resources is in those areas that are used as the trafficking routes.

Senator GRASSLEY. The bill only mentions need to secure the southern border, no mention of the northern border. In fact, only the southern border is included in the trigger and has to be 90 percent secured.

In light of what happened I think it was yesterday, this foiled terror plot in Canada, can the northern border be ignored? Or does it need to be part of the discussion?

Secretary NAPOLITANO. Well, I think it is part of the discussion but in a different way. It is a very different type of border. Both with respect, Senator, to your first point on the misspelling of Tamerlan's name and what that meant.

With respect to Esseghaier which is the case you are referring to now, I think it would be better if we could discuss those with you in a classified setting. But let me just share with you that I believe the draft bill adequately accounts for security on the northern border.

Senator GRASSLEY. All right. Thank you. Legalization program, about how many people today if you know or somewhere within the ballpark are in removal proceedings?

Secretary NAPOLITANO. I would have to get that number for you, Senator.

Senator GRASSLEY. Well then I can ask you a question about the bill. Whatever the number is, should these people who are in removal proceedings be allowed to apply for and receive legalization?

Secretary NAPOLITANO. In my judgment, if they would meet the requirements for being an RPI, I believe the intent of the bill is they would be allowed to register as such, yes.

Senator GRASSLEY. And you agree with that?

Secretary NAPOLITANO. We support the bill and we support that intent, yes.

Senator GRASSLEY. All right. You may not be able to answer this question either. How many people today have ignored the Government's order to leave the United States?

Secretary NAPOLITANO. Why, I will get you the number for whom we have fugitive warrants.

Senator GRASSLEY. All right, then about the bill on that same point, should these absconders be allowed to benefit from the legalization program even though the Government has expanded the resources to remove them?

Secretary NAPOLITANO. I think the intent of the bill is for certain narrow categories, for family unification purposes that they would be allowed to come back and register for RPI.

I think given how that provision is drafted and how it would work in practice in terms of family reunification, that is a very good part of the bill.

Senator GRASSLEY. Could I ask one more question?

Chairman LEAHY. Of course.

Senator GRASSLEY. This will be my last. I do not know how certain you are about what the fees will bring in on that and I know CBO has not scored it and I hope you have a handle on costs to some extent.

Some analysts tell us that the agency will be able to be prepared to cover all costs through fees and that the administration will not come to Congress to seek taxpayers' money to pick up the tab for the program. Does that sound reasonable to you?

Secretary NAPOLITANO. I think, Senator, as I mentioned earlier, we need to work with the Committee on how they have structured, to which account the fees and fines collected go. But the intent of the bill is that this be a self-supporting piece of legislation.

We know from DACA the Deferred Action Program, gives us a good pilot in terms of estimating what the costs are going to be.

Senator GRASSLEY. Thank you, Mr. Chairman. Thank you, Madam Secretary.

Secretary NAPOLITANO. Thank you.

Chairman LEAHY. Thank you. I was going to recess, but Senator Cruz says he has a couple more questions and rather than recess and come back late this afternoon, I will yield to him now and then we will stop.

Senator CRUZ. Thank you, Mr. Chairman, I appreciate the courtesy.

Madam Secretary, I wanted to go back and revisit the topic we discussed earlier of border security, which is proponents of this legislation argue that it provides for real metrics for border security and triggers that are meaningful.

I will confess the testimony that was provided this morning is not encouraging in that regard. We talked about operational control, a measure DHS has used for some time. In 2010 the last time DHS used that measure of operational control, the conclusion was that only 873 of the roughly 2,000 miles of the southern border were under operational control.

That metric was not an encouraging metric in terms of assessing what kind of job we are doing securing the border. It strikes me as not coincidental that in the light of that less than encouraging statistic, the Department simply decided to stop relying upon that statistic and instead, if I understood what you explained this morning correctly, the Department now relies on a holistic group of measures which to me seem reminiscent of Justice Lewis Powell's test in *Bakke* for affirmative action that measured everything and has a great deal of subjectivity in it.

If there are no objective metrics, if it is simply the subjective assessment of a host of factors, how can we have any confidence that the border will be secure and that any trigger will be meaningful?

Secretary NAPOLITANO. I think you have to step back, Senator, and look at where the border was even six or seven years ago, where it is today. There are a whole host of statistics that help in that regard. They are not subjective in that sense.

They are numbers that give you an overall picture of what is happening at the border. The problem with the operational control metric is the overuse of it or misuse of it because it was easily misunderstood. I am not being critical about it being overused, I am just being descriptive.

What it really refers to is your ability to have situational awareness and response in highly trafficked areas where you need it, where the risk is greatest.

What this bill does is pretty much say look, we are going to continue to build on the security you already have. There is additional money in there for that. We hope that we can get flexibility with respect to how that money is spent that goes to the set aside for fence.

Senator CRUZ. But Madam Secretary—

Secretary NAPOLITANO. By the way, by the way if we are going to use effectiveness rate, which is a GAO number based on numbers we give the GAO and if that does not reach a certain number in the highly trafficked areas, then we will have a commission that will recommend to me what additional steps need to be made.

Senator CRUZ. Madam Secretary though, it seems to me that if border security is to be measured by an amorphous, multi-factored subjective test, that this Committee knows to a metaphysical certainty that DHS will conclude border security is satisfied.

If a trigger is certain to occur, then I would suggest it is not a meaningful trigger that is measuring anything.

Let me ask you this. Can you describe a circumstance in which the evidence would be such that DHS would say the trigger is not satisfied, that border security is not there?

You have already told us apprehensions are at the lowest level in 40 years and yet the border is secure. What would the facts have to be for DHS to conclude the triggers are not satisfied?

Secretary NAPOLITANO. I think, Senator, and we will just kind of agree to disagree on the predicate for your question, but we would be continuing to look at all the measures I indicated to you. We would be deploying the technology plans that we have submitted to the Congress, and those technology plans are sector specific and they are important.

They are important because they will give us even greater visibility into what may be trying to come across the border than we even have now, so that when you look at effectiveness rate, we can have—

Senator CRUZ. Madam Secretary, I am sorry. My time is expiring and I would like if possible for you to try to answer the question I asked which is what the evidence would have to show for DHS to conclude that triggers were not satisfied.

Secretary NAPOLITANO. Well, if the conditions in the Tucson sector return to where they were in 2005 and 2006, the triggers certainly would not be satisfied.

Chairman LEAHY. Thank you.

Senator CRUZ. Thank you, Madam Secretary.

Chairman LEAHY. Thank you. Madam Secretary, one, I appreciate you being here. You and I talk often on issues here. I appreciate yours, I appreciate the President's commitment on immigration. As you know, he and I spent more than one discussion about this. I rather ruefully thanked him for having so many issues of importance to him before this Committee, but he was kind enough to say he did not want me to be bored because then Marcel would have to put up with me.

I cannot help but think as I listened to the debate around here that for some, there will always be a reason why we cannot go forward on immigration reform. It could be the terrible events in Boston, it could be any one of a thing.

The fact is that is denying reality to say we cannot go forward. Now is a good time. We have had eight senators who worked for months on this, joined by others and they go across the political spectrum on both parties.

I have stated often I am a grandson of immigrants, my wife is a daughter of immigrants. I think of how this country is improved and enlarged and made better by immigrants. If the most powerful, wealthiest nation on earth cannot face up to reality and find a law that faces reality, then shame on us. Shame on us.

This Senator believes we can. I know you believe we can, I know the President believes we can, and a growing number of Senators in both parties believe we can.

I have often said that the Senators should be the conscience of the Nation. If we want to be the conscience, now is the time to show our conscience, and I thank you for being here.

Secretary NAPOLITANO. Thank you, Senator.

Chairman LEAHY. We stand in recess.

[Whereupon, at 11:54 a.m., the Committee was adjourned.]

[Additional material submitted for the record for Day 1 and for Day 2 follows.]



# APPENDIX

## ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

Witness List

Hearing before the  
Senate Committee on the Judiciary

On

“The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744”

Monday, April 22, 2013  
Hart Senate Office Building, Room 216  
10:00 a.m.

### Panel I

Arturo Rodriguez  
President  
United Farm Workers  
Keene, CA

Charles Conner  
President & CEO  
National Council of Farmer Cooperatives  
Washington, DC

Alyson Eastman  
President  
Book-Ends Associates  
Orwell, VT

### Panel II

Megan Smith  
Commissioner  
Vermont Dept. of Tourism & Marketing  
Montpelier, VT

The Honorable Jim Kolbe  
Former United States Representative (R-AZ-5)  
Washington, DC

Tamar Jacoby  
President & CEO  
Immigration Works USA  
Washington, DC

Rick Judson  
Chairman of the Board  
National Association of Home Builders  
Washington, DC

Brad Smith  
General Counsel and Executive Vice President  
Legal and Corporate Affairs  
Microsoft  
Seattle, WA

Professor Ron Hira  
Associate Professor of Public Policy  
Rochester Institute of Technology  
Rochester, NY

Neeraj Gupta  
Chief Executive Officer  
Systems In Motion  
Newark, CA

Fred Benjamin  
Chief Operating Officer  
Medicalodges, Inc.  
Coffeyville, KS

Panel III

Gaby Pacheco  
Immigrant Rights Leader  
Director, Bridge Project  
Miami, FL

Janet Murguía  
President and CEO  
National Council of La Raza  
Washington, DC

Dr. David Fleming  
Senior Pastor  
Champion Forest Baptist Church  
Houston, TX

Mark Krikorian  
Executive Director  
Center for Immigration Studies  
Washington, DC

Laura L. Lichter, Esq.  
President  
American Immigration Lawyers Association  
Denver, CO

The Honorable Kris Kobach  
Secretary of State  
State of Kansas  
Topeka, KS

Panel IV

Mark Shurtleff  
Partner, Troutman Sanders LLP  
Former Utah Attorney General  
Washington, DC

The Honorable Bill Vidal  
Former Mayor of Denver  
President and CEO  
Hispanic Chamber of Commerce of Metro Denver  
Denver, CO

Janice L. Kephart  
Former Counsel, September 11 Commission  
Principal, 911 Security Solutions  
Washington, DC

Chris Crane  
President  
National Immigration and Customs Enforcement Council 118  
Of the American Federation of Government Employees  
Washington, DC

Dr. Steven Camarota  
Director of Research  
Center for Immigration Studies  
Washington, DC

Grover Norquist  
President  
Americans for Tax Reform  
Washington, DC

Statement of Arturo S. Rodriguez  
President of United Farm Workers of America  
Senate Committee on the Judiciary  
“The Border Security, Economic Opportunity, and Immigration  
Modernization Act, S.744.”  
April 22, 2013

Chairman Leahy, Ranking Member Grassley, and members of the subcommittee, thank you for the opportunity to testify today. My name is Arturo Rodriguez, and I have the honor of being President of the United Farm Workers of America. Tomorrow will mark the 20<sup>th</sup> year since our founder Cesar Chavez passed away – so we think it is very appropriate that we are here on this historic day to talk about the future of American agriculture. I want to give a special thank you to Senators Feinstein with whom we have worked for years to solve this problem and Senator Hatch, with whom we have worked very closely over the last several months to come to a proposal supported by both agricultural employer associations and agricultural workers that we believe will address a crisis in American agriculture and we hope will provide some stability in the years to come.

Last week, both agricultural employers and agricultural workers joined together in supporting a policy proposal put together by Senators Feinstein, Hatch, Bennet, and Rubio that will strengthen our nation’s agricultural industry.

The proposal is part of the broader more comprehensive immigration policy submitted last week by Senators Schumer, McCain, Durbin, Graham, Menendez, Flake, Bennet, and Rubio. It is great to see so many of you on this committee today.

Both farmers and farm workers have worked together over the last 5 months with the support of these Senators from both political parties and representing very different regions of the country in the interests of

improving our nation's agricultural industry and securing our nation's food supply.

We have worked so hard to come together and we ask you as members of this committee to come together to support this proposal because America's farms and ranches produce an incredible bounty that is the envy of the world. The farmers and farm workers that make up our nation's agricultural industry are truly heroic in their willingness to work hard and take on risk as they plant and harvest the food all of us eat every day.

But our broken immigration system threatens our nation's food supply. The UFW and our nation's agricultural employers have often been at odds on many policy issues – but we have now come together to unify our nation's agriculture industry. We are in a unique moment in our nation's history – and together with a lot of work, you on this committee can make the changes we need to secure our nation's food supply.

Let me speak a little about what's at stake for the women and men who work in the fields and do some of what even some Congressional opponents of our past proposals have acknowledged are the "hardest, toughest, dirtiest jobs." Every day, across America, almost two million women, men, and, yes, even children, labor on our nation's farms and ranches, producing our fruits and vegetables and caring for our livestock. At least 600,000 of these Americans are US Citizens or permanent legal residents. Our migrant and seasonal farmworkers are rarely recognized for bringing this rich bounty to supermarkets and our dinner tables. And most Americans cannot comprehend the difficult struggles faced every day by farm worker families. Increasingly, however, America's consumers are asking government and the food industry for assurances that their food is safe, healthy and produced under fair conditions.

The life of a farm worker in 2013 is not an easy one. Most farm workers earn very low wages. Housing in farmworker communities is often poor and overcrowded. Federal and state laws exclude farmworkers from many labor

protections other workers enjoy, such as the right to join a union without being fired for it, overtime pay, many of the OSHA safety standards, and even workers' compensation in some states. Farm worker exclusion from these basic Federal Laws in the 1930s is one of the sadder chapters of our history. We learned painful lessons from the abusive guest worker program of the 1940's to 1960's, known as the *bracero* program, and we should not repeat those abuses. Even when protections exist, there is often inadequate labor law enforcement. In California, where state laws thankfully provide most of the protections that Federal law does not, we have still seen dozens of farm workers die over the last several years for the simple lack of water and shade.

Such poor conditions, discriminatory laws and weak enforcement have resulted in substantial employee turnover in agriculture. An unstable labor market harms farmers, farm workers and consumers. Numerous federal commissions have made recommendations to achieve stability in the farm labor market. We believe, as have both Republican and Democrats who have prepared those commission reports in the past, that improving wages and working conditions and increasing farmworkers' legal protections would help attract and retain current workers in the farm labor force and end chronic employee turnover. These commissions and we recognize that immigration policy plays an important role in determining labor stability. We now turn to our goals and recommendations.

First and foremost, we seek an end to the status quo of poverty and abuse; we should not continue to treat farm workers as second-class workers. We also know that any new immigration policy must consider the future of the work force upon which American agriculture and American consumers depend.

With these goals in mind, we are very excited about what we have accomplished together with the nation's grower associations and I want to share some highlights of the agricultural labor sections in the immigration proposal, S. 744, the Border Security, Economic Opportunity, and Immigration Modernization Act of 2013.

While there are important details still to be worked out and debated, we are supportive of the comprehensive bill submitted by Senators Schumer, McCain, Durbin, Graham, Menendez, and Flake.

The comprehensive bill includes language drafted by Senators Feinstein, Rubio, Bennet, and Hatch regarding agricultural employers and workers. Should it become law, the proposal would give professional farm workers presently in the United States, who have been contributing to our country by helping feed our nation, temporary legal status and the opportunity to earn permanent legal residence in the future by continuing to work in agriculture.

Farm workers are the backbone of our agriculture industry here in the United States and an expeditious process toward adjustment of their status provides a strong incentive for those farm workers who are currently working on our farms and ranches to continue working in agriculture. Doing so also honors the people who feed our nation every day, helps farmers prosper, ensures the security of our food supply, and strengthens rural America's communities.

The bill also creates a new agricultural worker visa program for the future. The new visa program creates a legal avenue for farm workers to enter the country and a way for agricultural employers to recruit farm workers in a legal and just manner. The protections in the comprehensive legislation against the current corrupt recruitment practices we witness around the world are critical for all workers, but in particular for agricultural workers. S. 744 includes a registry of foreign recruiters and requires recruiters to post of a bond. Right now, in Mexico, where more than 90% of H-2A workers are recruited, no one knows who the recruiters are. This lack of transparency breeds fraud, coercion and worse. Requiring recruiters to register in the US and to post a bond will shed light on an industry that currently has no regulatory oversight either in the US or Mexico. The legislation also appropriately puts the ultimate responsibility with the US employers. They

must ensure that there is integrity in their labor supply chain. This concept is consistent with current codes of conducts of major retailers like Costco, who requires that companies who supply them with products to ensure compliance with their standards all the way down their supply chains. Anything less than the recruitment standards in this legislation will promote abuse and trafficking.

Finally, there are many substantial changes in this compromise that greatly benefit agricultural employers. Agricultural employers, under this proposal, will not be subject to some of the paperwork and labor regulations in the current H-2A guestworker program. On the other hand, the employers will be subject to some new and stronger worker protections and enforcement mechanisms. The proposal's wage requirements differ substantially from the H-2A program, including by recognizing the variation in wage rates for different jobs. We believe the new program's wage rates, while beneficial to employers, will protect wages for those farm workers working in the United States. We are hopeful that the new wage rates will enhance stability for both agricultural employers and agricultural workers into the future.

As a result of this compromise, farm workers are one step closer to much-earned recognition for their contributions to the United States. We believe this compromise could be a vehicle for improving the working conditions and job opportunities for farm workers. We also believe that this proposal will benefit agricultural employers, consumers and the nation.

We hope it earns the support of this committee.



**STATEMENT OF CHARLES CONNER**

**PRESIDENT AND CHIEF EXECUTIVE OFFICER  
NATIONAL COUNCIL OF FARMER COOPERATIVES**

**FOUNDING MEMBER OF THE AGRICULTURE WORKFORCE COALITION**

**TESTIMONY BEFORE THE COMMITTEE ON THE JUDICIARY  
UNITED STATES SENATE**

**APRIL 22, 2013**

Chairman Leahy, Ranking Member Grassley and members of the Committee, thank you for the invitation to testify on comprehensive immigration reform legislation, in particular, the agriculture worker program included in the Border Security, Economic Opportunity, and Immigration Modernization Act (S. 744).

I am Chuck Conner, President and Chief Executive Officer of the National Council of Farmer Cooperatives (NCFC). NCFC represents the interests of America's farmer cooperatives. There are nearly 3,000 farmer cooperatives across the United States whose members include a majority of our nation's more than 2 million farmers.

I am also here on behalf of the Agriculture Workforce Coalition (AWC). The AWC brings together nearly 70 organizations representing the diverse needs of agricultural employers across the country. A list of AWC members and supporters follows this testimony. The AWC came together out of the realization that, while America's farms and ranches are among the most productive in the world, they have struggled in recent years to find enough workers to pick crops or care for animals. The great success story that is American agriculture is threatened by this situation, and AWC has been working to develop an equitable solution to the problem.

As many of you know, the formation of the AWC represents a significant change from the past. For many years, agriculture and the farming sector have spoken with many voices on immigration; today we speak with one voice. And we are loudly saying that without people to work on America's farms and ranches, pick the crops, or milk the cows, all other issues in agriculture become irrelevant.

**Team Effort**

On behalf of the NCFC and the AWC, we commend the leadership, tenacity and commitment of Senator Dianne Feinstein throughout our negotiations as we worked toward a balanced approach for an agriculture worker program. Her efforts in collaboration with Senators Marco Rubio, Orrin Hatch, and Michael Bennet got us to where we are today. Additionally, I thank the

bipartisan group of champions in the Senate who have heard our concerns, challenged us to compromise, and introduced a workable solution to a problem we have been struggling with for years.

The agreement – reflected in S. 744 introduced by the bipartisan “Gang of 8” – includes both the short- and long-term workforce requirements of all of agriculture; both those producers with seasonal labor needs and those with year-round needs.

And a key to this landmark agreement that was reached recently was the discussions that the AWC had been having with representatives of the United Farm Workers (UFW) union. So it is my great pleasure to be joined on the panel by Arturo Rodriguez, President of the UFW.

**Agriculture Worker Program in S. 744**

U.S. agriculture competes both domestically and internationally, and the inability to find enough employees poses threats to our competitiveness and food security. The question is not whether foreign-born workers will be the ones harvesting many of our crops. The question is whether they will be picking those crops here in the U.S., or in other countries. To remain competitive, we need the stability of the earned legalization in the Blue Card Program and also future access to new workers in the Agriculture Worker Program offered in S. 744.

In spite of producers’ good faith efforts to verify work authorization, the agriculture industry acknowledges the reality that a majority of agriculture’s current workforce is unauthorized. In the short-term, the legislation provides that current unauthorized farm workers would be eligible to obtain legal status through the Blue Card Program. Granting work authorization for current experienced agricultural workers will preserve agriculture’s workforce and maintain stability in the sector. These workers would have a future obligation to work in agriculture. After this obligation is fulfilled, along with having paid all taxes and required fines, and barring conviction of any felony or violent misdemeanor, these employees could obtain permanent legal status.

For long-term stability, a new agriculture worker visa program is established that has two work options:

- ✓ “At-Will” visa employees have the freedom to move from employer to employer without any contractual commitment, replicating the way market forces allocate the labor force now.
- ✓ Contract visa employees commit to work for an employer for a fixed period of time, giving both parties increased stability where it is mutually preferred.

Importantly, we take great comfort in the fact that the new visa program will be administered primarily by the U.S. Department of Agriculture. This is a significant change from the current regime administered by the Department of Labor, who has demonstrated a complete lack of understanding of agriculture and our labor needs.

Achieving agreement on wages was one of the most time consuming aspects of our negotiations. For agriculture, it was important that we could quantify to the average producer the costs of the program. For many in agriculture, wages are the lion's share of their variable production costs. Thus, it was absolutely critical that we get this right. The negotiated wages included in S. 744 provide our farmers and ranchers with the certainty they need to plan for the future.

The bottom line with our efforts was to create a program that farmers and ranchers could easily navigate – whether they are growing almonds in California, peaches in South Carolina or apples in Vermont; or whether they raise beef cattle in Texas or dairy cows in Iowa. We believe the agreement reached, and reflected in S. 744, would provide both producers and their employees with a flexible yet predictable program. We look forward to working with the Committee as necessary on perfecting S. 744 to ensure our landmark agreement with the UFW is fully captured in the legislative text.

#### **H-2A Beyond Repair**

Given the difficulties of finding an adequate domestic workforce for production agriculture, the only option for farmers and ranchers to legally find the workers they need is the H-2A program. Unfortunately, this program has not worked for the vast majority of agricultural employers.

I have been asked by policy makers why we don't just try to reform what we have in place now. In fact, past efforts have attempted to reform the existing H-2A program, but the situation agriculture faces today is simply beyond repair.

The H-2A program's basic framework is overly restrictive and difficult for an employer to maneuver. Furthermore, the H-2A program is only accessible for producers with seasonal needs, excluding the year-round needs of many producers of commodities such as dairy, livestock, and mushrooms, as well as other crops. In recent years it has become even more unworkable and costly to use. The program has become so burdensome, in fact, that producers use it only when they absolutely have to, thus the H-2A program provides only about two to five percent of agriculture's total workforce.

A national survey of H-2A employers conducted by the National Council of Agricultural Employers illustrates some of the program's significant shortcomings. It showed that administrative delays caused an economic loss of nearly \$320 million for farms in 2010 alone. Seventy-two percent of growers using the program reported that workers arrived after the "date of need," on average 22 days late. Mother Nature does not wait for workers that might – or might not – show up.

Additionally, the U.S. Department of Labor's Foreign Labor Certification Data Center reports that denials of H-2A applications have increased dramatically in recent years, further complicating the situation and increasing costs. If there is a silver lining, the dysfunction of the H-2A program has led to a growing bipartisan consensus that the program is beyond repair and should be replaced. S. 744 would in fact sunset the H-2A program one year after the new visa program is enacted.

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Our goal with the new, more flexible and market-oriented program contained in S. 744 is that it meets the diverse needs of American agriculture—from the seasonal needs of many fruit and vegetable growers to the year-round needs of dairy producers, nursery owners and others. We also hope that such a visa program would benefit the great majority of farm workers who would now have greater freedom in choosing where and when they work.

#### **Why Action is Needed**

It is widely recognized that one of the industries most affected by our outdated and flawed immigration system is the agriculture industry. The labor situation in agriculture has been a concern for many years, but is moving towards a breaking point. There are roughly 1.8 to 2 million people who perform hired farm work in the U.S. Each of these workers supports two to three other employees in jobs like sales, marketing and transportation. Yet, a combination of government statistics and other evidence suggest that at least 50 percent and likely 70 percent or more is unauthorized to work in the U.S., though the workers typically show employers documents which appear genuine on their face.

Today, large segments of American agriculture face a critical lack of workers, a shortage that makes our farms and ranches less competitive and that threatens the abundant, safe and affordable food supply American consumers enjoy. For example, a 2012 survey by the California Farm Bureau found that 71 percent of the tree fruit growers, and nearly 80 percent of raisin and berry growers, were unable to find an adequate number of employees to prune trees and vines or pick crops. This has been an ongoing problem. In 2008, Texas A&M University reported that 77 percent of vegetable farmers reported scaling back operations. More than 80,000 acres of fresh produce that was once grown in California have been moved to other countries. Without adequate labor, estimates are that thousands of farms could fail and farm income could drop by five to nine billion dollars.

With labor costs and labor instability being a significant factor to our global competitiveness, we are seeing our market share slip to countries with lower costs of production. Already, imports are fast commanding a larger share of U.S. consumption. For example, the value of U.S. fruits and vegetable imports has grown to more than twice the value of exports. U.S. strawberries have moved from a comfortable trade surplus to a trade deficit in just four years. In fact, the Florida strawberry and tomato industries are fighting for their survival in the face of a fast-changing import picture. Likewise, each American apple – over 20 billion—must be picked by hand in over 36 states. And we need a reliable and skilled workforce to do that, otherwise we export our jobs to foreign orchards. Collectively, the apple industry alone needs over 70,000 harvest workers to get the crop off of the trees each year.

The problem exists for all facets of agriculture, beyond just fruits, vegetables, nuts and nursery crops. A separate Texas A&M study in 2012 focused on dairy, and found that farms using an immigrant workforce produce more than 60 percent of the milk in our country. Without these employees, economic output would decline by \$22 billion and 133,000 workers would lose their

jobs. Dairy farmers in this country have faced more months since late 2008 with flat to negative operating margins than they have profitable months.

Dairy is a labor intensive industry – cows must be milked two to three times a day, 365 days a year, including Thanksgiving, Christmas, Easter and the Fourth of July. Other commodities have their harvest over the course of a few weeks once, maybe twice a year. For dairy farmers, their harvest comes multiple times per day, every day.

This labor situation is simply not consistent with those who say that U.S. agriculture should just offer better wages. According to a 2009 Cornell University study, jobs on dairy farms in New York averaged nearly \$10 per hour, and usually included benefits as well. In spite of stable year-round jobs with wages averaging well above minimum wage and often with some benefits, few if any workers born in this country respond to job postings for dairy farm work.

Furthermore, an adequate and skilled workforce is a must to help ensure the well-being, health and productivity of herds. These are not entry-level jobs. Caring for herds of 1,500-pound cows that must be fed several times a day, given health exams routinely, milked multiple times a day, and bred and calved about once a year takes training and experience. And while others in agriculture at least have the H-2A guest worker program, those with dairy or other livestock operations have been left without a legal channel to find workers.

NCFC's membership also includes many of the banks in the Farm Credit System who work with their farmer members to address various risk factors including input and price risk, weather risk, and risk associated with changing interest rates. Increasingly concern with maintaining a stable labor supply is the risk factor with which agriculture producers are most concerned.

Talk to farmers and they will tell you that this is the issue that keeps them awake at night. A recent article in *The New York Times* detailed the challenges farmers there face, partly because they are so close to the Canadian border and as a result experience stronger federal immigration enforcement operations in their area. One farmer reported having to let 12 of his 14 workers go after a labor audit. Two I-9 audits on Idaho dairy farms resulted in upwards of an 80 percent dismissal rate. The list goes on.

The concern over farm labor availability is already influencing farm investment and management decisions. Many successful, progressive operations that have positioned themselves for growth opportunities are holding back over concern with I-9 audits, ICE activities, burdens associated with use of the H-2A program and the possibility of mandatory E-Verify without a workable visa program.

Even more concerning is that the lack of a stable labor supply will cause farms to go out of business, shrink in size, or shift to low-labor, but less profitable commodities. The economic impact of that will be dramatic. For example, a recent study by Farm Credit East, which I am submitting along with my testimony, examines the northeastern U.S. agricultural sector. It estimates that, without an adequate farm labor workforce, over 1,650 farms across the region could go out of business, meaning a loss of \$1.6 billion in lost agricultural production and nearly

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20,000 jobs destroyed. Without workers to count on, our farmers and ranchers simply cannot continue to provide for America.

In closing, I believe we are facing a once in a generation opportunity to reform our nation's immigration policy. We've done a lot of work; we have more work to do. All facets of American agriculture – from big to small, from all regions and all commodities – stand ready to work with this committee as you advance S. 744 through the legislative process.

Thank you again for holding this hearing and recognizing the unique needs of agriculture in this important debate. I look forward to responding to your questions.



**Founding Association Members of AWC:**

American Farm Bureau Federation  
American Nursery & Landscape Association  
Florida Fruit & Vegetable Association  
National Council of Agricultural Employers  
National Council of Farmer Cooperatives  
National Milk Producers Federation  
USA Farmers  
U.S. Apple Association  
United Fresh Produce Association  
Western Growers Association  
Western United Dairymen

**Coalition Partners:**

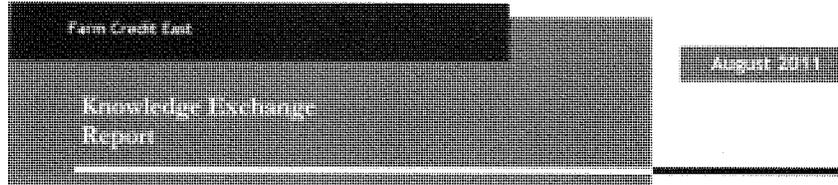
Agriculture Coalition for Immigration Reform

**AWC Supporters:**

Agricultural Council of California  
American AgriWomen  
American Beekeeping Federation  
American Frozen Food Institute  
American Mushroom Institute  
American Sheep Industry Association  
California Association of Winegrape Growers  
California Avocado Commission  
California Citrus Mutual  
California Giant Berry Farms  
California Grape and Tree Fruit League  
California Women for Agriculture  
Certified Greenhouse Farmers  
Colorado Nursery & Greenhouse Association  
CoBank  
Cooperative Network  
Farm Credit East  
Florida Citrus Mutual  
Florida Farm Bureau  
Florida Nursery, Growers & Landscape Association

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Georgia Farm Bureau Federation  
Georgia Fruit and Vegetable Growers Association  
Georgia Green Industry Association  
Hispanic American Growers Association  
Idaho Dairymen's Association  
Illinois Farm Bureau  
Louisiana Farm Bureau Federation  
MBG Marketing/The Blueberry People  
National Christmas Tree Association  
National Farmers Union  
National Grange  
National Onion Association  
National Peach Council  
National Potato Council  
Northeast States Association for Agricultural Stewardship  
Northwest Farm Credit Services  
OFA, An Association of Horticulture Professionals  
Oregon Association of Nurseries  
Produce Marketing Association  
Red Gold, Inc.  
Society of American Florists  
South East Dairy Farmers Association  
Southeast Milk, Inc.  
State Agriculture and Rural Leaders  
Sweet Potato Council of California  
Texas Citrus Mutual  
Texas International Produce Association  
Texas Vegetable Association  
U.S. Custom Harvesters, Inc.  
United Ag  
United Dairymen of Arizona  
Utah Dairy Producers  
United Egg Producers  
Village Farms International, Inc.  
Wine America  
Wine Institute  
Yankee Farm Credit  
Yuma Fresh Vegetable Association



### **Farm Labor and Immigration Enforcement Economic Impact to the Northeast**

Farm businesses throughout the Northeast United States depend on a stable workforce to produce a safe, reliable food supply as well as other horticultural products. Immigrant workers have been and will likely continue to be a significant part of this workforce. Farm Credit East has undertaken the following analysis to better understand the economic impact of a potential farm labor shortage resulting from significantly enhanced immigration enforcement actions, with no new agricultural guest worker provisions. Without foreign labor, many farm businesses in the Northeast and nationwide will face critical labor shortages.

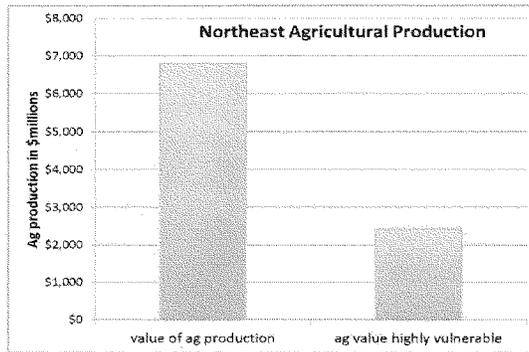
Northeast agriculture includes significant labor-intensive production such as vegetable, fruit, greenhouse, nursery, and dairy. These sectors can be highly vulnerable<sup>1</sup> to shortages of labor. The fact is that labor disruptions can quickly result in severe operational and financial problems for many farms. Most farms simply do not have the financial resources to survive for very long if they cannot produce and market their products. With the increasing consumer demand for quality products, a delay in harvest caused by a labor shortage can have a dramatic negative impact.

Northeast agricultural employers comply with existing federal and state laws in hiring workers. Some of this workforce has evolved into a population who presents identity documents and is then employed on the same federal and state terms as native-born workers. This includes deducting and remitting the appropriate payroll taxes and assessments on behalf of these workers. These foreign-born farmworkers that are an integral part of American agriculture are hard-working individuals filling an unmet need in the labor market. It has become apparent, that even with today's high unemployment levels, those on the unemployment rolls in the Northeast are simply not seeking jobs as farm laborers. Indeed, agricultural employers have had little success attracting and keeping local Americans in farm jobs. Whether it is their location, often away from population centers, working in variable weather conditions, the physical nature of the work, or the fact that many farm jobs are intermittent or seasonal, American-born workers have shown little interest in farm labor.

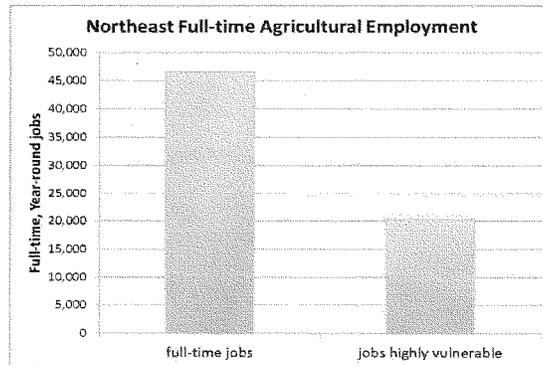
<sup>1</sup> This analysis defines "highly vulnerable" farms as those that could be forced to close or reduce operations by two-thirds or more, after a two year period in which no undocumented farm workers were available and no new guest worker provisions were offered. This analysis covers the states of New York, New Jersey, Connecticut, Massachusetts, New Hampshire and Rhode Island.

In light of these considerations, we present the Farm Credit East analysis:

- Approximately 1,732 Northeast farms are highly vulnerable to going out of business or being forced to severely cut back their operations due to a labor shortage caused by an aggressive, enforcement-only immigration policy.
- These 1,732 highly vulnerable farms are some of the largest in the region; their total sales of farm product are estimated to exceed \$2.4 billion. This is approximately 36% of the value of the region's agricultural output.



- On-farm employment: 20,212 full-time, year-round positions could be eliminated (this is on top of seasonal jobs lost, and not counting farm owners)



- Productive cropland: These farms operate over 1.1 million acres of cropland. If these highly vulnerable farms were to cease or reduce operations, some of this acreage might switch into less intensive agriculture, but thousands of acres would potentially be converted to non-agricultural uses. This would be at cross purposes to the region's long standing efforts to preserve farmland.

*Farm Credit East Knowledge Exchange Report*

- Farm-related economic impact: The impact goes beyond the farm gate, and could undermine, in part, the region's agri-business sector that our local and state economics depend on. In addition to the loss of farm employment, it is estimated that **55,311 off-farm jobs** in agriculturally related businesses in the Northeast could be impacted. Many of these positions are full-time jobs held by local citizens.

**Profile of Six Northeastern States**

Total Farms All Sizes	64,671
Farms with sales > \$10,000	44,545
Farms with Sales > \$50,000	13,375
Farms with Hired Workers	15,948
Value of Agricultural Production	\$ 6,793,432,000
Total Acreage in Cropland	5,308,138
Number of Farm Workers	116,829

**Profile of Northeast Agricultural Industry Considered Vulnerable**

Farm Type	Number of Farms	Value of Farm Sales (\$)	Cropland (Acres)	Total Workers	Seasonal Workers	Year Round Workers
Total	64,671	6,793,432,000	5,308,138	116,829	70,351	46,478
Dairy	6,058	2,754,114,000	1,877,316	16,114	5,710	10,404
Fruit	6,640	643,826,000	210,111	27,940	22,116	5,823
Nursery/GH	6,603	1,386,739,000	161,535	27,602	13,593	14,009
Vegetable	4,268	653,841,000	358,873	17,340	11,154	6,186
Other Crops <sup>2</sup>	70	58,400,000	6,115	2,624	1,972	652

**Farm Labor Shortages  
Farms Considered Highly Vulnerable\***

**By Farm Type**

Farm Type	Number of Farms	Value of Farm Sales (\$)	Cropland (Acres)	Total Workers	Seasonal Workers	Year Round Workers
Total	1,732	2,420,504,000	1,109,448	50,103	29,894	20,212
Dairy	528	1,076,496,000	732,664	8,679	3,071	5,609
Fruit	407	309,975,000	101,624	15,345	11,987	3,017
Nursery/GH	429	627,008,000	68,043	13,970	6,523	6,585
Vegetable	332	281,607,000	201,685	9,909	7,113	4,455
Other Crops	36	51,577,000	5,401	2,201	1,654	547

<sup>2</sup> Other crops were measured only for CT, and include tobacco.

## Farm Credit East Knowledge Exchange Report

## By State

State	Number of Farms	Value of Farm Sales (\$)	Cropland (Acres)	Total Workers	Seasonal Workers	Year Round Workers
Connecticut	164	273,090,000	45,487	6,558	3,973	2,585
Massachusetts	100	109,914,000	18,431	2,954	1,756	1,198
New Hampshire	40	55,136,000	18,425	1,322	843	479
New Jersey	350	461,235,000	103,852	13,481	8,319	5,162
New York	1,049	1,508,996,000	919,241	25,247	14,737	10,510
Rhode Island	31	12,133,000	4,012	544	266	278

## Percentage Considered Highly Vulnerable

## By Farm Type

Farm Type	Value of Sales \$50,000 or more	Value of Farm Sales (\$)	Cropland (Acres)	Total Workers	Seasonal Workers	Year Round Workers
Total	13%	36%	21%	43%	42%	43%
Dairy	10%	39%	39%	54%	54%	54%
Fruit	27%	48%	48%	54%	54%	52%
Nursery/GH	23%	45%	42%	47%	48%	47%
Vegetable	23%	43%	56%	67%	64%	72%
Other Crops	68%	88%	88%	84%	84%	84%

## By State

State	Value of Sales \$50,000 or more	Value of Farm Sales (\$)	Cropland (Acres)	Total Workers	Seasonal Workers	Year Round Workers
Connecticut	22%	49%	71%	50%	53%	46%
Massachusetts	8%	22%	10%	23%	26%	28%
New Hampshire	9%	27%	14%	26%	26%	28%
New Jersey	22%	46%	21%	55%	57%	53%
New York	11%	34%	21%	42%	41%	44%
Rhode Island	17%	18%	16%	33%	31%	35%

**In summary**, an aggressive, enforcement-only approach to undocumented immigrants could result in a severe labor shortage for Northeast farms, which would be not only disastrous to Northeast agriculture, but would have ripple effects throughout the economy as well.

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**Notes about methodology:**

Raw data for this analysis was obtained from the USDA 2007 Census of Agriculture. FCE broke down the data by number of workers (those with a greater number were considered more vulnerable), farm types (some types are more labor-intensive than others), as well as the value and land area of their production. Each category was given a subjective assessment of vulnerability determined by a survey of Farm Credit staff based upon their knowledge of Northeast agriculture. Responses were averaged and multiplied against total number of farms. Upstream and downstream impact was estimated by taking data from the U.S. Bureau of Census, County Business Pattern, and multiplying it by a percentage reduction in agricultural output.

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*Farm Credit East, ACA serves approximately 12,000 customers in the states of New Jersey, Connecticut, Massachusetts, Rhode Island and major parts of New York and New Hampshire. Part of the nationwide Farm Credit System, Farm Credit East is a customer-owned lender dedicated to serving farmers, commercial fishermen and the forest products sector. Farm Credit East is committed to providing economic information constructive to the advancement of Northeast agriculture.*

# Lake Home

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## Business Services, Inc.

Bookkeeping, Payroll & H-2A Business Services

Written Testimony by Alyson Eastman  
President and Owner of Lake Home Business Services, Inc.  
Dba Book-Ends Associates

U.S. Senate Committee of the Judiciary

**"Hearing on Comprehensive Immigration Reform Legislation"**  
April 22<sup>nd</sup>, 2013



Picture of Lake Home Farm, Inc. located in Orwell, Vermont

Good Morning! My name is Alyson Eastman, and I am the President and Owner of Lake Home Business Services, Inc., doing business as Book-Ends Associates. I purchased Book-Ends Associates from the previous owner in 2010 after collaboratively working with her for five years. Book-Ends Associates has been assisting H-2A employers for since 1993. At Book-Ends Associates, we offer a variety of Business Services, including Payroll, Bookkeeping and H-2A processing. I'd like to thank Chairman Leahy, and all the Members of the Committee for providing me the opportunity to appear before you today on behalf of the agricultural employers that I represent in Vermont, New Hampshire and New York as an H-2A Agent. As a member of the National Council of Agricultural Employers and through my work with US Apple I've kept abreast of the Ag issues on a National level through weekly H-2A conference calls and annual meetings.

I am a fourth generation farmer, born and raised on Lake Home Farm, Inc., a 278 acre family dairy farm in Orwell, Vermont. I have firsthand experience with dairy and beef farming. In fact, we sold our dairy cows in 2006 in part because of our inability to hire legal, reliable domestic employees. Since then, we have been raising Grass Fed Beef, which can be managed mostly by my father. Though I still have many family members that currently own and operate dairy farms within a 20 mile radius of our farm, there is not a day that goes by that I regret going into business to assist farmers from the business side.

Agricultural employers face many challenges these days, but a shared challenge faced by all farmers seems to be finding legal and experienced laborers who can provide the agricultural employers with competence, predictability, and stability. In fact, Vermont's Legislature recognized the importance of the H-2A program in our Agricultural Sector- please refer to the enclosed House Resolution H.R. 10. With such help, employers would be free to focus on other aspects of their operations; rather than who will milk the cows, who will harvest the produce or who will process this year's turkeys for Thanksgiving. H-2A currently is limited to a 10 month maximum. The proposed bill would be useful as it no longer draws a distinction between the seasonal and non-seasonal employers such as dairy farmers. This will allow dairy farmers to hire visa workers and also some of their workers could even be considered for legalization. At present, there is no program to get documented workers here legally for dairy. The Vermont Legislature is considering a driving privilege card that is designed to address undocumented workers- refer to S.38. I conclude my introduction by stating a solid Immigration Bill will solidify and resolve many of these above issues.

The remainder of my testimony will concentrate on the following three issues that I feel are most important:

- Misconception that Foreign workers displace US Workers
- Challenges with the current H-2A application process
- Experienced Workers

**MISCONCEPTION THAT FOREIGN WORKERS DISPLACE US WORKERS**

A common misconception is that H-2A seasonal guest workers are displacing US Domestic workers. In our office we not only facilitate the H-2A Application for USDOL and Immigration Petition for employers, but in some cases we also process their payroll. What I have seen is a direct correlation between the hiring of H-2A workers and the hiring of domestic employees, based on payroll data. In short, the harvest work done by the H-2A seasonal guest workers sets up year-round employment opportunities for domestic help.

I have received permission from two of my clients to share with you data from their operations that will help make my point:

Forrence Orchards, Inc. in Peru, New York applied and petitioned for the following foreign workers in 2012:

- 200 H-2A workers from Jamaica to pick apples over an eight week period
- 12 H-2A workers from Jamaica to harvest apples, prune and grade apples over an eight month period
- 12 H-2A workers from Jamaica to harvest, sort and grade apples over a five month period.

The above foreign workers created 50 year-round domestic jobs. Their payroll for the fiscal year which ended on 6/30/12 was \$2,359,500.00.

Sunrise Orchards, Inc. in Cornwall, Vermont applied and petitioned for the following foreign workers in 2012:

- 44 H-2A workers from Jamaica to pick apples over a 9 week period
- 7 H-2A workers from Jamaica to harvest, prune, pack and grade apples over an eight month period
- 1 H-2A worker from Jamaica to operate agricultural equipment and make deliveries over an eight month period.

The above seasonal workers clearly created approximately 20 US Domestic year round positions. Also to be noted is the fact that this is a \$700,000.00 payroll for the fiscal year end of 12/31/2012.

My point is that without the H-2A workers neither Forrence or Sunrise would find it possible to harvest the apples according to the quality method and therefore would not have a marketable crop for the fresh fruit market that would be

stored, sorted, packed, and shipped – work that in large part is done by "local" help. All employers will tell you that it requires appropriate timing and skilled labor to pick the produce in such a way that will ensure a quality product and market opportunity.

I would also like to add that money earned by H-2A workers is put back into our own economy. Each fall U-haul trucks will be loaded with the following: barrels full with goods from places like Walmart & Costco, purchases such as motorcycles, washing machines, lawn mowers, weed whackers and even chainsaws. The baggage trucks have routes that have been in place for years. The items are all shipped from the Fort Lauderdale Port to the final destination where the worker or their family will claim it. It is cheaper for the H-2A worker to purchase such items in the US and pay to have them shipped to their home country. The convenience stores in the rural locations make sure to stock their shelves accordingly upon the arrival of the seasonal ag workers.

#### **CHALLENGES WITH CURRENT H-2A APPLICATION PROCESS**

Employers face many challenges with the current H-2A Application Process, and the majority agree that the issues are simply because U.S. Department of Labor does not understand agriculture. In reading further I believe one will understand the importance for US Department of Ag to administer the program going forward rather than US Department of Labor. For example, in 2010 Stonewood Farm (in my hometown of Orwell) applied for 18 seasonal foreign laborers to assist with slaughtering turkeys from mid-October until the beginning of December. U.S. Department of Labor sent a Notice of Deficiency because as it was unclear to them: 1) who did this work, and 2) why temporary workers were needed. The fact that Thanksgiving happens once a year and this farm had 27,000 turkeys to slaughter and process between October 11<sup>th</sup> and December 3<sup>rd</sup> apparently was lost on them! I've enclosed the Notice of Deficiency and the employer's response- please refer to the enclosed pages labeled **Exhibit 1**.

Another example is in 2012, Mother Nature was quick to bring on the warm weather and an early spring in New England. Many apple trees had already gone to bud when they were damaged by an otherwise "normal" spring frost, and in some orchards, much of the surviving young fruits were by hit by hail. Some employers had a total crop loss and therefore did not apply for any foreign workers. In 2013 some of them decided they'd like to apply for foreign workers to clean up the orchard floor and prune the trees, in order to get the orchard ready, after last year's loss. US Department of Labor sent a Notice of Deficiency asking why the temporary dates of need changed from the previous applications.

Please refer to the enclosed pages labeled *Exhibit 2* for the Notice of Deficiency and also the employer's response.

NOTE- many employers are growing new varieties which make their seasons longer and we've experienced numerous Notices of Deficiencies across the country as US Department of Labor requires proof and written justification for the longer harvest schedule.

The application process is very time-sensitive. The employer must: list the job opportunity at 60 days prior to date of need, apply to US Dept. of Labor 45 days prior to date of need, and, if applicable, answer any Notice of Deficiencies in order to obtain a Letter of Acceptance, and then file a Recruitment Report according to the Notice of Acceptance to obtain a Labor Certification. Upon receipt of the Labor Certification an I-129 Petition is submitted to Immigration. It is nearly impossible to get workers here in timely fashion due to the convoluted process and the unnecessary Notices of Deficiencies. These employers are in the H-2A program because they want a legal workforce, reliable, experienced workforce. However, in the last 4 years it has become more difficult for employers to navigate the bureaucratic processes of the program in order to comply with the tougher regulations. The H-2A employers desperately need a user-friendly guest worker program that will enable them to obtain their current legal H-2A employees in a timely manner. For the reasons above, it would be most advantageous for USDA to facilitate the application processing for the proposed Non-Immigrant Agriculture Visa.

I've traveled to DC on several occasions including two bipartisan meeting with US Department of Labor officials and members of Congress which took up the better part of each day. There is bipartisan agreement that the current system is broken and that the H-2A program as it stands today is nearly impossible to use. Workers have been arriving late for many reasons, some I've already stated. It truly means that farms may go out of business if the produce isn't picked timely or the turkeys are slaughtered the week after Thanksgiving. I think back to August of 2010 when there was no movement of workers because Department of State had been notified by U.S. Department of Labor not to let any Jamaican workers enter the country due to an ongoing investigation of Jamaica Central Labor Organization (JCLC). Thankfully, Senator Leahy's seasoned staff quickly sprung into action. An agreement was reached within a week and each employer signed an affidavit that they would not take any deductions from the workers pay for JCLC. Another 48-72 hour delay and we would have seen thousands of bushels of apples on the ground. Needless to say our office didn't get any sleep for a straight week just knowing crop insurance wouldn't cover this type of loss.

**EXPERIENCED WORKERS**

H-2A workers return to the same employer(s) each year and are like family to the employers. I enjoy going onsite to Sunrise Orchards, Inc. during harvest. It's great to see the entire domestic staff happily greet the bus of H-2A workers as they arrive for harvest. Barney Hodges Jr and his wife Dee raised their children on the farm; now Barney Hodges III is the President. I love the fact that some of their H-2A Jamaican workers have been coming for over 30 years and they talk about watching their boss grow from a young child to a grown man. It is important to H-2A employers such as Barney Hodges III that he can continue to get his experienced workers back each year. Barney has said, "Without these experienced H-2A workers my orchard would be crippled and we'd be done farming and looking at developing."

Please note the term "experienced" and also note the fact that these H-2A workers return year after year to the same farm. Unfortunately, currently in Vermont, H-2A employers cannot require any experience on their H-2A applications. That's right...each employer has to hire any willing and able individual. This is due to the Prevailing Wage Survey, a broken system that is currently in place in Vermont. The survey is an attempt to use wages paid by employers in a given sector as a guide to set wages for H-2A employees. It is poorly handled and lacks credibility. For example, in Vermont the survey goes to all apple orchards, including those that do not use H-2A workers- each orchard is asked if they require experience, what they pay hourly and/or as a piece rate, as well as various other questions. The interesting part is that the only non H-2A Orchards in Vermont are "pick your own," which would make the results inconclusive. For example, an orchard in Vermont has to pay \$1.00 per box of handpicked cider apples, whereas an orchard 1 mile away across Lake Champlain in New York can pay .62 per box for handpicked cider apples.

Imagine for a moment you buy a McDonald's franchise and U.S. Department of Labor tells you that you must hire any willing and able individual and you cannot require that they have previous experience- yet you have to pay them all \$10.91 per hour, provide housing and pay for transportation. This includes high school students. If the worker is not experienced why can't the employer pay start them at minimum wage and give raises on merit?

**CONCLUSION**

The only con I see is the proposed name of the W-2 and W-3 Visas since all employees' annual wages are reported on form W-2 and the gross for the employer is reported on form W-3.

The pros certainly outweigh the cons. I feel that all employers will be in favor of the written part of the bill which refers to an employer's ability to give preference to the loyal H-2A worker who has worked for the employer three out of the last four years. Also, the logic behind the proposed wage rates seems much more commonsensical and affordable. The idea of the W-2 or W-3 Visa is exciting as it should make the transferring of workers between employers easier and more transparent. Though the majority of my testimony is about H-2A, it is believed that those undocumented workers also follow much of what is said above. It would be a great opportunity for the employer to obtain a legal workforce and provide them with stability. I believe that the public does not understand that the many of the undocumented workers have been paying into Social Security and Medicare with the expectation that they would never benefit from the system. It seems ludicrous to me to even consider sending all the undocumented workers home as it would significantly impact our Social Security and Medicare funding, while at the same time losing those folks who support our farms by doing jobs that Americans simply don't want to do. No doubt that whether one is referring to an undocumented Ag worker or an H-2A Ag worker, they share the following in common: these workers are ambitious and here to work, they want to please their employers and improve their lot in life, and they are willing to do the jobs that we cannot get Americans to do. Let's not forget through doing these jobs that Americans don't want, they create other jobs on the farm for the domestic worker.

Thank you again for providing me with this opportunity to testify. I look forward to answering any questions you might have.

**State of Vermont**  
**House of Representatives**



Montpelier, Vermont

**House Resolution**

H.R. 10

House resolution emphasizing the importance of Jamaican H2-A workers to Vermont's agricultural economy

Offered by: Representatives Jewett of Ripton, Turner of Milton, Partridge of Windham, Lawrence of Lyndon, Botzow of Pownal, Marcotte of Coventry, Johnson of South Hero, Stevens of Shoreham, Acinapura of Brandon, Bartholomew of Hartland, Branagan of Georgia, Browning of Arlington, Buxton of Royalton, Campion of Bennington, Canfield of Fair Haven, Clarkson of Woodstock, Conquest of Newbury, Copeland-Hanzas of Bradford, Deen of Westminster, Devereux of Mount Holly, Fisher of Lincoln, Greshin of Warren, Helm of Fair Haven, Howrigan of Fairfield, Johnson of Canaan, Keenan of St. Albans City, Kilmartin of Newport City, Lenes of Shelburne, Malcolm of Pawlet, Manwaring of Wilmington, Marek of Newfane, McAllister of Highgate, McNeil of Rutland Town, Miller of Shaftsbury, Mitchell of Barnard, Mrowicki of Putney, Pearson of Burlington, Peaslee of Guildhall, Shand of Weathersfield, Smith of New Haven, Taylor of Barre City and Toll of Danville

Whereas, for many years, Vermont's agricultural community has been heavily dependent on seasonal Jamaican contract labor to harvest crops, and

Whereas, Vermont agricultural employers in the H2-A temporary agricultural worker visa program make concerted efforts to advertise for and hire United States citizens and are required to demonstrate a need in order to qualify for H2-A employees, and

Whereas, workers with H2-A permits cannot displace workers from the United States, and employers are required to treat H2-A guest workers and United States citizen workers identically, and

Whereas, among the agricultural operations reliant on seasonal Jamaican labor are poultry and vegetable farms, greenhouses, and apple orchards, and

Whereas, many Vermont farmers rely on sales of poultry and vegetables for a significant portion of their revenue, and

Whereas, greenhouses are fundamental for the initial cultivation of many crops, and

Whereas, according to the Vermont Tree Fruit Growers Association, the state's fresh apple crop is valued at \$12–15 million annually, and value-added products including cider, applesauce, hard cider, and other apple products double the total cash value of the state's apple crop to \$25–30 million, and

Whereas, Jamaican workers are admitted to work temporarily in the United States as a result of the H2-A visa program that the United States Department of Homeland Security administers in conjunction with the United States Department of Labor (DOL), and

Whereas, these Jamaican workers have long proven their worth to Vermont's farmers and orchard owners, often returning to the same farms year after year, skillfully and conscientiously completing vital farm activities, and

Whereas, without H2-A labor, many Vermont farmers and orchard owners will find it difficult to plant, grow, and harvest their crops on time, and

Whereas, beginning in the autumn of 2010, Vermont's farmers have confronted new regulatory barriers to hiring Jamaican workers, barriers that are slowing the admission of these workers into the United States and denying the Jamaicans their comprehensive Jamaican benefits, and

Whereas, Jamaican agricultural workers are specifically impacted because DOL has declared that the nonprofit Jamaican Central Labour Organisation (JCLO) is a recruitment organization that charges a recruiting fee despite JCLO's assertions to the contrary, and

Whereas, JCLO furthers the mutual interests of both growers and employees, acts as a useful intermediary, promotes employment standards, and provides support services including: advising workers of employment conditions and welfare benefits; meeting workers at the United States ports of entry and assisting them in clearing customs; ensuring that workers and employers adhere to the terms and conditions of employment; periodically visiting housing and work sites to assist in the resolution of work-related or domestic disputes; ensuring that workers receive proper medical attention; and monitoring the employers' payroll documentation, and

Whereas, through 2010, employers sent three payroll deductions, including an administrative fee, a social security fee, and a health insurance fee to JCLO and another 19 percent of each worker's American salary to a bank account for family use in Jamaica, and

Whereas, specifically, the administrative fee was partially allocated to defray program costs which the Jamaican government incurred, and

Whereas, Jamaican H2-A workers in the past arrived in the United States with their JCLO-administered benefits, but starting in 2011, they will no longer receive these benefits, and, consequently, demands on Vermont's system of public services could increase proportionately, and

Whereas, the Department of Homeland Security's characterization of Jamaican workers' employment deductions as a recruitment fee threatens to cause serious harm to Vermont's agricultural economy, including the loss of domestic employment opportunities, diminished product quality, degradation of Vermont's working landscape, and the potential loss of millions of dollars in Vermont crops, now therefore be it

Resolved by the House of Representatives:

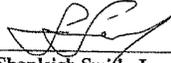
That the viability of Vermont's specialty crop producers' 2011 harvesting operations, many of which rely on Jamaican workers, is seriously at risk because of the uncertainty surrounding the H2-A program, and be it further

Resolved: That the issue of the benefits provided by the Jamaican Central Labour Organisation should not risk the future of the H2-A program and its successful implementation in Vermont and New England, and be it further

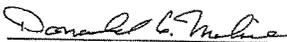
Resolved: That this legislative body urge the United States Department of Homeland Security and the United States Department of Labor to coordinate efforts that will ensure the reliable issuance of H2-A visas for Jamaican agricultural workers and the predictable supply of high-quality labor for Vermont producers, and be it further

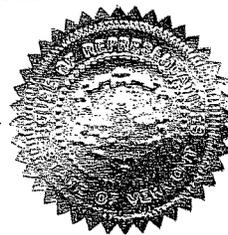
Resolved: That the United States Department of Homeland Security continue to permit employer deductions for payments to JCLO, and be it further

Resolved: That the Clerk of the House be directed to send copies of this resolution to United States Secretary of Homeland Security Janet Napolitano, to United States Secretary of Labor Hilda Solis, to United States Secretary of Agriculture Tom Vilsack, to the Vermont Congressional Delegation, to Vermont Secretary of Agriculture Chuck Ross, to Vermont Secretary of Commerce and Community Development Lawrence Miller, and to Vermont Commissioner of Labor Anne Noonan.

  
 Shapleigh Smith, Jr.  
 Speaker of the House

Attested to:

  
 Donald G. Milne  
 Clerk, House of Representatives



S.38

An act relating to expanding eligibility for driving and identification privileges in Vermont

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 23 V.S.A. § 603 is amended to read:

§ 603. APPLICATION FOR AND ISSUANCE OF LICENSE

\* \* \*

(d) ~~In addition to any other requirement of law or rule, a~~ Except as provided in subsection (e) of this section:

(1) A citizen of a foreign country shall produce his or her passport and visa, alien registration receipt card (green card), or other proof of legal presence for inspection and copying as a part of the application process for an operator license, junior operator license, or learner permit. ~~Notwithstanding any other law or rule to the contrary, an~~

(2) An operator license, junior operator license, or learner permit issued to a citizen of a foreign country shall expire coincidentally with his or her authorized duration of stay.

(e)(1) A citizen of a foreign country unable to establish legal presence in the United States who furnishes reliable proof of Vermont residence and of name, date of birth, and place of birth, and who satisfies all other requirements of this chapter for obtaining a license or permit, shall be eligible to obtain an

operator's privilege card, a junior operator's privilege card, or a learner's privilege card.

(2) The Commissioner shall require applicants under this subsection to furnish a document or a combination of documents that reliably proves the applicant's name, date of birth, and place of birth. The Commissioner may prescribe the documents or combination of documents that meets these criteria. However, the Commissioner shall accept a combination of two or more of the following documents to establish the name, date of birth, and place of birth of an applicant:

(A) a valid foreign passport, with or without a U.S. Customs and Border Protection entry form or stamp;

(B) a valid consular identification document issued by the government of Mexico or of Guatemala or by any other government with comparable security standards and protocols, as determined by the Commissioner;

(C) a certified record of the applicant's birth, marriage, adoption, or divorce, including a translation if necessary.

(3) The Commissioner shall require applicants under this subsection to furnish a document or a combination of documents that reliably proves the applicant's Vermont residence. The Commissioner may prescribe the documents or combination of documents that meets these criteria. However,

the Commissioner shall accept the following combinations of documents as proof of Vermont residence:

(A)(i) two pieces of mail received by the applicant within the prior 30 days with the applicant's current name and residential Vermont address; and

(ii) at least one of the documents specified in subdivision (B) of this subdivision (3); or

(B) two of the following which show name and residential Vermont address:

(i) a vehicle title or registration;

(ii) a document issued by a financial institution, such as a bank statement;

(iii) a document issued by an insurance company or agent, such as an insurance card, binder, or bill;

(iv) a document issued by an educational institution, such as a transcript, report card, or enrollment confirmation;

(v) federal tax documents, such as W-2 or 1099 forms;

(vi) state tax documents, such as an IN-111; and

(vii) medical health records, receipts, or bills.

(f) Persons able to establish lawful presence in the United States but who otherwise fail to comply with the requirements of the REAL ID Act of 2005, Pub. L. No. 109-13, §§ 201–202, shall be eligible for an operator's privilege

card, a junior operator's privilege card, or a learner's privilege card, provided the applicant furnishes reliable proof of Vermont residence and of name, date of birth, and place of birth, and satisfies all other requirements of this chapter for obtaining a license or permit. The Commissioner shall require applicants under this subsection to furnish a document or a combination of documents that reliably proves the applicant's Vermont residence and his or her name, date of birth, and place of birth.

(g) The Commissioner may adopt policies or rules related to the issuance of privilege cards under this section that balance accessibility with mechanisms to prevent fraud. The Commissioner shall consider adopting the appointment system procedures used in other states to prevent and deter fraud with regard to proof of residency.

(h) A privilege card issued under this section shall:

(1) on its face bear the phrase "privilege card" and text indicating that it is not valid for federal identification or official purposes; and

(2) expire at midnight on the eve of the second birthday of the applicant following the date of issuance.

(i) Every applicant for or holder of a privilege card under this section shall be subject to all of the provisions of this title that apply to applicants and holders of operator's licenses, junior operator's licenses, and learner permits, except where the context clearly requires otherwise.

Sec. 2. 23 V.S.A. § 115 is amended to read:

§ 115. NONDRIVER IDENTIFICATION CARDS

(a) Any Vermont resident may make application to the ~~commissioner~~ Commissioner and be issued an identification card which is attested by the ~~commissioner~~ Commissioner as to true name, correct age, and any other identifying data as the ~~commissioner~~ Commissioner may require which shall include, in the case of minor applicants, the written consent of the applicant's parent, guardian, or other person standing in loco parentis. Every application for an identification card shall be signed by the applicant and shall contain such evidence of age and identity as the ~~commissioner~~ Commissioner may require, consistent with subsection (1) of this section. The ~~commissioner~~ Commissioner shall require payment of a fee of \$20.00 at the time application for an identification card is made.

(b) ~~Every~~ Except as provided in subsection (1) of this section, every identification card shall expire, unless earlier canceled, on the fourth birthday of the applicant following the date of original issue, and may be renewed every four years upon payment of a \$20.00 fee. At least 30 days before an identification card will expire, the ~~commissioner~~ Commissioner shall mail first class to the cardholder an application to renew the identification card.

\* \* \*

(1)(1) The Commissioner shall issue identification cards to Vermont residents who are not U.S. citizens but are able to establish lawful presence in the United States if an applicant follows the procedures and furnishes documents as required under subsection 603(d) of this title and any policies or rules adopted thereunder, and otherwise satisfies the requirements of this section. The identification cards shall expire consistent with subsection 603(d) of this title.

(2) The Commissioner shall issue non-REAL ID compliant identification cards to Vermont residents unable to establish lawful presence in the United States if an applicant follows the procedures and furnishes documents as required under subsection 603(e) of this title and any policies or rules adopted thereunder, and otherwise satisfies the requirements of this section.

(3) The Commissioner shall issue non-REAL ID compliant identification cards to Vermont residents able to establish lawful presence in the United States but who otherwise fail to comply with the requirements of the REAL ID Act of 2005, Pub. L. No. 109-13, §§ 201–202, if the applicant follows the procedures and furnishes documents as required under subsection 603(f) of this title and any policies or rules adopted thereunder, and otherwise satisfies the requirements of this section.

(4) A non-REAL ID compliant identification card issued under subdivision (2) or (3) of this subsection shall:

(A) bear on its face text indicating that it is not valid for federal identification or official purposes; and

(B) expire at midnight on the eve of the second birthday of the applicant following the date of issuance.

Sec. 3. EFFECTIVE DATE

This act shall take effect on January 1, 2014.

Exhibit 1

U.S. Department of Labor    Employment and Training Administration  
 Office of Foreign Labor Certification  
 Chicago National Processing Center  
 536 South Clark Street  
 9<sup>th</sup> Floor  
 Chicago, IL 60605



NOTICE OF DEFICIENCY

September 08, 2010

STONEWOOD FARM, INC  
 105 GRISWOLD LANE  
 ORWELL, VT 05760

No. of Job Openings: 18  
 Job Title: MEAT, POULTRY AND  
 FISH CUTTERS AND  
 TRIMMERS  
 Period of Employment: 10/11/2010 - 12/04/2010  
 Case Number: C-10238-24951  
 Date of Receipt by DOL: 08/26/2010

RE: STONEWOOD FARM, INC

Dear Sir/Madam:

Pursuant to 20 Code of Federal Regulations (CFR) 655.141, your application for temporary employment certification and/or job order fails to meet the criteria for acceptance. The specific reason(s) why your application cannot be accepted for consideration, with citation(s) to the relevant regulatory standards, appears on the enclosed attachment. Pursuant to the regulations at 20 CFR 655.142, you may submit a modified application within five (5) business days from the date you receive this letter.

The modification(s) required for consideration of your application and/or job order also appear on the attachment. Please include your case number on any correspondence sent to the National Processing Center; failure to do so may result in a delay in processing your application.

If the modifications in the application are received within five (5) business days from the date you receive this deficiency letter and in the manner specified by the Certifying Officer, the Certifying Officer will make a determination on whether to grant or deny your application no later than thirty (30) calendar days before the date of need.

If you file a modified application, and it does not address all the modifications listed in this notice, we will not be able to accept it for consideration. If you file a modified application, and it does address all the modifications listed in this notice, but it is not received in the office by the due date for modification, the final determination will be postponed one calendar day for each day that passes beyond the 5-business day period allowed under 655.141(b) up to a maximum of five (5) days. 20 CFR 655.142(a). The application will be deemed abandoned if the employer

Exhibit 4

does not submit a modified application within twelve (12) calendar days after the Notice of Deficiency was issued.

As provided by the regulations at 20 CFR 655.142(c), you have the opportunity to request an expedited administrative review of the Notice of Deficiency or a de novo hearing of the Notice of Deficiency before an Administrative Law Judge. To obtain this review or de novo hearing, you must file within five (5) business days from the date of receipt of this notice by facsimile or other means normally assuring next day delivery, a written request for such a review or hearing to the Chief Administrative Law Judge, U.S. Department of Labor, 800 K Street NW, Suite 400-N, Washington, DC 20001-8002, with a simultaneous copy to this office. You may submit any legal arguments that you believe will rebut the basis of the Certifying Officers actions.

The Certifying Officers determination on whether to grant or deny the application will be made no later than 30 calendar days before the date of need, provided that the employer submits the requested modification to the application within five (5) business days and does not request an expedited review or de novo administrative hearing.

Sincerely,

William L. Carlson  
Certifying Officer

Enclosure

CC: VERMONT DEPARTMENT OF EMPLOYMENT AND TRAINING

ENCLOSURE FOR UNACCEPTABLE APPLICATIONS *Exhibit 1*

## 1. Temporary Need

20 CFR 655.103(d)

**Deficiency:**

DOL regulations at 20 CFR 655.103(d) requires that H-2A job opportunities are on a seasonal or other temporary basis. Poultry processing is presumed to occur on a year-round basis. Documentation to establish and support the employers temporary need for workers was not provided as part of this H-2A application.

**Modification Required:**

The employer must submit a detailed, written explanation documenting the temporary need for (18) H-2A Meat, Poultry, and Fish Cutters and Trimmers workers for only 55 days out of the year. The employer must explain who processes the poultry during the days in which temporary workers are not needed. This written explanation must be based upon supporting evidence and submitted to the Chicago National Processing Center (CNPC) on letterhead stationary and signed by the employer.

Supporting evidence in the form of summarized payroll reports is required to substantiate the employers temporary need for the H-2A workers in the case. The employer is required to submit summarized payroll reports for a minimum of one (1) previous calendar year (2009) Meat, Poultry, and Fish Cutters and Trimmers. These payroll reports must be a summarization of the employers individual payroll records by month, and, at a minimum, identify the total number of workers, total hours worked, and total earnings received **separately for permanent and temporary employment** in the designated occupation.

The summarized payroll reports should be signed by the employer with the following statement attesting that the information was compiled from the employers accounting records or system: I certify that the information contained on this monthly payroll report is accurate and based upon the individual payroll records maintained by Stonewood Farm, Inc. for Calendar Year 2009.

**If original documents have been returned, please make sure the amendments are made on the original documents by crossing out the amended item and initialing and dating each amendment. An application in which "white out" is used to make corrections cannot be accepted for processing. You must return all original documents sent with this modification letter. You must also provide a copy of any amendments to your respective State Workforce Agency.**

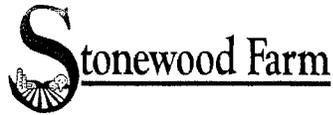


Exhibit 1

105 Griswold Lane  
Orwell, VT 05760  
802-948-2277

9/14/2010

William L. Carlson, Certifying Officer  
U.S. Dept. of Labor  
Employment and Training Adm.  
Office of Foreign Labor Certification  
Chicago National Processing Center  
536 South Clark St., 9<sup>th</sup> Floor  
Chicago, IL 60605

**Re: C-10238-24951**

Dear Sir/Madam:

**Per 20 CFR 655.103(d)**

Please find enclosed the requested Payroll Summarization of the previous (2009) calendar year. All payroll information is maintained by Stonewood Farm, Inc. I, Peter Stone manage the payroll operations. I certify that the information contained on these monthly payroll reports is accurate and bases upon the individual payroll records maintained by Stonewood Farm, Inc. for the Calendar Year 2009.

Stonewood Farm Inc. raises turkeys on a seasonal basis. Turkeys arrive mid May each year. Slaughter operations are from October 11 to December 3, 2010. This year we will slaughter 24,000 turkeys for Thanksgiving from October 11<sup>th</sup> through November 25, 2010. Then we will slaughter the remaining 3000 from November 29 to December 3, 2010 for Christmas.

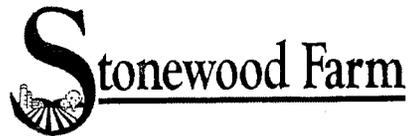
We sell our turkeys fresh; as a result we only have a small window of time to slaughter. It takes 24 employees to run the slaughter operation. We have 4 to 5 Full-Time employees' year around. Therefore, we need temporary help to assist in the slaughtering operations at Stonewood Farm, Inc.

We have always employed locals; however it is tough to find enough local help for the slaughtering process. We need the 18 temporary employees to fill the remaining open positions. We do employ 4 -5 local employees' year around doing activities non-related to slaughtering. We **do not** slaughter year around.

Thank you in advance to your prompt attention to this matter. Please don't hesitate to contact me with any questions.

Sincerely

Peter Stone, President



**Stonewood Farm**

**2009 Payroll Summarization by Month**

105 Griswold Lane  
Orwell, Vermont 05760

	January	February	March	April	May	June	July	August	September	October	November	December	Totals
<b>Full-time</b>													
Hours	586.23	578.95	601.96	808.35	652.35	752.73	856.11	724.04	624.28	819.76	855.88	556.95	8417.59
Earnings	8027.01	7954.49	8195.6	10358.76	8680.81	9739.16	10879.78	9464.87	7479.65	11419.1	11112.79	8035.27	111347.3
# of Workers	5	5	5	5	5	5	5	5	5	5	5	5	
<b>Part-time</b>													
Hours	349.02	387.68	416.92	360.11	85.49	8.4	0	0	0	175.02	731.46	600.82	3114.92
Earnings	3481.25	3835.49	4193.75	3614.58	843.8	81.48	0	0	0	1727.42	7393.69	6222.41	31393.87
# of Workers	4	4	4	3	3	1	0	0	0	3	5	6	
<b>Temporary Related to Slaughtering</b>													
Hours										1215.16	3978.05	318.1	5511.31
Earnings										11701.95	38308.69	3063.3	53073.94
# of Workers										17	17	10	

Certified Correct \_\_\_\_\_ Date \_\_\_\_\_  
Peter Stone, President

*Exhibit 1*

Exhibit 1

required under 8 U.S.C. 1188, 28 CFR part 501, or this subpart.

(c) *Definition of agricultural labor or services.* For the purposes of this subpart, agricultural labor or services, pursuant to 8 U.S.C.

1101(a)(15)(i)(ii)(a), is defined as: agricultural labor as defined and applied in sec. 3121(g) of the Internal Revenue Code of 1986 at 26 U.S.C. 3121(g); agriculture as defined and applied in sec. 3(l) of the Fair Labor Standards Act of 1938 (FLSA) at 29 U.S.C. 203(l); the pressing of apples for cider on a farm; or logging employment. An occupation included in either statutory definition is agricultural labor or services, notwithstanding the exclusion of that occupation from the other statutory definition. For informational purposes, the statutory provisions are listed below.

(1)(i) *Agricultural labor* for the purpose of paragraph (c) of this section means all service performed:

(A) On a farm, in the employ of any person, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife;

(B) In the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm;

(C) In connection with the production or harvesting of any commodity defined as an agricultural commodity in section 13(g) of the Agricultural Marketing Act, as amended (12 U.S.C. 1141), or in connection with the ginning of cotton, or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, used exclusively for supplying and storing water for farming purposes;

(D) In the employ of the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity; but only if such operator produced more than one-half of the commodity with respect to which such service is performed;

(E) In the employ of a group of operators of farms (other than a

cooperative organization) in the performance of service described in paragraph (c)(1)(iv) of this section but only if such operators produced all of the commodity with respect to which such service is performed. For purposes of this paragraph, any unincorporated group of operators shall be deemed a cooperative organization if the number of operators comprising such group is more than 20 at any time during the calendar year in which such service is performed;

(F) The provisions of paragraphs (c)(1)(iv) and (c)(1)(v) of this section shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption; or

(G) On a farm operated for profit if such service is not in the course of the employer's trade or business or is domestic service in a private home of the employer.

(ii) As used in this section, the term farm includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards.

(2) *Agriculture.* For purposes of paragraph (c) of this section, agriculture means farming in all its branches and among other things includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities (including commodities defined as agricultural commodities in 1141(g) of title 12, the raising of livestock, bees, fur-bearing animals, or poultry, and any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market. See sec. 29 U.S.C. 203(f), as amended (sec. 3(f) of the FLSA, as codified). Under 12 U.S.C. 1141(g) agricultural commodities include, in addition to other agricultural commodities, crude gum (oleoresin) from a living tree, and the following products as processed by the original producer of the crude gum (oleoresin) from which derived: gum spirits of turpentine and gum rosin. In addition as defined in 7 U.S.C. 92, gum spirits of turpentine means spirits of turpentine made from gum (oleoresin) from a living

tree and gum rosin means rosin remaining after the distillation of gum spirits of turpentine.

(3) *Apple pressing for cider.* The pressing of apples for cider on a farm, as the term farm is defined and applied in sec. 3121(g) of the Internal Revenue Code at 26 U.S.C. 3121(g) or as applied in sec. 3(f) of the FLSA at 29 U.S.C. 203(f), pursuant to 29 CFR part 780.

(4) *Logging employment.* Operations associated with felling and moving trees and logs from the stump to the point of delivery, such as, but not limited to, marking danger trees and trees/logs to be cut to length, felling, limbing, bucking, debarking, chipping, yarding, loading, unloading, storing, and transporting machines, equipment and personnel to, from and between logging sites.

(i) *Definition of a temporary or seasonal nature.* For the purposes of this subpart, employment is of a seasonal nature where it is tied to a certain time of year by an event or pattern, such as a short annual growing cycle or a specific aspect of a longer cycle, and requires labor levels far above those necessary for ongoing operations. Employment is of a temporary nature where the employer's need to fill the position with a temporary worker will, except in extraordinary circumstances, last no longer than 1 year.

#### Profiling Procedures

##### § 655.120 Offered wage rate.

(a) To comply with its obligation under § 655.122(l), an employer must offer, advertise in its recruitment, and pay a wage that is the highest of the AEW, the prevailing hourly wage or piece rate, the agreed-upon collective bargaining wage, or the Federal or State minimum wage, except where a special procedure is approved for an occupation or specific class of agricultural employment.

(b) If the prevailing hourly wage rate or piece rate is adjusted during a work contract, and is higher than the highest of the AEW, the prevailing wage, the agreed-upon collective bargaining wage, or the Federal or State minimum wage, in effect at the time the work is performed, the employer must pay that higher prevailing wage or piece rate, upon notice to the employer by the Department.

(c) The DFLC Administrator will publish, at least once in each calendar year, on a date to be determined by the DFLC Administrator, the AEWs for each State as a notice in the Federal Register.

##### § 655.121 Job orders.

(a) *Area of intended employment.*

Exhibit 2

**U.S. Department of  
Labor**

**Employment and Training  
Administration**  
Office of Foreign Labor Certification  
Chicago National Processing Center  
11 West Quincy Court  
Chicago, IL 60604



NOTICE OF DEFICIENCY

February 26, 2013

ALYSON EASTMAN  
375 MT. INDEPENDENCE  
ROAD  
ORWELL, VT 05760

No. of Job Openings: 2  
Job Title: Farm Workers and  
Laborers Crops  
Period of Employment: 04/08/2013 to  
12/12/2013  
Case Number: H-300-13051-970070  
Date of Receipt by: 02/20/2013  
DOL:

**RE: PUTNAM MANAGEMENT PROPERTIES, LLC DBA BILLY BOB'S  
ORCHARD**

Dear Sir/Madam:

In accordance with Departmental regulations at 20 Code of Federal Regulations (CFR) § 655.141, your application for temporary employment certification and/or job order fails to meet the criteria for acceptance. The specific reasons why your application cannot be accepted for consideration, with citations to the relevant regulatory standards, appears on the enclosed attachment. In accordance with Departmental regulations at 20 CFR § 655.142, you may submit a modified application within five business days from the date you receive this letter.

The modifications required for consideration of your application and/or job order also appear on the attachment. Please include your case number on any correspondence sent to the National Processing Center; failure to do so may result in a delay in processing your application.

If the modifications in the application are received within 5 business days from the date you receive this deficiency letter and in the manner specified by the Certifying Officer, the Certifying Officer will make a determination on whether to grant or deny your application no later than 30 calendar days before the date of need.

*Exhibit 2*

If you file a modified application, and it does not address all the modifications listed in this notice, we will not be able to accept it for consideration. If you file a modified application, and it does address all the modifications listed in this notice, but it is not received in the office by the due date for modification, the final determination will be postponed one calendar day for each day that passes beyond the five business day period allowed under 20 CFR § 655.141(b) up to a maximum of five days. Under Departmental regulations at 20 CFR § 655.142(a), the application will be deemed abandoned if the employer does not submit a modified application within 12 calendar days after the Notice of Deficiency was issued.

As provided by the Departmental regulations at 20 CFR § 655.142(c), you have the opportunity to request an expedited administrative review of the Notice of Deficiency or a de novo hearing of the Notice of Deficiency before an Administrative Law Judge. To obtain this review or de novo hearing, you must file within five business days from the date of receipt of this notice by facsimile or other means normally assuring next day delivery, a written request for such a review or hearing to the Chief Administrative Law Judge, U.S. Department of Labor, 800 K Street NW, Suite 400-N, Washington, DC 20001-8002, with a simultaneous copy to this office. You may submit any legal arguments that you believe will rebut the basis of the Certifying Officer's actions.

The OFLC Certifying Officer's determination on whether to grant or deny the application will be made no later than 30 calendar days before the date of need, provided that the employer submits the requested modification to the application within 5 business days and does not request an expedited review or de novo administrative hearing.

**In order to assist with the timely processing of the application, you are encouraged to submit all required documentation no later than 3:00 pm Central Time.**

Sincerely,

H-2A Certifying Officer

CC:

NEW YORK STATE DEPT OF LABOR

LAKE HOME BUSINESS SERVICES, INC.

Enclosure

*Exhibit 2***ENCLOSURE FOR UNACCEPTABLE APPLICATIONS****1. Temporary Need****20 CFR 655.103(d)****Deficiency:**

In accordance with Departmental regulations at 20 CFR sec. 655.103(d), the job opportunity must be on a seasonal or other temporary basis. Seasonal or temporary is defined as "employment [that] is tied to a certain time of year by an event or pattern, such as a short annual growing cycle or a specific aspect of a longer cycle, and requires labor levels far above those necessary for ongoing operations. Employment is of a temporary nature where the employer's need to fill the position with a temporary worker will, except in extraordinary circumstances, last no longer than 1 year."

The job opportunity, described on ETA Form 9142, Section B Items 5 and 6 indicates the employer's dates of need are from April 8, 2013 through December 12, 2013. However, the employer's previous certification was for September 6, 2011 through December 18, 2011 (our records indicate the employer did not file an H-2A application for 2012).

Case Number	Employer Name	Status	Beginning Date Of Need	Ending Date Of Need
C-08192-14213	PUTNAM MANAGEMENT PROPERTIES	Certified - Full	8/28/2008	10/31/2008
C-08192-14217	PUTNAM MANAGEMENT PROPERTIES	Certified - Full	8/28/2008	12/12/2008
C-09176-20059	PUTNAM MANAGEMENT PROPERTIES	Certified - Full	8/28/2009	10/31/2009
C-09176-20065	PUTNAM MANAGEMENT PROPERTIES	Certified - Full	8/28/2009	12/12/2009
C-10189-24639	PUTNAM MANAGEMENT PROPERTIES, LLC	Certified - Full	8/25/2010	11/20/2010
C-11201-29825	PUTNAM MANAGEMENT PROPERTIES, LLC	Certified - Full	9/6/2011	12/18/2011
H-300-13051-970070	PUTNAM MANAGEMENT PROPERTIES		4/8/2013	12/12/2013

Based on the current employer's requested dates of need and its previously established dates of need, it is unclear how this job opportunity is temporary or seasonal in nature.

**Modification Required:**

The employer must explain why its job opportunity is seasonal or temporary. This explanation must state in detail why its dates of need have significantly

*Exhibit 2*

changed from its established season of September through December to its current request of April through December.

Because the employer failed to establish a temporary need as required by 20 CFR sec. 655.103(d), it is now required to provide supporting evidence that a temporary need exists. The employer must submit a written explanation which documents the temporary need for H-2A workers.

Supporting evidence in the form of summarized payroll reports is required to substantiate the employer's temporary need for the H-2A worker(s) in the case. The employer is required to submit summarized payroll reports for a minimum of two previous calendar years (2011 and 2012) for Farm Workers and Laborers, Crop. These payroll reports must be a summary of the employers individual payroll records by month, and, at a minimum, identify the total number of workers, total hours worked, and total earnings received **separately for permanent and temporary employment** in the designated occupation.

The summarized payroll reports must be signed by the employer with the following statement attesting that the information was compiled from the employer's accounting records or system: I certify that the information contained on this monthly payroll report is accurate and based upon the individual payroll records maintained by Putnam Management Properties for Calendar Year 2011 and 2012.

**2. Notice of Deficiency****20 CFR 655.141(a)****Deficiency:**

In accordance with Departmental regulations at 20 CFR sec. 655.141 (a), "[i]f the CO determines the Application for Temporary Employment Certification or job order are incomplete, contain errors, or inaccuracies, or do not meet the requirements set forth in this subpart, the CO will notify the employer within 7 calendar days of the CO's receipt of the Application for Temporary Employment Certification." In Item 2 of the ETA Form 790, the employer attests that the worksite is owned and operated by the employer. However, the employer did not include this attestation in the ETA Form 9142.

**Modification Required:**

The Chicago NPC must have the employer's written permission to add the attestation above to the ETA Form 9142.

*Exhibit 2*

**If original documents have been returned, please make sure the amendments are made on the original documents by crossing out the amended item and initialing and dating each amendment. An application in which "white out" is used to make corrections cannot be accepted for processing. You must return all original documents sent with this modification letter. You must also provide a copy of any amendments to your respective State Workforce Agency.**

Exhibit 2

**Putnam Management Properties, LLC**  
**Db a Billy Bob's Orchard**

17771 State Route 22  
 PO Box 105  
 Putnam Station, New York 12861

March 1<sup>st</sup>, 2013

U.S. Department of Labor  
 Office of Foreign Labor Certification  
 11 West Quincy Court  
 Chicago, Illinois 60604-2105

RE: Response to Notice of Deficiency H-300-13051-970070

To Whom It May Concern:

Putnam Management, LLC's Job order H-300-13051-970070 is for (2) H-2A farm workers for the period of time 4/8/2013 – 12/12/2013 to perform orchard work. Tasks outlined in this job order are "to perform orchard work, harvest apples and specifically the ability to trim, prune and train apple trees in the spring." Putnam Management, LLC historically begins its pruning in April to early May recommended by the Cornell Cooperative Extension. (\*)See quote below. I have also included detail from the Cornell Extension outlining best practices of pruning orchards, which Putnam Management, LLC uses as its baseline manual.

*(\*) When to Prune*

*If you have a small orchard, delay pruning until it's nearly spring. Allow for rain and bad weather, but plan to be finished pruning by May 1 or in time to begin spraying. In many larger orchards, the pruning begins soon after harvest and continues through to spring. Old trees are pruned first and young trees are left until March and April.*

2012 was a difficult year for our orchard. Mother Nature caused severe crop loss for our farm. I've enclosed a copy of the check stub from Rural Community Crop Insurance Services for the crop insurance received. The buds were damaged by frost in late winter on the lower two thirds of each tree and the buds that escaped the frost were hit with hail in late spring. Thus the reason our orchard did not file a 2012 job order for any seasonal workers.

However, the reason why the date of need has changed significantly with those of the past is because of the damage in 2012 and the US Domestic workers that were going to prune are both out of work due to medical reasons. The orchard is in need of workers to prune, clean up the orchard floor and prep for harvest of 2013. Putnam Management, LLC anticipates that due to the inability to find local help, as years in the past to harvest apples, that another 2013 job order will be filed for harvest workers consistent with the date of needs in the past if the crop matures to its fullest potential. I anticipate that the domestic workers currently out will return to work once released by their doctors.

Please find enclosed an Employee Wage Summary and Payroll Register (Summary) report requested for 2011 and 2012. This particular job order starts earlier than those in the past because of pruning and cleaning up the orchard floor and prepping for a 2013 harvest. Please note early February thru the mid to end of April there is no orchard payroll in 2011 and last year the payroll was minimal due to the crop loss.

Please don't hesitate to ask should you need anything further.

Sincerely,



Bill Blood

Exhibit 2

Human Resources Center  
425 Pennsylvania Avenue  
Elmira, NY 14904-1766  
Tel: 607-734-4453  
Fax: 607-734-7740  
www.cce.cornell.edu/chemung

## Pruning Apple Trees

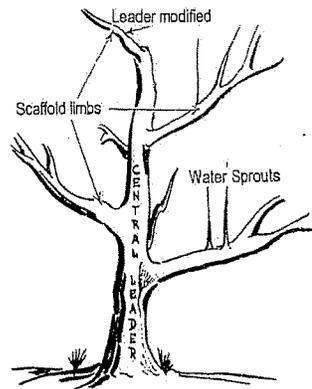
The "experts" generally agree to certain principles in the pruning of fruit trees. These principles include early training, selecting scaffold limbs with wide (60-90°) angle crotches and elimination of those with narrow crotches, thinning crowding branches and broken limbs, and heading the tree at a height desirable for economical spraying and harvesting.

**Training apple trees.** The training and selection of scaffold branches during the first few years of growth will influence the strength and life of your tree. There are several systems of training standard apple tree varieties, but the modified-leader system is best adapted to local conditions. This system is one that allows one leader or main limb to develop vertically for the first 5 to 8 years until strong, desirable scaffolds have developed laterally. Once the scaffolds have developed, the central leader is headed back to about 8 feet to a desirable, wide-angled limb.

This limb should be on the windward side of the tree, if possible, as a means of maintaining a good shape. The lowest scaffold branches should also be on the windward side. During the first few years, keep the leader larger in diameter than the scaffold limbs. This will help maintain strong crotches and discourage the scaffolds from becoming the leader.

Occasionally snip back the tip of the scaffold branches a foot or more to keep their height below the leader. Later, after you've harvested a crop or two, the limbs will bend enough to do away with this operation.

**Delayed heading.** You may not wish to follow standard procedures of pruning and training young apple trees for the first two or three years. Delayed heading, for instance, is a practice that is not universal but is successfully used by some orchardists. Delayed heading, the practice of pruning back the top of the tree to a strong bud which will become the central leader, starts when you plant the tree. This means cutting the whip back only a few inches, not to the usual desired height. The buds below the cut grow and lateral or scaffold limbs start to develop.



The mature tree will have a central leader modified at a desirable height (usually 8 feet), and scaffold limbs spaced up the leader 8 to 12 inches apart growing from various sides of the leader. Water sprouts and side branches are always found in vigorous orchards.

## Pruning Apple Trees

Scaffold branches near your cut develop sharp narrow-angled crotches. Limbs several inches lower, however, develop strong wide-angled crotches. After a month or two when the top shoots are 4- to 6-inches long, trim back the central leader to a shoot at the desired height. This point will be below the shoots with the narrow-angled crotches. The remaining top shoot will become the new leader for future growth.

You may find that bud stimulation or suppression will help develop good tree structure. Stimulation in this sense means selecting buds in a desirable location on the tree and cutting through the bark and cambium just above the bud. Do this in May or June during the first two years.

Suppression of undesirable shoots and buds may be accomplished by pinching back the growing point. You'll probably have to do this twice a year—once in June and again in July—over a two-year period to permit scaffold branch development.

**Scaffold limbs.** Select scaffolds that originate on different sides of the main leader, with the lowest limb on the windward side and at least 18 inches from the ground. Be careful that permanent scaffold limbs are no closer together than 10 to 12 inches at their base because each scaffold will develop side branches. Keep the side branches that have wide angles; thin out those that tend to crowd toward the trunk or other permanent scaffolds. Usually there are four permanent scaffold limbs originating from the main leader, but there may be as many as eight depending on the height of the leader.

**Strong, wide-angle crotches.** The limbs selected for scaffolds should form a wide angle (60-90°) with the main leader and be smaller in diameter. If you find only narrow-angled crotches on the young trees, remove them all so new limbs will develop from the leader. Delay in taking this step will cause you a great deal of trouble in shaping and training the tree in future years.

Exhibit 2

**Crowding branches.** Do not remove branches on young trees unless they interfere with desirable growth of the permanent scaffolds. More specifically, remove only those branches which are shading or rubbing the permanent branches, or are discouraging growth of new ones in desired locations. By leaving as much leaf surface as possible on the young tree, you will develop a larger tree in a shorter period of time.

Older trees already have more or less permanent shape and pruning of branches becomes a process of thinning. Trim to take out weak, slender unfruitful wood; to remove limbs that rub others; and to open up the tree for insect and disease control. Occasionally you may wish to leave a water sprout for bracing or renewal purposes. Otherwise, remove the water sprouts. They serve as a feeding area for insects and do not contribute to fruit production.

Crowded branches that tend to be growing down should be removed, not those that grow upward. The weight of the fruit will bring the branches down. Do not remove growing spurs. Food produced by leaves on spurs adds to the growth of the tree and fruit.

**Thin wood pruning.** Thin wood pruning on fruiting trees is economical and profitable, resulting in the production of more apples of good quality. Thin wood is found on outer reaches of the tree and toward the center. A ladder is usually necessary to do a good job on the outside.

Better growers will prune thin wood even though it takes longer than just the removal of crowded branches or bulk pruning. These trees often look over-pruned but close observation will show that few limbs are removed.

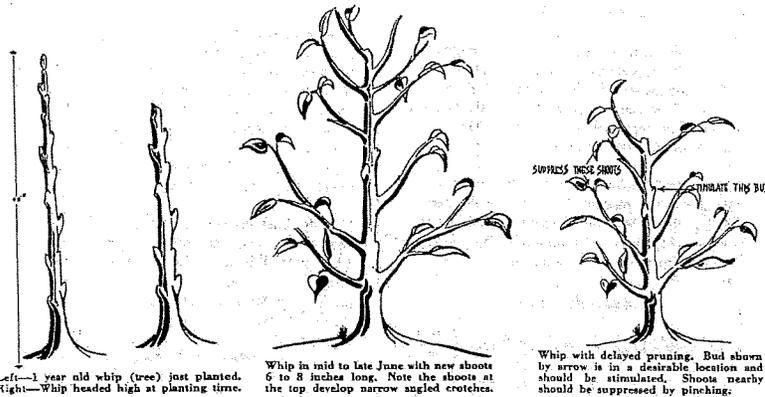
Pruning Apple Trees



Exhibit 2

**When to Prune**

If you have a small orchard, delay pruning until it's nearly spring. Allow for rain and bad weather, but plan to be finished pruning by May 1 or in time to begin spraying. In many larger orchards, the pruning begins soon after harvest and continues through to spring. Old trees are pruned first and young trees are left until March and April.



Left—1 year old whip (tree) just planted.  
Right—Whip headed high at planting time.

Whip in mid to late June with new shoots 6 to 8 inches long. Note the shoots at the top develop narrow angled crotches.

Whip with delayed pruning. Bud shown by arrow is in a desirable location and should be stimulated. Shoots nearby should be suppressed by pinching.

Trees to Five Years	Trees Six to Ten Years
<p>Other than training and shaping the young trees (as described under training), pruning should be limited to removal of limbs that are crowding and shading the permanent scaffolds, broken branches, or weak growth. Leave as much leaf area as you can to get fast growth and a large tree.</p>	<p>Trees in this age group seem to grow very rapidly. You should have these trees already shaped with established scaffolds.</p> <p>Because the limbs tend to grow <i>up</i> rather than <i>out</i>, bend the limbs down before pruning to visualize how the limb will be once it begins to bear fruit. If you do this, you will find the removal of thin wood, broken or damaged branches, water sprouts, and an occasional branch is all the pruning needed. <i>Too much pruning will delay fruiting of the tree.</i></p>

### Trees Over Ten Years

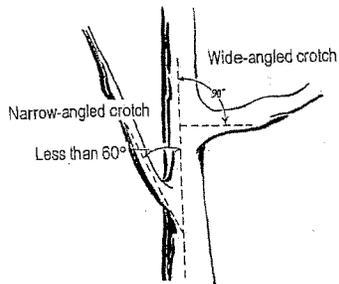
This is the age when trees are in prime fruiting. The limbs begin to bend from the weight of the fruit. Removal of thin wood, crowded branches, broken limbs, and water sprouts is a general practice. The big problem now is keeping the tree down to size without stimulating more upward growth.

Each large limb removed on top seems to encourage a dozen others which grow twice as high. Moderate work in the top of the tree each year is necessary to keep growth down. Occasionally, you will want to leave a water sprout in the top to branch out and provide shade to the upper branches to prevent sun scald. The second year the water sprout can be cut back two or three feet and the side branches will bear fruit and keep growth *down*, not *up*.

Never remove all the branches from the top of the tree leaving the center of the tree exposed.

Trees in this age group need to be pruned as much on the outside as on the inside. Removal of long, slender weak growth is important to maintain quality fruit. Leave strong branches and strong spurs, but remove crowded branches, thin wood, water sprouts, and broken limbs. Limbs which are touching the ground or will have fruit which is touching the ground should be removed. This often means you may have to remove one or more permanent scaffold limbs. The limbs above it will soon take its place.

Cutting back crowding trees is too common a practice. The need for this is usually the result of planting too close and failure to remove trees. If trees can be removed to improve spacing, do not hesitate to do so. A vigorous, well-managed orchard may have a yield drop for a couple of years, but the yield will be back up the third year following removal.



The limb on the left should be removed because it has a narrow angle (less than 60°) crotch. The limb on the right has a desirable, wide-angled crotch (60-90°) and should be left as a permanent scaffold limb.

**Equipment.** The amount and type of pruning needed determines the tools you will take to the orchard. You can usually handle two hand tools such as a limb lopper and hand saw. On young trees, you'll need hand shears, handsaw, and pocket knife. With power pruning equipment in use, the saw and shears are left with the tractor and used only when necessary. A light ladder is important on thin wood pruning on older trees.

Brush removal can be a problem. Brush rakes, similar to a buck rake but with shorter and stronger teeth, work well on thick brush but leave the spindle twigs. Orchardists are using large rotary mowers to chop up the brush and leave it for mulch.

Exhibit 2

You can remove brush fairly rapidly. Large limbs, 2 inches and larger, are trimmed out with an axe and removed for stove wood. Smaller wood is either removed or left to be chopped up with a rotary mower. Small brush, if it doesn't interfere with the cutter bar on the conventional mowers, need not be removed.

Most growers fork the brush in between the rows and push it out of the orchard with a modified brush rake. Or, you can pick it up by hand and put it on a large drag float or wagon. Another way is to use the large rotary mower and chop it up in the rows.

This works well if you use the rotary for mowing the grass later in the season. I have undoubtedly left out other methods that work equally well, but the point to remember is that brush *must* be taken care of.

Source: Rudolph A. Poray  
Extension Fruit Specialist  
Maine Extension Service

5/1994 Chemung

**Every effort has been made to provide correct, complete, and up-to-date pest management information for New York State. Changes in pesticide regulations occur constantly, and human errors are still possible. These recommendations are not a substitute for pesticide labeling. Read the label before applying any pesticide. Trade names used herein are for convenience only. No endorsement of products is intended, nor is criticism of unnamed products implied.**

**Cornell Cooperative Extension and its employees assume no liability for the effectiveness or results of any chemicals for pesticide usage. No endorsement of products is made or implied.**

**\*\*HOME REMEDIES: These remedies are not endorsements by Cornell University of any product or procedure. They are not recommendations for use either express or implied. Neither Cornell University, nor its employees or agents are responsible for any injury or damage to person or property arising from the use of this information.**

Putnam Management Properties  
 PO Box 105, 720 Couty Rt. 2  
 Putnam Station, NY 12861

2011 Payroll Summary

	January	February	March	April	May	June	July	August	September	October	November	December	Totals
<b>Full Time</b>													
Hours	318	18	0	47	223	240	169	160	170	262	289	285	2181
Earnings	\$3,606.00	\$216.00	\$0.00	\$564.00	\$2,682.00	\$2,886.00	\$2,028.00	\$1,920.00	\$2,040.00	\$3,144.00	\$3,468.00	\$3,426.00	\$25,980.00
# Workers	2	1	0	2	2	2	2	2	2	2	2	2	2
<b>Part Time</b>													
Hours	0	0	0	0	0	0	0	0	0	91	0	0	91
Earnings	0	0	0	0	0	0	0	0	0	\$823.00	0	0	\$823.00
# Workers	0	0	0	0	0	0	0	0	0	1	0	0	0
<b>Temporary Related to Orchard Work (Pruning/Picking)</b>													
Hours	0	0	0	0	0	0	0	0	1690	1547.5	0	0	0
Earnings	0	0	0	0	0	0	0	0	\$17,322.50	\$15,861.88	0	0	\$33,184.38
# Workers	0	0	0	0	0	0	0	0	10	10	0	0	0

229

I certify that the information contained on this monthly payroll reports accurate and based upon the individual payroll records maintained by Putnam Management Properties for the Calendar Year 2011.

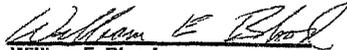
  
 William E. Blood

Exhibit 2

Putnam Management Properties  
 PO Box 105, 720 Couty Rt. 2  
 Putnam Station, NY 12861

2012 Payroll Summary

	January	February	March	April	May	June	July	August	September	October	November	December	Totals
<b>Full Time</b>													
Hours	199	0	0	70	57	42	75	145	254	291	187	99	1419
Earnings	\$2,388.00	\$0.00	\$0.00	\$840.00	\$690.00	\$510.00	\$906.00	\$1,740.00	\$3,054.00	\$3,498.00	\$2,244.00	\$1,182.00	\$17,052.00
# Workers	2	0	0	2	2	2	2	2	2	2	1	1	
<b>Part Time</b>													
Hours	0	0	0	0	0	0	0	0	0	0	0	0	0
Earnings	0	0	0	0	0	0	0	0	0	0	0	0	0
# Workers	0	0	0	0	0	0	0	0	0	0	0	0	0
<b>Temporary Related to Orchard Work (Pruning/Picking)</b>													
Hours	0	0	0	0	0	0	0	0	0	0	0	0	0
Earnings	0	0	0	0	0	0	0	0	0	0	0	0	0
# Workers	0	0	0	0	0	0	0	0	0	0	0	0	0

I certify that the information contained on this monthly payroll reports accurate and based upon the individual payroll records maintained by Putnam Management Properties for the Calendar Year 2012.

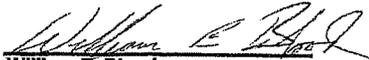
  
 William E. Blood

Exhibit 2

*Exhibit 2*



Check Number: 01726025  
DIRECT - CHECKS MAILED TO INS

MPCI SUMMARY OF LOSS										Policy #: 2012 31-090-095625		Claim #: 1915796	
PUTNAM MANAGEMENT PROPERTY LLC PO BOX 105 PUTNAM STATION NY 12861										County: WASHINGTON 115		RY: 2012	
										Page: 1		Date: 9/20/12	
31-3008 CROP GROWERS LLP GREENWICH OFFICE ONE TECHNOLOGY PL STE 3 HOMER NY 13077 PHONE (800)234-7012										FCIC ADMIN FEE CREDIT \$30.00		AMOUNT OF CHECK \$151,304.00	
										*PREMIUM BALANCE DUE \$0.00			
CROP / PLAN	UNIT	FSN	ACRES	PRAC	TYP	STG	GUAR / ACRE	ADJ GUAR	PROD TO COUNT	PRICE	SHARE	PAYABLE	
APPLE APH	0001-0001-BU	122	6.80	003	111	UH	180.50	1227.00	.00	10.90	1.000	13374	
		122	6.80	003	111	UH	180.50	1227.00	.00	10.90	1.000	13374	
		122	4.50	003	111	UH	180.50	812.00	.00	10.90	1.000	8851	
		122	5.60	003	111	UH	180.50	1011.00	.00	10.90	1.000	11020	
		122	9.90	003	111	UH	180.50	1787.00	.00	10.90	1.000	19478	
		122	10.70	003	111	UH	180.50	1931.00	.00	10.90	1.000	21048	
		122	15.30	003	111	UH	180.50	2762.00	.00	10.90	1.000	30108	

\*BALANCE REFLECTS TRANSACTIONS POSTED AS OF 9/20/2012

*Deposit 9/27/12*



MPCI SUMMARY OF LOSS

*Exhibit J*  
 Date: 9/20/12  
 Page: 2

CROP / PLAN		UNIT	FSN	ACRES	PRAC	TYP	STG	GUAR/ ACRE	ADJ GUAR	PROD TO COUNT	PRICE	SHARE	PAYABLE
			122	16.60	003	111	UH	180.50	2996.00	.00	10.90	1.000	32656
			122	3.40	003	111	UH	180.50	614.00	.00	10.90	1.000	6693

**TESTIMONY FOR THE RECORD**

**OF**

**MEGAN SMITH**  
**COMMISSIONER**  
**VERMONT DEPARTMENT OF TOURISM & MARKETING**

**ON**

**THE BORDER SECURITY, ECONOMIC OPPORTUNITY, AND**  
**IMMIGRATION MODERNIZATION ACT, S. 744**

**BEFORE THE**  
**SENATE JUDICIARY COMMITTEE ON**

**APRIL 22, 2013**

**INTRODUCTION**

On behalf of the U.S. and Vermont travel and tourism industry, I welcome the opportunity to provide testimony on how immigration reform can spur economic growth by providing needed reforms and resources that will expand foreign travel to the U.S. We congratulate the “Gang of 8” for including a number of significant provisions in the “Border Security, Economic Opportunity, and Immigration Modernization Act” and more broadly recognizing that facilitating legal travel must be an integral part of immigration reform.

As our economy recovers from the Great Recession, travel is leading the way:

- In 2012 international visitors added nearly \$130 billion to the U.S. Economy and generated more than \$19 billion in federal, state and local tax revenue.
- One in eight Americans is employed by the travel industry, and international visitors support more than one million U.S. Jobs.
- Every 33 additional overseas visitors – i.e. international visitors other than those from Canada and Mexico – create one American job.
- Overseas visitors to the US spend an average of nearly \$4500 per visit.
- Inbound international travel to the U.S. is America’s number one service export.

Vermont is very dependent on Tourism. Our percentage of jobs in the industry is twice the national average (38%) while our visitors spent \$1.7 billion in 2011 generating \$233 million in

tax revenue. The majority of our businesses are small and family-owned, and Agritourism is growing at a very high rate. We are starting to see a steady increase of international visitors and it is a market that we are focusing on much more with the support of Brand USA. While we benefit from being a weekend getaway for millions of travelers, in order for our small businesses to flourish, we need to attract more international travelers who stay longer (on average 14 days) and spend more money.

Understanding the economic importance of growing international visitation, we are fully supportive of the inclusion of the Jobs Originated through Launching Travel (JOLT) Act in the proposed immigration legislation. The JOLT Act, which garnered bipartisan support in both the Senate and House last Congress, will address some of the most pressing barriers facing inbound business and leisure travel to the U.S. JOLT, along with other key provisions in the legislation such as the EB-5 and H-2B proposals, will help the U.S. meet the nation's goal of attracting 100 million visitors by 2021.

In my testimony, I also want to highlight a provision in the bill which would have a negative impact on our nation's effort to continue attracting international visitors.

#### VISA WAIVER PROGRAM

According to an analysis by the U.S. Travel Association, one provision alone in the immigration proposal – expanding the Visa Waiver Program (VWP) – could, if extended to Argentina, Brazil, Bulgaria, Chile, Croatia, Israel, Panama, Poland, Romania and Uruguay, increase annual visitation by more than 600,000 people, add more than \$7 billion to the U.S. economy, and support more than 40,000 additional American jobs. A recent sales mission to Brazil by Vermont's ski industry gave us insight into how much interest there is for our ski product in just this one country.

The most economical and powerful step the U.S. government can take to improve the performance and competitiveness of the visa processing system while maintaining national security is to sign bilateral visa-free travel agreements with new countries as part of the VWP. The immigration proposal before the Senate today makes some necessary adjustment to the VWP in order to allow additional countries such as Poland, Brazil and Israel the opportunity to be eligible for the program, if they met substantial and important security and counter-terrorism criteria.

In 2011, visitors from VWP countries played a leading role in making travel the leading service export for our nation. VWP countries are the largest source of inbound overseas travel to the United States. According to Commerce Department data, 18 million VWP visitors, 65 percent of all visitors from overseas traveled to the U.S. in 2011. While here, they spent nearly \$69 billion, supporting 525,000 American jobs along with \$12.8 billion in payroll, and generating \$10.5 billion in government tax revenues.

Every new overseas visitor from Brazil, Poland and other key markets constitutes a source of new economic stimulus. Each has the desire and means to travel to the United States, for business and/or pleasure; and rarely do these visits require additional U.S. infrastructure. It is

just a question of whether our entry process is welcoming or discouraging, as compared with destinations in other nations.

Another key goal of the Visa Waiver Program is to improve standards for air security, travel documents and international law enforcement collaboration. As a condition of participation in the program, VWP countries must follow strict counter-terrorism, border security, law enforcement and document security guidelines, as well as participate in information-sharing arrangements with the United States. VWP countries must issue International Civil Aviation Organization-compliant electronic passports; report information on all lost and stolen passports to the United States through Interpol; and share information on travelers who may pose a terrorist or criminal threat to the U. S. As a result, our government is able to supplement our watch-list database with information from the travelers' home governments. In addition, each VWP traveler must also obtain pre-clearances to board a flight to the U.S. through the ESTA.

Taken together, these eligibility requirements ensure compliance with elevated security standards and cooperation with United States law enforcement. This enables us to better detect, apprehend and limit the movement of terrorists, criminals and other dangerous travelers – and to shift limited visa screening resources to higher risk countries.

The most effective ambassadors of American values are ordinary Americans. Citizens from VWP countries who travel to the United States for tourism or business form life-long impressions of American society based on their visits to destinations, large and small, across America. From our national parks to our ball parks to our theme parks, the heartland of our great nation reflects the best of the United States to foreign visitors. The more they know us, the better they like us and the more often they return.

Surveys have shown that foreigners who have the opportunity to visit the U.S. are 74 percent more likely to have a favorable view of our country; and that 61 percent are more likely to support the U.S. and its policies. Moreover, the mere agreement itself to establish a visa waiver relationship reinforces bilateral goodwill. While its explicit mission is to enhance security and encourage travel, the Visa Waiver Program has also demonstrated significant public diplomacy value as a “soft power” tool that complements our formal foreign policy mechanisms.

By strengthening our alliances and enhancing our nation's global image, the VWP has helped to keep us safer. By facilitating more efficient flow of overseas visitors for legitimate business and leisure at a time when the global travel market is booming, VWP expansion offers enormous export opportunity for the U.S. travel and tourism sector across the entire nation.

#### INTERNATIONAL TRAVEL PROVISIONS

The immigration bill also includes other provisions designed to improve the U.S. economy by facilitating legitimate travel to the U.S. including reducing visa wait times with measures that include:

- **Premium Visa Processing:** This provision would establish a pilot program for fee-based, expedited interviews at a limited number of consulate posts. Similar to services already

offered by the State Department for passport issuance, this would allow expedited review of visas for travelers willing to pay the additional fee. This service would not alter the visa issuance process, thus ensuring no impacts to security. Additionally, the revenue generated from the program would be reinvested into the State Department's visa issuance activities.

- **Visa Processing Goal:** The establishment of a visa processing goal is critical to ensure long-term, strategic planning by the State Department. The provision sets a goal of interviewing 80% of the applicants within three weeks for all nonimmigrant visas worldwide. It is my understanding that the State Department has already met this goal and therefore, I would encourage the Senate to raise the bar with a new goal of interviewing 90% of the applicants within ten days, with recognition of the need to concurrently maintain U.S. security and address resources allocation.
- **Wait Time Transparency:** Requiring the State Department to publish information on visa wait times will eliminate uncertainty in the process and facilitate travel planning for potential visitors.
- **Encouraging Canadian Visitation:** Easing unnecessary restrictions on visitation from Canada will only enhance the already strong diplomatic and economic ties between the two countries. As we continue with implementation of the "Beyond the Border Agreement" we should identify additional opportunities to boost Canadian visitation to the U.S. Vermont has a distinct and important relationship with our Canadian neighbors. This relationship is especially strong in the northern region where thousands of Canadians own second homes. These Canadians are more than second homeowners, though, they are members of our communities, not only as a critical segment of our local economy, but generous contributors to our local foundations, arts and humanities organizations. As these homeowners reach retirement, they are interested in spending more time in the U.S. so we strongly support increasing their time to remain in the U.S. to 240 days as proposed in the immigration bill.
- **Global Entry Expansion:** We also support inclusion of new language to expand the highly successful Global Entry Program that allows pre-approved, low risk international travelers the ability to utilize an expedited clearance process upon entry into the U.S. Customs and Border Protection personnel to focus inspection resources on unknown or risky travelers.

#### BRAND USA

Brand USA is a non-profit, public-private partnership dedicated to promoting the U.S. as a premier travel destination in foreign markets. By attracting more visitors, Brand USA increases U.S. economic growth, spurs job creation and creates a more positive impression of the U.S. around the world – at no cost to U.S. taxpayers. Half of Brand USA's budget, up to a maximum of \$100 million per year, is funded by the private sector, with matching funds provided by a \$10 fee assessed on visa-free international visitors screened through the Department of Homeland Security's Electronic System for Travel Authorization (ESTA).

Brand USA has already launched successful campaigns in Canada, Japan and the United Kingdom and is having a significant impact in these initial markets, showing between a 12 – 14% increase in intent to travel to the U.S. We expect to see similar results as the marketing campaign intensifies in the next three markets – China, Brazil and South Korea.

I represent the “small rural states” on the Brand USA Marketing Advisory Committee. This organization has allowed those of us that are not gateway states such as Florida, California and New York to finally have a voice in the international travel market. Vermont is lucky to work with Discover New England (the 6 states have a marketing cooperative overseas run by a staff of 3) but that has always been somewhat limited since the visitor is encouraged to visit the entire region only giving Vermont one or two nights of the stay. Since Brand USA and Vermont have partnered together, it has allowed Vermont to enter the markets of Great Britain, Tokyo and Canada, using both New York and Montreal as a gateway as opposed to only Boston with Discover New England. Partnering with Jet Blue, we have already seen an increase in visitation to Vermont through JFK and I have been able to hire a PR firm in the UK to promote Vermont.

Brand USA also makes it much more affordable and easier for Vermont to have a presence at international trade shows. Having a presence at a trade show allows smaller states a new opportunity to market themselves. Just this year at the ITB (largest international trade show in Europe) I saw states represented that have never attended before. The interest at the Illinois booth was particularly noteworthy with the popularity of the film “Lincoln” which they smartly were featuring. Brand USA has done a particularly good job promoting our National Parks and Monuments of which many are in smaller more rural states.

With the aforementioned successes and economic benefits associated with Brand USA’s efforts, we are very concerned about a provision in Section 6 of the immigration bill that would divert 75% of the ESTA fees that are used by Brand USA to the general funding pool for border security. DHS currently collects about \$140 million annually from the \$10 fee, and Brand USA can access up to \$100 million of these ESTA funds, if matched with private sector donations. The excess \$40 million currently is dedicated to deficit reduction. While Vermont and the broader travel community would support using the excess fees for the border security requirements in the immigration bill, we strongly oppose changing the ESTA funding formula so that Brand USA would only receive 25% of the \$140 million. Slashing the funding provided to Brand USA would greatly reduce the markets Brand USA could tackle and greatly diminish its return-on-investment to the U.S. Furthermore, with fewer resources, BUSA would have less opportunity to partners with smaller states like Vermont.

#### EB-5 PROGRAM

Vermont has been a pioneer of the EB-5 program through the unparalleled efforts of Jay Peak Resort’s Bill Stenger, making our state the first in the country to successfully utilize this program for resort development and expansion. Jay Peak is a perfect example of this program’s benefits for the economy and the local community, where jobs are scarce in that part of Vermont and conventional lending is not an option. Other resorts in Vermont that have utilized this program or are pursuing it for future projects include Sugarbush Resort, the Trapp Family Lodge and

Mount Snow Resort. In addition, manufacturing companies have likewise benefited from this program, thereby strengthening that important component of Vermont's economy. We appreciate the inclusion of a permanent authorization of this important program in Section 2319.

#### H-2B WORKERS

We also very much appreciate inclusion of reforms to the H-2B visa program which is highly important to employers in seasonal tourism industries – most importantly the states with lower populations and dense visitor seasons. Ski resorts in the winter and beach communities in the summers rely on these workers who not only prove to be excellent employees but bring a cultural experience to states that do not necessarily enjoy a great deal of diversity. When a trained employee can return for several years it is a great benefit to all. We thank you for including Sections 4601 and 4602 in the bill.

#### VISA VIDEOCONFERENCING

In geographically large countries, the lack of access to U.S. Consular Offices creates a major deterrent to travel to the United States for millions of potential visitors. For this reason, we encourage the Committee to add a provision requiring the State Department to conduct a pilot program using secure videoconferencing technology for visa interviews. By adopting modern communications technology commonly used in the private sector, U.S. consulates around the world could provide increased access for potential travelers while reducing costs for U.S. taxpayers.

Videoconferencing has become second nature to private industry and even State Government. The quality of remote videoconference technology has improved significantly in recent years – and is now used routinely for secure communications in the State Department and other sensitive federal agencies, as well as in such demanding environments as battlefield medicine. The use of videoconference technology to conduct visa interviews will enable U.S. consulates in nations such as Brazil to significantly expand access to visa services without reducing the level of security for visa interviews.

#### CBP OFFICER STAFFING

U.S. Customs and Border Protection's (CBP) recently released Workload Staffing Model identified a significant shortage of CBP officers nationwide. In order to enhance security, while also facilitating legitimate travel and trade, we strongly support the addition of the 3,500 CBPOs included in the legislation. In order to ensure the officers are allocated appropriately, we urge the committee to work with CBP to identify and specify the number of officers needed at air, land, and sea ports of entry.

While Vermont lacks a major U.S. gateway airport, our tourism industry relies heavily on traffic from major northeast hubs, where travelers often experience significant customs wait times upon entry – largely due to a lack of resources within CBP. These delays can significantly impact foreign perceptions of the U.S. and discourage future visitation.

Let me give you a couple of examples of the far-reaching impact of this problem. It is common for states like Vermont to invite foreign journalist to visit our state and write stories about their experience in order to attract international visitors. We recently had 4 journalists from the U.K. arrive at 10:00 pm in JFK on a flight that arrives every evening at that time. There was only one agent to process all of the international visitors arriving on various flights at that time this resulted in a four hour wait at primary inspection. As a result, the journalist didn't arrive to their hotel until after 3:00 am. Imagine if you had to wait in a four-hour line to enter a country after arriving on a 7-hour flight. Would it leave you with a desire to return? We did all we could to show them a wonderful experience in Vermont, but the delays at CBP are likely to also be featured in the articles they write.

For the past two winters we have worked with Porter Airlines from Toronto to fly four flights per week into Burlington International Airport. This has opened a huge market for us, and the high demand for the flights has proven this market has excellent potential. Yet, instead of helping sustain this economic opportunity, as of today, we won't be able to offer the service in the summer because CBP has informed us they do not have the officers to process those flights. It appears that the CBP officers from the winter are reassigned to Lake Champlain in the summer. So essentially, we are going to leave money on the table and hurt our local small businesses as a result.

The land border can also experience similar problems. Our Canadian visitors have found it much more difficult to cross the border due to both lines and intensive scrutiny that often borders on harassment. I have experienced first hand much greater difficulty coming back into our Vermont from Canada.

We strongly encourage the committee to work with CBP to provide adequate staffing resources at our nation's gateway airports to process all flights and to meet a 30 minute per-passenger processing goal. Recently released researched from CBP highlighted the significant economic impact of CBPOs. Adding a single CBP officer equates to annual benefits of a \$2 million increase in GDP, \$640,000 saved in opportunity costs, and the addition of 33 U.S. jobs. This significant economic and security related impacts generated from each officer should more than justify the government's investment in increased CBP staffing.

#### CONCLUSION

As noted throughout my testimony, there are various provisions in the bill that recognize the importance of legitimate travel to our nation. As we work to reform the entire immigration system and enhance border security, we must ensure that our efforts do not unintentionally deny the country the significant economic benefits of travel. Just like many other states, Vermont has a strong tourism industry and many of the provisions outlined in my testimony will help strengthen our state and local economies throughout the country.

I very much appreciate the opportunity to testify today and look forward to your questions.

**TESTIMONY OF FORMER CONGRESSMAN JIM KOLBE****SENATE JUDICIARY COMMITTEE****22 APRIL 2013**

Chairman Leahy and Members of the Committee:

Thank you for inviting me to testify before you today on behalf of the Border Security, Economic Opportunity and Immigration Modernization Act of 2013. As you may know, I had the privilege of serving in the United States Congress from 1985 until 2007, representing Arizona's 5<sup>th</sup> and 8<sup>th</sup> Congressional Districts. Immigration is an issue that has always been in the forefront in this border district, with a large and vibrant immigrant community and all the strains on law enforcement and social services that accompany illegal immigration. At one point less than a decade ago, nearly half of all apprehensions of illegal immigrants in the entire country were occurring in this single congressional district.

I applaud the senators in the so-called "Gang of Eight", and especially Senator Flake from my home state of Arizona, who spent many months preparing this legislation. I am hopeful that this Committee will engage in a bipartisan effort to fix our country's broken immigration system with legislation that offers meaningful solutions. The bill currently before the Committee is an excellent start that offers many positive provisions to help U.S. businesses, our immigrant population, and our country as a whole. Others on this panel will discuss various economic considerations, but I want to talk about one particular provision—completing family unification.

I know first-hand from my days of representing my district in Arizona that immigration laws impact all of our lives. I also know, as the partner of a Panamanian immigrant, how especially difficult it can be to build a life and protect your family, under our current, cumbersome system. While the bill you are considering is an excellent starting point for reform, I submit to you that it is still incomplete. Families like mine are left behind as part of

this proposal. Equally important, U.S. businesses and our economy suffer because of the omission of lesbian, gay, bisexual and transgender (LGBT) families from the bill introduced last week.

Eight years ago, I met my partner and future husband, Hector Alfonso. Hector was born in Panama, and came to the United States on a Fulbright Scholarship to pursue graduate studies in special education. He has been a dedicated teacher for almost two decades. The schools where he taught, however, could not sponsor him for a green card, and I couldn't either. Despite being in a committed relationship and despite the fact that he remained in lawful status every day he had been here, Hector was forced to return to Panama when his work visa expired. Our twelve month separation—like that of any American from their spouse—was painful. Hector returned to Panama while he applied for another visa. Eventually, we accomplished this, but it was a long process and it was expensive—far beyond the reach of most families. Our laws should not separate American citizens from their loved ones for such unacceptably long periods of time.

On May 18<sup>th</sup>—just a month from now—Hector and I will legally marry here in the District of Columbia, surrounded by family and friends. We are immensely fortunate that Hector has now secured an investment visa that allows him to remain here with me. Many other couples, however, are not as fortunate. Even if they, like us, have a marriage, civil union or life-long commitment to each other, their ability to secure a permanent solution that would allow them to build a home, family or business together is elusive and difficult to realize. It shouldn't be that way, and this Committee has an opportunity to fix this problem.

The Uniting American Families Act (UAFAs)—legislation sponsored by Chairman Leahy and Senator Collins—would make a profound difference in the lives of many Americans and their families. By amending our immigration laws to treat lesbian and gay families as our nation treats other immigrant families, UAFAs would ensure American citizens are not torn apart from their loved ones, or forced in to exile abroad. The Williams Institute at the University of California estimates that some 36,000 couples who are raising more than 25,000 children, would be given the permanence they need to protect their families and build a life here in this

country. It is a small number overall. Including this provision would place virtually no additional burden on our immigration system. For those families and their children, however, UAFA's inclusion in the committee bill would make all the difference in the world.

The comprehensive immigration reform bill now under consideration by this Committee includes important provisions to make U.S. businesses more competitive. The UAFA does the same, which is why it is supported by Fortune 500 companies like Intel, Marriott, Texas Instruments and US Airways, who have called on lawmakers of both parties to support its passage. The failure to recognize lesbian and gay families in our immigration laws has a direct impact on American business.

A survey last year by the American Council on International Personnel (ACIP) found that ten percent of their member organizations have lost valuable employees who were forced to leave the United States because the employee's spouse or partner had no ability to remain in the country. An additional forty-two percent reported missing out on a significant recruiting opportunity because a job candidate was unable to bring their partner to the U.S. with them. Meanwhile, six of America's top ten trading partners, as well as sixty-five percent of the Organization of Economic Cooperation and Development (OECD) member countries, recognize lesbian and gay couples for immigration purposes. That puts those countries at a distinct competitive advantage over the United States.

In a letter last month to the eight Senators who authored the Border Security, Economic Opportunity and Immigration Modernization Act, a coalition of 28 of our country's most prominent companies wrote:

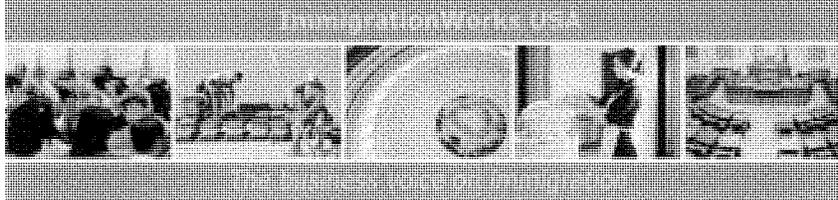
*"We have each worked to help American employees whose families are split apart because they cannot sponsor their committed, permanent partners for immigration benefits. We have lost productivity when those families are separated; we have borne the costs of transferring and retraining talented employees to they may live abroad with their loved ones; and we have missed opportunities to bring the best and the brightest to the United States when their sexual orientation means they cannot bring their family with them."*

It isn't just major corporations that lose out; small business owners are also suffering. In Columbia, South Carolina, a restaurant owner with 25 employees recently made the difficult decision to close his business in order to move so he could be with his partner. In Los Angeles, a young entrepreneur who employed 30 U.S. workers shut his doors after his Canadian partner's visa expired and they were forced into exile. These are stories that should give us all pause, and cause us to reflect on the price to both American businesses and American families when we choose to leave some of our fellow citizens out of a reform to our immigration laws.

Prior to serving as a Member of Congress, I also had the privilege to serve our country as a member of the United States Navy, including a year's tour in Vietnam on small boats alongside now-Secretary of State, John Kerry. Both my service in our armed forces, and in the U.S. Congress has reinforced my strong belief that America is unique among the nations of the world in its dedication to equality, liberty and justice for all. Our country is changing and our laws must change with it in order to protect all American citizens and their families, and to strengthen our position in an increasingly competitive, global economy. The immigration reform bill currently before this Committee is a step in the right direction, and I commend the Committee for taking up the difficult task of immigration reform. It can be made better, however, by including American citizens like me, and American businesses—like the 28 who recently wrote many on this Committee—who need your vote for this important addition of the Uniting American Families act to the bill now before you.

It is time, Chairman Leahy and members of the Committee, to fix our immigration laws. The opportunity is too rare, and the positive impact too great to leave anyone behind. Adding UAFA to the committee bill would be a big step toward making it truly comprehensive.

Thank you.



## TESTIMONY

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ON: THE BORDER SECURITY, ECONOMIC OPPORTUNITY AND  
IMMIGRATION MODERNIZATION ACT, S.744

TO: U.S. SENATE COMMITTEE ON THE JUDICIARY

BY: TAMAR JACOBY  
PRESIDENT, IMMIGRATIONWORKS USA

DATE: APRIL 22, 2013

Testimony before the U.S. Senate Committee on the Judiciary  
Monday, April 22, 2013

Hearing on the Border Security, Economic Opportunity and Immigration  
Modernization Act

Statement of  
Tamar Jacoby  
President  
ImmigrationWorks USA

Good morning, Chairman Leahy, Ranking Member Grassley and distinguished members of the Senate Judiciary Committee. Thank you for this opportunity to testify on the less-skilled worker visa program in the Border Security, Economic Opportunity and Immigration Modernization Act. My name is Tamar Jacoby, and I'm president of ImmigrationWorks USA.

ImmigrationWorks USA is a national federation of small and medium-sized business owners from across the sectors that hire less skilled immigrant workers: hospitality, food processing, cleaning, maintenance and construction, among other industries. Our network consists of 25 state-based, pro-immigration business coalitions. These local groups fight for better immigration law in their states and in Washington and work to educate the public about the economic benefits of immigration. Their shared goal: to bring the legal intake of less-skilled immigrant workers more into line with the nation's labor needs.

I'm here today on behalf of my members to express our support for the Border Security, Economic Opportunity and Immigration Modernization Act. We applaud the eight Senators and staff who came together to craft the legislation. It's a thoughtful, ambitious blueprint, proof positive that the art of compromise is still alive in the Senate. Many of my members are particularly pleased to see Republican lawmakers engaging as equal partners in the effort to pass immigration reform, and we are grateful to all eight Senators for their commitment to pragmatism and bipartisanship – pragmatism and bipartisanship evident on virtually every page of the bill.

We believe the legislation would make for dramatic improvements in the workings of the nation's dysfunctional immigration system and look forward to supporting passage. But we also hope the measure can be improved, most importantly by increasing the size of the less-skilled worker W Visa program so that it works to prevent future illegal immigration, diverting today's unauthorized immigrant influx and replacing it with a legal labor force.

I'm going to use my time today to address three issues:

Number One: The nation's need for less-skilled immigrants and the contribution they make to the U.S. economy, not just filling critical jobs for which there are not enough willing and able Americans, but also supporting jobs for U.S. workers up and downstream in the local marketplace.

Number Two: The design of the less-skilled worker W Visa program in the Border Security, Economic Opportunity and Immigration Modernization Act, which we find innovative and ingenious – a break-the-mold 21st century temporary worker visa program.

Number Three: Our concerns about the size of the program, which I and many of my members fear may not be adequate to prevent illegal immigration in the future.

#### **The economic benefits of less-skilled immigration**

Americans who are skeptical about the nation's need for immigrant workers often frame the issue as a contest between U.S. workers and the foreign-born. These skeptics make claims about competition and displacement and adverse wage effects. But this is not the reality in the U.S. today. In fact, immigrants, high and low-skilled, fill labor market niches for which there are not enough willing and able Americans. And by filling these niches, which are generally at the top and bottom of the job-skills ladder – PhD engineer, for example, or busboy and farmworker – immigrants make U.S. workers, who are more likely than newcomers to occupy the middle rungs of the ladder, more productive.

The most powerful force driving low-skilled immigration today is not in Mexico or Central America or elsewhere beyond our borders. It's the changing nature of the U.S. workforce.

American families are having fewer children. U.S. fertility rates have declined dramatically since the 1960s and are now well below replacement level. For U.S.-born women, the rate is currently 1.7 percent – some 20 percent lower than what's needed to maintain the size of the population and eventually replace the existing workforce.

Meanwhile, a second factor, baby boomers are retiring. The numbers are stunning: a full 10,000 older workers are now leaving the workforce every day, and that rate is expected to continue through the next 15 years.

Third and perhaps most important, the younger workers coming up behind the baby boom generation are much more educated than their parents. In 1950, 64 percent of American workers were high school dropouts willing to do physically demanding, low-skilled work. Today, the figure is less than 10 percent. More than 60 percent of Americans have some postsecondary education, whether college or vocational training. And the number graduating from college is 25 times greater today than it was in 1950.

Together, these three factors – smaller families, baby boom retirements and what economists call the "educational upgrading" of the U.S. workforce – have had a dramatic effect on the pool of Americans available to fill low-skilled jobs. It's no accident that the service-sector employers who make up the lion's share of my membership are constantly complaining about the difficulty they have finding workers. The pool they have to draw on is shrinking, and has been for several decades. For those seeking to hire unskilled men of prime working age – high-school dropouts aged 25-34 – the supply of U.S.-born workers is half the size it was as recently as 1970.

But many U.S. businesses still need less-skilled workers to meet customers' needs and remain competitive. If anything, demand for less-skilled workers is growing. In 1955, 25 cents of every dollar spent on food was spent in a restaurant; today, the figure is 50 cents out of every food dollar. Restaurant and food-service employment is expected to grow by 11 percent over the next decade, but the 16-to-24 year old workforce that typically fills restaurant jobs will grow by only 4 percent.

The shortfall is even more dramatic in the care professions. According to the Bureau of Labor Statistics, the two fastest growing occupations in America are home-health aide and personal-care aide. Both will expand by more than 70 percent between now and 2020. Combine this with the nation's future need for nurses' aides and child-care workers – also

low-skilled, physically demanding work – and the total projected demand adds up to 1.9 million new jobs. This sounds good: 1.9 million new jobs. The problem: it's more than the total number of Americans who are expected to enter the labor force between now and 2020 – just 1.7 million. As Michael Clemens and Lant Pritchett point out in a recent study issued by the Center for Global Development, in coming years, the need for low-skilled care workers alone will outstrip the growth of the entire U.S. labor force. And given continuing trends – smaller families, baby boom retirements and the educational upgrading of the U.S. workforce – not many American parents are likely to be raising their children to aspire to jobs of this kind.

Bottom line: we need less-skilled immigrant workers. We're going to need them increasingly in the years ahead. And far from taking jobs from Americans, by and large they support and create jobs for U.S. workers. Because immigrant workers are different from Americans – in this case, less skilled, less educated, generally with poorer English and less suited to jobs that require communications or management skill – they tend to complement U.S. workers, filling empty niches and producing a well-rounded workforce that can fill jobs across the skill spectrum.

Low-skilled immigrant workers allow restaurants to expand and the restaurant industry to grow, creating jobs for U.S.-born chefs, U.S.-born waiters, U.S.-born restaurant managers and accountants. A restaurant's expansion also creates more work for other businesses up and downstream in the local economy, whether food producers or janitorial services or local designers and architects. The availability of low-skilled immigrant labor has enabled millions of American women to work outside the home in recent decades. And in coming years, low-skilled immigrant health care workers will position more Americans to take advantage of better health care jobs: doctors, nurses and lab technicians, among others.

These are givens – all but inexorable demographic and educational trends that are changing the U.S. workforce to create a continuing demand for low-skilled foreign workers. It's not a fixed or entirely predictable need: economic trends and technology, among other factors, will influence its magnitude in coming years. And these workers represent an increasingly small part of the U.S. economy. Remember, most U.S. workers are becoming more educated and better skilled, and on the whole, the kinds of jobs on offer in the U.S. are becoming more sophisticated.

But the question remains – a burning question: how in the years ahead is the nation going to fill this ongoing need for less-skilled immigrant workers?

#### **The W Visa program**

The Gang of Eight Senators that crafted the Border Security, Economic Opportunity and Immigration Modernization Act faced a daunting challenge in creating a less-skilled worker visa program.

Guest worker programs has proved problematic in the past, both in the U.S. and in Europe, giving rise to the well-known quip that there's nothing more permanent than a temporary foreign worker. Existing U.S. temporary worker programs offered little to build on. Both existing low-skilled programs – H-2A and H-2B, both for seasonal workers only – are regarded by many employers as too cumbersome and bureaucratic to be useful, and both are disliked by labor advocates, who claim they foster a new form of indentured servitude. The Gang of Eight sought to craft a program that would prove workable through future decades, flexible enough in size to accommodate the ups and downs of the business cycle and meet U.S. labor needs, which could change significantly in future years. And in this

realm as others, the Senators strove to find an equitable balance: a new program that would provide employers with a stable, reliable, legal labor force, while protecting labor rights – the rights of less-skilled U.S. workers and the incoming foreign labor force.

The Senators largely succeeded in my estimation. The W Visa program is a thoughtful, creative blueprint – vital bipartisan recognition that we as a nation need a less-skilled foreign labor force to fill jobs when there are no willing and able Americans. Presented as a drawing without a key to indicate its size or scale, the program would inspire high praise.

Among its innovative and ingenious features:

**Free movement of workers within the program.** In contrast with other, existing U.S. temporary worker programs, employers would not sponsor workers for W visas, and workers would not be tied to specific jobs or specific employers. A foreign worker could not enter the country without a job offer from a U.S. employer. But once workers have entered the country, they would be free to change jobs at will, accepting work from any employer who had been approved to participate in the program – who had tried to hire U.S. workers and demonstrated a bona fide labor need.

This innovation is a win-win for willing workers and willing employers. For workers, the possibility of quitting is the foundation of all other labor rights: leverage to bargain for better wages, working conditions, promotions and other benefits. For employers, the new model offers more flexibility in managing the size of their labor force and also the possibility of hiring in real time without repeating a cumbersome government application process.

**A floating cap.** In contrast to existing temporary worker programs, the W Visa yearly quota would not be fixed legislatively. Congress would mandate an initial limit. But in future years, the cap is designed to adjust automatically in response to changing U.S. labor needs. The number of visas issued would float upward in good years when the economy needs more foreign workers and downward in down years, when labor demand decreases and more Americans are out of work.

What's more, the Senators recognized, even a floating cap might not always accommodate the changing needs of the wide variety of U.S. employers who rely on immigrant workers. The government isn't omniscient, the economy is dynamic – and some employers in some sectors will need workers even in economic downturns. The Senators solved this problem with a so-called "safety valve," intended to provide relief for employers who cannot find workers even when the annual visa quota has been met or unemployment in the metro area where the job is located is higher than 8.5 percent. At that point, employers can no longer use the regular program. But they can still petition to hire a foreign worker, provided they are willing to pay a higher wage and take additional steps to try to recruit U.S. workers.

**Streamlined and easy to use.** Employers who participate in the program would be required to try to hire Americans first. They would have to complete a variety of specified recruitment steps, whether advertising in a local newspaper or visiting a jobs fair or posting open slots on the internet, among other options. They would have to pay foreign workers the same or slightly higher wages than they pay comparable U.S. workers. And compliance with these and other program requirements would be monitored by rigorous government audits. But in contrast to existing temporary worker programs, applying for a W Visa slot would be a relatively simple, streamlined, predictable process. Most significantly for employers, it would be based on attestation rather than certification – and as result less costly, more timely and less vulnerable to the whims of government adjudicators.

**An option to earn permanent status.** If the patterns of the past are any guide, workers who participate in the new program are likely to come to the U.S. with a range of goals and motives. Some will seek to work for a while and then return to their home countries, armed with new skills and a nest egg with which to build a home or start a business. Others, particularly those who do well while in the United States, may decide they want to settle permanently. The Gang of Senators wisely acknowledge this reality and attempt to accommodate it.

The initial W visa would be temporary: good for three years. But just as high-skilled H-1B temporary visa holders can eventually transition to permanent visas, so low-skilled workers in the W Visa program can eventually become eligible to apply for green cards under the new merit-based point system created elsewhere in the Border Security, Economic Opportunity and Immigration Modernization Act.

This provision too would be a win-win for willing workers and willing employers – and for the United States. For workers, it would mean flexibility and choice. For employers, it would open the possibility of retaining and promoting valued workers. For the United States, it would combine the benefits of a temporary worker program and those of the nation’s traditional way of immigration – the melting pot model based on permanent residence and assimilation.

Bottom line: my members and other employers like them find much to admire in the new W Visa program. By and large, the program is well designed and carefully crafted. It promises to meet employers’ needs while protecting U.S. workers. It would be relatively easy to use for the vast majority of employers who desperately want a legal way to hire less-skilled foreign workers, while disadvantaging those who continue to flout the law and punishing them with stiff penalties.

My main concern and that of my members: that the W Visa program may not be large enough to accommodate U.S. labor needs in years ahead and as a result may not succeed in replacing the existing flow of illegal immigrants with a legal labor force.

#### **A program that will work for the future?**

The W Visa program will be used by a relatively small number of willing workers and willing employers – a few hundred thousand workers at most, out of the 150 million that make up the U.S. economy. But these direct beneficiaries are far from the only Americans who need the program to succeed.

Without a workable temporary visa program, the nation can have no hope of ending illegal immigration. New intensified border enforcement can help control the flow. So can workplace enforcement, and my members welcome the E-Verify mandate in the Border Security, Economic Opportunity and Immigration Modernization Act. Like most employers, my members would welcome the government’s help distinguishing new hires who are eligible to work in the U.S. from those aren’t, as long as their businesses are not liable when the E-Verify system is inaccurate. And together, the enforcement mechanisms stipulated by the legislation should create a new environment. But ultimately, the best antidote to illegal immigration is a legal immigration system that works, meeting unmet U.S. labor needs with an adequate supply of foreign workers.

We learned this lesson the hard way – or should have learned it – over the last three decades. An overwhelming majority of the 11 million unauthorized immigrants living in the U.S. today would rather be here legally. They came and stayed illegally only because, when

work beckoned, there was no lawful way for them to enter the country – under existing law, there is effectively no visa program, temporary or permanent, for less-skilled foreigners who want to work year-round and have no family in the U.S. to sponsor them. Lawmakers considered creating such a visa program the last time they overhauled the immigration system, in 1986 – but they failed to do so. If we repeat that mistake this year, failing to create a legal way for low-skilled workers to enter the country in the future, in 10 or 20 years we're going to find ourselves in exactly the same predicament we're in today – wondering what to do about a *new* 11 or 12 or who knows how many million unauthorized immigrants.

Bottom line: the most important question – the threshold test – about the W Visa program is whether or not it will be ample enough to accommodate the nation's foreign labor needs in the decades ahead.

How to anticipate what those needs will be? Most scholars attempting to do so use a methodology based in part on the flows of recent decades.

According to the Mexican Migration Monitor developed by researchers at the University of Southern California and the Colegio de la Frontera Norte in Tijuana, from 2003 to 2009, more than 350,000 unauthorized Mexican immigrants entered the U.S. every year to take jobs for which there were no willing or able Americans. At the height of the housing boom, in 2006 and 2007, the number exceeded 650,000. Even in 2011, with the economy still sluggish and uncertain, 150,000 workers came to fill unmet demand.

The Migration Policy Institute looks at different years, uses a different measure and proposes a somewhat different estimate – of the net inflow. But according to this calculation, more than 450,000 Mexican immigrants came to the U.S. every year in the decade from 1990 to 2000. Between 2000 and 2007, the annual average was 280,000. And in the decade ahead, assuming continued soft growth, MPI predicts that demand will range from 230,000 to 330,000 workers a year.

Will the W Visa program be able to accommodate these projected labor needs? Not, certainly, in its first four years, when the annual quota will start at 20,000 workers and rise year by year to 75,000. In subsequent years, the size of program is intended to ebb and flow in response to changing U.S. workforce needs, as measured by employer demand, national economic indices and the deliberations of a newly created research bureau. But under the act, the upper limit is 200,000 permits a year – still seemingly not enough if the past is any guide and expert projections of demand are accurate.

Other uncertainties further cloud the calculus, among them the complexity of the legislation. There are some potential exemptions and exceptions to the quotas that could prove significant. The Gang of Eight proposes to admit the spouses of W Visa holders and allow them to work in the United States. There is a small additional allotment of visas – up to 10 percent of the overall annual quota – for meat, poultry and fish cutters and trimmers. And by definition, the safety valve would increase annual admissions.

But even together, these exemptions and exceptions may not produce a robust addition to the available immigrant labor force. It's unclear how many W visa-holders' spouses will accompany them to the U.S. and choose to participate in the labor force. Married Mexican women currently living in the U.S. are significantly less likely than their husbands to work or be looking for work. As structured, the safety valve is likely to be too expensive for most employers. The wage premium required to participate will vary from occupation to occupation and depend on where the job is located. But in some cases it will be higher

than 100 percent, and it will often be more than 50 percent. Additionally problematic, any workers admitted under the safety valve will count against the next year's visa quota, limiting how much the safety valve can raise the number of workers in the U.S. at any given time.

There is also a quota within a quota for the construction industry: 33 percent of the overall annual limit – that's 6,600 in the first year of the program – and never, under any circumstances, more than 15,000 workers. This certainly will not be enough for an industry that anticipates adding as many as 350,000 jobs this year and currently relies on immigrants for some 20 to 25 percent of its workforce.

Bottom line: it's hard to predict how many foreign workers the nation will need in years ahead – or even how many the W Visa program would admit. But the quotas mandated in the legislation – 20,000 to 200,000 registered slots a year – appear inadequate to accommodate future needs. And these limits raise serious questions about whether the program will work as intended to divert today's illegal immigration into legal channels.

What sorts of changes would eliminate this uncertainty? It's beyond the scope of this testimony to develop detailed improvements to the program, but among the ideas that might be considered:

- A larger footprint to start. Few scholars who study the problem of unauthorized immigration think 20,000 slots will be adequate to replace the current illegal flow even in today's still uncertain economy.
- A more flexible upper limit. Why the arbitrary 200,000-visa cap that bears so little relation to past low-skilled immigrant flows? One possible way to create some leeway: a returning worker exemption like the one incorporated in the past in the H-2B seasonal temporary worker program – an exemption that would be reinstated in the H-2B program by the Border Security, Economic Opportunity and Immigration Modernization Act.
- A formula that gives more weight to employer efforts to recruit U.S. workers. Surely, this is the closest and most accurate measure of whether there are indeed willing and able Americans available to take low-skilled jobs.
- Don't try to pick economic winners and losers. Why should the construction industry be subject to a quota within a quota? Why should other industries get a special allotment? These arbitrary distinctions could have dire consequences for individual employers as the construction industry ramps up after years of severe contraction. They would severely limit construction growth in years ahead – just as the industry is poised to take off and drive the rest of the economy toward full recovery. And they are likely to create incentives for unauthorized employment, as immigrants who enter the country to work in sectors other than construction gravitate, lawfully or not, to higher-paying construction jobs.
- A safety valve that's financially within reach for employers. The safety valve should be expensive – that's the intent, it's a special accommodation – but not prohibitively so. And it should not be structured in a way that benefits large, well-financed employers at the expense of smaller, weaker businesses. As is, not only will many smaller business be barred by cost from participating in the safety valve; they will also have limited access to workers the following year when the number of visas

issued this year under the safety valve limits the number available under the normal program.

- Revisit the program after five years. The W Visa program is a bold experiment – a significant departure from any existing temporary worker program. Its design is highly promising, but like any new idea, it is sure to need tweaking after a few years of operation. The new research bureau, the quotas, the mathematical formula designed to expand and contract the program should all be reexamined – and perhaps more than once. My members would adamantly oppose an automatic sunset. The unpredictability produced by the prospect of a sunset would deter many if not most employers from entering the program in the first place. But the new system should be assessed and if needs be adjusted in coming years.

### **Conclusion**

In closing, I'd like to underscore how much I and my members appreciate the work of the Gang of Eight Senators who crafted the Border Security, Economic Opportunity and Immigration Modernization Act. Most of the ImmigrationWorks members I've consulted agree: the W Visa program is significantly better than the status quo – no program. The new system reinvents the very definition of guest worker. It would be market-based but respectful of labor rights, easy to use but tough on those who abused the privilege, a boon for willing workers and willing employers – a breakthrough design that could become a model for other temporary worker programs in the U.S and abroad.

Our concerns about the size of the program, while significant, can be readily addressed. Indeed, some improvements, like a returning worker exemption, could be incorporated – if political considerations require it – without changing the overall statutory limit on the size of the program.

Thank you again for this opportunity to testify. My members and I look forward to working with members of this committee and others in Congress to improve the W Visa program and pass the Border Security, Economic Opportunity and Immigration Modernization Act.

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**Testimony of Rick Judson  
2013 Chairman of the Board,  
National Association of Home Builders**

**Before the  
Senate Judiciary Committee**

**April 22, 2013**

**Hearing on**

**S.744**

**The Border Security, Economic Opportunity, and Immigration Modernization Act**

### **Introduction**

On behalf of the more than 140,000 members of the National Association of Home Builders (NAHB), I appreciate the opportunity to testify today. My name is Rick Judson, and I am a homebuilder and developer from Charlotte, North Carolina and NAHB's 2013 Chairman of the Board.

NAHB supports the goal of many of those in Congress to enact comprehensive immigration reform. A stable, just, and efficient immigration system will provide the certainty needed to grow our economy and increase competitiveness.

S.744 strikes a balance between a mandatory, nationwide, E-Verify program and the employer community's role in addressing illegal immigration. The legislation creates a fair, efficient, and workable system that gives employers clarity with regard to their duties and obligations. It also pre-empts the current patchwork of state laws, providing employers with a straightforward rulebook for compliance. Perhaps most importantly, S.744 honors the direct employer-employee relationship and the current "knowing" liability standard.

S.744 also includes a responsible solution to bringing the current undocumented population out of the shadows, and NAHB appreciates the work that has been done to create a new visa program for the low-skill sector within the *Border Security, Economic Opportunity, and Immigration Modernization Act*, S.744. However, to ensure the mistakes of the past are not repeated, improvements to the W Visa program, particularly for the residential construction industry, should be given due consideration through the legislative process.

NAHB welcomes a strong legislative debate on S.744, and I will direct my testimony today on recommended improvements to the W Visa program, the low-skill guest worker program contained in the legislation. By way of background, I will first provide information on the importance of foreign workers in the residential construction industry and current labor challenges.

### **Foreign Labor in Construction**

American and immigrant workers working alongside each other in the construction industry is not a new development. Throughout our nation's history, the immigrant community has played a vibrant and important role in the industry, often bringing their trade-related expertise and skills to enhance the quality of our work. We are proud to say that many immigrants who have come to America and joined our industry have been able to enhance their skills, create and grow their own businesses, and gain a foothold in the American middle class.

The home building industry, with the contribution of a substantial immigrant workforce, plays a critical role in sustaining the national economy and meeting the nation's housing needs. The inflow of foreign-born labor into construction is cyclical and coincides with overall housing activity. Their share was rising rapidly during the housing boom years when labor shortages were widespread and serious. However, even during the severe housing downturn and a period of high unemployment, the construction labor force continued to recruit new immigrants to replace, for example, native and foreign-born workers leaving the industry.

According to the 2011 American Community Survey, foreign-born workers account for 22% of the construction labor force. Particularly, immigrants are concentrated in some of the trades needed to build a home, such as carpenters, painters, drywall and ceiling tile installers, brick masons, and construction

laborers. These are trades that require less training and education,<sup>1</sup> but consistently register some of the highest labor shortages in NAHB surveys.

The distribution of immigrant construction workers is not even across the United States, with some states drawing more than a third of their construction workers from abroad. States that traditionally rely on foreign-born labor, but lost its significant share during the housing downturn – such as Arizona, California, Colorado, Florida, Nevada, and Georgia – are most likely to experience difficulties in filling out construction job vacancies once home building takes off.<sup>2</sup>

### **Worker Shortages in Residential Construction**

Few industries have struggled more during the Great Recession than the home building industry. The decline in home construction has been historic and unprecedented. Single-family housing production peaked in early 2006 at an annual rate of 1.8 million homes, but construction fell to 353,000 per year in early 2009, an 80% decline in activity. A normal year driven by underlying demographics should see 1.4 million single-family homes produced. When home building is operating at normal levels, there will be millions of additional jobs in home building and related trades.

The improvement in housing markets over the last year has been a welcome change for the economy.<sup>3</sup> NAHB is anticipating total housing starts of 970,000 this year and 1.18 million in 2014 as the market continues its gradual rebound.

This turnaround presents new labor challenges for the construction industry. The January and March 2013 NAHB/Wells Fargo Housing Market Index (HMI) surveys, which gauge sales conditions from builders across the country, indicate that labor shortages are quickly rising on home builders' list of most significant problems. 46 percent of the builders surveyed experienced delays in completing projects on time. 15 percent of respondents had to turn down some projects, and nine percent lost or cancelled sales as a result of recent labor shortages.<sup>4</sup>

Trades with a high concentration of immigrant workers also tend to have more vacancies and labor shortages. According to NAHB's HMI surveys, construction trades with the most consistent labor shortages are framing crews, carpenters and bricklayers. About 30 percent of surveyed builders were still

<sup>1</sup>The construction industry relies heavily on labor that requires less training and education. 21 percent of construction workers do not have a high school diploma and an additional third of the construction labor force did not study beyond high school. Immigrants who arrive to the United States to work in the construction industry are more likely to be drawn into lower-skill trades since roughly half of them do not have a high school diploma and additional 27 percent did not study beyond high school. By comparison, only 13 percent of native born workers in the construction industry did not graduate from high school and more than half of them went to college. As a result, immigrants represent more than half of the lowest skill construction labor force, while their overall share in the construction labor force is 22 percent. For more detailed information, please see NAHB Economics, "Immigrant Workers in the Construction Labor Force" available at <http://www.nahb.org/generic.aspx?sectionID=734&genericContentID=200529&channelID=311>.

<sup>2</sup>To review a map detailing the regional differences, please *see id.*

<sup>3</sup>Construction activities have positive impacts by creating ongoing beneficial impacts in communities as new home purchasers pay taxes and buy goods and services in the community. For example, NAHB estimates the first-year economic impacts of building 100 typical single family homes include \$23.1 million in wage and net business income, \$8.9 million in federal, state and local taxes, and 305 jobs.

<sup>4</sup>NAHB Economics, "Evidence of Growing Labor Shortages in Home Building", available at <http://eyeonhousing.wordpress.com/2013/03/26/evidence-of-growing-labor-shortages-in-home-building/>.

reporting some shortages of labor in these trades in June 2012, even though the shortages were not nearly as severe as in the midst of the housing boom. Nine months later, in March 2013, reported labor shortages worsened across all trades, but particularly among framing crews and carpenters, with more than a half of respondents reporting shortages.

NAHB works diligently to address the continuing need for skilled labor within the nation's borders. In partnership with NAHB and Job Corps, the Home Building Institute (HBI) is a national leader for career training and job placement in the building industry. HBI's Job Corps training programs are national in scope but implemented locally, using proven models that can be customized to meet the workforce needs of communities across the United States. It prepares students with the skills and experience they need for successful careers through pre-apprenticeship training, job placement services, mentoring, certification programs, textbooks and curricula. With an 80 percent job placement rate for graduates, HBI Job Corps programs provide services for disadvantaged youth in 73 centers across the country.

Yet, NAHB believes strongly that the nation should implement a new market-based visa system that would allow more immigrants to legally enter the construction workforce each year. Despite our efforts to recruit and train American workers, our industry faces a very real impediment to full recovery if work is delayed or even cancelled due to worker shortages. A new, workable visa program would complement our skills training efforts within the nation's borders, and fill the labor gaps needed to meet the nation's housing needs.

#### **W Visa Program in S.744**

NAHB appreciates the work that has been done to construct a bold and innovative visa program for the low-skill sector that operates unlike any other across the world. The W Visa program contained in S.744 reflects a good-faith attempt on the part of the negotiators to address a serious matter that has been ignored for decades.

NAHB believes, however, that the negotiated product is unworkable for our industry. First and foremost, the program wrongly singles out the construction industry with a discriminating set of rules and stipulations that no other sector of the economy must follow. The distinct set of rules, including an arbitrary and meager cap, not only ignores, but rejects, the value of the housing industry to the nation's Gross Domestic Product (GDP).

Housing is a critical part of the economy, once equal to 18 percent of the nation's GDP. Our industry should be afforded the same opportunities as any other sector of the economy. Congress must reassess this critical flaw in the legislation.

Other components of the W Visa are not without concern. The 8.5% unemployment trigger is perhaps the most concerning component of the program. Immigrant workers fill jobs that are currently going unfilled because the majority of Americans are over-qualified and are unwilling to take these jobs. Putting an unemployment trigger in the program ignores the simple fact that immigrant workers and native-born workers sometimes perform jobs that are interdependent.

The inclusion of a commission in the program is yet another misstep. Under the program, the commission will play a role in determining the annual cap after year four of the program's existence, in addition to declaring shortage occupations. However, only the marketplace can best make these determinations. The most accurate way to measure whether immigrant workers are needed is for employers to try, and either succeed or fail, to hire U.S. workers.

Additionally, an expensive and undersized program allows only sophisticated and well-funded businesses to navigate the complex program. With high fees in the underlying program, as well as under the safety valve mechanism, employers with worker shortages will be faced with the decision to either delay or cancel a project, or pass along unexpected costs to the consumer.<sup>5</sup>

In the W Visa program, big business wins. There simply is no room for a small business, let alone a start-up company, to compete. For the American housing industry, this is a very significant concern.

The NAHB membership is dominated by small businesses, which construct approximately 80% of the new homes built in the United States, including both single-family and multifamily homes. Residential construction is, for the most part, comprised of private sector firms. Accordingly, only three to four percent of the industry is unionized.

For NAHB's members, the concept of prevailing wages is unfamiliar, and most would be deterred from the complex requirements under the program. NAHB appreciates that the W Visa's prevailing wage requirements are a step forward from the wage requirements in the current H-2B program. However, including a complex wage scale in the program will deter private small business firms from taking advantage of the program. Employees in similarly situated positions should be paid actual wages. Employers will already have to pay fees for self-registration and any positions needed, and those fees alone should satisfy the employer's financial obligations.

Another component of the W Visa program that should be addressed is the requirement that the employer attest that he or she has not or will not lay off a U.S. worker during the period beginning 90 days prior to and ending 90 days after the date the employer designates the registered position. This inflexible rule ought to be eliminated. Construction is project-based, and employers must be given flexibility if a project is cancelled or delayed due to conditions outside of the employer's control.

Another concern is the inclusion of complete portability. A registered employer faces the stark reality that a W visa holder, on the first day of work, has the option of immediate portability to quit and work somewhere else. One positive aspect of the program allows the employer to hire another similarly situated employee in the system free of charge. However, whether another worker is available to quickly replace the loss of time and resources is a serious concern. This concern is even more pronounced for the construction industry, considering the meager 15,000 visa cap. NAHB believes that employers should have some assurances that after navigating a confusing and expensive process, the visa holder will actually have to show up to work for the employer who sponsored the worker.

### **Conclusion**

NAHB commends the authors of S.744 for their resolve in taking meaningful steps towards comprehensive immigration reform. We also express gratitude to Chairman Leahy and Ranking Member Grassley for holding this important hearing today.

<sup>5</sup> The rising cost of inputs drives up the cost of construction, which in turn, drives up the price of a new home. The impact is of particular concern in the affordable housing sector where relatively small price increases can have an immediate impact on low- to moderate-income home buyers who are more susceptible to being priced out of the market. A 2012 priced-out analysis done by NAHB illustrates the number of households priced out of the market for a median priced new home due to a \$1,000 price increase. Nationally, this price difference means that when a median new home price increases from \$225,000 to \$226,000, 232,447 households can no longer afford that home. See NAHB Economics, "Households Priced-Out by Higher House Prices and Interest Rates", available at <http://www.nahb.org/generic.aspx?sectionID=784&genericContentID=40372>.

Congress should not ignore the importance of the housing industry to the nation during this critical juncture for housing and the economy. Tackling comprehensive immigration reform is an enormous task that requires a bold vision. Given the significant role that foreign workers play in the housing industry, Congress needs to take a long-term, holistic approach to comprehensive immigration reform.

NAHB stands ready to work with the Senate Judiciary Committee to achieve such reforms and provide much-needed stability for this critical sector of the economy.

Thank you for your attention to our concerns.

**Written Testimony of Brad Smith**  
**General Counsel and Executive Vice President**  
**Legal and Corporate Affairs**  
**Microsoft Corporation**

My name is Brad Smith, and I am the General Counsel and Executive Vice President for Legal and Corporate Affairs at Microsoft Corporation. Thank you for the opportunity to participate in this hearing and to provide the perspective of a major technology and private sector employer on an issue of critical importance to our country.

The bipartisan introduction of the Border Security, Economic Opportunity, and Immigration Modernization Act of 2013 represents the most significant opportunity for comprehensive immigration reform in the last 30 years. The bill's sponsors have shown a superb bipartisan spirit by working together to strike a careful balance on a range of complex and difficult issues. The bill addresses problems that have remained unsolved for over a decade. Its passage would modernize the nation's approach to immigration policy, including border security, the undocumented, families, and both low skilled and high skilled workers. If passed, the bill would enable technology companies, large and small, to keep jobs in America and create more jobs here in the future. Through an extraordinary effort, the bill's sponsors have launched an immigration reform process whose successful outcome is critical to our nation's ability to remain economically and technologically competitive, and to remain the beacon of hope and opportunity this country has always been.

One of the crucial issues on which Congress must strike the right balance is improving the programs for America's access to high skilled foreign talent. The current system does not meet the needs of today's economy, and it must be reformed to enable ongoing innovation and economic growth. Like most American businesses, Microsoft has seen the enormous contributions that highly educated foreign workers bring to our company and our economy. Now more than ever, as our economy continues its recovery, we need effective high skilled immigration reform that brings the best talent in the world to America and to enables these individuals to work together with the innovators, entrepreneurs and talented individuals in our domestic workforce. We need reform that encourages businesses to innovate and grow here, while providing reasonable protections for American workers. This bill provides a strong framework for just this type of reform. It makes important and badly needed changes regarding green cards and H-1B visas for high skilled workers and it provides powerful new enforcement authority to ensure that unscrupulous companies cannot abuse the system. It also implements strong measures to protect American workers. As with any legislation, there are parts of the bill that may benefit from some clarifications and refinement. But this bill contains tremendously important changes that will benefit employers, workers, families, and the nation.

As important as high skilled immigration reform is to our economic prosperity, however, it is only part of the solution. To us, unlocking the full potential of our nation's economic capabilities also requires investments to provide current and future generations of Americans with the skills needed to succeed in an increasingly competitive world. We cannot afford to ignore the need to equip our current workforce with new skills, nor can we allow this country to fall behind in providing our children with a strong education that equips them for the jobs of the future. Just as we need a healthy immigration system, we also need to make targeted investments in STEM education to improve opportunities for current and future American workers. We are pleased that the proposed legislation adopts this two-pronged solution by coupling high skilled immigration reform with additional funding for STEM education, and we hope that this STEM focus and funding will be strengthened further as Congress considers this bill.

**THE U.S. ECONOMY IS PRODUCING MORE HIGH SKILLED JOBS THAN THERE ARE QUALIFIED PEOPLE TO FILL THEM.**

When I testified before the Judiciary Subcommittee on Immigration, Refugees, and Border Security in July 2011, our country was struggling to emerge from the Great Recession. The nation's unemployment rate was above 9 percent, and many were deeply concerned by the prospect of a double-dip recession. Twenty-one months later, while many economic indicators have improved, we are still waiting for the emergence of a full, sustained economic recovery. The national unemployment rate, now at 7.6 percent, still reflects an estimated 11.7 million unemployed workers in our country. Educational attainment continues to be a crucial differentiator. The unemployment rate for those without a high school diploma is 11.1 percent; for high school graduates, it is 7.6 percent. But for those with a bachelor's degree, the unemployment rate is only 3.8 percent, and for computer and mathematical occupations, it is only 3.2 percent. In many parts of the country, the latter unemployment rate is even lower. According to The Boston Consulting Group, the unemployment rate for computer science-related jobs in Washington state was only 1 percent over the last half of 2012.

This disparity illustrates a simple but sobering reality: those with the skills in highest demand were largely spared from the effects of the Great Recession, while those without the modern skill sets demanded by an innovation economy bore a disproportionate share of the burden from the downturn. And even as the economy slowly recovers, this disparity in opportunity persists.

- **The Importance of High Skilled Workers to the Economy**

This skills gap unquestionably is impeding our country's economic prosperity. Even while we have close to 12 million unemployed in our workforce, the Department of Labor reports that there were 3.9 million unfilled job openings at the end of February 2013, up from 3.6 million in the previous month. This is the highest number of unfilled job openings since May 2008, and it is in large part a reflection of the difficulty that employers are having in finding workers with the modern skill sets needed to fill the types of jobs being created by today's knowledge economy. As a result, it is taking employers longer than

ever to fill the open positions they are creating across the country. Put simply, our economy is producing more high skilled jobs than there are high skilled workers to fill them.

On a local level, we see this happening quite clearly in Washington state, where there are currently 25,000 unfilled jobs as a direct result of the gap in skills—a deficit that is projected to double to 50,000 unfilled jobs by 2017. And these aren't the only jobs whose potential is being lost. Economists agree that the additional economic activity created when a high skilled, high wage job is filled results in more job creation—the so-called “multiplier effect.” Factoring in the most conservative estimates for the multiplier effect, a recent report by The Boston Consulting Group and the Washington Roundtable concluded that leaving these 50,000 jobs unfilled will also forego the opportunity to create enough additional jobs to drive down our state's unemployment rate by as much as 1.8 percentage points.

- **The Challenge of Finding Enough High Skilled Workers**

Like other employers with high skilled job openings around the country, Microsoft has been confronting the challenge of finding workers for our open jobs in a labor market where the necessary skills are in short supply. Our recruiters are dedicated to finding the talent we need wherever they can find it, using every effective recruiting strategy possible. This includes conducting substantial recruiting activities at universities across the nation and extensive targeted recruitment of experienced workers in the industry, including veterans and candidates with diverse backgrounds. Despite these efforts, we currently have more than 6,300 open positions in the U.S. Over 3,300 of these are for jobs in core research, engineering and development. This represents a 29 percent increase in the number of open research, engineering and development positions compared to the same time last year. Combined with IBM, Intel, Oracle and Qualcomm, these five companies alone have over 10,000 high tech job openings in the United States. In New York City, there are postings for over 20,000 open jobs among a group of just 25 employers that includes companies like JPMorgan Chase, AT&T, IBM, PriceWaterhouseCoopers LLP, Bloomberg, Deloitte and Accenture. This problem isn't improving—it's getting worse.

This problem is not limited to the computing sector. Increasingly, every company is at least in part a software company. Auto manufacturers create advanced software for cars, appliance manufacturers build “smart” appliances, and health care companies create software systems to manage medical data. To take one example where expertise and understanding of computing will be vital, we can look at Big Data, the new frontier in information capture and analysis. Big Data advancements will impact many business sectors far beyond the technology industry, including education, energy, transportation, and healthcare. As the use and insights from data pervade new areas, companies across our economy will need people to create and use these Big Data systems. Yet we are not equipping our population to meet that need. A recent McKinsey Report predicts a potential shortfall of 1.5 million “data-savvy” managers and analysts by 2018.

The unmet demand for high skilled talent, particularly in STEM and computer science, is also a key issue for start-ups, who rely deeply on the expertise of high skilled workers for driving the key innovations upon which they are built. And start-up activity is not limited to Silicon Valley or major urban centers. We are seeing an emerging technology scene in the Great Plains area—which many are now calling the

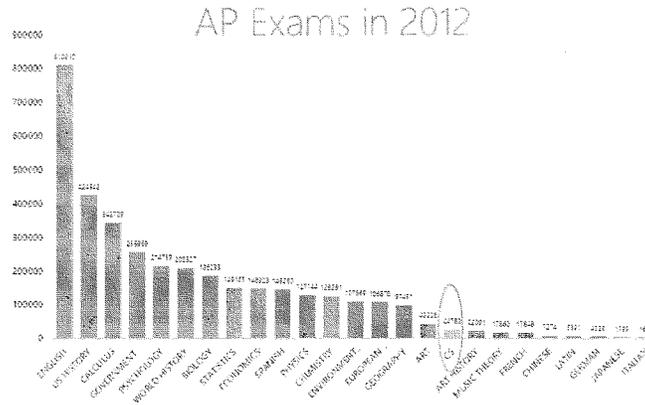
“Silicon Prairie”—one of just two regions in the nation that increased its share of the country’s angel investment deals from 2011 to 2012. The region is now home to start-ups like MindMixer, Hudl, AdFreeq, AgLocal, Stackify, and Invenquery, to name just a few. Eastern Nebraska has seen a three-fold increase in start-up activity, with more than \$300 million in venture capital available in the state. Des Moines, Iowa is home to Dwolla, an online and mobile money transfer company that represents another success story. Startup City Des Moines, a tech incubator, has received applications from 160 start-ups in the past two years. Yet even with this level of activity, the New York Times reports that the Silicon Prairie is being held back by a limited supply of software engineers. Sensible high skilled immigration reform, combined with a focus on improving STEM education, will benefit all parts of our country.

Unless we take new steps to invest in education and reform immigration, America’s job growth and technology leadership will be at risk. The current persistent talent shortage is simply not a sustainable situation for U.S. employers. The risk here is two-fold. First, the inability to fill open positions requiring high skilled workers means there is less capacity for research, innovation and technology development. Second, if this skills deficit persists, companies will be forced to move unfilled positions to other countries, where they can recruit more individuals with the skills needed to fill them.

**WE MUST INCREASE TARGETED INVESTMENTS IN EDUCATION TO BETTER PREPARE AMERICANS FOR THE JOB OPPORTUNITIES OF TOMORROW.**

The high skilled jobs in today’s modern economy increasingly are requiring an education in STEM fields. These types of occupations drive our nation’s innovation and competitiveness, and they are experiencing some of the fastest growth rates in new job openings and compensation, particularly in the highest demand STEM fields like computer science. The shortage of available labor is a reflection of the lack of capacity within our education system, resulting from a fundamental underinvestment in education in high demand STEM fields.

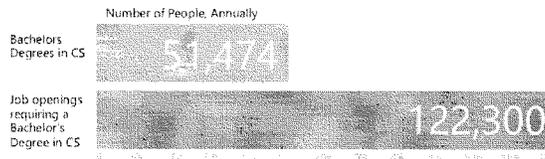
This deficit begins early in the educational system. Our K-12 system is not producing enough high school graduates with sufficient preparation for success in college, particularly in critically important STEM fields of study. In 2011, only 45 percent of U.S. high school graduates were prepared for college-level math, and only 30 percent were prepared for college-level science. Our students are also scoring significantly lower in math and science literacy compared to their counterparts in other developed countries, and this gap is growing as other countries continue to improve their scores at a rapid pace. These are clear warning signs that need to be addressed.



The lack of education in computer science is an example of an area of particularly acute concern. Of the more than 42,000 high schools in the U.S., just 2,255 were even certified to teach the Advanced Placement (AP) computer science course in the current academic year. Counter to the growing importance of computer science in the job market, AP computer science accounted for less than 1 percent of all AP tests taken last year—down from 1.6 percent of all tests in 2000. What’s more, 41 states currently do not consider computer science courses even to be part of the “core” curriculum distribution requirements students can pursue to graduate from high school. This means there are not appropriate incentives in place for students to take computer science education courses, even when they are offered. The presence and profile of computer science in K-12 education is actually fading from the national landscape at a time when it is needed most.

## Our Computer Science Shortage

Supply is not meeting demand



The pipeline of talent is restricted within the higher education system as well. The Bureau of Labor Statistics has projected approximately 122,000 new job openings each year in computing occupations requiring at least a bachelor’s degree through the end of this decade. Yet nationally, our universities are only producing approximately 51,000 bachelor’s degrees in computer science each year. And a

significant number of the degrees awarded each year in high demand STEM majors like computer science are earned by foreign students studying in the U.S. This means that not only is the pool of students in this field too small by over half, but there are also too few American students in that undersized pool.

Consider the following: In 2009, U.S. universities produced 58,058 computer science degrees at the bachelor's, master's, and doctoral levels combined. Of those, 11,010—nearly 1 out of every 5—were earned by international students. Among those earning advanced degrees, the proportion of international students at U.S. universities is even more pronounced. At the master's degree level, international students earned 27 percent of all degrees in science and engineering. In computer science, that number rose to 46 percent; in engineering, it was 43 percent. At the doctoral level, international students earned more than 33 percent of all science and engineering degrees. They comprised 57 percent of doctorates in engineering and 54 percent of doctorates in computer science.

Our colleges and universities are not meeting the demand for educating and graduating students with degrees in key STEM majors. Our own region in the Seattle metropolitan area is home to one of the top computer science departments in the world at the University of Washington. Yet that department currently turns away over two-thirds of students at the university who complete the prerequisites and apply for this major because of a lack of capacity. This is just one example of a leading university that still can't meet the demand of the number of students who want to major in computer science. We need to do better.

This is a high skilled labor shortage that cannot be solved in just a year. We need a sustained, two part strategy that leverages high skilled immigration reform to address the labor market's current skills deficit at the same time that we invest in educating, training and preparing the U.S. workforce for these new opportunities. It is critical that at the very outset of work to pass comprehensive immigration reform, Congress carefully strike the proper balance in the high skilled provisions of the bill to reach the country's innovation and job growth potential.

#### **HIGH SKILLED IMMIGRATION REFORM IN THE BORDER SECURITY, ECONOMIC OPPORTUNITY, AND IMMIGRATION MODERNIZATION ACT OF 2013: KEY STEPS FORWARD**

- **Modernizing the Supply of High Skilled Green Cards and Matching Green Card Supply to the Needs of the Innovation Economy**

When I testified before the Judiciary Subcommittee on Immigration, Refugees, and Border Security in 2011, the Subcommittee explored in depth the problems associated with the shortage of employment-based green cards and a quota system for them that had not been updated since 1990, nearly 25 years ago. I believe that this bill goes a long way toward addressing those problems. There are several components of the green card provisions of the bill that are exceptionally important for technology companies and for the ability of the country overall to remain competitive in global markets. In short,

this bill modernizes the supply of high skilled green cards, and matches that supply to the needs of our innovation economy.

I would like to express our deep appreciation to Senators Hatch, Klobuchar, Rubio, and Coons for the leadership they have shown in developing and introducing—with 21 other cosponsors—the Immigration Innovation Act of 2013, or the “I-Squared Act.” Last fall they sat down, rolled up their sleeves, and drafted the blueprint for optimal high skilled immigration reforms, providing in the process a model of bipartisanship from the very outset of this Congress. We believe that it provided a very important contribution to the comprehensive immigration reform effort, and many important features from that bill are echoed in this one.

Perhaps most importantly on the topic of green cards, the legislation before this Committee today recognizes the value to the U.S. economy of graduates from U.S. universities with an advanced STEM degree. By exempting them from the overall green card quota, the bill provides a clear path to a green card for these highly sought-after individuals. Under current law, many face a wait of more than 10 years to obtain a green card, and they may decide that a career in the United States simply isn’t worth that kind of instability. As a result, we risk losing these experts to other countries, where they will compete against us. This bill goes a long way toward keeping their talents in the United States and helping to grow our economy.

The bill also recognizes the importance of other critical kinds of employees by exempting them from the quota as well. This includes outstanding researchers, individuals of extraordinary ability, and multinational executives and managers. By ensuring that these individuals do not need to be concerned about quota backlogs, they can instead focus on making new discoveries, creating new product lines and keeping their companies competitive.

The bill also takes the sound approach of exempting family members of employment-based immigrants from the quota. This helps to keep the focus of the employment-based green card numbers where it belongs—on the workers themselves. This also helps to treat all high skilled workers the same, whether they have a family or not, bringing a key element of fairness to the system.

On the subject of fairness, the bill also restores parity to the employment-based immigration system by eliminating the “per country” limits on green cards. This change, modeled after a bill authored by Senator Lee in 2011, levels the playing field and is long overdue.

I also applaud the provision of the bill that recaptures employment-based green cards that were previously authorized but never used. According to data provided by the Department of State to the U.S. Citizenship and Immigration Services Ombudsman and published in the Ombudsman’s 2010 Annual Report, there were approximately 325,000 employment-based immigrant visa numbers that Congress authorized in previous years but that remain unused. There is a substantial backlog that has developed for people who have approved labor certification applications and immigrant petitions, and who could be given a green card if only there was a green card number available. At Microsoft, where we sponsor our employees for permanent residence at the outset of the employment relationship, we have large

numbers of employees directly affected by this backlog, and it is a major disruption to their lives and their ability to feel that the U.S. is truly their home. It makes great sense to use these employment-based green card numbers, which were already allocated but never used, to bring these immigrants permanently into the American community.

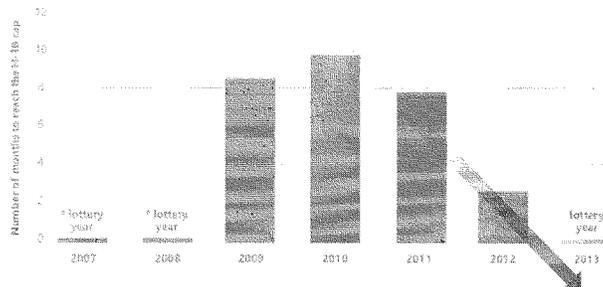
- **Enabling Entrepreneurs and Startups**

New companies are one of the most important drivers of job creation, innovation and economic growth, and this bill contains smart provisions to facilitate the cultivation of new ventures and technological endeavors. The bill provides a new category of nonimmigrant visas for individuals who can secure investment funding for a startup or who have an existing U.S. business that is creating jobs and generating significant revenue. The bill would also create an entirely new “EB-6” immigrant visa category that would provide up to 10,000 green card numbers each year for entrepreneurs with business ventures that are creating jobs for our economy and that have secured ongoing investment funding or are generating substantial revenues. We fully support this kind of forward-thinking immigration policy, which will help attract the brightest young entrepreneurs from around the world to bring their ideas and grow their businesses in the U.S., rather than to other countries, and enhance our competitive capability.

- **Improving the Supply of H-1B Visas**

Aside from an important but limited exemption that Congress added in 2004 for those who have earned an advanced degree from a U.S. university, we work still, in 2013, under an H-1B cap that was set in 1990—a time when only 15 percent of American households even had a personal computer. It is a visa supply that was set for a 1990 economy, and we have long outgrown it. Just two weeks ago, we saw a repeat of what is becoming common during periods of relative economic strength. The H-1B cap for the coming fiscal year was exceeded in just the first week of availability, with about 40,000 more petitions submitted than there are numbers available.

## A Renewed Visa Shortage



Running out of H-1B visas this quickly has significant consequences for the economy. This year, employers are faced with a scenario in which one-third of the H-1B petitions that they submitted will be rejected in the H-1B lottery. These are 40,000 positions that will remain unfilled despite the fact that qualified candidates have been identified and job offers have been extended after a careful, intensive recruiting process in a very competitive market for talent. This is incredibly disruptive to the business planning and operations of U.S. employers.

At Microsoft, we entered this year's H-1B cap season knowing that we could not file H-1B petitions for 250 candidates we had identified for job offers simply because the cap would be exhausted in the first week, a full two months before their graduation dates in June. Among the H-1B petitions we were able to file this year, we will likely have more than 200 additional candidates to whom job offers were extended, but who will not be selected in the H-1B lottery. When this happens, we don't simply rescind these offers of employment. We begin the process of identifying alternative options for employing these talented individuals at one of our subsidiaries abroad. The inability to employ these individuals in the U.S. means the loss of work that was intended to be performed in the U.S., and along with it, the output and productivity our business groups were planning, not to mention the potential tax revenues and economic activity associated with the salaries for those jobs.

These immigration challenges also have very real consequences for the talent we are trying to attract. Some potential hires are unwilling to jump over all of the hurdles presented by the H-1B cap and will simply walk away from the offer of employment in the U.S., opting to instead pursue alternative options in their home countries. A few specific examples from our own experience will help illustrate the tangible impact to these individuals. Last year, we were unable to file an H-1B petition for one of our candidates before the H-1B cap was exhausted due to his graduation date. The inability to start working for us in the U.S. was incredibly distressing to him, not only because of the delay in starting a job he was excited for, but also because of an uncertain political situation in his home country. We have filed an H-1B petition for him under this year's H-1B cap, a year and a half after his original offer of employment was extended. In the meantime, he continues to wait on the sidelines for the approval of the petition. This year, we extended offers of employment to two candidates who happen to be engaged to one another. Again, due to the timing of graduation dates, only one of them could have an H-1B petition filed before the cap was reached. This couple is now confronted with the reality of being separated in order for one to pursue employment with Microsoft in the U.S. while the other seeks options abroad. Without reform to address these unnecessary impediments in the H-1B program, these kinds of challenges will deter future high skilled immigrants from investing their skills in our economy.

An additional consequence is the loss of potential jobs that would have been created in the economy by filling these open positions. This month, the Economist reported on yet another in a line of studies concluding that bringing high skilled workers to the U.S. creates additional jobs. According to that study, for every job created in the high tech sector, an additional 4.3 jobs emerge over time in the local economy. If there are 40,000 jobs that will go unfilled because of the insufficiency of the H-1B cap, there will be an additional 172,000 potential new jobs that will go unrealized. Combined, this represents nearly 10 percent of the 2.2 million net jobs that were created in all of 2012. The lesson

could not be clearer: failing to match the supply of H-1B visas to the demands of today's economy weakens, in real numbers, the economy's ability to create jobs.

Without a doubt, high skilled foreign workers are essential leaders of and contributors to the innovation and entrepreneurial activity of our nation. The number of talented workers from abroad who have founded or co-founded successful, job creating companies, and who have been awarded U.S. patents for their inventions is well documented. At Microsoft, these kinds of high impact technical and leadership contributions by foreign-born workers are evident throughout our organization. In my testimony from 2011, I shared about Alex Kipman, an immigrant who led the development of Kinect, one of our most successful consumer products and important technical accomplishments. Another example of a high impact contributor at Microsoft is Dr. Desney Tan, one of our Principal Researchers. Dr. Tan manages the Computational User Experiences Group at our headquarters and holds an affiliate faculty appointment in the Department of Computer Science and Engineering at the University of Washington. At Microsoft, Dr. Tan researches the adaptation of advanced technologies for applications in human-computer interaction, mobile computing and health care. He has received numerous honors recognizing his substantial expertise and significant contributions to the field, including MIT Technology Review's "2007 Young Innovators Under 35" award for his work on brain-computer interfaces and Forbes' "Revolutionaries: Radical Thinkers and their World-Changing Ideas" for his work on Whole Body Computing. Dr. Tan began his career at Microsoft with an H-1B visa, and we subsequently sponsored him in the employment-based green card process. Talent of Dr. Tan's caliber illustrates why our country's access to the best and brightest from around the world is so essential.

#### ***The Base Cap and the STEM Exemption***

The bill's sponsors wisely included an increase to the base H-1B cap to 110,000 per year, with a new exemption for an additional 25,000 U.S. advanced STEM degree holders. Even these increases could be quickly exhausted in a strong economy, but it is a healthy increase and a very positive step. We also commend the focus on addressing our serious skills gap in STEM fields.

While advanced degree workers are particularly critical, those with Bachelor's degrees in highly technical fields for which there are acute shortages are also the type of crucial high skilled talent that can drive forward our country's economy and capacity for innovation. H-1B visas are reserved for "specialty occupation" jobs that require the theoretical and practical application of a body of highly specialized knowledge, requiring completion of a specific course of higher education—typically at least a bachelor's degree. These jobs—whether for biophysicists, geneticists, artificial intelligence researchers or software engineers—require highly educated and skilled workers at all career stages and levels of experience.

#### ***The Market Adjustment Mechanism***

The bill incorporates a crucial concept that better connects the supply of visas with the changing needs of our economy. The supply of H-1B visas should not be structured around a fixed numerical limit set through congressional negotiation every 10 or 20 years. It should be allowed to fluctuate—either up or

down—in response to the conditions actually taking place in the American economy, and the labor demand that fluctuates as a result. The bill wisely recognizes this, and includes a market adjustment mechanism that allows the base cap to fluctuate between 110,000 and 180,000 per year in response to market conditions, never increasing by more than 10,000 in a given year. This is an approach we endorse.

We do have some concerns that the bill's market adjustment mechanism—which has a "High Skilled Jobs Demand Index" that factors in the level of new H-1B filings from the previous year with changes in the unemployment rate—might not adequately respond to the need for H-1B visas in the labor market. Because companies stop filing new H-1B petitions as soon as the quota is reached, the Index may undervalue demand. In addition, the Index looks at changes in the unemployment rate without considering the actual rate itself, and could therefore restrict upward adjustments in the cap even when the unemployment rate is extremely low. Because of these concerns, we believe that the approach taken in the I-Squared Act is potentially simpler and more effective. It would measure demand based on how quickly the cap is reached, and it would inject additional numbers into the system for that year.

- **Improving Protection for American Workers and Other Critical Provisions**

We support strong enforcement of the rules associated with the H-1B program against those that violate them. Without question, this bill has introduced a number of tough new enforcement measures and tightened restrictions, and we fundamentally agree that the H-1B program should be regulated and enforced in a manner that protects American workers, prevents abuse and holds violators accountable. But it is equally important to ensure that companies that utilize the H-1B program appropriately, recruit and employ thousands of American workers and are key job creators in our economy continue to be able to utilize the H-1B program to effectively meet the need for high skilled workers. Enforcement and restrictions will be most effective if they are focused on the users whose workforces are most dependent on H-1B visas or that show a disregard for the rules.

We believe we share common ground with the bill's sponsors, who have taken steps to differentiate "dependent" and "super-dependent" users from non-dependent companies. We support the bill's new restrictions on these types of employers—such as the phased-in restrictions for employers whose workforces are made up by more than fifty percent of workers in either H or L status. We also agree with the manner in which the bill differentiates employers who sponsor foreign workers for permanent residence from those who do not by treating employees in the green card process like permanent residents for purposes of dependency calculations. This is wise policy.

***Changes to the Prevailing Wage System***

There are new restrictions that have been placed on all employers as well. The prevailing wage system has been completely restructured and now subjects all employers to significantly higher wage requirements. Microsoft is generally supportive of this approach, in part, because it helps address the common misperception that H-1B workers are used as a cheap source of labor. For the overwhelming majority of users of the H-1B system, this criticism simply isn't true, and our H-1B workers provide a

direct rebuttal of this misperception. At our headquarters, our software development engineers who have recently graduated college, for example, have a starting salary that is typically more than 36 percent above the "Level 1" wage in the Department of Labor's current wage system. In fact, their salaries are even slightly above the Department of Labor's "Level 3" wage for the occupation.

We sometimes hear that the problem with the H-1B program is that employers are cheap, and that instead of providing additional visas for high skilled workers, the government should require employers to increase wages to attract the U.S. workers they are supposedly avoiding. Let me be plain on this point. If employers really wanted only to hire cheaper workers, it would not a difficult thing to do. Our industry would not be here asking Congress to modernize the H-1B program and align it to the needs of today's economy. Instead companies would be moving additional jobs outside the United States and putting them in countries where labor costs are significantly lower. Our industry has come to Washington specifically because it wants to create more jobs in this country, both by securing meaningful access to global talent and by investing more to help American students and workers gain the skills needed for the jobs that will fuel the innovation economy.

And, in fact, compensation in this area has consistently been increasing due to the short supply of talent. The highest growth rates in wages have occurred for positions requiring the highest skill levels. Since 1999, wages for computer research scientists have increased 54 percent and wages for software engineers have risen 52 percent, substantially ahead of inflation. Technology companies have taken dramatic steps to retain and attract talent: in late 2010, Google issued a 10 percent across the board pay raise, and Microsoft responded with a similar company-wide increase the following spring. Analysts predict this trend of robust wage growth will continue. A report by Robert Half International predicts a 5 percent average increase in U.S. tech starting salaries for 2013, outpacing inflation and the economy's overall wage rate. Growth in compensation for expertise in the newest technologies is occurring even more quickly. Analysts predict salaries for mobile application developers to rise 9 percent and wages for wireless network engineers and data modelers to rise almost 8 percent. Overall, studies have shown that H-1B workers are among the most highly paid and productive workers in the U.S. economy.

#### ***Enhancement of Enforcement Authority***

The bill before this Committee would also give the government substantial new enforcement powers. The Department of Labor would be able to initiate investigations based on complaints received two years after the alleged violation, up from a one-year limit now. Investigations could be based on complaints from anonymous tipsters. No longer would there be a need for "reasonable cause to believe" a violation occurred before undertaking an investigation. DOL would have unrestricted authority to begin self-initiated investigations, and there would be no time limit at all on how many years after an alleged violation one of these non-complaint driven investigations could begin. Standards for violations would be broadened, interagency information-sharing would be enhanced and penalties would increase. The list goes on. The agencies would have more power than ever before to identify and penalize program violations. This is an important change to the law, and will help ensure that

companies that don't follow the rules will be found and that rule violations and program abuses will be stopped.

***Improvements to Worker Mobility***

We likewise support the proposed provision that would enhance worker mobility for those in H-1B status. One criticism of the H-1B program we often hear is that H-1B workers are "indentured servants." To the contrary, the H-1B program already includes a very specific portability provision that allows H-1B workers to move very freely to new employers, and many of the H-1B workers we hire at Microsoft come to us from other companies. H-1B workers can begin working for a new company as soon as a petition from the new employer has been filed. The only limitation of this portability provision is the requirement to demonstrate continuity of employment. The H-1B worker must show that he or she is still employed by the current employer while applying to transition to a new company. H-1B workers who end their employment relationship with their first employer before subsequently finding a new job, therefore, are not afforded the same type of mobility. This bill would further improve the mobility of H-1B workers by providing a 60-day grace period to look for a new job after initial H-1B employment ends, for any reason, and to transition to the new employer without having to leave the United States.

The bill would also alleviate another and much more significant problem affecting worker mobility—the impact of such transitions on an individual's green card process. Today, if a worker being sponsored for an employment-based green card changes employers, the worker risks having to restart some or all of the stages of the lengthy green card process. The idea of losing one's place in line is a daunting prospect, given the extraordinary length of the green card backlog. One solution to this problem is to correct the supply of green cards and eliminate the backlog, thereby mitigating the impact of the worker's move to a new employer. When the backlog goes away, this problem goes away, and the bill takes significant steps in that direction.

***Spousal Employment Authorization***

We also welcome the provision in the bill that would allow the spouses of H-1B workers to be employed. Today they cannot, throughout what can be a many-year period while awaiting a green card. This is a significant problem for employees and their families. The spouses of H-1B workers tend to be well educated, well qualified, able to contribute productively to the economy, and armed with their own professional ambitions and goals. Prohibiting their employment causes financial, personal, and other hardships for employees, and it causes recruitment and retention problems for employers. The provision in this bill allows the spouse to work only if he or she is a national of a country that provides reciprocal treatment to the spouses of American workers in that country. This additional requirement, though its motivation is understandable, seems slightly self-defeating. A key goal of this provision is to enhance American competitiveness in an extremely tight global competition for talent. We support entirely the notion that the State Department should aggressively seek agreements in other nations to provide the same treatment to Americans, a task that should be facilitated greatly with this provision in place. But it would be more in the economic self-interest of the United States to remove the reciprocal treatment limitation.

- **Areas for Refinement of Certain New Restrictions and Requirements**

Given the number of new restrictions and requirements included in the proposed legislation, it is important to ensure that the provisions are crafted with an appropriate scope and breadth that enables compliant, job-creating U.S. employers to continue to use the H-1B program. Two important areas would benefit from further clarification and refinement to ensure these goals are achieved. These relate to the recruitment requirements and nondisplacement provisions included in this bill.

***Recruitment***

For the first time, the bill includes a recruitment requirement even for employers with a small overall population of H-1B workers. For each H-1B petition—including petitions seeking to extend the H-1B status of existing employees—every employer would need to attest that it has advertised the job on a new website created by the Secretary of Labor, and has offered the job to any U.S. worker who applies and is equally or better qualified for the job than the H-1B worker. Employers that are H-1B dependent would have to make an additional attestation that they have taken good faith steps to recruit in the U.S. using procedures that meet industry-wide standards and are offering compensation that is at least as great as that required to be offered to the H-1B nonimmigrant.

As a threshold matter, it is important to understand that we are not dealing with a choice between hiring U.S. workers and hiring foreign workers. The talent shortage is so acute that we need *both* to address today's workforce needs. And, to be clear, Microsoft endorses the idea of requiring that H-1B employers make good faith efforts to recruit U.S. workers in the occupations for which H-1Bs are sought, using industry-wide standards and offering the same level of compensation. At Microsoft, we do this already, not just because it is the right thing to do, but also because it is a necessity to meet our business needs. Microsoft engages in massive recruitment efforts for talent—including U.S. workers—on a daily basis. We spend millions of dollars each year in our recruitment efforts, with a staff of over 300 recruiters whose key assignment is to find qualified candidates for our job openings. We hire people from hundreds of U.S. universities, and we conduct significant targeted recruitment efforts at 100 of those schools with whom we have cultivated deep connections and relationships over the years to ensure the opportunities available at Microsoft are widely known. We also dedicate significant resources to the recruitment of experienced candidates within the industry, and we leverage a multitude of connection points, including professional networks and associations, a robust employee referral program, dozens of job search websites, social media and our own careers website. We even have a blog at [www.microsoftjobsblog.com](http://www.microsoftjobsblog.com) that is devoted to generating as much visibility as possible for our opportunities. We don't just wait for potential candidates to find us. We do everything we can to find them.

When we make our hiring decisions, we evaluate our candidates thoughtfully to ensure that the candidate with the best qualifications receives an employment offer. We are confident in how we hire and the opportunities that we provide to American workers. Our main concern is with having those hiring decisions second-guessed years after they are made. This introduces a deep level of uncertainty, particularly with regard to how regulators would make appropriate assessments of employers' hiring

decisions. The imposition of new requirements on non-dependent employers—whose workforces are already comprised primarily of U.S. workers—to keep voluminous records on each applicant and every hiring decision would also add a significant level of administrative overhead and expense without improving protections for U.S. workers or helping drive innovation and business growth. This level of regulation would certainly create substantial new resource demands for the government as well, and in the context of compliant, non-dependent employers, may not be the best use of limited enforcement resources. Ultimately, employers are in the best position to assess applicants and their qualifications in relation to their workforce needs, and it is already in our clear business interest to hire the most qualified candidates. We believe that this provision must recognize that reality.

#### ***Nondisplacement***

The bill also includes a requirement that even companies with very small percentages of H-1B workers not have displaced a U.S. worker within the 90 days prior to an H-1B petition, and that they will not do so within 90 days following a petition. Again, we fully endorse the principle that H-1B visas should not be used to displace U.S. workers, but we should be certain to focus the restriction on the practice we all want to prohibit—replacing an American worker with an H-1B worker. But as drafted, this provision could disrupt a number of situations that Congress would consider to be both legitimate and important business options—such as changes in the number of U.S. workers due to acquisition or divestiture activity—none of which would involve actual displacement of U.S. workers. Particularly for companies like Microsoft with a well-documented record of job creation and hiring U.S. workers, these provisions should be carefully crafted to preserve the critical flexibility that employers need to make workforce decisions that enable important strategic business decisions.

The bill recognizes these types of situations and includes an exemption for situations where the number of U.S. workers in the professional ranks has not decreased in the prior year. This is a sensible exemption, but it may not be broad enough to accommodate for common situations such as divestitures, acquisitions, and other noncontroversial occurrences in the corporate ecosystem. The framework of the exemption—based on job zones—also creates challenges in calculating the qualifying metrics for the exemption. There are simple refinements to address this concern. One option would be to require an attestation of nondisplacement that more precisely provides that the employer is not filing an H-1B petition for the intent or purpose of displacing a specific U.S. worker. An alternative approach would be to apply the nondisplacement provisions to employers whose layoffs exceeded their net hiring of U.S. workers. We recognize that compromises are necessary for a bill of this scale, but we are optimistic that this provision can be refined while still ensuring strong protections against the displacement of U.S. workers.

**SIGNIFICANT, LONG TERM INVESTMENTS IN THE U.S. STEM PIPELINE ARE CRITICAL**

As I expressed at the outset of this testimony, there is an urgent demand for workers trained in the STEM fields, throughout the nation and in a wide range of industries. Yet there simply are not enough people with the necessary skills to meet this burgeoning demand. Even more troubling, too few American students are achieving the levels of education required to secure jobs in innovation-based industries, especially students who have historically been underserved and underrepresented. This trend is compounding our economic challenges and limiting our nation's full economic potential.

High skilled immigration alone is not the solution to the skills shortage. We need to make deeper investments in the U.S. STEM education pipeline to ensure that Americans have access to these crucial opportunities in our economy. While I'm pleased to see a STEM fund included in this initial bill, a more robust national education fund would go further in growing the pipeline of qualified workers and keeping these high skilled, high wage jobs in the U.S. There is a real opportunity before us to address the threats to employment and economic competitiveness our country faces at its source, and we need to ensure the level of our investments in STEM are sufficient to make a long-term difference.

Experts have reached consensus around the key needs in the STEM pipeline. In K-12 education, we need to recruit and train more qualified teachers and help more students prepare adequately for college and careers. There also needs to be increased access to computer science in our nation's high schools to ensure that all students have the opportunity to gain this foundational knowledge and explore promising and fulfilling careers in computing. Within the higher education system, we need to address challenges in college completion rates and the ability of higher education to produce more graduates in critical STEM degrees, with a particular focus on computer science. Targeting efforts to address each of these areas in the pipeline is essential if we are to ensure that all students have the opportunity to achieve their dreams and industry has the opportunity to innovate and thrive.

Here, we can draw from the principles outlined in the I-Squared Act—which has the support of the National Governors Association and The Council of Chief State School Officers—with its model of a larger national STEM education investment that is urgently needed. That bill contains the "Promoting American Ingenuity Account" funded by fees from companies that pay for the additional green cards and H-1B visas. The combined fees would generate as much as \$500 million dollars each year for the U.S. STEM pipeline, a substantial increase from the fund proposed in this legislation. The I-Squared Act calls for the money to be state-directed and used for teacher training, post-secondary STEM programs, computer science and community college STEM training programs. This level of investment is desperately needed by U.S. students, educators and employers.

Ultimately we cannot expect to build the economy of the future without empowering our people to grasp the opportunities that the future promises to provide. With greater investment in STEM education, we know we can better prepare the next generation for the waves of technological innovation that are on the horizon in every field. If we do, our future is a bright one, not only in information technology, but in all kinds of scientific and technological innovation. And more of our people will share in, and contribute to, the resulting economic strength and prosperity for our nation.

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I want to reiterate that the introduction of the bipartisan Border Security, Economic Opportunity, and Immigration Modernization Act of 2013 is a major step forward in the collective effort for comprehensive immigration reform. The bill provides sensible solutions not just for high skilled immigration, but for our nation's immigration policy as a whole. The Congress has a rare opportunity to position our country for leadership in technology and innovation, foster sustained economic growth and enhance our global competitiveness. We should not let this moment pass.

Testimony Given By

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In A Hearing Before The  
Judiciary Committee  
U.S. Senate

On  
**"The Border Security, Economic Opportunity, and Immigration  
Modernization Act, S.744."**

April 22, 2013

Hart Senate Office Building

I want to thank Chairman Leahy, Ranking Member Grassley, and the members of the committee for inviting me to testify today. My name is Ronil Hira. I am a professor of public policy at the Rochester Institute of Technology in Rochester, New York. I have been studying high-skill immigration policy for more than a decade, so I appreciate the opportunity to share my thoughts about how the proposed Border Security, Economic Opportunity, and Immigration Modernization Act might impact the U.S. economy and American workers. I want to acknowledge Senator Durbin's leadership in ensuring that some reforms of the H-1B and L-1 guest worker visas were included in this bill.

I also would like to note that I am the son of immigrants. My parents, both of whom were professionals, left India in the 1950s in search of a better life. After leaving India, they first lived in France for six years but decided to leave primarily because my late mother, who was a physician, could not practice medicine there. Subsequently, they received the opportunity to immigrate to America, immediately receiving greencards, and later became naturalized citizens. They had long and productive careers, my late father as an engineer and my late mother as an anesthesiologist. The opportunity to testify is a professional honor but it is also very meaningful to me personally.

High-skill immigration has the potential to spur innovation and economic growth, and to create better job opportunities for American workers. However, I have concluded that our high-skill immigration policy, as currently designed and administered, does more harm than good. To meet the needs of the U.S. economy and U.S. workers, our guestworker and permanent residence programs need immediate and substantial overhaul. I will focus most of my testimony on the H-1B guest worker program, but the L-1 and OPT guest worker programs suffer from even more significant problems.

**The majority of the H-1B program is now being used to hire cheap indentured workers.**

The bulk of demand for H-1B visas is driven by the desire for lower cost workers, not by a race for specialized talent or a shortage of American talent. All of the top 10 H-1B employers in FY12 used the program principally to outsource American jobs to overseas locations.

**Outsourcing firms received more than half of the H-1B visas issued in FY12. Outsourcing is only the most visible and obvious symptom of the underlying problems with the H-1B program. Program misuse is widespread.**

The H-1B program currently has three fundamental flaws:

- 1) employers can legally hire H-1B workers at substantially lower wages than American workers,
- 2) American workers do not have a first and legitimate shot at these jobs and can even be replaced by H-1B workers, and,
- 3) accountability in, and oversight of, the program is nearly non-existent.

**The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744, includes safeguards that move in a positive direction, but it falls short by not fixing the fundamental problems in the H-1B or other guest worker programs. Employers will continue to bring in cheaper foreign workers, with ordinary skills, to directly substitute for, rather than complement, workers already in America.** Under this bill the H-1B program would continue displacing American workers and deny them both current and future opportunities. It also discourages American students from pursuing these professions. These problems will expand since the bill proposes to roughly double the number of H-1Bs, which potentially could grow to a tripling.

**The good news is that adding some modifications to the legislation could solve these problems. The provisions contained in S.600, the H-1B and L-1 Visa Reform Act of 2013, introduced by Senators Grassley and Brown, should be included in S.744.**

Let me turn to some facts about the H-1B program that are not often understood.

#### **The Mythology & Facts About The H-1B Program**

The public discussion about the H-1B program is often misleading and mistaken, and does not represent the way the program operates in practice. Let me discuss a few key features of how the H-1B program actually works.

- H-1B advocates often conflate the H-1B with a legal permanent residence (a greencard). The H-1B program is a temporary non-immigrant work permit. An H-1B is not legal permanent residence (a greencard). The employer holds the visa, not the worker, and if the H-1B worker is laid off he must leave the U.S. This provides enormous leverage over the H-1B worker. An H-1B worker is essentially indentured to a particular employer.
- The employer, not the worker, has the discretion of applying for a greencard for an H-1B worker. And most of the top H-1B employers don't sponsor their H-1B workers for greencards. By my estimates less than half of H-1Bs are being sponsored for greencards. As Table 1 below shows, most of the top H-1B employers are using the program for cheaper temporary labor - as a vehicle to outsource jobs overseas rather than as a bridge to permanent immigration. Just to use one example - Accenture received 4,035 H-1Bs yet applied for a mere 8 greencards for its H-1B workers in FY12. That is a 0.2% rate, or 1 greencard application for every 50 H-1B workers.

FY12 H-1B RANK	Employer	FY 12 H-1B		Immigration Yield = Greencard/ H-1Bs
		Initial Petitions	FY12 Greencard Applications for H-1Bs	
1	Cognizant	9,280	669	7%
2	Tata	7,485	10	0%
3	Infosys	5,600	21	0%
4	Wipro	4,304	30	1%
5	Accenture	4,035	8	0%
6	HCL	2,131	105	5%
7	Tech Mahindra SATYAM	1,963	20	1%
8	IBM India	1,846	96	5%
9	Larsen & Toubro	1,829	15	1%
10	Deloitte	1,668	260	16%
<b>TOTAL</b>		<b>40,141</b>	<b>1,234</b>	<b>3%</b>

- H-1B workers can be paid wages that are lower than the market wage for an American worker. While employers are required to pay a "prevailing" wage, which may sound like a market wage it is not. Congress, not the market, sets the "prevailing wage", and it is set far below than a market wage. It is the fiduciary duty of employers to lower their costs if it increases their profits for the owners, so it is no surprise that employers take advantage of the opportunity to hire workers at below-market wages.
- Employers do not have to look for American workers before hiring an H-1B worker. Simply put, no shortage is necessary before hiring an H-1B worker.
- Employers can displace an American worker with an H-1B worker. This has been happening with more frequency. Simply put, even if there is a surplus of American workers who are doing the job, they can be displaced by an H-1B. There have been a number of documented cases of American workers training their foreign replacements. I personally know American engineers, working at a major firm in Rochester, who are currently being "shadowed" by guest workers who will soon take over their jobs. The American engineers will be let go. Like many American engineers about to lose their jobs to guest workers, they are frustrated but scared. They are unwilling to tell their story publicly for fear of retribution and for fear of losing their severance packages.

- To qualify for an H-1B, the foreign worker need no special or rare skills. The worker must hold a Bachelor's degree. Approximately 30% of American workers already hold a bachelors degree and their unemployment rates continue to be very high. H-1Bs can be hired into virtually any occupation that generally requires a bachelors degree. The typical H-1B worker has no more than ordinary skills, skills that are abundantly available amongst American workers. Or skills that could be easily acquired by American students.
- The H-1B program is already huge. USCIS doesn't know how many H-1Bs are here but analysts estimate that there are approximately 650,000 here right now. On top of that we know that approximately 120,000 new H-1Bs arrive every year.<sup>1</sup> As the National Academies found in 2000, these numbers are large enough to distort the labor market. It is having significant adverse impacts on the American workforce, job opportunities, and wages. In new research to be published shortly, Professor Hal Salzman estimates that approximately one-third to one-half of new IT jobs were taken by guest workers on H-1B, L-1 and OPT.<sup>2</sup> This is not because there aren't enough Americans studying STEM fields. Salzman finds, "In computer and information science and in engineering, U.S. colleges graduate 50 percent more students than are hired into those fields each year; of the computer science graduates not entering the IT workforce, 32 percent say it is because IT jobs are unavailable, and 53 percent say they found better job opportunities outside of IT occupations." Most of the jobs being filled by H-1Bs are ones that Americans can and should be filling.
- There is no shortage of American STEM workers and students. As Salzman finds, "the United States has more than a sufficient supply of workers available to work in STEM occupations." The key indicator of a shortage would be rapidly rising wages, but wages in STEM and in computer occupations have been essentially flat for more than a decade.
- The H-1B program harms employers that hire American workers. Domestic sourcing companies, such as Ameritas Technologies and Systems in Motion, are being penalized by U.S. Government H-1B policies because they are hiring American workers. Their competitor firms hire H-1B workers because they can be paid less than Americans.
- Stepped up enforcement will not solve the problem. Most of the problems with the H-1B program are loopholes that can only be fixed through legislation.

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<sup>1</sup> The 120,000 is larger than the 85,000 cap because many employers are exempt from the cap.

<sup>2</sup> This paper, written by Hal Salzman, Daniel Kuehn, and B. Lindsay Lowell, will be published by the Economic Policy Institute.

- Program integrity relies almost entirely upon whistleblowers. There is virtually no oversight of the program. The only program accountability and integrity comes from relying on whistleblowers. This is the worst possible design of program integrity.

#### **S.744 Moves in the Right Direction But Falls Far Short on Safeguards**

S.744 attempts to address some of the flaws in the H-1B program but falls short. S.600 would fix the flaws and close the loopholes.

#### *S.744 Raises Wage Floor from 17th to 33rd Percentile But Wage Floors Remain Below American Wages*

It is an open secret in the information technology industry that H-1B workers can be paid below-market wages. Brian Keane, CEO of Ameritas Technologies and a veteran of the technology industry, summed it up this way at a recent Senate briefing of Judiciary Committee staff:

Outsourcing firms who place H-1B personnel onsite at a client, will typically charge an average of \$60-75 per hour of IT work. Compare that to a US-based IT staffing firm which will need to charge \$80-100 per hour, or a US IT consultancy which likely will charge \$90-150 per hour. Simply put, firms using H-1B labor are paying lower wages so they can charge lower prices than equivalent US competitors that use US citizens as their workforce.

Neeraj Gupta, who joins me on this panel, pegs the cost savings at approximately 20%.

Last week, the Wall Street Journal reported that, "Indian IT professionals working in the U.S. are typically paid about 25% less than their American counterparts."<sup>3</sup>

S.744 raises the wage floor for the H-1B program from the 17th percentile to the 33rd percentile for the particular occupation in a specific geographic area. This is a step in the right direction but the 33rd percentile is still far below market wages for American workers.

To illustrate why this is still too low, let me provide you some concrete examples of what the wage floor would be if S.744 were adopted:

- Under the bill's wages, a firm could **hire an electronics engineer for a mere \$39,000 per year** in College Station, TX. **This is more than a 37% discount (a whopping \$23,000 annually) over the starting salary for an entry level Bachelor's degree**

<sup>3</sup> [http://blogs.wsj.com/indiarealtime/2013/04/18/u-s-visa-bill-very-tough-for-indian-it/?mod=wsj\\_streaming\\_latest-headlines](http://blogs.wsj.com/indiarealtime/2013/04/18/u-s-visa-bill-very-tough-for-indian-it/?mod=wsj_streaming_latest-headlines)

**engineer.<sup>45</sup> And it is an astonishing 59% lower than the national average wage of \$95,250 for electronics engineers at all skill levels.**

- Firms could **hire a computer programmer for \$11.90 per hour** in the Pee Dee region of South Carolina. This is **68% lower than the national average wage of \$78,260.**
- Firms could **hire a computer systems analyst for \$43,413 per year** in Roanoke VA, which is **48% lower than the national average salary for computer systems analysts of \$83,800.** Computer systems analysts is by far the most common H-1B occupation accounting for more than a quarter of all the H-1B applications certified by the Department of Labor.<sup>6</sup>
- Firms could hire a **computer professional for \$10.64 per hour in Salisbury, MD, or 73% lower than the national average wage of \$81,140.**
- Firms could hire an **accountant for \$35,027 in Lewis, MO, or 51% lower than the national average wage of \$71,040.**

All of these occupations are amongst the top 10 H-1B occupations according to the FY12 Department of Labor H-1B data. The three computer occupations above were by far the largest of all H-1B occupations accounting for more than half of all of the H-1B applications approved by the Department of Labor. The examples I have given are located in low-cost areas but they illustrate the rule: the H-1B wage floors are far below market wages. In some high-cost areas, the discounts might be less, but they are still substantial.

It is worth keeping in mind that the **H-1B advocates have claimed that the H-1B workers they seek possess superior skills. If this is the case, then those workers should be paid at least the average wage.**

Some have argued that American workers are protected by the following employer requirement, "Employers must attest to the Department of Labor that they will pay wages to the H-1B nonimmigrant workers that are at least equal to the actual wage paid by the employer to other workers with similar experience and qualifications for the job in question." While this sounds like a requirement with teeth, in reality it is nothing more than a paper tiger. Any human resource professional can easily tweak requirements to make two similar positions appear dissimilar. The

<sup>4</sup> The data for the wage floor is sourced from the prevailing wage tables at the Department of Labor's Foreign Labor Certification Program webpage. The wage is calculated as the current Level 2 wage or 80% of the mean wage, whichever is higher.

<sup>5</sup> The National Association of Colleges & Employers (NACE) conducts an annual salary survey of recent graduates by discipline.

<sup>6</sup> This is based on the Office of Foreign Labor Certification fact sheet for FY12: [http://www.foreignlaborcert.doleta.gov/pdf/h\\_1b\\_temp\\_visa\\_2012.pdf](http://www.foreignlaborcert.doleta.gov/pdf/h_1b_temp_visa_2012.pdf)

data prove this out. There is no case that I'm aware of where the Department of Labor has tried to enforce this requirement. And even if it attempted to, it would be doubtful that it ever could.

Lastly, I think there are important technical flaws in the ways in which the Department of Labor calculates Prevailing Wages. Virtually no electronics engineer with a BS degree is being paid \$39,000, yet the Department of Labor claims that one-third of them in College Station, TX, are being paid less than that. I believe that Congress should ask the Department of Labor to do a thorough review of how it is measuring Prevailing Wages and make appropriate changes to better reflect the Congress' intent.

*S.744 Requires Posting of Jobs But No Actual Active Recruitment Requirements - American Workers Deserve a First & Legitimate Shot At These Jobs*

There were a couple positive, albeit weak, steps in S.744 when it comes to recruiting American workers.

S.744 requires that H-1B jobs be posted to a national jobs board for 30 days There is nothing stopping the jobs posting from becoming more than a pro forma exercise, where firms post the jobs but still hire an H-1B instead of a qualified American applicant. The bill should include a tally of the number of applicants for each position posted.

Most H-1B employers will never have to look for American workers prior to hiring an Americans. The bill does not require "good faith" recruiting of American workers. It should.

The good faith recruitment requirements are common sense and are not burdensome. Here are some excerpts from the compliance guidance from the Department of Labor of what is required.<sup>7</sup>

**What does the term "recruitment" mean?**

The term "recruitment" means the process by which an employer seeks to contact or to attract the attention of any person who may apply for any job that the employer is considering filling with an H-1B worker. Recruitment must take place before the LCA or petition is filed. Recruitment includes soliciting, receiving, considering, and reviewing applications.

**What solicitation methods may an employer use in seeking to contact or to attract the attention of potential U.S. applicants for employment and to solicit applications from persons for employment?**

"Solicitation methods" that an employer may use are:

Either external or internal to the employer's workforce; or

Either active (where an employer takes positive, proactive steps to identify potential applicants and to get information about its job openings into the hands of such persons), or passive (where potential applicants find their way to an employer's job announcements).

<sup>7</sup> <http://www.dol.gov/whd/regs/compliance/FactSheet62/whdfs62O.htm>

**An employer must recruit in "good faith." What does this mean?**

An employer which recruits in good faith must offer fair and nondiscriminatory opportunities for employment to U.S. workers. U.S. workers must be given fair consideration for jobs. H-1B workers must not be favored over U.S. workers.

It is good step that S.744 has eliminated a major loophole in the good faith recruitment requirements for so-called H-1B Dependent firms. Current law provides H-1B Dependent firms exemptions the additional good faith and non-displacement regulations if they claimed to pay the H-1B worker more than \$60,000 or if the worker held a Masters degree. This loophole was widely used by most H-1B Dependent firms. While this loophole has been closed, the bill puts a new one in its place. Firms will be exempted from the requirements should they begin the paperwork for greencards for some of their workers. We could see a rush to begin paperwork with no intention of following through. As former Congressman Bruce Morrison observed recently, "It could just be a matter of paper pushing, ... All you have to do is file a piece of paper, which doesn't even have to be approved or approvable."

*S.744 Attempts to Curb Outsourcing But Simply Shifts it to Other Firms Instead*

The H-1B visa has been aptly dubbed the "outsourcing visa" by a number of observers. All of the top 10 H-1B employers in FY12 use the program principally to outsource American jobs overseas. Table 2 below shows this very clearly. Every single firm used the program to facilitate the shipping of American jobs overseas. These ten firms alone received an astonishing 40,141 H-1B visas in FY12, or nearly half of that year's allotment.

<b>All of the Top 10 H-1B Employers in FY12 Used It Principally for Offshoring</b>			
<b>FY12 H-1B RANK</b>	<b>Employer</b>	<b>FY 12 H-1B Initial Petitions</b>	<b>Significant Offshoring</b>
1	Cognizant	9,280	X
2	Tata	7,485	X
3	Infosys	5,600	X
4	Wipro	4,304	X
5	Accenture	4,035	X
6	HCL	2,131	X
7	Tech Mahindra SATYAM	1,963	X
8	IBM India	1,846	X
9	Larsen & Toubro	1,829	X
10	Deloitte	1,668	X
<b>TOTAL</b>		<b>40,141</b>	

Three key provisions in S.744 attempt to curb the use of the H-1B program for outsourcing American jobs overseas. The first is the so-called 50/50 rule, which prohibits firms that have more than 50% of its U.S. workforce on H-1B or L-1 visas from getting additional visas. This is a good rule but it isn't sufficient. Many of the firms that use the H-1B program to ship American jobs overseas, like IBM India and Accenture, will not meet these thresholds due their legacy business models. Therefore, we will simply see the outsourcing shift from a company like Cognizant, which will face restrictions, to an Accenture, which will not. The net result for American workers and the American economy will still be same negative outcome - more jobs being shipped offshore due to loopholes in the H-1B program.

The second is that H-1B dependent firms will have to meet a higher wage floor than other H-1B employers. That wage floor will be set at the average wage for the occupation in the geographic area. This is, again, a good development but the likely outcome will be a shift of work from H-1B dependent outsourcers to outsourcers that are not H-1B dependent. American workers will continue to be undercut and undermined.

Another good provision of S.744 is that it bans the outplacement of H-1B workers. But it only bans it for H-1B Dependent firms. It allows non-dependent firms to do outplacement by paying a \$500 fee. Again, we would expect that work will shift from dependent to non-dependent firms and that American workers will continue to be undercut.

*S.744 Only Includes Regular Audits of H-1B Dependent Firms*

In addition to abuse, which is legal due to loopholes, the H-1B program has been rife with fraud for many years. This hasn't been stamped out because program integrity is almost entirely reliant on hoping that whistleblowers will come forward. There is absolutely no rational reason for an H-1B worker to come forward with a complaint. Their visa is held by their employer, so if they complain they could be fired and have to leave the country. But more importantly, H-1B whistleblower cases typically take 5 years to adjudicate and result in awards that are miniscule. One case of alleged widespread fraud by Infosys is illustrative. The whistleblower, Jay Palmer, has been subjected to threats and harassment for years.

S.744 includes audits only of H-1B Dependent firms. These are a small number of H-1B employers that account for an outsized share of the number of H-1Bs granted. However, the bill does not require any random auditing of other H-1B employers. This is a significant drawback in the bill. A random audit of all H-1B employers should be adopted. Without it, the vast majority of H-1B have no reason to carefully comply with the regulations.

*S.744 Includes Important Non-Displacement Requirements For All Firms*

The H-1B program has been used to displace American workers at many firms. This sometimes happens in subtle ways. Age discrimination is an open secret in the technology industry and the H-1B workers, most of whom are young, have been used as a way fuel this age discrimination.

I would urge Congress to keep the non-displacement requirements outlined in section 4221 for all firms. These provisions will ensure that employers are using the H-1B for truly specialized talent rather than because the H-1B worker is younger, and therefore cheaper.

The non-displacement requirements for L-1 visas, contained in Section 4301, are also important to include in any final legislation. The L-1 visa has been extensively to displace American workers.

**Major Problems With L-1 & OPT Visas Not Addressed**

The L-1 and OPT visa programs are in many ways more harmful to American workers than the H-1B program.

Neither the L-1 nor the OPT have *any wage floor*, a cap, recruitment requirements, or non-displacement. Further, neither program has virtually any scrutiny. We have no idea how many L-1 visa holders are here at any one time, and unlike the H-1B, we don't even know how many are coming in every year.

The L-1 program has been extensively used to support the outsourcing of American jobs overseas as can be seen by Table 3. S.744 wouldn't stem this at all.

The L-1 visa program has no wage floor and the wage arbitrage opportunities are even greater. Workers can be paid home country wages. The wage differentials between America and India, the source country for the largest share of L-1s, are staggering. In the case of an information technology worker from India, this could mean a salary of just \$10,000 per year. Even including the housing allowances and living expenses often given to these workers, the wages would be far below market. S.744 does not set a wage floor.

I would note that the industry lobbying coalition, Compete America, heartily endorsed the *IDEA Act of 2011* introduced in the House in the 112th Congress.<sup>8</sup> That bill included a wage floor for L-1 workers, something that doesn't exist now.

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<sup>8</sup> See: <http://www.competeamerica.org/media/ideaact2011>

<b>Table 3</b>			
<b>Top 10 L-1 Employers for Fiscal Year 2008</b>			
<b>8 of 10 Have Significant Offshoring</b>			
<b>L-1 Use Rank</b>	<b>Company</b>	<b>L-1s Obtained FY08</b>	<b>Significant Offshoring</b>
1	Tata Consultancy Services	1,998	X
2	Cognizant Technology	1,893	X
3	Wipro	662	X
4	Satyam (now Mahindra Satyam)	604	X
5	Infosys	377	X
6	IBM India	364	X
7	Hewlett Packard	319	X
8	GSTechnical Services	288	X
9	Schlumberger	287	
10	Intel Corp	226	

**Source:** DHS USCIS

In 2008, Optional Practical Training (OPT) was extended from 12 to 29 months for STEM graduates to fill what was then called a shortage in the STEM field.

While the H-1B program has loopholes that allow employers to bring in cheaper workers, the OPT has even wider loopholes and little oversight and transparency. For example, unlike the H-1B there is no wage floor for the OPT. B. Lindsay Lowell, a research professor at Georgetown University, estimates that OPT workers are paid a mere 40% of equivalent US workers. And many of the major beneficiaries of the OPT STEM extension are obscure universities with dubious credentials. For example, students from the unaccredited University of Northern Virginia, which was recently raided by USCIS investigators, received 189 OPT STEM extensions, 14th on the list of all universities. According to media reports USCIS has revoked University of Northern Virginia's ability to issue any new F-1 student visas for international students. For those foreign students who wish to work in the US for extended periods of time, rather than simply obtain practical training, they should have their employers use the H-1B program.

#### **Major Increase in H-1B Cap is Unwarranted & Detrimental**

There is no reason for an increase in the H-1B cap, and any increase would do significant harm to American workers and students.

All objective studies that have examined the STEM labor markets have concluded that there is no systemic shortage of American workers and students. These have been conducted by academics, like Salzman and Lowell, as well as respected think tanks like RAND.

There are always spot shortages for specialized talent. To address these shortages immigration policy should allow employers access foreign guest workers for these positions. A large H-1B program will send a clear signal to American students to avoid professions where employers will simply use the H-1B to import cheaper workers. It will also send a signal to the employers that they do not have to invest in workforce development.

S.744 is extremely generous with the number of skilled greencards that have been allocated. There is no reason why the number of guest workers need to be increased. The proposed EB greencards coupled with the current guestworker program already has the potential to overwhelm the American STEM labor market.

#### **Trade Policy Creeping in on Immigration Policy in S.744**

There are a few provisions in S.744 that require more clarification. It is unclear what Section 4402 would do to the law. Does it exempt these nationals from free trade agreement countries from the H-1B cap? From the rules? We need more clarity on the goal of this section.

#### *H-1Bs for Ireland Without the Bachelors Requirement*

Section 4403 of S.744 appears to create a new work visa program for people from under the existing E-3 program. The E-3 was created as an H-1B program specifically for Australians as a work-around of the U.S.-Australian Free Trade Agreement. It has a cap of 10,000 visas and allows Australians to avoid the H-1B cap. Under the E-3 program, S.744 creates a new set of temporary work permits for Irish who have no more than a high school education.

The temporary non-immigrant work program is already too complex. It makes little sense to add to the alphabet soup of visa programs. There should be a bright line between trade and immigration policy.

#### **Recommendations**

By closing the H-1B and L-1 visa loopholes described above, Congress would create and retain hundreds of thousands of high-wage American jobs and ensure that our labor market works fairly for American and foreign workers alike. The "H-1B and L-1 Visa Reform Act of 2013", S.600, would solve the most important problems with these programs and should be included in S.744.

I summarize what needs to be done to restore the integrity of the programs below.

*Pay Guest Workers True Market Wages*

H-1B and L-1 workers should be paid true *market* wages. The Congressionally imposed four-level wage structure for the H-1B program should be abandoned. No guest worker should be paid less than the median wage in the occupation for all skill levels. Ensuring that employers pay market wages will remove the temptation of wage arbitrage. Further, employers should pay an annual fee equal to 10% of the average annual wage in the occupation. Those fees could be used to increase the skills of the American workforce and will ensure that employers are hiring guest workers who are filling real gaps in the labor market.

S.744 increases the wage floor but H-1Bs can still be paid below-market wages. And the bill does nothing to fix the L-1 wages.

*Institute an Effective Labor Market Test*

All employers should, at a minimum, perform good faith recruitment of American workers prior to hiring an H-1B or L-1 worker. They should also be required to not displace American workers.

L-1B visas surpassed the number of L-1As over the past decade, in concert with the rise of the offshore outsourcing industry. Yet no one, including the consular officers who review the applications, can identify what constitutes *specialized knowledge*. Congress should either eliminate the category or clearly define specialized knowledge.

S.744 only applies good faith recruiting to a small subset of employers and provides no clarity on what constitutes L-1B specialized knowledge.

*Eliminate access to additional H-1B and L-1 visas for any H-1B Dependent firms.*

The programs are intended to help employers in the United States operate more effectively, providing them skilled workers they cannot find in the U.S. It should not be a way for businesses to compete here in the U.S. with an imported workforce. With the exception of very small businesses, no employer should be permitted to employ a workforce consisting of more than 15% H-1Bs or L-1s. There is no reason, other than wage arbitrage, for any firm to have more than 15% of its workforce on guest worker visas.

S.744 sets the threshold at 50%. This is a good step in the right direction but the threshold should be set lower.

*Shine Light on H-1B & L-1 Program Practice*

There is widespread and substantial misunderstanding, in the media and even amongst some policy makers, about how the programs work in practice. Many of these misunderstandings could be cleared up through greater transparency. Congress and USCIS should publish data on program use by employer, including job title, job location, actual wages paid, and whether the

worker is being sponsored for permanent residence. The data should include all H-1B & L-1 workers, not just newly issued and renewed petitions. Further, the practice and impact of L-1 blanket petitions should be examined.

H-1B & L-1 use by *H-1B Dependent* firms should be investigated and the findings publicly released. The GAO or IG should be asked to complete a study of the weaknesses of the H-1B Dependent regulations on good faith recruiting and non-displacement. So called H-1B Dependent firms must meet additional requirements prior to hiring an H-1B worker, yet it is clear that these firms are able to circumvent Congress' intent regarding those additional requirements. As noted above, these firms are able to hire literally thousands of H-1Bs annually without hiring any Americans for those positions.

*Institute Sensible Oversight*

Through their use of guest worker visas employers are asking government to intervene in the normal functioning of the American labor market. With this privilege should come accountability. Employers using guest workers should be subject to random audits to ensure they are fulfilling the obligations contained in their attestations. And government agencies in charge of these programs—the Departments of Homeland Security, Labor, and State—should be granted the authority, and allocated resources, to ensure the programs are operating properly. Given the efforts in Congress to cut deeply into discretionary spending, some mechanism to fund these audits should be created. At a minimum, one in ten H-1B & L-1 employers should be audited and, if they are not eliminated, every H-1B Dependent firm should be audited every year.

S.744 includes audits only of the H-1B Dependent firms. The vast majority of firms will never be kept accountable by an audit. So, the program will continue to ensure its integrity solely by whistleblowers.

*Establish a Clear Single Objective for the H-1B Program*

The H-1B program is a so-called "dual-intent" visa; i.e., though the visas are temporary, employers can choose to sponsor these workers for permanent residence. While this design feature appears to provide flexibility, it comes at substantial cost. Is the H-1B program supposed to be truly temporary, be used sparingly, and only for short periods of time? Or is it the way to entice very recent foreign graduates of American universities to stay permanently? Or is it the primary bridge to immigration for high-skilled workers who are trained abroad? Each of these objectives creates inherent conflicts in program design; e.g., in setting wage floors. Congress should consider how to limit the scope of the H-1B program to improve its performance.

*Other High-Skill Visa Programs Need Scrutiny & Fixing*

I have highlighted in detail the problems with the H-1B and L-1 visa programs. But I would like to briefly point to some other critical issues for high skill immigration policy. Other temporary

visa programs, such as the B-1, OPT, and J-1, are also badly in need of an overhaul, and are being used to circumvent the annual numerical limit on H-1Bs and the regulatory controls on the L-1.

With respect to the B-1 “business visitor” visa we have even less information about how it might be being exploited, but recent news reports and an ongoing lawsuit reveal that they are being used to get around the H-1B rules and cap. Pending litigation alleges that B-1 visas are being used for shuttling in workers rather than business visitors. And job websites advertise explicitly for jobs for foreigners with eligible B-1 & B-2 visas<sup>9</sup>, in direct contradiction of the purpose of these visas.

In 2008, the duration of the OPT work visa was extended for STEM majors to 29 months without oversight or any approval from Congress. The list of eligible majors was recently expanded by the Obama Administration. The largest beneficiaries of this extension are obscure colleges that are providing workers to the offshore outsourcing industry.<sup>10</sup> There is no wage floor for OPT and one analyst estimates they are paid a mere 40% of what Americans earn. The rationale for the OPT extension has disappeared – according an analysis of BLS data by IEEE-USA more than 300,000 American engineers and computer professionals are unemployed - so the OPT STEM extension should be rolled back to its original duration.

S.744 does nothing to address these major loopholes.

*Immigration Policy Should Be Made By Congress, Not the U.S. Trade Representative*

Given the widespread use of both H-1B and L-1 visas by offshore outsourcing firms, Congress should take affirmative steps to make it clear that both guest worker programs and permanent residence are immigration, and not trade, policy issues. In 2003, the U.S. Trade Representative (USTR) negotiated free trade agreements (FTAs) with Chile and Singapore, which included additional H-1B visas for those two countries, and constrained Congress from changing laws that govern the L-1 visa program. In response, many members of Congress felt it was important to re-assert that Congress, not the USTR, has jurisdiction over immigration laws. But no law was ever passed. Without legislation, the muddying of trade and immigration policy will keep recurring. Most recently, it appears that some L-1 visa provisions were included as a side agreement in the Korea-U.S. Free Trade Agreement. Many countries, including India, have pressed for more liberalized visa regimes through trade agreements including proposing a new GATS work visa. Congress, not the U.S. Trade Representative, should have the authority to change these laws, and Congress should pass a law reaffirming jurisdiction.

<sup>9</sup> See [www.naukri.com](http://www.naukri.com) as described in Malia Politzer & Surabhi Agarwari, “B-1 visa holders in demand on job portals,” *LiveMint.com*, June 23, 2011. <http://www.livemint.com/2011/06/23014418/B1-visa-holders-in-demand-on.html>

<sup>10</sup> For the list of universities benefitting from the OPT STEM extension see, [http://www.computerworld.com/s/article/9196738/H\\_1B\\_at\\_20\\_How\\_the\\_tech\\_worker\\_visa\\_is\\_remaking\\_IT\\_in\\_America](http://www.computerworld.com/s/article/9196738/H_1B_at_20_How_the_tech_worker_visa_is_remaking_IT_in_America)

*Simple Administrative Fix Would Prioritize Foreign Graduates of American Universities*

Some have argued that foreign students with advanced degrees from American universities should have a priority with the H-1B program but DHS could easily do more to fulfill this goal. The quota for new H-1B workers is 85,000 per year with 20,000 of those set aside for advanced degree graduates of U.S. universities. The 20,000 additional visas were created specifically to provide prioritization for advanced degree graduates of U.S. universities. But the way in which DHS counts advanced degree holders towards the cap severely hampers its effectiveness. DHS fills the 20,000 cap with applications from advanced degree graduates before counting them against the 65,000. If DHS instead counted them against base cap of 65,000 first it would free up more than enough spaces for advanced degree holders.

S.744 expands the base cap substantially from 65,000 to 110,000. But it only increases the advanced degree cap from 20,000 to 25,000. This is one of the most baffling features of the legislation. Industry has repeatedly put the straw man forward that the cap is too low so foreign graduates of American universities are being forced out of the country. If there is any increase in the cap, and I don't think it is warranted, it should be allocated towards advanced degree graduates of U.S. universities.

*Immigration Policy Should Be Made By Congress But It Needs Specialized Expertise From An Independent Commission*

A number of think tanks and academics, including the Migration Policy Institute and the Economic Policy Institute, have recommended that Congress create a standing commission on immigration. This commission would track the implementation of policy, the changing needs of the U.S. economy and labor market, and make recommendations to Congress on legislative changes. Given the nature of immigration policymaking Congress should seriously consider creating such a commission.

S.744 proposes creating a Bureau to address these but it is focused on low-skilled guestworker programs. The Bureau's jurisdiction should be expanded to high-skilled guestworker programs.

**CONCLUSION**

In conclusion, let me say that I believe the United States benefits enormously from high skilled permanent immigration, especially in the technology sectors. We can and should encourage the best and brightest to come to the United States and settle here permanently. But our future critically depends on our homegrown talent, and while we should welcome foreign workers, we must do it without undermining American workers and students. Closing the H-1B& L-1 visa loopholes would ensure that the technology sector remains an attractive labor market for Americans and continues to act as a magnet for the world's best and brightest.

Those the H-1B & L-1 programs have repeatedly made claims that the program is needed because there is a shortage of American workers with the requisite skills, and the foreign workers being imported are the best and brightest. If that is indeed the case, then those employers should not object to these sensible reforms. The policies I have proposed pose no limitations on employers' ability to hire foreign workers who truly complement America's talent pool.

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Testimony Given By

**Neeraj Gupta**

*CEO, Systems In Motion*

*Managing Director, Cervin Ventures*

In A Hearing before the Senate Committee on the Judiciary

On

“The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744”

Monday, April 22, 2013

I want to thank Chairman Leahy and the members of the Senate Committee on the Judiciary for inviting me to testify today. I appreciate the opportunity to share my perspectives on how our immigration policy on H1B and L1 visas is having significant unintended consequences.

My name is Neeraj Gupta and I came to America as a graduate student on a student visa, following which a Silicon Valley technology company applied for my H1B visa and green card. I went on to be the founder and CEO of an IT services company that was acquired by an Indian company that was #7 on the offshoring leader board. I became a member of the executive team and led global sales and marketing with over 80% of our approximately \$700M in revenues coming from US customers. More recently, I founded a domestic technology services company, a direct result of my experiences in offshore outsourcing. I am also a Managing Director of an early stage technology venture fund in Silicon Valley.

I have been a direct beneficiary of the H1B program. I have also been an executive at an offshore company that has leveraged the visa programs effectively, and in my current role, I see the challenges our current immigration policy creates for domestic IT services companies and innovative start-ups. As a backdrop to my comments, I wish to emphasize that I support the proper use of H-1B visas as a means to attract the best available global talent to the United States. My comments are largely limited to the use of visas by the technology services industry.

In early 2009, in the midst of the great recession and inspired by the wave of hope and change, a group of us left the offshore industry to study how we could be a part of a solution that would create American jobs in technology services. After having offshored many jobs, primarily helping US enterprises reduce their cost of operations, we went on a quest to find a US alternative.

We knew the key drivers that led to the growth of the offshore industry. The industry had been buoyed by the availability and lower-cost of resources, and easy mobility of such resources through the use of H1B and L1 visa programs. Global services companies had built a model of efficiency with "centralized software factories". The question we posed ourselves was: "Can we build globally competitive technology services in the US?" We reviewed key business drivers including the supply of resources, the quality of resources, and the economics of building a domestic alternative to offshore companies. We also reviewed our policies for high-skilled immigration.

**Economics:** Let us first look at the economics. It was clear that the #1 use of H1B and L1 visas was by the offshoring industry. The #1 reason why enterprises used offshore programs was for cost reduction (under the euphemistic terminology of efficiency). Was there not a direct correlation? How could one miss the linkage that the visas are primarily being used for lower costs? It did not matter who the beneficiary of these offshoring visas was – a large offshore major headquartered in India or the US or a global services major such as IBM or Accenture. It was clear to us that everyone was using the visas for the same reason. Lower costs. Economic rationale was driving their decisions.

The US market is the largest revenue source for offshore vendors. H1B/L1 visas allowed them to have easy mobility and keep utilization rates high. In the current policy environment, domestic services companies faced a huge competitive disadvantage. We know that the first question an Indian business asked was: *"why do we need to hire an American worker when we can get a cheaper resource from India, benched in India at a lower wage, and mobilized on an as-needed basis."*

The offshore majors mostly hired H1B employees because the current policy provided them a "subsidy". It was clear to us that our policies should change in order that the question that should be asked is "*why do we need to hire an H1B employee, if we can train and develop a local worker*".

Imagine a scenario, where hiring of an H1B employee had an associated tax of 25% (which could be used for training of American workers). If it cost a company 25% higher to hire an H1B employee than a local resource, what will the industry do? I am not suggesting taxes but the idea that it needs to be fundamentally more expensive to hire an H1B employee than an American worker. If we did that, the market forces will lead us to the right outcome. We will adapt quickly, the H1B program will move towards hiring of specialist resources only, local training and development will get an impetus, and US "software factories" will flourish. Most importantly, we would find the answers for the kids that wish to pursue STEM careers and give them a clear path forward. We would address the challenge of long-term human capital development.

The current policy approach around determining supply and demand of such skilled resources, undertaking market or prevailing wage tests, and determining employer-employee relationships did not address the core issue. Putting restrictions on H1B dependent employers would only move the offshore pie from TCS and Wipro to IBM and Accenture. It would not solve the core issue. The core issue we saw was the following: *Why would a business hire an American worker if a cheaper local alternative were available?* We thought to ourselves: why are policy makers creating economic incentives for hiring Indian engineers over American kids who can be trained for most roles that H1B visas are being used for? Why are we not letting market forces handle this and limiting our policy to only addressing the true skills gap for the highly specialized?

**Supply:** Let me move on to share our findings on the availability of talent. Our most critical finding is that there are enough workers with the pre-requisite skills to be trained and developed. Today, all our staff in our delivery center in Michigan has been hired locally. We have taken the advantages of centralized "software factory" operations with strong training plans. We are convinced that the model of Bangalore and Manila can work in the US. We have found strong support from universities - University of Michigan, Eastern Michigan University (EMU), and others.

In our early days in Michigan, a dean at EMU spent extensive time with us as we reviewed his data on the drop of enrollment in CS/EE programs that if graphed on a time line was the direct opposite of the growth of the Indian offshore industry. His biggest issue in convincing kids to join his programs was his ability to show how graduating kids are finding meaningful jobs. It was disheartening to meet various under-employed graduates from these universities.

We have created a self-fulfilling 'skills scarcity' problem. With an expectation that most of the potential technology jobs of the future will be offshore, we see young Americans steadily moving away from technical degrees, creating greater pressure on an already weak supply pool. We continue to push for more kids to take up careers in STEM, but without a career path for our graduating students, we have broken the "**chain of long-term human capital development**". We cannot expect our workers to become technology leaders of tomorrow without having the opportunity for an apprentice role or an entry-level job. We need to create meaningful and stable jobs for our graduating students.

The H-1B workers employed by organizations with offshore outsourcing as their primary business model generally average between 3-8 years of work experience and primarily to **sub-contract work** for IT

departments of large US enterprises - banks, insurance companies, telecom operators, etc. Majority of this work delivered by H1B/L1 staff cannot be considered specialized. This is unlike the work done by technology companies such as Google and Microsoft who use these visas to hire engineers for research and development; work that can generally be considered specialized.

We are convinced that the supply of resources for majority of technology services is available in the United States.

**Quality:** Global enterprises are not entirely satisfied with the quality of work being delivered offshore. Research by Rafiq Dossani at Stanford University illustrates the quality advantage that we have.

Quality	India	US
# of Institutions	1800	350
# of Graduates	450K	70K
Tier 1	1%	15%
Tier 2	15%	70%
Tier 3	84%	15%

Note that the above chart only shows graduates from four-year engineering schools. In India, engineers graduate with a degree even if the quality of education and skills may be so weak that they are unemployable. In the US, we are graduating better quality engineers. Also, we have a significant supply of resources graduating with associate degrees that can be employed in technology services.

### Recommendations

I would recommend that the committee consider taking away the economic incentives for businesses to hire H1B employees. Here are a few recommendations:

1. We should address the economic abuse and the associated dis-incentive to hire American workers. Location-based wage test should be changed. The goal should be that enterprises feel the "pain" of hiring H1B employees. Their total cost of hiring a resource should be at least 125% of the highest percentile resource and the 25% surcharge should be used for training and development of local resources. Since most services today can be delivered in a distributed environment, tying H1B visas to locations and wage parity in a location is no longer relevant. We should tie wage rate requirements to national averages. Or even more simply, benchmark it to a minimum of \$100K in annual wages (excluding graduating MS/Ph.D. students from US universities).
2. We should consider limiting the use of visas for an organization's direct use and eliminate the use of these visas for any kind of outsourcing or sub-contract work. Employer-employee relationship test should be strengthened to a "sub-contract test" – the visas should be for an organization's direct use and not to deliver sub-contract work to a client, irrespective of who controls the work. In essence, the visas should be used for specialist work such as R&D. We should not have the offshore industry take away majority of the visas while innovative product companies cannot meet their needs.

By instituting the above, 3 key things will happen:

- H1B visas will be increasingly available for innovation and specialized work. US technology companies such as Google and Microsoft will not hit visa caps, as the visas currently being used by the offshore industry become available. The H1B policy will enable innovative start-ups and technology companies rather than feeding the offshoring machine.
- The offshore industry will adapt and invest more heavily in developing, training, and building resources in the US. Domestic services models will become more competitive. Enterprises and services organizations will drive greater local work-force development.
- Visa abuse will be significantly reduced. Only the best and brightest would be hired for direct employment and not for sub-contract work.

### In closing

Our current policy is unfair. It is intended to solve the skills gap. However, it has resulted in a side effect of economic abuse. While we could use more specialized talent at the top end, we have the workforce for most IT jobs that can be trained and developed. The market will quickly adjust if we did not have H1B/L1 visas available for sub-contract/outsourcing services. How about we challenge the industry by giving them as many visas at 125% of the top American wage and let us see how many visas are actually used. Will experiments such as ours that focus on training and development of American workers succeed or fall under the weight of current policies that give a significant advantage to offshore companies?

Finally, I would submit to the committee that the policies you institute should truly focus on addressing the true gap of highly specialized skills and put a stop to the use of visas by the offshore industry.

**TESTIMONY OF  
FRED BENJAMIN, CHIEF OPERATING OFFICER,  
MEDICALODGES, INC.  
BEFORE THE SENATE JUDICIARY COMMITTEE ON COMPREHENSIVE  
IMMIGRATION REFORM:  
THE BORDER SECURITY, ECONOMIC OPPORTUNITY, AND IMMIGRATION  
MODERNIZATION ACT, S.744**

**APRIL 22, 2013**

Good Morning, Chairman Leahy, and distinguished members of the Committee. I'd like to thank you for holding this hearing to examine the immigration reform needs of our Country, and I especially appreciate the opportunity to appear before you here today. My name is Fred Benjamin, and I am the Chief Operating Officer of Medicalodges, Inc., a company that offers a continuum of health care options which include independent living, skilled nursing home care, rehabilitation, assisted living, specialized care, outpatient therapies, adult day care, in-home services, as well as services and living assistance to those with developmental disabilities. Medicalodges is a member of the American Health Care Association (AHCA), which is a member of the Essential Worker Immigration Coalition (EWIC) – a broad-based national coalition of businesses and trade associations concerned about the shortage of semi-skilled and unskilled labor.

The American Health Care Association (AHCA) is the nation's largest association of long-term care with more than 10,000 members that include not-for-profit and proprietary skilled nursing facilities, assisted living communities, and facilities for the developmentally disabled. AHCA represents over 1.5 million nursing staff, and approximately 1.7 million residents and patients.

I thank you, Senator Leahy for bringing the immigration reform debate to the forefront. I also greatly appreciate the efforts of the "Gang of 8" Senators for their bi-partisan work culminating in the introduction on April 17, 2013 of S. 744, The Border Security, Economic Opportunity, and Immigration Modernization Act of 2013. This bill addresses the major elements of immigration reform needed by the business community. Specifically it provides new and revised visa programs for skilled and lesser-skilled workers to provide businesses a way to get the workers

needed from abroad when U.S. workers are unavailable, a mechanism for the undocumented to earn legal status after being screened and paying a penalty, and a new employment verification system.

Medicalodges was launched in 1961 when its first nursing home, Golden Age Lodge, was opened in Coffeyville, Kansas by founding owners Mr. and Mrs. S.A. Hann. The company grew through the 1960s with the addition of eight nursing facilities. In 1969, Golden Age Lodges was renamed Medicalodges, Inc. As new care centers were built or purchased, the company expanded its products and services to include a continuum of health care. In February 1998, the employees of Medicalodges acquired the company from its previous owners in a 100% Employee Stock Ownership Trust transaction. Today, the company owns and operates over 30 facilities with operations in Kansas, Missouri and Oklahoma, and employs over 2200 people in the communities it serves.

I have served as the Company's Chief Operating Officer since May 2009. I am honored to have served for 30 years in this industry, which includes senior management roles in skilled and sub-acute care, hospitals and other for-profit and not-for-profit ventures. I am also currently serving as Chairman of the Board of the Kansas Health Care Association, the leading provider advocacy group for seniors in Kansas.

**Worker Needs are Critical and The Impact is More Profound in Skilled Nursing Facilities**

We have critical staffing needs. There are chronic shortages throughout the nursing home industry. If you are in the business of caring for our nation's elderly, whether you are for-profit, not-for-profit, or government-managed, it is a daily struggle to find enough dedicated caregivers

to care for the people in your charge. Let me tell you a little about the state of nursing homes today.

We are different from other employers in many ways. We are responsible for the lives of 1.5 million frail and elderly citizens nationwide. And this is the fastest-growing segment of our population.

The general causes of the shortage have been explored. In addition to the causes that affect employers of all types, the nursing home industry is confronted with the following: .

- A newly altered regulatory system that focuses on fines and penalties (often for failing to provide adequate personnel) instead of the previous system where government employees were encouraged to help centers meet the challenges they face.
- Dramatically increased competition for caregivers from assisted living centers, independent housing for the elderly, home care centers and hospital-based nursing homes – all of which seek the workers we traditionally employed.
- Annualized turnover rates of nearly 100% in our industry among staff personnel, and now excessively high turnover rates among our managers, who are increasingly frustrated with overwhelming paperwork, regulation, and underfunding.
- Challenge of caring for infirm and often difficult residents.
- Mandated training and certification of most employees.
- Need for dedicated and caring personalities.

- Increasing age of workforce because of fewer young workers entering long-term care; this means that these young workers are increasingly *not* choosing long-term care as a profession of choice, which is alarming as baby boomers age in greater numbers.
- Underfunding through Medicare and Medicaid, which impacts wages for our workers

#### **The Role of Caregiver**

Dedicated caregiving staff that work in our facilities every day and every night are the unsung heroes of the American workforce. The job of caring for the elderly and disabled is one of the most demanding jobs on many levels.

It is difficult physically to lift, turn, transport, position, and keep up with our residents' care day and night. It is psychologically demanding to work with our Alzheimer's residents who are often confused, angry, scared, or lonely, and to make their days rewarding and productive. It is emotionally draining to care for those in the twilight of their lives, share their frustration and fears, and still assure that they are getting the very best medical care we can provide. Their needs must come first, and staff must learn to put their own needs second to needs of their residents. These are the residents that hospitals cannot care for, whose families cannot care for them, and who are dealing with multiple chronic illnesses.

Our dedicated staff does a very hard job for a wage that is as much as we can pay, but never enough, in my opinion, for the service they provide. Without these caregivers, our seniors will suffer.

The shortage of labor and the difficulty in finding adequate levels of staff on a daily basis, 24-hours each and every day of the year, is cited as the number one reason prompting many of our

existing workers to leave our company and seek alternative employment. We lose some of our best managers during this period of time when their skills and compassion are crucially needed.

Because of the difficulty of the job, and our inability to increase wages or prices, long-term care has always been a high turnover industry. My company's turnover rate in lower skilled categories is approximately 60% annually – significantly lower than most companies in the industry. We do focus on retention initiatives and employee recognition and involvement. We have implemented dozens of programs, and empowered our facilities to implement their own initiatives. We are active in implementing total quality management techniques successfully used by the best companies in America. Indeed, four of our facilities were recently identified by *U.S. News and World Report* as among the “Best in America.”

Our nursing centers are not factories. We cannot stop the assembly line or reduce the services we provide to accommodate budget cuts. The elderly we care for depend on us 24 hours a day, every day, weekends and holidays. If we have a staff vacancy, we must fill that vacancy. Ms. Johnson will still need help getting dressed and eating in the morning. Mr. Smith will need therapy to help him swallow and learn to walk after a stroke. **These services are not optional.** We need certified nurse aides (CNAs), licensed practical nurses (LPNs), and registered nurses (RNs) to provide skilled services around the clock in every facility. We provide services in both rural and urban locations. Vacancy rates for CNAs can approach 20%; for LPNs and RNs, the rate is 10%.

#### **Addressing the Recruitment Problem**

What has Medicalodges done to address the vacancies and shortages?

Historically, I have hired extensively from the welfare rolls. The nursing home industry in general has hired over 50,000 welfare recipients in the last three years. Most of them are single mothers whom we train to become certified nurse aides, and put on a career path in health care. This is the only career path that I know of that can help take people from economically disadvantaged situations to the middle class. Unfortunately, all too often they will complete their training with us, and then be hired away by hospitals or other providers who do not have to deal with our heavy reliance on government-set payment rates.

- Several states, including Wisconsin and Florida, have taken steps to use federal funds to help support training programs specifically targeted on meeting the labor needs of the long-term care industry.
- In our profession, the residents' welfare must be the top priority. Hence, we perform criminal background checks on each potential employee. This process significantly adds to costs, but eliminates an estimated 10% of applicants from eligibility for hire, and appropriately so.
- We have offered signing bonuses of \$1,500 for certified nursing assistants – and even higher for licensed personnel.
- We have set up tables in grocery stores to recruit new employees, sent direct mail, posted job openings in communities, schools, and even Laundromats.
- We offer multiple incentives for recruitment. We have flexible scheduling, good benefits, recruitment bonuses, shift differentials, float incentives, pay in lieu of benefits, and many other programs to attract the dedicated caregivers we need.
- Every one of my facilities has a substantial recruitment and retention function. We make great efforts to reduce turnover and maintain a stable workforce through

flexible scheduling, employee appreciation efforts, mentoring programs, and much more. We even involve our residents in interviewing candidates. Yet it is still not enough.

### **Comprehensive Immigration Reform**

Comprehensive immigration reform should be guided by three basic goals. First, America must always remain in absolute control of its borders and know who lives within those borders.

Second, new immigration laws should serve the needs of the U.S. economy. If an American employer is offering a job that American citizens are not willing or available to take, we ought to welcome into our country a person who will fill that job – especially a job that has the capacity to improve the health and well-being of our seniors and people with disabilities. With the high turnover rate for CNAs and personal care workers in some of our skilled nursing facilities and assisted living residences, we find it illogical that an administrator must send his or her most senior, qualified aide home after just two or three years simply because they were born in a foreign country.

Third, undocumented workers who pay taxes and contribute to our labor needs should be given a vehicle to earn legal status. Of course, we should not provide unfair rewards to illegal immigrants in the citizenship process, or disadvantage those who came here lawfully; however, we must recognize the contributions of these workers and provide mechanisms for attaining legal status.

We currently have a broken immigration system that was created in 1986 after the passage of the Immigration Reform and Control Act. We have let our immigration system spin out of control over the past 2 decades. That is why AHCA in collaboration with EWIC helped craft the business community's basic principles of what comprehensive immigration reform should include:

- Reform should be comprehensive, addressing both future economic needs for workers and undocumented workers already in the United States.
- Reform should strengthen national security by providing for the screening of foreign workers and creating a disincentive for illegal immigration.
- Reform should strengthen the rule of law by establishing clear, sensible immigration laws that are efficiently and vigorously enforced.
- Reform should create an immigration system that functions efficiently for employers, workers, and government agencies.
- Reform should create a program that allows hard working, tax-paying, undocumented workers to earn legal status.
- Reform should ensure that U.S. workers are not displaced by foreign workers.
- Reform should ensure that all workers enjoy the same labor law protections.

While everyone is still reviewing S. 744, I believe that it captures most of the needs of immigration reform identified above. In particular, the W visa program is designed to allow employers to match with qualified foreign nationals. This new nonimmigrant classification for non-agricultural lesser skilled foreign workers, while limited in the number of workers permitted to enter in any given year, would allow employers to bring W visa holders to the U.S. when U.S.

workers cannot be found. It would be valid for 3 years and could be extended in increments of 3 years.

### **Conclusion**

Our labor shortage is our most pressing operating problem. The labor shortage deprives us of the most valuable resource we have: our caregivers. If we are to meet the expectations set for us, policymakers must act now to expand access to new pools of staff and take steps to encourage employment in long-term care. We need to increase staff supply, and there are many talented immigrants who are anxious to enter the caregiving field, yet face insurmountable roadblocks. These talented caregivers should be given the opportunity to make a living and make a difference in their own lives and the lives of others. To increase the supply of labor, please give special consideration to permitting new entry for immigrants with nursing skills as well as increasing the pool of unskilled labor. We need a new immigration system that serves the economic needs of the U.S. economy. If an American employer is offering a job that American citizens are not willing to take, we ought to welcome into our country a person who will fill that job – especially a job that has the capacity to improve the health and well-being of a vulnerable senior, or a person with disabilities.

We struggle every day to ensure that the labor shortage does not negatively affect the quality of care delivered in our facilities. This is a difficult and highly complex balancing act that is currently taking place in nursing centers across the country. I urge you to take a broader look at this staffing crisis and think about the frail and elderly population we serve – our parents, our grandparents, our aunts, our uncles, our neighbors and yours - those special people who have given so much to us and our country. We owe it to them to provide the best possible care, don't

we? I am here to ask you who will care for them if this critical situation is not addressed immediately. I thank the committee for its commitment to resolving this onerous problem in a manner that advances ideas and solutions in a straightforward, bipartisan fashion.

Thank You. I am happy to answer any questions that you may have.



**BRIDGE PROJECT**

Statement of  
Maria Gabriela “Gaby” Pacheco  
Immigrant Rights Leader  
Director of Bridge Project

Before the  
U.S. State Judiciary Committee

At the hearing entitled  
“UPDATED: The Border Security, Economic Opportunity, and  
Immigration Modernization Act, S.744”

Presented  
April 22, 2013

Thank you Chairman Leahy, Ranking Member Grassley, and members of this Committee for giving me the opportunity to testify today in support of S.744, the Border Security, Economic Opportunity, and Immigration Modernization Act of 2013.

My name is Maria Gabriela “Gaby” Pacheco and I am an “undocumented American.” I was born in 1985 in Guayaquil, Ecuador. In 1993, at the age of eight, I moved to the United States with my parents and three siblings.

Out of everyone who is here testifying today, I am the only one that comes to you as one of the 11 million undocumented people in this country.

My family reflects the diversity and beauty of America. We are part of a strong working class; a mixed-status family who are your neighbors, classmates, fellow parishioners, consumers, and part of the fabric of this nation:

- My father is an ordained Southern Baptist preacher who currently works as a window washer. My mom is a licensed nurse’s aide, but due to health problems she has not been able to work the last couple of years. Their hope is to continue to support their family while at the same time contributing to this country’s economic growth.
- My oldest sister, Erika, is eagerly counting the days when she is able to apply for citizenship later this year. She is married to a United States citizen and has two United States citizen children, Isaac and Eriana. She will be able to vote in the next national election.
- Mari, my second oldest sister, currently works managing a construction company. Although a DREAMer, she did not qualify for the Department of Homeland

Security's new initiative, Deferred Action for Childhood Arrivals (DACA), because she is over the age of thirty. The DREAM Act provisions under S.744 will provide her a permanent path forward.

- My younger brother is a proud business owner; he has a car washing business. Last month, at the age of twenty-seven, because of DACA he was able to get a driver's license and buy his first car. However, DACA is not a permanent solution.
- Last, I am the wife of a Venezuelan of Cuban descent, who has lived in the United States for twenty-six years. Miraculously last year, after an eighteen-year wait, he was able to obtain his Legal Permanent Residency. My husband's process shows how our immigration system is broken, outdated, and desperately in need of modernization.

My family is not alone.

In 2009, my friend Felipe Souza Matos, Co-Director of "Get Equal," asked me to join him on a journey and campaign to seek immigration reform. In my heart I knew that in order to put an end to the separation of families, heal the hurt and pain of our communities, and disprove the myths and lies that are told about immigrants, we needed to peacefully demonstrate and courageously bring to light our (lack of) immigration status. On January 1, 2010, with Felipe, Juan Rodriguez (now Juan Souza Matos), and Carlos Roa, I began the Trail of Dreams, a 1,500 mile walk from Miami to Washington, D.C.

Through this walk we wanted to show our love for this country, which we consider our home. We risked our lives, put everything on the line, walked in the cold, and felt the pain in our bodies as blisters and callouses formed on our feet. We walked in faith

knowing that many before us had put their lives at risk to fight for freedom, legal reforms, and the American values that this country was founded on and aspires to.

We did not allow anything to stop us, including the fringe elements of American society. We witnessed firsthand how misinformation and fear mongering confused people about immigrants. The phrasing and images that some use to portray people like me, undocumented Americans, have created a false perception of who we are. It was also during the trail we saw firsthand how fear translated into hate. I vividly remember how robes of white, in a KKK demonstration, had colored the streets of a small town in Georgia. In fact, an event eerily similar to this demonstration just took place this past Saturday in Atlanta, Georgia. America's history, however, shows that we have been here before and we have overcome.

Since the walk I have carried the stories and dreams of thousands of people we met along the way. People working in our fields, chicken farms, day laborer centers, homes as domestic workers, newspapers as journalists, small businesses as owners, and health clinics as doctors. These people are mothers, fathers, children, and neighbors. Their dreams are held in the hands of this committee and the rest of Congress. Their dreams now lie in the Senate bipartisan bill, S.744.

Legalizing people like me, all 11 million of us, will make the United States stronger and will bring about significant economic gains in terms of growth, earnings, tax revenues, and jobs. It is time to set fear aside and deal with an issue that is affecting an entire nation, and doing nothing is no longer acceptable. Americans deserve a modernized immigration system. Individuals who are citizens in every way except on paper ask for a roadmap to citizenship.

In the words of my good friend, journalist Jose Antonio Vargas, who testified in front of this very committee--

- What do you want to do with me?
- What do you want to do with us?

With dignity and faith I surrender my talents, passion, and life. I ask you to give me, my family, and 11 million of us an opportunity to fully integrate and achieve our American Dream.



**A COMMONSENSE SOLUTION FOR IMMIGRATION  
REFORM MUST BE ENACTED THIS YEAR**

Presented at

“The Border Security, Economic Opportunity, and Immigration Modernization Act,  
S.744”

Submitted to  
U.S. Senate Judiciary Committee

Submitted by  
Janet Murguía  
President and CEO  
National Council of La Raza

April 22, 2013

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Chairman Leahy and Ranking Member Grassley, thank you for holding this hearing on immigration reform legislation. I appreciate the opportunity to appear again before the Committee on this critically important issue to the Latino community.

I am the President and CEO of the National Council of La Raza (NCLR), the largest national Hispanic civil rights and advocacy organization in the United States, an American institution recognized in the book *Forces for Good* as one of the highest impact nonprofits in the nation. We represent some 300 Affiliates—local, community-based organizations in 41 states, the District of Columbia, and Puerto Rico—that provide education, health, housing, workforce development, and other services to millions of Americans and immigrants annually.

NCLR has a long legacy of engaging in immigration, evidenced through our work in the Hispanic community and in Washington, DC. We helped shape the Immigration Reform and Control Act of 1986, the Immigration Act of 1990 to preserve family-based immigration, and the Nicaraguan Adjustment and Central American Relief Act (NACARA). We also led four successful efforts to restore safety net systems that promote immigrant integration. We have worked with Presidents Ronald Reagan, George H. W. Bush, Bill Clinton, and George W. Bush to achieve the best results possible for our community and for the country. We know that working with both parties is the only way to get things done.

Fixing our broken immigration system is in the best interest of our country. That is why it is so important to acknowledge the work of the bipartisan group of senators who last week reached a critically important breakthrough in the push for immigration reform with the introduction of S. 744, the “Border Security, Economic Opportunity, and Immigration Modernization Act of 2013.” The distinguished senators who worked on this bill have shown extraordinary perseverance, thoughtfulness and courage in their months-long effort to bring about a solution to a national concern too long neglected. Their unity and ability to work together to find common ground in the face of an increasingly polarized political atmosphere should be a model for addressing our country’s challenges. Senate bill 744 is a significant milestone and presents a historic opportunity to deliver a commonsense solution for the country this year.

As I noted in my previous testimony, NCLR’s principles for immigration reform are very clear that reform should (1) restore the rule of law by creating a roadmap to legalization and citizenship for the 11 million aspiring Americans, and include smart enforcement that improves safety, supports legal immigration channels, and prevents discrimination; (2) preserve the rule of law by creating workable legal immigration channels that reunite families, strengthen our economy, and protect workers’ rights; and (3) strengthen the fabric of our society by adopting proactive measures that advance the successful integration of new immigrants. While Senate bill 744 is not perfect, it has provisions that will give our country the tools to achieve a 21<sup>st</sup> Century immigration system—one that helps ensure immigration to the United States is orderly and legal, promotes economic growth, sustains our families, and protects workers and honest employers, if it is implemented in a way that is consistent with our nation’s values.

### **The Time is Now**

There are three potent threads aligning that make this moment different and the opportunity for reform stronger: the moral, economic, and political imperatives for immigration reform.

- The moral imperative for reform has been made clear for years, with a wide ranging set of organizations raising awareness about the untold damage our broken immigration system has had on immigrants and families, a plight that found its most potent symbol recently in the courageous activism of DREAMers. And the magnitude of that devastation is much larger, as the lives and fate of immigrants are fundamentally interwoven with those of citizens and impacts how those who are deemed to be immigrants are treated.
- The economic imperative for reform has been gaining strength particularly in the last couple of years, with the consequences of deportation policies, state anti-immigrant laws, and an outdated legal immigration system, affecting more industries. Simultaneously, more and more studies show the economic benefit to our country of implementing legalization, promoting citizenship, and bringing in the best and brightest talent from around the globe.
- Election Day made the political imperative crystal clear. Adding to the strong participation by African American voters, according to the exit polls, Asian American and Pacific Islander voters were 3% of the electorate and Latinos were 10%. Latinos were decisive in Nevada, Colorado, and Florida, and an essential part of the winning coalition in places like Pennsylvania and Wisconsin, as were Asian American voters in Minnesota and Virginia.

These three imperatives, and the conditions that created them, have brought together the multi-sector voices and constituencies on the left and right of the debate necessary to help immigration reform become a reality. We understand that failure to achieve reform will mean a continued erosion of the family unit, working rights, community wellbeing, and civil rights protections that start with the vulnerable undocumented community and reverberate well beyond. For example, hundreds of thousands of U.S. citizens and lawful permanent residents have been separated from family members. This is untenable. We can do better, and have an opportunity to do so. The time to take action is now.

### **A Roadmap to Citizenship**

Our country places a high regard on the successful integration of immigrants into the socio-economic fabric of the nation. And we must remember that the American public puts a special premium on citizenship, because citizenship signifies fully embracing our country and accepting the contract that all of our ancestors at some point made: to be fully American. The American people want to see immigrants all in—not partially in, not in a special status, but in the same boat as everyone else.

We believe Senate bill 744 recognizes the importance of that process of integration, and seeks to strike a balance that can reflect our national principles and priorities. And it also recognizes the fact that, if we are serious about restoring the rule of law, it is essential that we acknowledge that no healthy society can tolerate the existence of a subclass of people outside the scope and

protection of the law. Those living in the shadows are easily exploited by employers, thus lowering the wages and labor standards for all workers and undercutting businesses that play by the rules. They are afraid to report crimes that they may experience or witness, undermining public safety.

In addition, the lives of undocumented immigrants are inextricably linked with ours. Most of them are long-term U.S. residents; they work hard, pay taxes, and otherwise abide by our laws. They provide for U.S. citizen spouses and children; they are our fellow churchgoers and children's playmates. Some of them came to this country as children, and this is the only country they know and consider home. Many have contributed to the revitalization of the cities where they live, and are providing the services the aging Baby Boom generation requires.

The notion that we are going to hunt down and deport 11 million people is a fantasy, and one the American public neither buys nor supports. So the question then is, what do we do? The majority of Americans support an earned legalization with a roadmap to citizenship as an essential component of immigration reform—and Senate bill 744 offers that possibility.

It is a steep road, one that includes some conditions many civil rights and social justice organizations, including my own, have concerns about. But we are willing to give our support to Senate bill 744, as we pledge to improve it, because we know that the interests of our country are best served by creating that roadmap to legality and to citizenship for this population of immigrants, just like there was for every other group of immigrants before them. We know this roadmap can also help us prevent having a subclass of workers who are expected to support the rest of us in our pursuit of the American Dream without having access to it themselves.

With implementation in mind, we do want to express our concern to the Committee that the process of moving from unlawful status to potential citizenship may be too long and too costly for many who have been working and raising families in the U.S. It is also a significant concern that as these individuals move forward through the legalization process, they will not only be assessed multiple fees and fines, they will be required to pay taxes to fund critical services that ensure health, well-being and productivity without having access to them. As NCLR has testified, the ultimate goal of any public benefits system should be to provide the support that enables American families—including immigrant families—to become self-sustaining. However, the irony in the treatment of immigrants under S. 744 is that the rules in place may actually make it harder for them to do so.

The benefits to our country of allowing these immigrants to earn legalization are significant, both economically and socially. No longer could unscrupulous employers pit undocumented workers against other workers. Legalization is also the only way to reduce the ability of unscrupulous employers from exploiting them or threatening to deport them for reporting labor law violations, thereby endangering wages and working conditions for all workers.

And bringing stability through earned legality to this population would mean opportunity for deepening roots, as well as higher earnings and therefore higher tax revenue—which studies have estimated would add billions of dollars just in the next 10 years alone. Legalized immigrants would be able to invest and spend more as they would be able to work towards their dreams—starting a business, buying a home for their families, helping their children succeed.

In short, the legislation proposes a tough but reachable path for those who are willing to contribute and be vested in the future of our country. It should be noted that the success not just of the legalization program, but of reform itself, will be determined by how many undocumented immigrants who are law-abiding aside from their immigration status, are able to go through the process. If the legalization program is made more difficult, or imposes conditions designed to prevent people from applying, or provisions that exclude people with a legitimate claim, then reform will fail to achieve restoration of the rule of law, one of its fundamental goals.

#### **Family Unity**

Keeping families together and strong is a core principle and a fundamental value of American life. In every religion, in every culture, in every wave of immigrants that have come to this country, the family unit has been critical both to the survival of immigrants in a strange land, and to their success in adapting and contributing to their newly adopted nation. It also promotes the economic stability of immigrants and their integration into our country, and we must continue our historic commitment to this idea.

We are glad that the bipartisan legislation seeks to address the unnecessary separation of families who are kept apart by extraordinarily long wait times for certain family visas. Millions of close family members of U.S. citizens and permanent residents are stuck waiting outside the U.S. for visas to become available; many wait for more than two decades. It is also important to remember that the family is not only a social unit, but a powerful economic engine. Close relatives are able to make vital contributions to the U.S. economy as productive workers and entrepreneurs. By clearing out the backlogs in the family and employment based categories and removing the limitation on the number of visas that are requested by legal permanent residents who apply for their spouses and minor children, the legislation would help promote the economic stability of immigrant families and their integration into our country.

Unfortunately, there are also provisions in the legislation that weaken our country's historic commitment to family unity. This proposal eliminates the ability of U.S. citizens to petition for their siblings and reduces the ability of U.S. citizens to petition for their adult married children who are more than 30 years old. Maintaining a commitment to "family values" requires the recognition that a rapidly changing society and economy requires an equally dynamic definition of family. Families in our country today come in all shapes and sizes and include not only siblings pooling their resources together to buy a home or start a business but also adult children taking care of their elderly parents. And it is ironic that same sex couples increasingly have been gaining appropriate recognition in our society, except in our immigration law.

#### **Future Flow of Workers**

Unlike previous immigration reforms, which have tightened enforcement but failed to establish effective legal avenues that respond to the needs of our economy and protect the American workforce, this bill has a series of provisions offering the opportunity for future workers to eventually pursue legal permanent residency and then citizenship. This is the best way to prevent the nation from having another debate in the future about legalizing yet another group of

workers who live and work unlawfully in the U.S. It is imperative that our legal immigration system keep pace with our economy and our changing society.

As such, the sponsors of the bipartisan senate bill took into account the needs of both our country and its workers, from the fields all the way to Silicon Valley, by providing multiple ways for immigrant workers to enter the U.S. through safe and legal channels to meet legitimate workforce needs across sectors of our economy. The proposed legislation includes provisions that are complex and need further analysis. However, it appears it would create a 21<sup>st</sup> century process intended to be responsive to U.S. labor needs in a regulated, orderly fashion—while breaking precedent by providing labor rights and protections. We strongly believe that immigrant workers should have the same rights and responsibilities as other U.S. workers, including whistleblower protections and back-pay owed to them for their labor.

### **Immigrant Integration**

Americans hold immigrant integration in high regard and want to see immigrants pledge allegiance to our country. So we are very pleased to see that the bipartisan legislation also includes many measures designed to achieve the successful integration of immigrants into American society. Its provisions would help enhance social cohesion among neighbors and coworkers in communities across the United States. The legislation would prohibit the use of race and ethnicity in federal law enforcement activities and requires data collection and new regulations to ensure a prohibition of racial profiling is implemented effectively. It also establishes an Office of New Americans, a New Americans taskforce and includes additional initiatives to help immigrants learn English, American civics and integrate into local communities. From financial counseling to English and civics courses, there is a dramatic need for increased resources and collaboration across government agencies to achieve the full integration of immigrants. And immigrants want to learn English and make greater contributions to the nation—I know it, because my organization and our hundreds of Affiliates help immigrants on this journey every day of the week. We applaud the effort to strengthen that process. The sponsors of this legislation recognize that, as in the turn of the 20th century, the integration of immigrants needs to be accelerated by both the public and private sectors and it funds a public-private partnership to acquire the skills needed to work and integrate into the economic and social mainstream.

### **Conclusion**

I want to reiterate that Senate Bill 744 provides you an incredible opportunity to restore and preserve the rule of law, and to do so in a way that honors our country's values and strengthens our economy.

We acknowledge that compromises will have to be made by all parties. Significant concessions have already been made in this legislation, many that cut deeply into the interests of the Hispanic community. If each of us was looking at only individual pieces of this bill from our own parochial perspective, there is much we would be forced to oppose. But just as we are asking others to set aside some of their preferences to advance our nation's interests, we recognize that

all of us have to accept some compromises to advance our common goal of producing a bill that reflects a strong, effective, and sustainable immigration policy for the 21<sup>st</sup> Century.

A bright line will soon emerge between those who seek to preserve a status quo, which serves no one except those who profit from a broken system, and those who are working in good faith to reach compromise and deliver a solution the country desperately needs. Put in stark terms, those who oppose progress are not just advocates for doing nothing, in essence, they are advocating for worse than nothing. Opponents of progress are supporting the continued existence of a subclass of 11 million people living outside the scope and protection of the law and an enforcement regime that separates families, turns a blind eye to racial profiling and the detention and even deportation of U.S. citizens and lawful residents. They would do nothing to address the growing gap between on the one hand, the family values of a 21<sup>st</sup> century society and the economic needs of a 21<sup>st</sup> Century economy and on the other, a legal immigration system that has remained unchanged for nearly three decades. They are opposing improved labor law enforcement, leveling the field for American workers, and laying the foundation for the accelerated integration of today's immigrants and those yet to arrive. In short, they offer the same feeble failed policies that may advance their political interests but don't produce real results, or they hold out for dystopian ends that cannot be achieved.

This bright line will be burnt indelibly in the minds of Latino voters. Those who created the game-changing moment for this debate in November, and the additional 14.4 million U.S. born and raised prospective Hispanic voters that will join the electorate between now and 2028. Our community will be engaged and watching closely to ensure that the legalization process is real, enforcement is accountable, and families and workers are protected.

**Testimony of  
Dr. David Fleming,  
Senior Pastor Champion Forest Baptist Church**

**Senate Judiciary Committee**

**“The Border Security, Economic Opportunity,  
and Immigration Modernization Act, S.744”**

**April 22, 2013**

Chairman Leahy, Ranking Member Grassley and distinguished Members of the Judiciary Committee: Good afternoon and thank you for the opportunity to participate in this process as you work towards a bipartisan solution to our nation's current immigration crisis.

As a Pastor, I got involved in this debate as a result of my everyday responsibilities. My personal encounters with hurting people compelled me to work towards improving a system that isn't working. It isn't working for a young father with children back home, for a widow and mother of two teenagers born here, for a family who has done everything to come legally but is still caught in a system that is neither just nor fair, and is certainly not compassionate.

Determined to make a difference for these and so many others, I've spoken to law enforcement officials, immigration attorneys and government officials at every level. Everyone agrees on the magnitude of the problem, from rampant crime along the border, to human trafficking across our borders, to broken homes and families on all sides of our borders.

But when it comes to proposed solutions, they have mostly come from one of two opposite poles. One side calls for what sounds like open borders and amnesty with little regard for the rule of law or our national security. The other side demands closed borders and mass deportations with little regard for human dignity, and at the expense of our national identity. With such strong and opposing forces, we've heard plenty of rhetoric but seen no workable solutions.

In the midst of this confusion, I've wondered what God has to say. I read in Romans 13..."Let every person be subject to the governing authorities. For there is no authority except from God, and those that exist have been instituted by God. Therefore whoever resists the authorities resists what God has appointed, and those who resist will incur judgment." God is a God of order, our nation must be a nation of law, and our laws must be just.

I also read in Leviticus 19... "When a stranger sojourns with you in your land, you shall not do him wrong. You shall treat the stranger who sojourns with you as the native among you, and you shall love him as yourself, for you were strangers in the land of Egypt..." God is just, but he also expects us to treat one another with compassion, each having been created in His image.

In Matthew 25, we read about those who stood before the Lord and were invited into His Kingdom. They fed the hungry, gave something to drink to the thirsty, **welcomed the stranger**,

clothed the naked, and visited the sick and imprisoned. In the words of Jesus: 'Truly, I say to you, as you did it to one of the least of these my brothers, you did it to me.'

So which is it, justice or compassion? The answer is: Yes! There is balance in the tension between the two. We are to be guided in all we do to protect the value and dignity of human life, and to alleviate human suffering wherever and whenever we can. And we must have laws and a legal system that enables us to live out those values in a way that is just and fair.

I recognize not everyone shares my convictions, but I want you to know that there are many who do. I am but one local church Pastor, but I have the privilege to stand with thousands of other Pastors and leaders from across the country, who represent a growing tide of support for and demand for a bipartisan effort and a comprehensive approach to immigration reform.

In my city, the Houston Area Pastors Council wrote a Declaration on Immigration Reform and more than 1,000 Pastors representing the great diversity of Houston signed on. As a Southern Baptist, I rejoiced as our Convention with 45,000 churches and 16 million members, passed a resolution in 2011 with overwhelming support, calling for just and humane public policy with regard to immigration. And most recently a national coalition of Christian denominations and organizations known as the Evangelical Immigration Table, with thousands of Christian leaders representing millions of members, calling for bipartisan comprehensive reform that:

- Respects the God-given dignity of every person
- Protects the unity of the immediate family
- Respects the rule of law
- Guarantees secure national borders
- Ensures fairness to taxpayers
- Establishes a path toward legal status and/or citizenship for those who qualify and who wish to become permanent residents

That is why I was pleased to see the introduction of S. 744, The Border Security, Economic Opportunity and Immigration Modernization Act. While this bill may not be perfect, it appears to be an excellent starting point for bipartisan discussion that moves this debate forward toward real solutions that work in the real world and for real people.

In a passionate debate with opposing views, some of us are called to speak for those who cannot speak for themselves. In the end I will stand before The Lord and give an account for my actions. It will be clear whether or not I cared about what God cares about, and whether or not I did what I was supposed to do, not because it was popular with men, but because it was right with God.

I am calling on you... our leaders, who no doubt share my sense of calling, and swore an oath under God, and I believe will also give an account before God who has given you authority. I urge you, don't waste this opportunity to do the right thing, under God and for the sake of millions of people...come together and give us a comprehensive solution that works.

Thank you again for giving me this opportunity, and please know that we support you and that we are praying for you as you work through this bill and as you resolve this immigration crisis.

**S 744: Amnesty before enforcement**

**Statement of Mark Krikorian**

**Executive Director of the Center for Immigration Studies**

**Before the Senate Committee on the Judiciary**

**April 22, 2013**

There may be circumstances under which an amnesty for certain illegal aliens would make sense. Given the pervasive and deliberate non-enforcement of the immigration laws for so many years, and the resulting large population of illegal aliens, one could make a case for clearing the decks, as it were, and making a fresh start. This would be a distasteful proposition, to be sure, given that virtually all illegal aliens are guilty of multiple felonies, among them identity theft, document fraud, tax evasion, and perjury. Nonetheless, for practical reasons conferring legal status on established, non-violent illegal aliens may well, at some point, be a policy option worth discussing.

But only *after* the problem that allowed the mass settlement of illegal aliens has been addressed.

S 744 takes the opposite approach. It legalizes the illegal population *before* the necessary tools are in place to avoid the development of yet another large illegal population. As such, it paves the way for yet more demands for amnesty a decade or so in the future, as those who entered in, say 2015, are so well-established by 2023 that we will be told that we have to permit them to stay as well.

What's more, the legalization provisions of the bill make widespread fraud very likely.

Much has been made of the so-called triggers in Sec. 3 that would permit the Registered Provisional Immigrants (RPI) to receive permanent residence. Tying the green card to achievement of these benchmarks – which include an employment authorization system for all employers, biographical exit tracking at airports and seaports, and substantial completion of two border strategies – is presented as a guarantee that this scenario of serial amnesties would not happen. Unfortunately, those triggers are, in a very real sense, beside the point.

The other triggers mentioned in Sec. 3 – those allowing the granting of the initial RPI status – are the submission by the Department of Homeland security of two plans: A "Comprehensive Southern Border Security Strategy" and a "Southern Border Fencing Strategy". Since similar plans have been frequently offered over the years, this isn't much of a hurdle.

And yet it's the only hurdle that matters because receipt of Registered Provisional Immigrant status *is* the amnesty – that is to say, it represents the transformation of the illegal alien into a person who is lawfully admitted to the United States.

RPI status brings with it work authorization, a legitimate Social Security account, driver's license, travel documents – in effect, Green Card Lite. It is only the upgrade of this status to that of lawful permanent resident – Green Card Premium, if you will – that is on hold until the enforcement benchmarks are satisfied. But the political and bureaucratic incentives to press for the achievement of those enforcement benchmarks are blunted by the fact that the amnesty has already happened. With people "out of the shadows" and no longer "undocumented", the urgency to meet enforcement deadlines

would evaporate, especially in the face of determined opposition to enforcement by business and civil liberties groups.

To use an analogy, if you're flying to the West Coast, it doesn't ultimately matter whether you're in coach or first class – your destination is the same. By the same token, whether or not the beneficiary of the RPI amnesty is upgraded to a green card, the destination is the same – the ability to live and work in the United States. An upgrade from coach to first class may actually be more consequential than the upgrade from RPI to permanent residence; while the former results in wider seats and free drinks, all a green card offers that RPI status does not is the right to apply for citizenship, something most recipients of green cards from the IRCA amnesty had not done a quarter century after the enactment of the law.

And many of those who receive the RPI amnesty are likely to do so fraudulently. Reading Sec. 2101 harkens back to the 1986 Immigration Reform and Control Act's Special Agricultural Worker program, which the *New York Times* called "one of the most extensive immigration frauds ever perpetrated against the United States Government". The Justice Department's Office of Inspector General described it this way:

To be eligible for adjustment of status under the SAW provisions, the applicant had to prove with documentation that he or she had worked in an agricultural enterprise in the United States for 90 days in each calendar year from 1984 through 1986, or for 90 days between May 1985 and May 1986. The evidence of having engaged in such work, INS employees believed, was often forged and sold to undocumented individuals seeking U.S. residency. **Given the crush of applications under the program and the relative fewer investigative resources, INS approved applications absent explicit proof that they were in fact fraudulent.**

("An Investigation of the Immigration and Naturalization Service's Citizenship USA Initiative", USDoJ OIG, July 2000, <http://www.justice.gov/oig/special/0007/listpdf.htm>, p. 72; emphasis added)

When Sec. 2101 of S 744 is considered in this light, the sources of fraud become apparent:

- If IRCA created a "crush" of applications when only 3 million people applied, what should we call the workload that DHS will face when triple the number of people – at least – apply for the RPI amnesty? The administrative capacity does not exist to handle this properly, which all but guarantees that most applications will be rubber-stamped by overwhelmed DHS staff.
- The bill says DHS "may interview", not "shall interview", applicants for the RPI amnesty. Given the aforementioned crush, it is unlikely many will be interviewed. In fact, the current DACA amnesty (Deferred Action for Childhood Arrivals) is a good model for how the administration would manage S 744's amnesty provisions. DACA processing is almost entirely paper-based, with few interviews, resulting in the approval of 99.5 percent of applications. And yet the number of cases so far decided amounts to perhaps one-fiftieth the number likely to apply for the RPI amnesty.
- S 744 allows affidavits by non-relatives regarding the work or education history of RPI amnesty applicants. Fraudulent affidavits were common among IRCA applicants, with some small farmers claiming to have employed hundreds of illegal-alien farmworkers. The temptation to fraud will be great in any program giving away something as valuable as the RPI amnesty, but the ability to investigate fraudulent affidavits will be extremely limited given the millions of applicants. And there is no realistic level of fees or penalties that could raise enough money to hire enough staff to follow up on questionable affidavits. They will be approved, as in the 1980s, absent specific proof that they're fraudulent.

- The current bill also contains a confidentiality clause, prohibiting the use of any information provided by illegal alien applicants for other purposes. This means illegal aliens with little likelihood of approval are free to apply and try their luck, knowing that there's no downside, and a significant upside.
- As a corollary to this, there is no requirement that rejected applicants be immediately taken into custody and deported. In fact, the bill specifically says that failure to qualify does not require DHS to commence removal proceedings. Again, unqualified applicants would have nothing to lose in applying, in the hope that they could fall through the cracks and get approved, something certain to happen to a significant number of people.
- As an additional incentive to fraudulent applicants, S 744 provides de facto work authorization to those merely *applying* for the RPI amnesty, pending the adjudication of the application. Application alone also forestalls removal, making a frivolous application an attractive option for illegal aliens with no chance at amnesty.

We don't have to speculate about the consequences of such widespread fraud. Mahmoud "The Red" Abouhalima was an Egyptian illegal alien driving a cab in New York when he fraudulently – and successfully – applied for amnesty as a farmworker. This legal status allowed him to travel to Afghanistan for terrorist training, which he put to use in the first World Trade Center attack in 1993. A co-conspirator, Mohammed Salameh, also applied for the 1986 amnesty but was, remarkably, turned down. But since that amnesty, like the one in S 744, did not mandate the removal of failed applicants, Salameh was able to remain and assist in the 1993 bombing.

S 744 thus places amnesty before enforcement, and ensures an amnesty process that would reward fraud. A better approach would be to make the *initial* legalization dependent on the bill's enforcement

provisions, rather than a future upgrade in status. The enforcement provisions themselves would have to be strengthened by requiring, for instance, biometric exit-tracking at all ports of entry, not just airports and seaports – as it already required in current law and as was recommended by the 9/11 Commission. Another trigger for initial legalization would have to be an explicit statement by Congress that states and localities are not preempted from enforcing civil immigration law.

And any future amnesty would need to be constructed differently. Not only should all lies, however small, be punished with criminal prosecution, but the amnesty might best be conducted piecemeal, rather than addressing millions of people effectively all at once. That is to say, candidates might be considered as they are apprehended for traffic stops or factory raids or what have you, with those who fail to qualify be removed.

Thank you for the opportunity to speak on this important matter and I look forward to any questions you might have.

Testimony of Laura Lichter

President, American Immigration Lawyers Association

Submitted to the  
Committee on the Judiciary of the U.S. Senate

Hearing of April 22, 2013

“The Border Security, Economic Opportunity,  
and Immigration Modernization Act, S.744”



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I am Laura Lichter, national president of the American Immigration Lawyers Association (“AILA”), and founder and managing partner of Lichter Immigration, a Denver-based law firm. AILA is the national association of immigration lawyers established to promote justice and advocate for fair and reasonable immigration law and policy. AILA has more than 12,500 attorney and law professor members.

For nearly two decades, my immigration practice has focused on complex removal, family and naturalization issues, their related administrative appeals, and related litigation at the Federal level. I have been an elected member of AILA’s national leadership for over a decade and previously served as the association’s top liaison to the key immigration enforcement bureaus of the Department of Homeland Security and Department of Justice, including Immigration and Customs Enforcement (ICE) and the Executive Office of Immigration Review (EOIR). In 2011, I was appointed by DHS to serve alongside other key stakeholders on the Homeland Security Advisory Council Task Force assessing the agency’s Secure Communities program.

I am honored to testify on this subject at a time when overwhelming numbers of Americans support immigration reform. National polls show more than 80 percent support for granting citizenship to the 11 million people who are without status in the U.S. AILA is encouraged by actions already taken in Congress and commends the creativity and perseverance of the eight Senate leaders who introduced the “Border Security, Economic Opportunity, and Immigration Modernization Act.” This bill presents a solid framework to fix our broken immigration system and match our laws to the needs and realities of the 21<sup>st</sup> century.

My testimony will focus on: (1) the importance of ensuring that our immigration laws support and sustain families, including same sex families; (2) the need to protect refugees and asylum seekers; and (3) the critical value of reforms that will preserve due process and maintain the integrity of the immigration system.

### **I. Ensuring Family Unity in the Immigration System**

Families stand at the center of our American values. Understanding the value of strong families means that keeping them united is a core national interest. Thus, family unification has long been the cornerstone of our legal immigration system.

Current immigration policy, as codified in the Immigration and Nationality Act (INA), reflects those values, but has been undermined by unreasonable and unnecessary backlogs that result in years-long separation of families, not to mention a confounding set of roadblocks that often block or completely bar the path for these very immigrants who have ties to our communities. A properly working family-based immigration system is foundational to ensure that future generations of immigrants continue to maintain family as a core value of our country.

Family-based immigration is about more than advancing fundamental American values. When working properly, family immigration policies further America's economic and social interests, as well. Oftentimes, immigrants who arrive through the family-based system have valuable skills or are business innovators themselves. Moreover, studies have shown that close family relationships facilitate entrepreneurship because family members can support caring for children and working in family-owned businesses.<sup>1</sup>

A popular misconception about the immigration system is that family members who would like to immigrate can simply get into a line to obtain a visa, and then quickly get a green card. This is the furthest thing from the truth. Apart from parents, spouses and unmarried minor children of U.S. citizens, close family members of citizens and legal permanent residents are forced to navigate extremely long delays in the visa application process due to the insufficiency of the numbers of visas available per year—numbers which were last adjusted by Congress a generation ago.

For example, a U.S. citizen parent typically has to wait about seven years to bring an adult child. Due to limits on per country admissions, an adult child from Mexico will wait nearly two decades. Brothers and sisters of U.S. citizens just now eligible to apply for status started the process about a dozen years ago, and if the sibling is coming from the Philippines, the minimum wait would have been more than two decades. For families stuck in these artificial backlogs, important life events whose passing we might take for granted—a college graduation, the birth of a grandchild, a sister's achievement of a lifelong dream, a brother's bout with cancer—are at best a major struggle to be a part of, and most often are missed altogether.

Senate Bill 744 makes several improvements to the legal immigration system that will strengthen families. Recognizing their unique bonds, the bill re-classifies the children and spouses of lawful permanent residents as "immediate relatives." This allows them to immediately qualify for a visa, while the existing system keeps them apart from their spouses and children for two years or more. The drafters also recognized that many visas that Congress authorized by statute have gone and continue to go unused every year solely because of bureaucratic delays. As a result

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<sup>1</sup> Chad Moutray, (2009), LOOKING AHEAD: OPPORTUNITIES AND CHALLENGES FOR ENTREPRENEURSHIP AND SMALL BUSINESS OWNERS, 31 W. New Eng. L. Rev. 763

those visas are permanently lost even though there are people who are waiting in backlogs for those visas. The bill ensures that visas will not be lost. Another important change is the “widows and orphans” provision, which allows an orphan, a widow, or a widower to immigrate even if the petitioning parent or spouse dies before the application process is completed.

Unfortunately, S. 744 also includes provisions that would restrict or eliminate existing family categories that enable U.S. citizens to bring siblings or married adult children, also known as the third and fourth family preferences. We are concerned that the “merit-based” point system fails to provide sufficient opportunity for those close family members to immigrate, and may significantly disadvantage women, who are more likely to work in the home or in the informal labor market. AILA urges Congress to ensure U.S. citizens can continue to directly petition for their siblings and married adult children.

In many families the ties that hold together siblings or elderly parents and adult children are as strong as the bonds of marriage or of parent and child. Siblings and adult sons and daughters are in some cases the closest family to a U.S. citizen or lawful permanent resident.

Eliminating or restricting these family-based immigration categories would tear apart families and foster social isolation and disconnection. Furthermore, adult children and siblings have been shown to have a direct impact on immigrant entrepreneurship. They help build family-owned businesses. They also provide critical care for elderly parents and minor children.

America benefits the most when the family- and employment-based systems are each working effectively. A well-functioning family-based system strengthens the employment-based system by allowing workers to maintain their family units in the U.S. Less family-friendly policies may dissuade high-skilled immigrants who also have families, from choosing to invest their talents and resources in America’s economy. This is particularly true as LGBT relationships find more acceptance globally, and American companies must be able to offer same an immigration path that includes the entire family. Our immigration system must be flexible and capable of meeting the needs of both American businesses and families.

**Family Case Example: Lauren**

Lauren, a 21-year old British citizen, came to the U.S. at age 4. Her grandparents had immigrated to the U.S. earlier in 1983 to farm. After an accident where Lauren’s grandmother had a stroke and lost her leg, her parents, Ian and Allison, brought their family to the U.S. in 1995. The parents arrived on an E-2 visa to manage a motel and restaurant.

Lauren’s grandparents became U.S. citizens, and in September 2003, her grandmother filed a petition for Lauren’s mom as an adult married child of a U.S. citizen (Family Third category). (The employment-based system for permanent residence is decidedly hostile to business owners, making the family-based system Lauren’s parents’ only option.) Lauren was a derivative on that petition. Because of the wait on the Family Third (F3) category, the family is still waiting for visas to be available that would allow them to become lawful permanent residents. From March 2013 to April 2013, the F3 category will only inch forward one week from July 15, 2002 to July 22, 2002. At that rate, it is expected to take five more years to reach their place in the queue.

Lauren's parents' E-2 visa status is only temporary, and E status holders live in constant fear that, at the next renewal point, their extension will be denied. And when Lauren turned 21, she was no longer covered under her parents' current nonimmigrant visa – and was left without a status. Furthermore, she may soon “age-out” of the F3 family-based petition filed in 2003, and the Child Status Protection Act likely does not provide enough protection to save her from aging out. The only reason that Lauren is still here is that she was granted deferred action in 2012, allowing her to stay in the U.S. temporarily. She is currently pursuing dance in New York.

Outside of the extraordinary relief of deferred action there are few options for Lauren to remain with her family. If Lauren ages out, she does not keep her place in line with a different petition. When her parents finally get permanent resident status, either could file a new petition for Lauren as the adult child of a permanent resident (F2B). But Lauren would have to start her wait over again (and would risk being again disqualified if she marries). The wait in the F2B category means that Lauren could wait another decade or longer to get her green card.

Under S.744, Lauren and her mother should be able to complete their petition process. But in the future, anyone in their situation would be permanently separated because Lauren's mother was over 30 years old when the petition was filed.

**Family Case Example: “N”**

N is the daughter of M and J, from Thailand. After immigrating to the U.S. in the 1990's based on M's skill as a traditional Thai chef, M and J opened their own Thai restaurant. In 2002, they filed a petition for their adult daughter, N, to immigrate and join them. N was over the age of 21 when M and J immigrated initially and, therefore, could not accompany them to the U.S. for M's job.

By the time the petition on N's behalf was approved in 2005, the "priority date" in the category for an unmarried daughter of a lawful permanent resident was backlogged to 1995. M and J considered naturalizing, but between the demands of running their own restaurant and the high cost of the application fees, did not do so until 2010.

In 2009, however, N decided to get married. As a married daughter of permanent residents, her parents' immigrant petitions on her behalf became immediately void, and she lost her place in the immigrant visa quota backlog, with no credit for any of the five years she had been waiting in the backlog.

M and J have now become U.S. citizens and have re-filed immigrant petitions for their married daughter, but their priority date of January 2013 is in a category that is backlogged to July of 2002, meaning that it will be at least a decade or more before their daughter can join them. Under S. 744, N herself will be able to obtain her green card. But once S. 744 is implemented anyone in her situation —as a married child over age 30—would be unable to obtain permanent residence.

**Family Case Example: Sudhir**

Sudhir is a 44 year old Indian national who is developmentally disabled, and has an IQ of 40. Sudhir has always lived with his parents who continue to care for him as if he were a young child. Sudhir is a friendly, docile, and curious person with a strong sense of imagination.

Sudhir and his elderly parents, Raj and Mohan, entered the U.S. in lawful nonimmigrant status in May 2012. Sudhir has a brother, Dinesh, who is a permanent resident on the verge of citizenship and a U.S. citizen sister, Anjali, who has been here for about 14 years and who has 3 U.S. citizen children. Both siblings are married to U.S. citizens and are physicians. Raj and Mohan's age and poor health make it vital that they have the support of Dinesh and Anjali.

Anjali has filed an immediate relative petition for her parents, and a family-based fourth preference petition for her brother Sudhir. As the parents of an adult U.S. citizen, visa numbers are immediately available for Raj and Mohan and they have applied for permanent residency and expect to have their green cards soon. However, because of the long wait in the quota for siblings, it will take approximately twelve years before Sudhir will be able to obtain permanent residency based on his sister's petition.

It is simply impossible for Sudhir to wait twelve years outside of the U.S. without his family. He requires assistance with everyday tasks of life, including shaving, bathing, and dressing. Sudhir requires constant care and cannot be on his own for even one day, much less twelve years. He cannot live on his own, and would be subject to physical abuse and exploitation in his home country because of his disability. Raj and Mohan's own poor health prevents their return to India, and in addition, the family has no relatives in India who can help care for Sudhir.

While a twelve-year wait is untenable, no option at all would be devastating to a family like this. Track two of the merit-based system in S. 744 preserves Sudhir's chances, but the thousands of other Sudhirs who are not fortunate enough to already be the beneficiary of a petition on file would be left with nowhere to turn.

**Family Case Example: Nadine**

Nadine, originally from Trinidad, came to the U.S. on a student visa in August 1988. She completed a graduate degree and was sponsored for an H-1B visa and later, a green card. In 1998, Nadine became a naturalized citizen.

Though their dad was deceased and their mother was fighting cancer, Nadine's brother was a determined university student. Nadine worked long hours in the U.S. and tried to support her brother and her mother from afar. In February 2006, the family decided that the siblings needed to be together, and Nadine filed a sibling petition (I-130) for the brother, who was 23 years old at the time. Their mother passed away in 2007.

Right now, green cards are available to brothers and sisters of U.S. citizens who began the process in April of 2001, five years before Nadine began the process for her brother. To date, a visa has not been made available and, during the almost decade-long wait, Nadine's brother finished a bachelor's degree.

At age 30, he is currently residing in Barbados, where he attended college and remained after graduation. Nadine and her brother are very close, and given the age difference between them, Nadine has always helped to take care of him. In the past six years, Nadine and her brother have buried their mother, grandmother, and stepfather –it has been a difficult time for them to be apart. They maintain weekly contact through phone calls, Skype, or Facebook. Modern technology has helped them keep their bond, but it is no substitute for actual presence.

Under S.744, Nadine’s brother would eventually be able to get his green card under the merit-based track two, because he already is in the queue. But families like theirs would remain permanently apart in the future under S. 744 due to the repeal of the family-based fourth preference.

## **II. Ensuring Equal Treatment of Same-sex Families in Immigration Law**

Under current law, gay or lesbian U.S. citizens or residents cannot sponsor their foreign-born same-sex partners, forcing couples to either live abroad or be separated. Similarly, same-sex partners of immigrants sponsored by U.S. employers are not included in petitions for either nonimmigrant visas or permanent residence. U.S. immigration law does not recognize same-sex relationships, no matter how long same-sex partners have been together or how committed their relationship. According to a UCLA study of the 2010 Census, more than 36,000 couples are affected by this form of discrimination, and nearly half of them are households raising children.

Many gay and lesbian Americans in binational relationships have aging parents and must make difficult decisions between managing their parents’ health or remaining with their partners. The median age for Americans in these families is 38 years old. These are mature, committed relationships between couples who have established productive lives within the U.S. These individuals and families are a valuable asset to the market and a resource that businesses want to retain. Many Fortune 500 companies have lost skilled Americans to foreign competitors because of this issue.

In my practice alone, we advise couples facing these very difficult issues on nearly a weekly basis. For many, the limited options mean having to choose between unconscionable separation, a life without lawful immigration status, or relocating the entire family outside the U.S.

### **Same-Sex Family Case Example: Susanne and Mary**

Susanne, a German citizen, always wanted to be a teacher. While pursuing her Ph.D. in German language and literature at U.C. Davis, she met and fell in love with Mary, a U.S. citizen. On October 25, 2008, with their families and friends present, Susanne and Mary married in the back garden of their home.

Susanne is currently employed as a part-time lecturer at City College of San Francisco (CCSF), teaching German language and culture to a cross section of college-aged and older students. In addition to her teaching, Susanne was chosen to act as the CCSF cultural liaison for a group of German students from Hochschule Fresenius, a private university in Cologne that is seeking a

long term partnership with CCSF. Every semester, Susanne exposes these students to American culture, history and ideas.

Susanne donates much of her time to CCSF by giving free tutorials to her students, arriving at class early and staying late to help with homework assignments, and organizing German-themed cultural events for students. She often partners with the Goethe Institut in their cultural events in San Francisco and has students over to the home that she shares with Mary, where she introduces them to German cuisine and music.

The mix of Susanne's teaching, volunteer work and cultural liaison activities makes her a vital part of CCSF, a beloved institution in San Francisco. A measure of how important CCSF is to the economic and cultural life of the city is the fact that voters recently and overwhelmingly approved a parcel tax to keep CCSF open. CCSF is a true jewel in a city that is known for its rich heritage.

Mary is an attorney who has owned her own small law firm in San Francisco for fifteen years. Mary was named Best Lawyers 2012 Lawyer of the Year in White Collar Criminal Defense in San Francisco. In addition to her practice, she and her firm are deeply involved in the local community, volunteering time to the local federal court. Mary has spent almost a quarter of a century building her career as a lawyer. If the laws do not change to allow a U.S. citizen to sponsor the non-U.S. citizen spouse/partner on an equal footing with traditionally-married couples, Mary will have to leave the country, abandoning her business and causing great disruption to her law partner and employees. This would result in at least some of the employees losing their jobs. It would also spell a major financial loss for both Susanne and Mary.

Susanne is present in the U.S. on an academic H-1B visa, which expires in early August, and she has been on this visa for almost six years, the maximum duration. Due to the school's financial situation, she does not have any possibility of obtaining a different visa via her employer, CCSF.

Like most married couples, Susanne and Mary share everything. They have been married for four and a half years and jointly own a house, bank accounts, a car, life insurance, long-term disability insurance, retirement plans, health insurance. In short, they are completely intertwined financially, as well as emotionally. If forced to leave the U.S., all of those things would have to be abandoned, sold off or liquidated, with tax penalties for the liquidation of retirement accounts. They would lose their major source of income with the loss of Mary's law firm income, and would suffer the termination of such financial safeguards as long term care policies that have been paid into for two decades and that are invalid outside of the U.S.

There is also the huge cost of Mary's having to find a new way to make a living. Because Germany does not follow the common law system, Mary would have to start over in a field outside of the law and in a language that is not her native one. The emotional toll of being forced to leave would be even greater. Mary has lived her entire adult life in San Francisco and has deep ties to the community in the form of friends, her business and employees and the home that she shares with Susanne. For her, leaving the country amounts to being forced into exile. Susanne has spent thirteen years in the U.S., first as a Ph.D. student and, for the past six years, as a lecturer giving her energy and talents to her students. Simply put, Susanne and Mary have built a life together that is rooted in their home and community of San Francisco. There is no

valid reason to treat them, or LGBT couples like them, differently from every other committed couple in the country.

### **III. PROTECTING REFUGEES AND ASYLUM SEEKERS**

The United States has a long history and tradition of protecting victims of persecution and torture. The United States is a leader in refugee resettlement and humanitarian protection, and annually resettles thousands of refugees. Since 1975 refugee admissions to the United States have totaled more than 3 million people. Welcoming those fleeing persecution is a deeply rooted American value that has defined our country since its founding.

Our nation's immigration laws and practices, however, too often fall short in protecting refugees and asylum seekers. For example, many asylum seekers are detained upon their arrival in the U.S. In fact, my very first case was a young Somali man who on arrival was detained for months, without bond, waiting for his case to be heard. Arbitrary or harsh rules often prevent bona fide asylum seekers from seeking, much less obtaining the protection they desperately need. AILA has long supported reforms to ensure refugees and asylum seekers are protected by the United States, including those embodied in the proposed Refugee Protection Act of 2013.

AILA is pleased that S. 744 includes several provisions that would improve U.S. refugee and asylum law, increase efficiency in processing, and protect refugees, asylum seekers and stateless persons. Senate Bill 744 eliminates the one-year filing deadline for asylum applications and allows those previously denied asylum because of the deadline the opportunity to reopen their cases. Eliminating the deadline also makes the asylum system more efficient. Currently, the filing deadline leads to the unnecessary expenditure of government resources by pushing the claims of credible refugees into the overburdened immigration courts, diverting limited time and resources that could be more efficiently allocated to assessing the actual merits of asylum applications. Further, because effective anti-fraud measures already exist in the adjudications process, the filing deadline is not needed to counter abuse in the system.

Senate Bill 744 also gives expert, trained asylum officers the authority to review an asylum claim after credible fear is shown by an individual seeking entry into the U.S., rather than referring asylum seekers to a judge for lengthy and costly court proceedings. This approach was recommended by the bipartisan U.S. Commission on International Religious Freedom. This simple, commonsense change in process should result in increased efficiency and cost savings by helping to ease the immigration court backlog, clear busy court dockets, and prevent prolonged and costly detention of bona fide asylees. It also will help decrease the psychological strain on individuals who already have been traumatized by their experiences in their home countries.

Senate Bill 744 also includes a provision allowing certain refugee children to join their parents in the United States and provides protections for the surviving relatives of refugees. Gaps in current law can lead to the permanent separation of vulnerable families. The bill extends and improves the Iraqi and Afghan Special Immigrant Visa program, establishes protections for stateless persons, and enables the designation special groups of humanitarian concern as eligible for resettlement, including religious minorities from Iran. Finally, S. 744 encourages the

successful integration of both refugees into their receiving communities through the creation of an Office of Citizenship and New Americans and initiatives that would provide elderly refugees with greater access to naturalization.

AILA strongly supports these reforms included in S. 744 that would improve the lives of asylum seekers, refugees, and the U.S. communities that welcome them, all while making the system more efficient and cost-effective.

**Asylum Case Example: Mr. N**

A citizen of Venezuela, Mr. N, along with his wife and children, arrived in the United States in June 2002. An opponent of the Chavez regime, and supportive of his brother who was “out” as being homosexual, Mr. N was the victim of repeated threats in Venezuela because of his opinions on the regime and his brother’s sexuality. Indeed, his brother has been granted asylum in the U.S. because of these threats.

Admitted under a visitor’s visa, Mr. N tried hard to maintain a lawful status in the U.S. Unfortunately, he received bad legal advice, and rather than seeking asylum, pursued extensions of his visitor’s status and a petition for another nonimmigrant status for which he was ineligible. He applied for asylum in 2006. Because he had missed the one-year filing deadline, his case was referred to an immigration judge. Plagued by ineffective assistance of counsel (his then-attorney has since been disbarred), Mr. N’s case has traveled the judicial system over for years, and is now administratively closed before the immigration courts, pending visa availability through a petition filed by his parents.

What should have been a simple case had a trained asylum officer been able to review the merits has become a costly and trying ordeal for the system and the N family alike. Senate Bill 744’s repeal of the one-year filing deadline would have prevented this situation.

**Asylum case example: Ms. P**

Ms. P is the married mother of two from Nepal. From an early age, she experienced pervasive discrimination, beatings and attempts on her life because of her gender and commitment to women’s rights. In addition to the “normal” discrimination she suffered as a child and young wife, Ms. P was subjected to beatings by her in-laws and forced to live in the family’s livestock pen after she gave birth to a female child. Eventually, Ms. P decided that she would try to improve the lives of women and girls, and sought out training on birth control, sexually transmitted diseases and sex trafficking.

In her travels as a community educator, Ms. P was subject to threats and harassment for her attempts to inform women of their rights and how to care for and protect themselves. Eventually, her outspokenness on the perils of sex trafficking brought her to the attention of both the local officials and Maoist rebels who were profiting from the trade. Facing attacks on her life and her family, Ms. P fled to the United States.

Traumatized and uncertain about her rights, Ms. P did not understand that she could apply for asylum nor know that there was a time limit. After a few years in the U.S., she presented her case for asylum but was told that the officer would have to deny her case, simply because she

was applying after one year. The case was referred to an immigration judge, and after several years of waiting, Ms. P was able to establish that she met a much higher standard than that required for asylum—that she was more likely than not to suffer persecution if returned to Nepal—and was granted withholding of removal.

While the story should have ended there, it did not. Unlike an individual granted asylum, Ms. P could not bring her daughter to the U.S. and withholding did not provide a path to permanent residence. In fact, for several years, immigration authorities hounded her to make arrangements to leave the U.S. for a third country, all simply because she did not file her case within one year of arrival.

#### **IV. UPHOLDING FAIRNESS AND DUE PROCESS IN AMERICA'S IMMIGRATION SYSTEM**

AILA's mission is "to promote justice, to advocate for fair and reasonable immigration law and policy, [and] to advance the quality of immigration and nationality law and practice." These principles inform AILA's belief that America's immigration laws and the enforcement of our laws should uphold civil and human rights and ensure due process, equal treatment, and fairness. AILA urges Congress to improve the integrity of the immigration judicial system by ensuring that immigration judges have the resources and authority to give thorough and fair review for each case and thereby deliver just outcomes for every person who appears before them. In addition, immigration legislation should reduce the use of institutional detention, ensure that all persons in removal proceedings are represented by counsel, and re-establish the primacy of the federal government in the enforcement of immigration law.

##### **The Immigration Court System**

Ensuring the due process rights of immigrants in removal proceedings is of the utmost importance. The immigration court system, however, is struggling to meet the demands of rapidly increasing caseloads. As of March 2013—despite an aggressive attempt by Immigration and Customs Enforcement to review cases on the docket for discretionary closure—there were 327,483 immigration cases pending in a lengthy backlog where the average number of days cases have been waiting has reached 555 days.<sup>2</sup>

Each immigration judge handles, on average, over a thousand cases per year. High caseloads and lack of adequate financial and other resources have resulted in overworked judges and staff, compromising the system's ability to assure proper review of every case. Court statistics show that the grant rates for cases are highly disparate among judges, thus giving rise to criticism that outcomes may turn on who or which court is deciding the case, rather than on established principles and rules of law. Such disparities have made the immigration judiciary vulnerable to perceptions that its ranks are biased and lacking in professionalism.

Immigration reform must address these serious problems with the immigration judicial system or risk eroding the fundamental principles of due process and rule of law. In this regard, AILA is

<sup>2</sup> [http://trac.syr.edu/phptools/immigration/court\\_backlog/](http://trac.syr.edu/phptools/immigration/court_backlog/)  
<http://trac.syr.edu/whatsnew/email.130411.html>

pleased that S. 744 adds immigration judges, law clerks, legal assistants, and appellate review staff to clear the backlog in immigration court and facilitate better adjudication of cases. The bill also codifies the existence of the Board of Immigration Appeals and requires the BIA to issue written decisions, thereby improving the transparency and thoroughness of review in appellate cases.

#### Access to Legal Counsel

The high numbers of respondents appearing in proceedings without counsel is a major contributing factor to the large backlog of cases before the immigration courts. The Executive Office of Immigration Review (EOIR) has stated that “[n]on-represented cases are more difficult to conduct. They require far more effort on the part of the judge.”<sup>3</sup> If noncitizens lack lawyers, immigration judges must guide them through the proceedings, often through an interpreter. Even at that, a Judge, of course, cannot function as counsel for a noncitizen in proceedings, and valuable information which might impact a case may never come to light, thereby necessitating appeals and motions to reopen in order to avoid a miscarriage of justice. Judges frequently continue cases to give noncitizens time to seek counsel, or repeated reset a case to allow a noncitizen to attempt navigate the complex immigration system on his or her own.

The Administrative Conference of the United States recently advised that “funding legal representation for . . . non-citizens in removal proceedings, especially those in detention, will produce efficiencies and net cost savings.”<sup>4</sup> The American Bar Association also concluded that in immigration courts “[t]he lack of adequate representation diminishes the prospects of fair adjudication for the noncitizen, delays and raises the costs of proceedings, calls into question the fairness of a convoluted and complicated process, and exposes noncitizens to the risk of abuse and exploitation by ‘immigration consultants’ and ‘notarios.’”<sup>5</sup>

The tremendous cost savings to the government of legal education and services programs has been demonstrated by EOIR’s Legal Orientation Program (LOP), which provides general information to immigration detainees about the immigration law and the court system. According to a 2012 EOIR report to the Senate Committee on Appropriations, LOP reduced case processing times by an average of 12 days when compared to individuals who did not receive LOP.<sup>6</sup> Using an average cost per bed day of \$112.83,<sup>7</sup> EOIR’s analysis determined that LOP led

<sup>3</sup> Charles H. Kuck, *Legal Assistance for Asylum Seekers in Expedited Removal: A Survey of Alternative Practices* (Dec. 2004), 8, available at [http://www.uscirf.gov/images/stories/pdf/asylum\\_seekers/legalAssist.pdf](http://www.uscirf.gov/images/stories/pdf/asylum_seekers/legalAssist.pdf)

<sup>4</sup> Administrative Conference Recommendation 2012-3: Immigration Removal Adjudication (adopted June 15, 2012), 3, available at <http://www.acus.gov/wp-content/uploads/downloads/2012/06/Recommendation-2012-3-Immigration-Removal-Adjudication.pdf>

<sup>5</sup> American Bar Association Commission on Immigration, *Reforming the Immigration System: Proposals to Promote Independence, Fairness, Efficiency, and Professionalism in the Adjudication of Removal Cases*. (2010), 5-8.

<sup>6</sup> The April 4, 2012 EOIR report was transmitted on July 2, 2012 by the Department of Justice to the Chairwoman and Ranking Member of the Senate Committee on Appropriations’ Subcommittee on Commerce, Justice, Science, and Related Agencies pursuant to the requirements of the Conference Report accompanying the Consolidated and Further Continuing Appropriations Act, 2012 (P.L. 112-55). The report was reviewed by the Office of Management and Budget before being transmitted to Congress, and OMB did not object to its transmittal.

to \$677 in detention cost savings for each LOP participant in Fiscal Year 2011. In the aggregate in FY 2011, LOP saved the federal government, specifically Immigration and Customs Enforcement (ICE), more than \$19.9 million. After deducting the cost of providing the services (which cost approximately \$70 per participant), the net savings to the government in FY 2011 were more than \$17.8 million. Attorney General Holder described LOP's incremental assistance as a "great success story" and a "critical tool for saving precious taxpayer dollars" based on its cost savings to both DOJ's immigration courts and the Department of Homeland Security's (DHS) immigration detention system.<sup>8</sup>

Despite the success and cost savings delivered by LOP, the program serves adult detainees at only 25 of the approximately 250 detention facilities used by ICE. The LOP program should be expanded nationwide. This would increase the cost savings, improve efficiencies, and lead to more just outcomes in immigration courts.

The Senate bill would improve the LOP program by codifying the existing Office of Legal Access Programs and ensure that Legal Orientation Programs were administered to detainees within five days of arriving in custody, as well as provide services to detained immigrants in proceedings.

In addition to legal orientation programs, having immigration counsel represent individuals in immigration court proceedings directly correlates to successful outcomes for noncitizens pursuing claims to relief ranging from persecution abroad or family separation from U.S. citizen relatives. Asylum seekers who have legal representation, for example, are three times as likely to be granted asylum.<sup>9</sup> Whether a person is represented by an immigration attorney is the "single most important factor" affecting the result in an asylum case.<sup>10</sup>

A pilot project providing legal representation to asylum seekers found that the rate at which asylum seekers retracted their claims rose by 50 percent, and the number of claims resulting in successful outcomes also increased significantly.<sup>11</sup> Overall, "[t]he two most important variables

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<sup>7</sup> Once DHS personnel and administrative costs are included, the total cost of detention is \$164 per person per day. National Immigration Forum, *The Math of Immigration Detention* (Aug. 2012), 2, available at <http://www.immigrationforum.org/images/uploads/MathofImmigrationDetention.pdf>. Using the current of detention, the net annual savings to the government from the LOP are more than \$25 million.

<sup>8</sup> Attorney General Eric Holder Addresses the Pro Bono Institute (Mar. 19, 2010); see also Vera Institute of Justice, "Legal Orientation Program: Evaluation and Performance and Outcome Measurement Report, Phase II." (May 2008), available at <http://www.usdoj.gov/eoir/reports/LOPEvaluation-final.pdf>

<sup>9</sup> Human Rights First, *U.S. Detention of Asylum Seekers: Seeking Protection, Finding Prison*. (2009), 8, available at <http://www.humanrightsfirst.org/pdf/090429-RP-hrf-asylum-detention-sum-doc.pdf>. In a September 2008 report, the Government Accountability Office found the likelihood of an asylum claim being granted by an Immigration Judge increased significantly for those who had representation. GAO, *U.S. Asylum System: Significant Variation Existed in Asylum Outcomes across Immigration Courts and Judges*, 30, GAO-08-940 (Sept. 2008), available at <http://www.gao.gov/new.items/d08940.pdf>

<sup>10</sup> Jaya Ramji-Nogales, Andrew Schoenholtz & Philip Schrag, *Refugee Roulette: Disparities in Asylum Adjudication*, 60 Stan. L. Rev. 295, 340-41 (2007).

<sup>11</sup> Nimrod Pitsker, "Due Process for All: Applying *Eldridge* to Require Appointed Counsel for Asylum Seekers." 95 Cal. L. Rev. 169 (2007).

affecting the ability to secure a successful outcome in a case . . . are having representation and being free from detention.”<sup>12</sup>

The absence of court-appointed counsel in immigration court is especially damaging for vulnerable populations such as juveniles and immigrants with mental disabilities. Through the enactment of the Unaccompanied Alien Child Protection Act and the Trafficking Victims Protection Act, Congress has recognized the vulnerability of unaccompanied youth and that they are unlikely to grasp the nature and consequences of immigration court removal proceedings. To ensure the needs of children and youth are protected, Congress has directed EOIR and the Department of Health and Human Services to provide legal orientation services for the released children’s caregivers. A guarantee of legal representation for this population is absolutely essential to ensure fairness in the immigration system.

Those with mental disabilities are no less vulnerable when confronting the complexities of the immigration court system. A 2010 report concluded that U.S. citizens with mental disabilities have been erroneously placed into ICE custody, and that “an unknown number of legal permanent residents (LPRs) and asylum seekers with a lawful basis for remaining in the United States may have been unfairly deported from the country because their mental disabilities made it impossible for them to effectively present their claims in court.”<sup>13</sup> A 2011 report by the DHS Office of Inspector General concurred that “[s]ome detainees are seriously impaired by mental illness and may be unable to coexist with others in detention or participate in immigration proceedings.” In 2010 two individuals with mental disabilities “lost” in ICE custody were identified in immigration detention after they had been forgotten for more than four years, without ever being given a single bond hearing.<sup>14</sup> Their cases were closed because they were incompetent and without counsel to understand proceedings. Incarceration for someone with a mental disability is estimated to cost seven times the average.<sup>15</sup> Legal representation is vital to ensure that immigration courts serve immigrants with mental disabilities and other vulnerable populations, including juveniles, fairly and efficiently.

Importantly, S.744 gives the Attorney General authority to appoint counsel and ensures that for unaccompanied minors, individuals with serious mental disabilities, and other particularly vulnerable populations will be represented by counsel.

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<sup>12</sup> New York Immigrant Representation Study, *Accessing Justice: The Availability and Adequacy of Counsel in Immigration Proceedings* (Dec. 2011), available at [http://www.cardozo.lawreview.com/content/denovo/NYIRS\\_Report.pdf](http://www.cardozo.lawreview.com/content/denovo/NYIRS_Report.pdf); see also Donald Kerwin, *Revisiting the Need for Appointed Counsel* (Migration Policy Institute, 2005).

<sup>13</sup> *Deportation by Default* (Human Rights Watch/ACLU, July 2010), 4, available at <http://www.hrw.org/en/reports/2010/07/26/deportation-default-0>

<sup>14</sup> “Immigration Officials Announce Release of Detainees with Mental Disabilities Who Were Lost in Detention for Years.” (Mar. 31, 2010), available at <http://www.aclu-sc.org/releases/view/103017>

<sup>15</sup> Texas Appleseed, *Justice for Immigration’s Hidden Population: Protecting the Rights of Persons with Mental Disabilities in the Immigration Court and Detention System* (Mar. 2010), 17 (quoting Sen. Russell Feingold), available at [http://www.texasappleseed.net/index.php?option=com\\_docman&task=doc\\_download&gid=313](http://www.texasappleseed.net/index.php?option=com_docman&task=doc_download&gid=313)

### **Restoring Judicial Discretion**

The revisions to immigration law enacted in the 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA) restricted the authority and jurisdiction of immigration courts to review removal charges involving many categories of noncitizens. First, Congress widened the scope of summary administrative removal procedures, thereby authorizing DHS to bypass normal removal proceedings before an immigration judge for many noncitizens including those with minor or old criminal convictions. Second, for those noncitizens who do make it into proceedings before an immigration judge, Congress expanded the number and scope of grounds for removal while it limited the opportunities for noncitizens to offer evidence of extenuating circumstances or compelling equities. The impact of IIRAIRA was to categorically deny certain noncitizens – including long-time lawful permanent residents (LPRs) – the opportunity to plead their cases to an immigration judge before they are deported.

Judicial authority to engage in a careful consideration of the specific facts in each case has been curtailed. In its place, immigration officers—essentially, the prosecutors—have been empowered to act as judge and jury, with no meaningful independent oversight. Federal courts have been stripped of the authority to review most discretionary determinations made by these officers. The system as it currently operates is neither equitable nor fair. Every noncitizen should have the opportunity to go before a neutral adjudicator for an individualized, fact-based determination before the extraordinary consequence of deportation is imposed.

Congress can restore fairness and flexibility to our system by expanding the authority of immigration judges to consider an individual’s unique circumstances and make case-by-case assessments before deportation. Senate Bill 744 restores limited authority to immigration judges to review the specific facts in an individual case and grant relief where family unity would be served. The bill recognizes the value of keeping families together especially in cases where a U.S. citizen or lawful permanent resident would be separated from their family. The bill expands access to U visas and removes arbitrary, harsh barriers to asylum relief. AILA supports these and other reforms included in S. 744 that restore judicial discretion to grant relief.

But even if S. 744 were enacted, judges would still exercise very limited authority to review the circumstances each individual case to determine whether to grant relief. Some forms of relief, such as Cancellation of Removal have very high standards, for example requiring a showing of “extreme hardship” or “exceptional and extremely unusual hardship.” It is critical that judges have the discretion to consider the facts presented by both parties and then to grant relief based on merit. The people in the following examples involving clients currently represented by AILA members would not be eligible for relief if S. 744 became law.

#### **Case Example: Janelle Ngo Chin**

Janelle Ngo Chin has lived in the U.S. for over 25 years, since she was 10 years old. She attended elementary, middle, and high school here. She now has three U.S. citizen children. Her only criminal history is a single minor conviction 17 years ago – when at age 19 she was convicted for petty theft, but served no jail time.

As the mother of three and common-law wife to a hardworking noncitizen with Temporary Protected Status (TPS), Janelle now also takes care of her aging and ailing parents (who are both lawful permanent residents), who live with her. Her father has already had two heart attacks and suffers from coronary heart disease and many other health problems that interfere with his ability to accomplish everyday tasks. Janelle's mother has diabetes, a history of cancer, and debilitating psychological problems. All of this was thoroughly documented before the immigration judge, when Janelle was placed in removal proceedings. She requested cancellation of removal, asking the judge to exercise his discretion and allow her to stay in the U.S. with her family.

The immigration judge denied Janelle's request for discretion, finding that her evidence of hardship, though compelling, was insufficient to meet the incredibly high "exceptional and extremely unusual hardship" standard required by the statute. She appealed the judge's decision, but lost. Then her circumstances got much worse. Her parents' health deteriorated, additional familial assistance evaporated, and her children were suffering at school. She asked DHS to exercise Prosecutorial Discretion (PD) to choose not to deport her, given that she is not a high priority for enforcement and has compelling equities. Unfortunately, DHS felt that Janelle's case did not merit PD. Finally, an appeals court intervened. Janelle is now back before the immigration judge, trying desperately to make her case for discretionary relief from deportation.

Senate Bill 744 does not change the criteria for eligibility for Cancellation of Removal, the form of relief that Janelle applied for. If S. 744 were enacted, she would still need to meet the very high standard of "exceptional and extremely unusual hardship."

**Case Example: Brenda Gutierrez**

Brenda Gutierrez is the mother of three children. Two of her children are U.S. citizens and the third recently qualified for a temporary reprieve from deportation through Deferred Action for Childhood Arrivals (DACA). One of her U.S. citizen children has a rare blood disorder that requires constant medical attention. Ms. Gutierrez and her husband, Jose, have both been trained by their doctors to give their child injections when needed.

Mr. Gutierrez is a lawful permanent resident after having been granted Cancellation of Removal. Ms. Gutierrez was not so fortunate. Many years ago, shortly after she arrived in the U.S., she came out of the shadows to apply for asylum but missed the tight statutory deadline. The government immediately tried to deport her and issued a charging document. She then renewed her asylum claim before the courts and appealed her denial, but that was ultimately unsuccessful.

That charging document, issued so many years ago, now disqualifies Ms. Gutierrez for the same discretionary relief her husband had received. None of the equities she accumulated over the many years she has been living in the U.S. since that document was issued – even with no criminal history whatsoever – can even be considered by the judge. ICE finally granted her a temporary stay of removal that may be renewed, at ICE's discretion, each year. But she never knows whether this year will be the year ICE decides to deport her. She lives in fear of being torn apart from her family and the child who needs her.

If S. 744 were enacted, Brenda would still be unable to obtain her green card because S. 744 would not change the rule that rendered her unable to apply for Cancellation of Removal.

**Categorical Bars and Detention Statutes Result in Unfairness and Injustice**

The category of “aggravated felonies” was introduced into the immigration law in 1988, and encompassed murder and trafficking in drugs or weapons. However, the roster of offenses that are considered aggravated felonies was expanded tremendously with the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) and with IIRAIRA. Now, even some misdemeanors fall within the statutory definition of “aggravated felony.”

An alien who has been convicted of a crime categorized as an “aggravated felony” must be detained and is deportable and ineligible for any form of relief from deportation. These stringent requirements restrict a judge’s ability to look at the totality of circumstances in a case and grant appropriate relief. Tying the hands of immigration judges by denying them the ability to consider all of the facts of a case has led to substantial inequities, especially for individuals with minor or old disqualifying criminal conduct. Expanding judicial discretion to grant relief for those individuals with minor convictions on their record, including minor non-violent drug offenses, would bring fairness back to our immigration system.

Former Immigration Judge Paul Grussendorf, who testified before the Senate Judiciary Committee on March 20, 2013, provided the following example of a woman whose case came before him and who was designated with an aggravated felony for stealing diapers. As a result she was subject to mandatory detention.

A mother from El Salvador who had received a suspended sentence for shoplifting baby diapers for her U.S. citizen child came before me on the custody docket, and I had to inform her that I could not even consider bond in her case. She chose deportation so as not to be separated from her infant [while she was in detention], although she may even have been eligible for a green card if she were not designated as having committed an aggravated felony.

The Senate bill, S. 744, keeps intact the current definition of “aggravated felony,” which has led to patently unfair results and is long overdue for reform.

**Immigration Detention**

As currently applied by ICE, our mandatory custody or detention laws prevent the release of entire categories of noncitizens charged with immigration violations. The restraint of an individual’s liberty is one of the most consequential government powers. No one should be deprived of their liberty except as a last resort. But every day, thousands of people – including asylum seekers and those with no criminal convictions – are detained by Immigration and Customs Enforcement (ICE) though they pose no flight risk or threat to public safety. According to recent ICE data, as of May 2, 2011, 41 percent of immigrants in detention were classified at the lowest possible risk level. Categorical laws that mandate prolonged deprivations of liberty without permitting – or without sufficiently ensuring – the availability of release under the least restrictive conditions run afoul of basic principles of fairness and due process.

In the last several years, Congress has increased funding for ICE detention beds, from 20,800 beds per day in FY 2006 to 34,000 beds per day in FY 2012. The appropriations law has been interpreted by ICE to mandate detention of a minimum average daily number of noncitizens. This “mandate” puts pressure on ICE to detain more people, even if the agency determines that reducing detention is a smarter, more effective approach.

ICE has a range of tools other than institutional detention at its disposal and should be encouraged to use them more often. Spending on detention has increased exponentially from \$864 million seven years ago to \$2.02 billion today. Spending billions of taxpayer dollars to needlessly detain immigrants who could successfully and safely be released is a poor use of limited resources. Immigration detention costs U.S. taxpayers between \$122 and \$164 per day; however, proven alternatives to detention cost between 30 cents and \$14 per day and have an over 90 percent success rate.<sup>16</sup>

Immigration officers and judges must have the authority in all cases to consider alternatives to detention for individuals who are vulnerable or pose little risk to communities and to consider in each case whether continued detention is necessary and lawful. Further, ICE should be required to place each individual in the least restrictive setting available.

Bond hearings also must occur in a timely fashion. Detainees often languish in detention with no hearings scheduled in their cases because charging documents have not been served on them or filed with the immigration court. Finally, detention conditions fall well below appropriate standards for civil confinement. Clear standards that mandate humane conditions of civil detention under which aliens may be housed must be adopted, and there needs to be meaningful oversight and penalties for non-compliant facilities.

Thank you for the opportunity to address these important issues, and for your efforts to grapple with these difficult questions.

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<sup>16</sup> U.S. Immigration and Customs Enforcement Salaries and Expenses, Fiscal Year 2012 Congressional Budget Justification, 43.

**Testimony of Kris W. Kobach**  
**Before the United States Senate Committee on the Judiciary**  
**Hearing on Comprehensive Immigration Reform Legislation**  
**April 22, 2013**

Mr. Chairman and Members of the Committee, although I serve as Kansas Secretary of State, I come before you today chiefly in my capacity as former Counsel to United States Attorney General John Ashcroft, and as an attorney representing cities and states that have successfully reduced illegal immigration within their jurisdictions. I also represent the ten ICE agents who are suing Secretary Napolitano for the reason that her directive of June 2012 directly orders the agents to violate federal law. That case is *Crane v. Napolitano*, No. 3:12-cv-03247-O (N.D. Tex.).

The legislation pending before this committee has been portrayed as a balanced bill that combines an amnesty with significant enforcement measures. That portrayal is completely inaccurate. In the testimony that follows I will offer three significant vulnerabilities created by the amnesty provisions and six reasons why the enforcement components of this bill are illusory.

**Three Flaws in the The Bill's Amnesty Provisions.**

**(1) The Background Checks Are Insufficient to Prevent Terrorists from Gaining Amnesty.**

The background check provisions of the bill in Section 2101(b)(8) contain no requirement that amnesty applicants actually provide government-issued documentation proving who they say they are. That means that any illegal alien can invent a new name with a totally clean record and present that name when applying for the amnesty. Immigration officials will have absolutely no way to force the alien to disclose his real identity. In other words, an alien who has a terrorist background can call himself "Rumpelstiltskin" without having to prove that that is his real name. Indeed, under Section 2101(b)(12), the terrorist alien gains a new photo-ID document issued by the federal government that gives credibility to his fictitious identity. He also gains legal immigration status and the ability to travel outside of the United States to coordinate with international terrorist groups and then to return to the United States. *As marathon bomber Tamerlan Tsarnaev demonstrated, an alien's ability to travel internationally and gain terrorist training before returning to the United States can have deadly consequences for innocent Americans.*

It should also be pointed out that even if a terrorist uses his real name when seeking the amnesty, a background check is in most cases unlikely to produce information sufficient to stop the granting of legal status. Again, the case of Tamerlan Tsarnaev illustrates the point. Although Tsarnaev entered the country legally, he was compelled to undergo background checks

similar those that amnesty applicants would undergo. Tsarnaev cleared those background checks. He was also interviewed by FBI agents in 2011 at the request of a foreign government. The FBI found no links to terrorism and released him. That is far more scrutiny than applicants for the amnesty offered by this legislation would receive.

The United States has granted amnesty to terrorists before. That is exactly what happened in 1986 when we last granted an amnesty to millions of illegal aliens. Under that amnesty, the United States granted legal status to Mahmoud “The Red” Abouhalima, who fraudulently sought and obtained the amnesty for seasonal agricultural workers. He was actually working as a cab driver in New York City. He was a ringleader in the 1993 terrorist attack against the World Trade Center, and he used his new legal status to travel abroad for terrorist training. His brother Mohammed, another participant in the 1993 attack, also gained legal status under the 1986 amnesty.

**(2) Absconders and Aliens Who Have Already Been Deported Claim the Amnesty.**

One provision of the bill is particularly counterproductive with respect to immigration enforcement. Unlike the amnesty of 1986, and unlike the various smaller amnesties that have been enacted since then (such as the “Section 245i” amnesty), this bill actually allows illegal aliens who have already been deported from the United States to return and gain the amnesty. Sections 2101(b)(6)(B)-(C) do so. These provisions are a waste of the millions of dollars in immigration court proceedings and other costs that were spent in the process of removing those aliens from the United States.

Worse, the bill allows alien absconders who have remained in the United States as fugitives, despite the fact that a removal order has been issued to them by an immigration court, to receive the benefit of the amnesty. Sections 2101(c)(7)(C)(i) and 2211(b)(5)(C)(i) grant this benefit to absconders. This would create a significant and perverse incentive for aliens who are removed in the future. Any alien who is ordered removed after this bill is enacted would be effectively told, “Ignore your removal order and remain in the United States until the next amnesty.” This provision would make a mockery of immigration court proceedings.

**(3) The Bill Legalizes Dangerous Aliens Who Received Deferred Action Under DACA.**

Sections 2101(b)(13) and 2103(b)(2)(C) permits beneficiaries of Secretary Napolitano’s unlawful DACA directive of June 2012 to become eligible for the amnesty and for lawful permanent resident status. The DACA Directive was issued by Secretary Napolitano in direct violation of federal law, specifically 8 U.S.C. § 1225, which requires that immigration officials place certain aliens into removal proceedings. 8 U.S.C. § 1225(a)(1) requires that “an alien present in the United States who has not been admitted ... shall be deemed for purposes of this chapter an applicant for admission.” This designation triggers 8 U.S.C. § 1225(a)(3), which requires that all applicants for admission “shall be inspected by immigration officers.” This in turn triggers 8 U.S.C. § 1225(b)(2)(A), which mandates that “if the examining immigration

officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a of this title.” The proceedings under 8 U.S.C. § 1229a are removal proceedings in United States Immigration Courts.

As was recently revealed in an April 8, 2013, hearing before the U.S. District Court for the Northern District of Texas, *DHS has employed that unlawful DACA Directive to release numerous aliens who have been arrested, but not yet convicted, of very serious felonies* including: assault on a federal officer, sexual assault on a minor, and trafficking in cocaine. If this bill is enacted, those dangerous aliens will be eligible for the amnesty; no provision of the bill disqualifies criminals who have been arrested but not yet convicted.

**Six Reasons Why The Bill’s Enforcement Provisions are not Serious.**

**(1) The So-Called Enforcement “Triggers” in the Bill are Trivial.**

The bill contains two triggers that have been described as ensuring enforcement of our immigration laws. They do no such thing. The first trigger (in Section 3(c)(1)) is simply the submission of written strategies to Congress by the Homeland Security Secretary. After submitting these pieces of paper, DHS may begin accepting applications and offering immediate legal status to illegal aliens. The second trigger (in Section 3(c)(2)), which allows DHS to adjust the legalized aliens’ status to lawful permanent resident is equally insubstantial. It is merely a statement from the Secretary that the strategies are “substantially deployed and substantially operational.” These terms are not defined in the bill and have no concrete meaning. Indeed the Obama Administration’s current border enforcement strategy is “substantially deployed and substantially operational.” But it is largely ineffective. In addition, DHS must implement a “mandatory employment verification system,” but that too is left undefined and is so vague that the current I-9 paper system could be said to qualify. Finally, DHS must implement an “electronic exit system” at air and sea ports of entry. Arguably, the current U.S. Visit kiosks already satisfy this vague description. *Moreover an exit verification system that does not include land ports of entry is utterly pointless, since DHS can never conclusively determine whether or not an alien has left if the land ports of entry are not included.*

**(2) The 90 Percent Metric is Completely Meaningless.**

Even more misleading is the bill’s promise to achieve an “effectiveness rate” of 90 percent or higher in “high risk border sectors.” The bill requires that, within five years after enactment, DHS must certify that it is catching or turning around 90 percent of all border crossers in these sectors. If not, a Border Commission will be created to reshape DHS strategy at the border. The first problem with this metric is that it is sheer fantasy to imagine that we can calculate that percentage. We have no idea how many people the Border Patrol doesn’t catch.

And we likely never will. Thus, it is impossible to know whether we have achieved 90 percent or not, because we have absolutely no idea what the denominator is.

The second problem with this metric is that it is only applied at a few so-called “high risk border sectors” where the annual number of apprehensions is over 30,000. Only three of the nine border sectors meet that definition at present. As illegal immigration patterns over the last two decades demonstrate, smugglers constantly adjust their routes in response to Border Patrol activity. If by some miracle, the Border Patrol manages to deploy complete video surveillance and improved security in the three high risk sectors, the smugglers will simply move their operation to the other sectors. In which case, DHS will be declaring 90 percent success in a sector that the smugglers have long abandoned, while smuggling traffic surges elsewhere.

Finally, even if calculating this metric were possible and it were to be done across the entirety of the southern border, the DHS under current leadership has demonstrated that it cannot be trusted to fairly report its statistics. For the past two years, we have heard DHS repeatedly claim that deportations are at an all-time high. It sounds pretty impressive: almost 410,000 removals in FY 2012 alone. However, we now know that DHS has been cooking the books. In FY 2011, DHS started transporting many of the aliens who were caught at the border (and who would have counted as “voluntary returns,” not “removals”) to a different border sector before releasing them. But DHS decided to count these voluntary returns as “removals” since ICE had control of the alien for a short period of time during transit. And that little accounting trick made all of the difference. In FY 2012, there were about 86,000 of these cases. Take them out of the total, and the claimed 410,000 removals shrinks to 324,000. Given their track record, we simply cannot trust current DHS leadership to fairly calculate their success percentages.

### **(3) The Bill Hobbles State Enforcement Efforts in the Workplace.**

For the past four years, the only meaningful enforcement against illegal labor in the workplace has occurred at the state level. The Obama Administration essentially brought a halt to worksite enforcement in 2009 (with the exception of I-9 “audits”). Those state efforts have been particularly effective. Most notably, in Arizona, the Legal Arizona Workers Act resulted in a 36 percent decrease in the population of illegal aliens in the state between 2008 and 2011, when the nationwide population decreased only one percent.

Another major flaw in this bill is the “preemption” clause found in Section 274a(h) on page 496 of the bill. This provision guts almost all state laws prohibiting the knowing employment of unauthorized aliens. A State also would not be able to fine an employer for failing to use the verification system. The clause preempts everything except for “business licensing...as a penalty for failure to use the System.” This preemption clause is extremely broad and overturns the penalties that already exist in numerous states. Under this clause, no state may pass a law that penalizes employers for knowingly hiring or continuing to employ unauthorized aliens. This huge preemption clause is problematic because it permits employers

who knowingly hire or continue to employ illegal aliens to avoid any kind of enforcement by State and local governments. If this bill were really intended to be tough on employers and illegal immigration, it would expand, not restrict, the authority that states already have to discourage illegal immigration. What is more, that weakness is exacerbated by the lengthy phase-in period of the verification system. During that entire period, a State has absolutely no authority to discourage the hiring of unauthorized labor.

**(4) The Employment Provisions Exempt Large Categories of Labor.**

The definition of “employer,” found in the amendment to INA Section 274A(b)(3) on page 402 of the bill exempts any employment that is “casual, sporadic, irregular, or intermittent.” In other words, the express definition of “employer” excludes anyone that hires someone in any of those situations. Currently, many of the ways in which illegal immigrants obtain labor will thus no longer be unlawful. Likely any kind of day labor would easily fit within this definition. No employer would have to verify the work authorization status of any such employee, nor even refuse to hire the worker if the employer had knowledge of the person’s unlawful work authorization. What is more, even if it weren’t large enough of a loophole to allow illegal labor, the bill expressly allows the DHS Secretary to define the terms as the Secretary sees fit. The term “intermittent” alone is so broad that many construction employers could hire illegal aliens on an as needed basis, and potentially not violate the statute.

The bill also contains a huge loophole for illegal labor employed by subcontractors. The proposed INA 274a(a)(3) on page 396 of the bill, only prohibits “obtaining labor...while knowing that the alien is unauthorized.” Therefore, under typical contractor bidding, a general contractor will take proposals from subcontractors to perform work. As long as the general contractor is not contracting with a subcontractor to obtain the worker “while knowing that the alien is unauthorized,” the general contractor is not implicated. What is more, the “continuing” employment provision will not prohibit the contractor from continuing the contract with the subcontractor, even if the general contractor learns of the unlawful labor during the performance of the contract. The contractor is not “employing” the illegal aliens, so the general contractor is not violating 274A(a)(1) or (2). And the contractor did not “obtain” the unauthorized labor through contract, so the general contractor is not violation of INA 274a(a)(3).

**(5) The Bill Scraps and Replaces the Proven E-Verify System.**

One of the big selling points made by some lawmakers has been that this bill would mandate the use of E-Verify. Repeatedly, employers who use E-Verify give high grades to the system and successive administrations admit that E-Verify is the best way to ensure a lawfully authorized work force. Yet, rather than simply mandating nationwide E-Verify use, this bill scraps the entire E-Verify system. Section 3101(e) of the bill (Pages 503-04). E-Verify is a system that is already used by more than 400,000 employers. Several states already mandate its use by all employers (Arizona, Mississippi, South Carolina, and Alabama), and many more states

mandate its use by public employers and the recipients of government contracts. There does not seem to be a significant difference between the current E-Verify system and the system that the bill mandates must be created. So, one has to wonder why this bill would scrap the successful E-Verify system which billions of dollars has already been spent.

Furthermore, the prolonged phase-in requirement for the replacement system does not start at the time of the bill's *enactment*, but after the regulations implementing the new system are in place. INA 274a(d)(D), (E), (G). The only deadline seems to be in the trigger section, which requires that "the Secretary has implemented a mandatory employment verification system to be used by all employers to prevent unauthorized workers from obtaining employment in the United States." Bill Sec. 3(c)(2)(A). In other words, it does not appear that *any* employers will be required to even use the new system before the newly amnestied aliens (Registered Provisional Immigrants or "RPis") may be converted to LPR status. Instead, under the terms of the statute, the system only needs to be in place so that it is "to be used" by employers.

In short, this bill is not a good-faith effort to implement a national electronic verification system for employers. If it were, the bill would follow the example of several states and immediately require E-Verify usage by large employers within a one-year period after enactment and by all employers within a two or three year period. There is absolutely no reason to scrap the E-Verify system and replace it with another—other than to delay any meaningful enforcement in the workplace.

**(6) The Bill Exempts Current Employees from Verification.**

A final major flaw of the bill is that it does not require, or even permit (except when ordered by the DHS Secretary due to a pattern and practice of violations), the electronic verification of existing employees. INA § 274a(d)(1)(ii). Furthermore, it is deemed an "unfair immigration-related employment practice" to "use the System to reverify the employment authorization of a current employee..." Section 3105(a) (amending INA § 274B(a)(4)(C) (page 514). If this bill were truly intended to protect American workers against unfair competition from illegal labor, it would subject existing employees to electronic verification.

**Testimony of  
Former Utah Attorney General Mark L. Shurtleff**

**Senate Judiciary Committee**

**“Hearing on Border Security, Economic Opportunity and Immigration  
Modernization Act, S.744”**

**April 22, 2013**

Chairman Leahy, Ranking Member Grassley and distinguished Members of the Judiciary Committee:

My name is Mark Shurtleff. I am currently a Partner in the Washington DC office of Troutman Sanders LLP, and the former three term Attorney General for the State of Utah. Thank you for inviting me to testify before you today regarding the important issue of comprehensive immigration reform.

Let me start by saying our hearts and prayers go out to the people of Boston. As the former top law enforcement official for the State of Utah I know what a difficult time this can be. We are extremely grateful for the fast and successful work of federal, state and local law enforcement officials in responding to this atrocious attack. Any strike against America is an attack against all Americans regardless of their faith, ethnicity or national origin. All Americans are united in our revulsion at this crime, and in our resolve to pull together for the security of our communities and our nation.

Having been a long-time Republican advocate for comprehensive reform of America's immigration system, I applaud the Committee for moving so quickly and with purpose in holding this hearing on Senate bill S. 744, the Border Security, Economic Opportunity, and Immigration Modernization Act.

Prior to being elected Utah Attorney General I was an assistant attorney general, deputy country attorney and a county commissioner. From my experience on the ground at the state and local level observing and dealing with the impact of a broken system, and my study of this bill, it is clear that it not only addresses the moral imperative of reform, but also demonstrates the best of what is a uniquely American tradition of pulling together for the good of the country - not the least purpose of which is to enhance national security and local public safety.<sup>1</sup>

From a law enforcement perspective, we need to fix legal immigration in order to reduce illegal immigration. By modernizing our system and making legality and accountability

our top priority, our government can take control and make immigration once again work for America.

I believe Congress must now seize upon the momentum that has been building around immigration reform. For more than two years, starting with the Utah Compact, an alliance of conservative faith, law enforcement and business leadership has come together to forge a new consensus on immigrants and America. These relationships formed through outreach in the evangelical community; the development of state compacts; and convening of regional summits in the Mountain West, Midwest and Southeast.

In early December 2012, I was one of over 250 faith, law enforcement and business leaders from across the country — including two of today's other witnesses, Dr. David Fleming, Senior Pastor of Champion Forest Baptist Church, and Grover Norquist, President of Americans for Tax reform— who came to Washington, D.C. for a National Strategy Session and Advocacy Day. We told policymakers and the press about the new consensus on immigrants and America. More importantly, faith, law enforcement and business leaders from across the country committed to work together to urge Congress to pass broad immigration reform in 2013.

In February, we launched the Bibles, Badges and Business for Immigration Reform Network to achieve that goal. Over the last few months, 'Bibles, Badges and Business' have hosted dozens of events all over the country to keep the momentum going around immigration reform.

As the Judiciary Committee discusses reforming our immigration system, I applaud the work of four of the committee's members, Senators Richard Durbin, Charles Schumer, Lindsey Graham and Jeff Flake, who helped craft the Border Security, Economic Opportunity, and Immigration Modernization Act. This bipartisan legislation is a strong start for the immigration debate this year. I am also pleased that my Senators Mike Lee and Orrin Hatch of Utah have been engaged in these bipartisan negotiations and hope they continue to be involved in the process.

Now that the legislation is introduced, many will work to improve it as it goes through the important process of regular order in the Senate, first in Committee and then to the Senate floor. This bill strikes a careful balance among its most important pillars: interior enforcement and border security, earned legalization and a path to citizenship, needed reforms to our current immigration system, and efforts to deal with the current backlog of immigration.

I urge this Committee, and all Senators, as they consider this bill, to continually remember that the whole of the bill is much more than just the sum of its parts. This bill is not perfect. There is no such thing as a perfect bill. Each part of the bill has impacts on the other areas.

It is also important that the discussion does not become singularly focused on enforcement. Over the last few years we have carefully followed and analyzed the consequences of state enforcement-only approaches on immigration reform, and they have led to less law and less order. Law enforcement must deal pragmatically with the reality of how policy translates to the street; and a commonsense, workable solution is imperative.

#### **Our Border Has Never Been More Secure**

Since 2004, I have participated in numerous border and cross-border conferences and training exercises with American and Mexican federal, state and local law enforcement and criminal justice professionals including many of the attorneys general from states in Mexico. During these conferences we have been briefed on the ongoing efforts to further secure the border.

Currently, the entire Southwest border is either “controlled,” “managed,” or “monitored” to some degree according to the Department of Homeland Security. When I was first elected Attorney General of Utah in 2000 we had a total 8,500 agents at the border and were apprehending 1.6 million people per year. Now, we have a record 21,370 Border Patrol agents that continue to be stationed at the border, a number that does not include the thousands of agents from other federal agencies, including the Drug Enforcement Agency (DEA), the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Federal Bureau of Investigations (FBI), and other agencies, supplemented by National Guard troops. As a result of these increased resources and programs, in my last year in office, 2012, we apprehended 365,000 people attempting to cross the border. Indeed our border with Mexico is more secure today than it has ever been.

As of February 2012, 651 miles of border fencing had been built out of the 652 miles that the Border Patrol feels is operationally necessary. The fence now covers almost the entire length of the border from California to Texas. There is double fencing in many areas.

Customs and Border Protection now has more than 250 Remote Video Surveillance Systems with day and night cameras deployed on the Southwest border. In addition, the agency relies on 39 Mobile Surveillance Systems, which are truck-mounted infrared cameras and radar. CBP has also deployed additional Mobile Surveillance Systems,

Remote Video Surveillance Systems, thermal imaging systems, non-intrusive inspection systems, radiation portal monitors, RFID readers and license plate readers to the Southwest border and is the process of acquiring more. CBP currently operates three Predator B unmanned aerial drones from an Arizona base and two from a Texas base, providing surveillance coverage of the entire Southwest border across Arizona, New Mexico, and Texas.

Prior to August 2006, many persons who were apprehended at the border were released pending their immigration hearing. That practice was ended in August 2006, and now nearly all persons crossing the border illegally are detained. Immigration and Customs Enforcement (ICE) is now funded to hold 33,400 individuals in detention at any given time. In Fiscal Year (FY) 2011 ICE detained a *record* number of people: 429,000. In FY 2012 ICE deported a *record* 409,849 people. Of these, approximately 55 percent, or 225,390, were convicted of felonies or misdemeanors — almost double the number of criminals removed in FY 2008. On top of this, 96 percent of all removals (also a *record* high) fell under ICE's priorities for deportation.

ICE priorities include recent border crossers and people who re-enter the country illegally. An enormous amount of resources are devoted to prosecuting individuals who enter the country illegally. For example, in the first 10 months of FY 2011, over 63,000 people were charged with illegal entry or illegal re-entry, making up 46 percent of *all* federal prosecutions during that time.

#### **Increased Border Provisions in S.744**

Notwithstanding the forgoing, the eight committed sponsors of this legislation understand that as part of a comprehensive approach to the problem, they need to provide additional resources and programs to help further secure our nation's borders.

The bill calls on the Department of Homeland Security to create a "Comprehensive Southern Border Security Strategy" which would achieve and maintain an effectiveness rate of 90 percent or higher in all high-risk border sectors. To help implement this strategy, three billion dollars from fees and fines collected under the bill will be made available.

The Secretary of Homeland Security must also submit a "Southern Border Fencing Strategy" to Congress and the Comptroller General of the United States to identify areas of the southern border where enhanced barriers should be put in place, including double and triple fencing. Another \$1.5 Billion will be made available to implement this additional fencing.

**The Best Defense is a Good Offense**

It is often said in sports that the best offense is a good defense, but as a former offensive lineman, I always believed the opposite was true. So that while the additional border security provisions of S.744 are very important to law enforcement, of perhaps even greater value to national and local security, are the many reforms that fix legal immigration, deal pragmatically and justly with those currently here in an unauthorized status, and enhance identification for future immigrants and migrant workers. These reforms will reduce and eliminate the causes and incentives for past illegal entry or overstays.

For example, streamlining legal immigration; eliminating backlogs for family and employment-based immigrants; opening up greater numbers and new categories of visas; enhancing and improving employment verification systems; mandating “biometric work authorization cards”; creating SSN “locks”; adding due process protections; and registering employers will all work to ensure legal migration and immigration are the first choice of those who want to come to this country to better their own lives and those of their families, and contribute to the growth, vitality and improvement of the United States of America.

The American people want this problem solved. In poll after poll the American people demand law and order, secure borders and broad immigration reform that includes earning U.S. citizenship. Immigration reform is good for national security and public safety as a whole. We learned in Utah that when brave and selfless policy makers step up and do what is right, instead of what is thought to politically expedient, they will be supported by not just those who carry Bibles, wear badges, and own businesses; but by the majority of the American public and in particular, by those who participate in our Constitutional Republic by going to the polls.

I look forward to continuing this positive discussion on how best to move forward with passing broad immigration reform into law this year. We cannot let the status quo continue any longer. The moral imperative is now for uniquely American comprehensive immigration reform that is just, pragmatic, fair and compassionate.

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<sup>1</sup> Last year First Focus Campaign For Children published a treatise I wrote entitled “A Dream of Youthful Hopes” which details much of my experience in dealing with the lack of action by federal policymakers to address immigration reform which resulted in the introduction of state laws around the country that have a direct impact on children of immigrants. The paper highlights the success of the Utah Compact as well as the importance of recent federal administrative reforms and need for comprehensive reform. It gives insight into my education and experience underlying my testimony today. A copy can be downloaded at <http://www.firstfocus.net/library/reports/a-dream-of-youthful-hopes>



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April 19, 2013

Mr. Patrick Leahy  
Chairman  
United States Senate Committee on the Judiciary  
Washington, D.C.

Good morning, Mr. Chairman, and Members of the Committee. My name is Guillermo Vidal. I am here to lend support to the Border Security, Economic Opportunity, and Immigration Modernization Act of 2013.

I am the President and CEO of the Hispanic Chamber of Commerce of Metro Denver, an organization of over 2000 business members.

Although I represent the business community today, I also bring over 36 years of experience as a public servant, holding several positions within the great city of Denver, Colorado including serving as the city's 44<sup>th</sup> and first foreign born mayor.

Before I served the state of Colorado for twenty three years in the Colorado Department of Transportation, the last five of which I held the post of Executive Director and part of a governor's cabinet.

I am a proud American, but I am also Cuban immigrant who, in 1961, at the tender age of 10, was sent by my parents to the United States with my two brothers as part of a program called Operation Peter Pan that brought 14,000 Cuban children to this country unaccompanied by their parents in order to save them from Castro's Cuba.

For this reason, my testimony today is rooted in everything that I am, everything that I have and everything that I have ever achieved as a result of the door that was opened to me the day I arrived in the United States.

My personal story represents two great truths about this country. First, that anyone regardless of the most humble beginnings can become anything they set their mind to, like the mayor of a large city or perhaps even greater,

Fifty two years ago I arrived in this country parentless and was sent to live in an orphanage in Pueblo, Colorado. Every day I woke up not knowing what suffering awaited me. Many nights I cried myself to sleep and asked a merciful God to take my life and spare me from the great sorrow I was experiencing.

Yet, here I am today testifying before you, the Senate Judiciary Committee.

But the second truth that my story represents is that immigrants make positive contributions to the success of this country daily, especially when they can live out of the shadows.



Immigrants built America. We came escaping the desperation of poverty, or to free ourselves from oppressive regimes that violated our human rights. We came in search of education and opportunity.

We chose a new destiny, the United States of America, a beacon of hope and promise of a brighter future, a place where all can live in freedom and contribute to the success of their communities.

Unfortunately, over the years, indecisiveness and lack of action on comprehensive immigration reform has resulted in a dysfunctional system that has confiscated the respect we once held for immigrants and replaced it with a fear and ignorance that has dehumanized these individuals to the point that they are looked down upon as human throwaways.

I am encouraged by the bi-partisan effort that emerged to craft this legislation, but after all my years in government developing public policy, I know that no legislation will ever be perfect enough to satisfy every nuance from all political sides.

But hopefully we can agree on one thing; fixing our immigration system will contribute to the greater good of our country by;

- securing our borders and providing a safe, fair and orderly process into this nation.
- giving a clear set of rules and realistic timeline for future immigrants to live and work here.
- providing legal status and a path to citizenship to undocumented immigrants already here so that they may openly contribute to our society.
- keeping families together,
- providing immigrant children who came here following the will of their parents a stable home and their own opportunity at the American dream.

This Comprehensive Immigration Reform will bring people out of the shadows to;

- Provide a skilled and dedicated workforce that will grow our economy.
- Invite entrepreneurialism and innovation that will create more businesses and jobs.
- Bring in new revenues in the form of taxes that will help us run our country and strengthen our government
- Bring out into the open a new group of consumers that will spur new business growth.



My parents made an unfathomably courageous sacrifice in sending their children to this country, and I am the better for it. My life has been filled with hope, opportunity, meaning and purpose. I am fulfilling my parents' American dream. But the America that I was sent to as a child would never have tolerated what many immigrants must live with today; living in fear of being deported or separated from their families, having their wages stolen by a deceitful employer, or having no legal recourse when crimes are committed against them.

The fabric of America will continue to change and we as leaders should be the positive facilitators of that change.

I ask you to support comprehensive immigration reform. Let's recover that greater good America once proudly displayed for the rest of the world.

Thank you and I can answer any questions.

Guillermo "Bill" Vidal

## Senate Committee on the Judiciary

“The Border Security, Economic Opportunity , and  
Immigration Modernization Act, S.744”

Monday, April 22, 2013

Hart Senate Office Building , Room 216

10:00 a.m.

## Testimony of

Janice L. Kephart

former border counsel, 9/11 Commission

principal, 9/11 Security Solutions

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**Introduction**

Chairman Leahy, Ranking Member Grassley. Thank you for having me here today. I appreciate very much this committee's continued interest and effort in securing our borders and your willingness to hear from so many highly qualified experts today with whom I am honored to share testimony.

It is an honor to be before you as an alum of the committee that prepared me so well for my work as a counsel to the 9/11 Commission and my subsequent work on border and identity security. More specifically, my testimony is based on my work as a counsel on the 9/11 Commission "border security team," as an author of the 9/11 staff report, 9/11 and Terrorist Travel, and as the National Security Director at the Center for Immigration Studies for five years.

From the outset, let me make it clear that I, like many, consider the benefits and wealth of human potential that immigration brings to this country to be one of our greatest strengths as a nation. However, I also believe that we owe it to all Americans to maintain the integrity of our borders. I appreciate the S. 744's Congressional Findings, especially those that make clear that it is the federal government's responsibility to "maintain and secure our borders, and to keep our country safe and prosperous", "protect its borders and maintain its sovereignty", and a recognition that "illegal immigration... in some cases has become a threat to our national security." These tenets reflect and incorporate findings pertaining to abuse of our immigration system's historical

vulnerabilities, some of which were made clear by the 9/11 Commission, while others are reflected in more recent events, including the surge in illegal immigration we have seen across at least some key sections of the southwest border in recent months as well as the continued abuse of the legal immigration system by those with terrorist intentions.

To be clear, I was asked that my testimony cover the border security portion of S. 744, “The Border Security, Economic Opportunity, and Immigration Modernization Act”. The basis of my testimony rests on the basic finding of fact from my work on the 9/11 Commission, and subsequent work on terrorist travel, border and identity security: that border security is a matter of national security. From that vantage point, I thought most helpful to the Committee may be a review of the “triggers” that must occur before the “Secretary ... adjust the status of aliens who have been granted registered provisional immigrant status” set out in Section 3. My testimony therefore covers the “triggers” as follows:

Part One. Comprehensive Southern Border Strategy must be submitted to Congress and “substantially” deployed and operational  
 Part Two. E-Verify becomes mandatory  
 Part Three. An electronic, biographic exit system is in place  
 In addition, I’ve added in Part Four. Immigration Benefit Identity Verification as Vital to National Security Security.

## Part One. Comprehensive Southern Border Strategy

### A. Overview

The Comprehensive Southern Border Strategy called for in S. 744 has useful, albeit somewhat limited, elements. First, the concept of a mandate for a strategy for the southwest border is a good one. It is helpful. However, it is also incomplete as the Secretary of Homeland Security is not truly required to assure border security, just state the official Department opinion regarding what that strategy should be, whether that the strategy has been deployed and how well the metrics set out in S. 744 have been met. Also, there is another more nefarious problem with S. 744’s approach to border security: requiring only a strategy for the southwest border ignores the many loopholes that still exist in the legal system to enable entry and embedding of an illegal alien, such as the visa overstay or illegitimate asylum seeker.

The Border Strategy requires a new metric to measure border security, which the bill refers to as an “effectiveness rate”. The policy equation put forth in the bill to determine the required 90 percent “effectiveness rate” is defined as the annual number of illegal entries divided by “apprehensions and turnbacks” per sector. To be able to determine “apprehensions and turnbacks”, the strategy must deploy a means to create a 100 percent detection rate of these apprehensions and turnbacks. How that is to be done is undefined. The problem is this: if there is not 100 percent detection, then the 90 percent effectiveness rate set forth in the equation will be inaccurate, and the metric fails.

How would 100 percent detection rate best be achieved? The most fail-proof manner would be an interoperable common operating picture deployment by sector which enables Border Patrol agents to garner operational intelligence by geographic coordinates and type of activity on a 24/7 basis. How a 100 percent detection rate can be deployed otherwise that is both accurate and

reliable will be difficult with a combination of technologies that do not garner information in a standardized way.

Another issue with the 'effectiveness rate' is that it appears to be based wholly on human activity, and not necessarily on activity that affects public safety. Does the metric now mean that the Border Patrol, to maintain a sector's 'effectiveness rate' (assuming it can be achieved), will now prioritize only human and alien smuggling, and not drug cartel loads, weapons or other contraband which will not count towards the metric?

In terms of "high risk border sector" where 'effectiveness' must be maintained, this definition is questionable as well. While reallocating that term to sectors on an annual basis recognizes that smugglers shift their entry points based on law enforcement and other logistics issues, an annual determination is an extremely slow response to flows that can shift on a weekly basis. The failure to embed flexibility into a high risk border sector, or even requiring that a determination be made about whether a sector is high risk or not, may complicate and not support the Border Patrol mission, which is to secure the entire border.

The 'Southern Border Fencing Strategy' is a valuable requirement of S. 744. A fencing strategy with required deployment, with attending authorizations, would also have value as a standalone statute. However, S. 744 only calls for a strategy, nothing more. While a strategy is a good start, it is actually building one -- one that actually is built to keep individuals out -- that works to protect both the border and the environment. This is an issue which I have written about extensively.

The Southern Border Security Commission established in Section 4 of the bill is an invitation for failure. Immigration control is a federal responsibility which the states and local communities are enabled to support with laws that reflect federal law, or in conjunction with federal law enforcement. Creating a Commission five years down the road if the Border Strategy created in S. 744 fails is tantamount to, at minimum, a political gesture asking for the states to make recommendations and decisions which can not be operationalized without federal support. That is a waste of taxpayer money in an era of severe budget cuts as well as a political distraction from the federal government's ultimate accountability.

#### B. S. 744's Southwest Border Strategy Metric in Light of the Surge of Illegal Crossings

Predator UAV: "We haven't been in that area for hours; we're being inundated where we're at."

Fixed-wing pilot: "This in Night Owl on air four. We're ten eight. We're en route about two zero mikes from Ajo. You guys got targets out there?"

Predator UAV: "Are you kidding me? We just broke the record."

Listen here [[http://www.secureborderintel.org/BorderBlotter/Omaha10\\_030113.wav](http://www.secureborderintel.org/BorderBlotter/Omaha10_030113.wav)] to Border Patrol pilot conversation March 1, 2013 at 7 PM

Whether the metric outlined in S. 744 is adequate to deal with the complications of border enforcement should be considered closely. The metric's relative simplicity focusing on apprehensions does not take into account these complications, and may have unintended consequences such as encouraging the Border Patrol to focus on the smuggling of people to the exclusion of drugs, weapons and other contraband.

It also remains unclear how many individuals S. 744 will legalize. Right now, the numbers could be substantially higher than the 11 million generally accepted as the illegal population currently residing in the United States, especially since S. 744 enables those previously deported to seek amnesty.

Recent data on illegal crossings suggests strongly that the numbers are substantially higher than the 11 million. Whether the American public, and Congress, is comfortable with an increasing number of illegal aliens who come here specifically, or in part, to benefit from S. 744 is an outstanding question. It would be inappropriate for S. 744 to be considered in a policy vacuum, rather than in the reality of the border as it stands today. Below is a snapshot of the southwest border today.

1. Overview of Illegal Border Crossings Since August 2012

At least over the central Arizona border, there has been a tremendous surge in the amount of illegal border crossing activity from August to December of last year. August is usually a relatively low number of crossings due to high heat creating dangerous conditions. However, when in late August 2012 the DHS Deferred Action program began accepting applications from illegal aliens that qualified under the provisions of the June 2012 memo, there was an uncanny corollary surge in illegal crossings. While it is impossible to know if the surge is related to the deferred action applications, the fact remains that the numbers surged every month from August through December 2012. There were 540 incidents in August while there were 2,668 incidents in November. The result was a 494 percent increase in activity during that time frame.

Date	TYPE of Incident			Drug Sub-Types **						Anecdotal	
	Total Incidents	Human	Drug	Drug LD Vehicle	Ultra & Aircraft	Drug Packers	Scout LP/OP Rip Crew	Drug Cache	Unk	Weapon Involved	Homicide Incidents
Prior	346	205	141	78	3	43	19	1	2	13	1
2012-Jun	72	46	26	14	0	10	1	2	2	1	0
2012-Jul	91	66	25	6	1	17	0	0	0	1	1
2012-Aug	540	436	104	24	2	65	5	8	2	7	0
2012-Sep	1194	1044	150	31	0	96	8	4	9	6	1
2012-Oct	2019	1853	166	30	3	101	10	10	15	14	2
2012-Nov	2668	2423	245	30	1	188	6	6	17	14	0
TOTALS:	6930	6073	857	213	10	520	49	31	47	56	5

The high numbers from last November are reflected in recent weeks as well, with groups over the same area ranging from 20-40 per day, and group size anywhere from one individual to ninety. Hidden cameras show pockets of areas where the drug cartels do near daily drops, but the Border Patrol is never seen in any of the footage.

This chart and data are derived from the non-governmental volunteer group Secure Border Intelligence, who uses various official and unofficial sources, including hidden cameras, to compile a list of incidents along a portion of Arizona's border with Mexico. All data are verifiable, but confidential, given the sensitive nature of the work. A summary chart is below. All charts come with attending mapping pinpointing activity, showing where heavy traffic versus lower traffic is occurring across the year, and various points in time. Hidden camera and law enforcement audio is anecdotally available as well. Note those reported here are only the illegal

crossings which were either recorded or noted by federal, state or local law enforcement, or picked up by hidden camera. Other illegal crossings remain unknown.

## 2. Surge Analysis Details

From August 1 to September 23, 2012, more than 1,000 incidents occurred in 915 "hot spots" in a small area stretching from the central Arizona border to about 70 miles north to the Interstate 8 east-west highway, crossing north over the Tohono O'odham Indian Reservation to the Barry Goldwater Firing Range and into the Sonoran Desert National Monument. There have been 3,275 incidents from August 1 to October 19. In contrast, just 509 incidents were logged from January through July.

"Incidents" are defined as groups of individuals involved in illegal activity, such as those on foot being smuggled by coyotes, drug packers on foot, drug vehicles operating in tandem, ultralight planes dropping drugs to a group of waiting vehicles, or even a pack of lookout scouts crossing in preparation for another series of drug loads in the near future. Incidents can range in size from a handful to as many as 90 individuals at once. One incident in late October included 200 individuals amassing just south of the border and then dispersing into smaller groups to cross.

Recall the issues that arose when Agent Nicholas Ivie died in October 2012 immediately after being shot in the head by a fellow agent due to confusion surrounding a group of individuals who had set off a sensor about six miles east of Bisbee, Ariz. With bounties on Border Patrol agents and a surge in numbers, it is almost predictable that agents operating in such a tense atmosphere could make such a tragic and fatal mistake.

There are other issues as well. At least in late 2012, the Border Patrol was not apprehending in the traditionally heavily trafficked area of Casa Grande and Gila Bend about 80 miles north of the border at east-west corridor I-8. However, law enforcement continued to track as many as seven groups at a time in this area via air support. Primarily working this corridor on the ground to fill in the gap left by the Border Patrol is the "West Desert Task Force". The Bureau of Land Management leads often, and operations include representatives from the High Intensity Drug Trafficking Area force, the Arizona Department of Public Safety, and Pinal and Maricopa County sheriff's offices. Most often these operations occur at night. When operating, the task force often is picking up two incidents per day just between Gila Bend and Casa Grande. This could mean there are actually up to six incidents a night, if the conventional estimate is correct that law enforcement detects just one-third of actual activity in the vicinity of the border.

Observation 1. The number of incidents that grew late last year made clear the level of border insecurity existed in the area. According to Secure Border Intelligence data, 73 percent of the 1,881 incidents occurred in the 54 days between August 1 and September 23. In August, the month began with a low of seven incidents on August 5. By August 31, there were 33.

On September 1, there were 38 incidents. By September 29, the month peaked with 62 incidents in one day. On September 30, there were another 38. On October 1, there were 43 incidents.

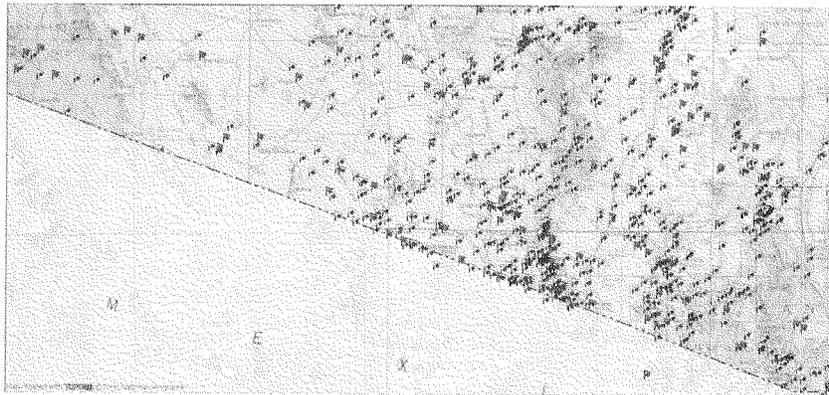
By October 18, the per-day incidents had jumped to 83.

Following are two maps of the Arizona border south of Tucson. The first is from the beginning of the year through July 29, the second through October 22. While the amount of activity the Border Patrol estimates that it intercepts varies, a conservative statistic puts detection at about one-third of actual illegal crossings; applying the same rule of thumb would suggest these maps are missing some two-thirds of total incidents.

January 1, 2012- July 29, 2012. Red flags are drugs, yellow are human smuggling. Blue dots are actual locations determined via map coordinates.



January 1, 2012 – October 22, 2012. Red flags are drugs, yellow are human smuggling. Blue dots are actual locations determined via map coordinates.



Observation 2. The size of each incident was growing. One incident in October involved about 200 illegal aliens massed on the Mexican side of the border who then spread out to cross the

border in smaller groupings. The area is south of the Baboquivari Mountains — a favorite of coyotes — and is administered by the Bureau of Land Management. It is located about 80 miles southwest of Tucson and just east of the Tohono O'odham Indian Reservation. These mountains are the Tohono O'odham's holiest location. Recently the area had 100 illegal aliens in five groups of 20 staging to cross the border.

These peaks have seen the largest groups crossing in this area, with a group of 91 in Vamori Wash, just west of these mountains and seven miles north of the border, and two groups of 70 each in the mountains. About 90 people across the three incidents were apprehended and the remaining 141 were not stopped, representing the average of Border Patrol apprehensions.

The incidents have grown so much in both size and number that those tracking them can no longer keep up with counting individuals in a group as they struggle just to keep up with incident numbers. It seems that traditional coyote and cartel concerns about being noticed and stopped due to larger group sizes may be receding.

Observation 3. Drug activity is unabated. Not a single day has passed between August and December without a drug incident, with as many as 11 in one day. A drug incident is defined as a group involving some combination of multiple drug vehicles, packers, scouts, drug bales, and weapons. Most days included one to three load vehicles. Only six days did not include drug packers. Drug pack horses are also being used, a new tactic for drug runners.

Oddly, only 16 scouts were found, but 20 drug-related arrests included weapons.

A typical drug apprehension goes like this: On October 9 at 1 p.m., 16 miles east of Gila Bend and three miles south of Interstate 8, air support was requested for multiple subjects in custody along with three vehicles filled with 30 bundles of about 648 pounds of marijuana with an estimated street value of \$972,766.90.

Observation 4. Violence continues. From August to December there were four homicides of illegal aliens. From January to August there had been just one.

Observation 5. Use of ultralight planes to carry drug loads is on the rise. In one incident on October 20, the plane flew 73 miles into U.S. airspace before dropping 10 bales of marijuana. These pilots are crafty, often zig-zagging along the border to test whether they are being followed or possibly about to be intercepted before proceeding across to drop their drug loads.

In this case there were three smugglers on the ground and one load vehicle. All three were apprehended.

Law enforcement does not track these incidents back across the border and does not try to stop airspace incursions or attempt to confiscate the ultralight planes; it only seeks out the drugs and runners left on the ground. The October 20 incident unfolded over two hours, as the ultralight entered U.S. airspace, followed a path that allowed it to fly close to the ground, circled until it found the load truck, dropped the load, and returned to Mexico unharmed without ever having been challenged.

The next night another ultralight incursion occurred, but there was no law enforcement activity to track its purpose or stop it.

Observation 6. "The word amnesty possesses remarkable power on the Mexican side of the line. It has the same effect as a starter's pistol." — Leo Banks, reporter, [The Tucson Weekly/a>](#).

The president began implementing his [deferred action amnesty program](#) in August. Illegal aliens were offered driver's licenses in California in September. Other states followed suit. Amnesty plus driver's licenses seemed to create a magnet for an illegal population that seeks both legality and the ID that embodies legality in most places in America — the driver's license — so they can get a job and live in the United States comfortably. Despite the border violence, abuse, extortion by smugglers, and the high cost of coyotes, plus "border bandits" and "rip crews" within U.S. borders and cartel-controlled corridors, Mexicans and other foreign nationals may well see the value in risking the violence and potential death for the chance at a job and amnesty being offered north of the border.

### 3. Texas

In a recent series of stories from FOX News reporter William LaJeunesse, Border Patrol sources told LaJeunesse that the newest illegal immigrants have nothing to fear from being caught. "With the knowledge of immigration reform, you will -- and are -- seeing a huge flow of illegals hitting the Southern border looking to stay caught," a Border Patrol source told Fox News. Another said, "Central Americans and South Americans are flooding the system asking for hearings knowing immigration reform/amnesty is coming." Moreover, the source told Fox News that with the freeing of thousands of non-criminal illegal aliens from detention facilities while awaiting removal or deportation hearings, that law enforcement calls the "notice to appear" a sarcastic "notice to disappear."

LaJeunesse also reported that Fox News received emails that show Texas Border Patrol is feeling the heat from the surge in illegal crossings as well. Border Patrol officials in Texas feel overwhelmed by the sudden influx from Mexico. "Not sure if you saw our last detention report, but we have approximately 700 [illegal immigrants] ready to go and another 1,000 unprocessed," read one. "We have been at emergency levels for a while and we are now entering critical mass."

### Part Two. S. 744 Requirement for a Mandatory E-Verify is a Good Idea, Minus the Revisions

It has taken more than 20 years, but E-Verify is finally in a form that is helpful to those employers who choose to use it. E-Verify's on the Web, with straightforward access. Error rates are low. The human-resource personnel who use it attest that it is easy to use, cheap and helps straighten out hiring issues up front, before cost and disruption become a grave concern. Labor statistics from last year showed about 1 in 8 new hires nationwide checked through the system. E-Verify has clear momentum.

E-Verify replaced a paper-based system that employers incessantly complained about for good reason. Even after Sept. 11, 2001, employers were in a no-win situation with the federal government; they faced an immigration law rightly forbidding the hiring of illegal workers but

had to rely on a paper-based system which could not verify the identities or documents of new hires. Then, with the creation of E-Verify in 2004, the main burden for determining work authorization shifted to the government in a meaningful way, modernizing what was known as the Basic Pilot Program.

E-Verify taps into the Social Security Administration (SSA) database for verification and, for foreign workers, checks with U.S. Citizenship and Immigration Services (USCIS). Photos are available for those presenting immigration cards as their IDs, and this is to be expanded to include passport photos and, hopefully, driver's license photos as well.

Kinks in the system are continually being fixed at a remarkable pace; 94 percent of hires are now verified instantly, with a mere one percent requiring further action - and most of these are new citizens who have not had their Social Security information updated. The rest are rejected as not authorized to work. Chilling - and perhaps good proof that E-Verify is doing its job - is that the numbers rejected by E-Verify as not authorized to work closely parallels the estimated percentage of illegal aliens in the work force, about 5 percent.

While S. 744's interest in making a mandatory E-Verify a centerpiece of assuring a legal workforce is noteworthy, unfortunately what is most important about S. 744 is that it renders E-Verify initially unhelpful, as most individuals will attain authorization. Nor does a mandatory E-Verify appear to require DHS to act on those who fail authorization. S. 744 calls for no less than 5,000 USCIS and Immigration and Customs Enforcement (ICE) employees to handle E-Verify. Nowhere does the law (current or S.744) require that an alien with a final nonconfirmation be turned over to ICE to be put into removal proceedings. There are no consequences for illegal aliens who fail E-Verify. Making E-Verify mandatory without consequences does not assure adherence to immigration law.

Moreover, E-Verify's construct adds not one, not two, but three levels of review of a nonconfirmation in E-Verify, culminating in the alien receiving four opportunities for authorization. The practical result is that this appellate process for the alien creates an extremely difficult atmosphere for an employer to terminate an employee, even when clearly the grounds for authorization is likely nonexistent.

To make matters more confounding, S. 744 adds unlawful employment practice to the lengthy list of U visa grounds to apply for a visa. This means that an alien that fails E-Verify confirmation despite repeated, and possibly frivolous, time-consuming and costly appeals, can claim harm from the E-Verify process and get a U visa.

S. 744's straightforward requirement for a mandatory E-Verify is sufficient. Adding appellate processes to an already well-developed confirmation / nonconfirmation process is not helpful and should be deleted. Also unhelpful is the ability of a nonconfirmed alien to obtain a U visa by claiming the E-Verify program caused harm.

### Part Three. S. 744 Unnecessarily Requires an (Insufficient) Exit System

On August 23, 2001, the CIA provided biographical identification information about two of the hijackers to border and law enforcement authorities. The CIA and FBI considered the case

important, but there was no way of knowing whether either hijacker was still in the country, because a border exit system Congress authorized in 1996 was never implemented.

#### 9/11 and Terrorist Travel monograph (August 2004)

This nation most certainly needs to fulfill the mandate to complete a comprehensive exit system that includes air, land and sea ports of entry. However, S. 744's exit component fails to include the largest volume of crossings, that of the land border ports of entry. In addition, the exit component of S. 744 is unnecessary for two reasons: (1) six prior inconsistent exit laws have already complicated the exit requirement enough; and (2) just a few weeks ago congressional appropriators used their purse strings to realign exit implementation to Customs and Border Protection.

#### A. National Security Component of Exit; Why We Need It

In September 2011, on 9/11's ten year anniversary, 9/11 Commission Chairman Tom Kean and Vice-Chairman Lee Hamilton, who together led the bipartisan commission forward politically and substantively in a manner that has changed the way we look at national security, released their "[Tenth Anniversary Report Card: The Status of the 9/11 Commission Recommendations](#)." The report highlights the top nine areas the Commissioners believe require the most work. They term these "Nine Major Unfinished 9/11 Commission Recommendations."

Discussing the "evolving terrorist threat to the U.S.", the commissioners refer to the breadth of al Qaeda affiliates that have multiplied in diversity since 9/11: "In assessing terrorist threats to the American homeland, senior U.S. counterterrorism officials now call attention to al Qaeda's strategy of 'diversification' – attacks mounted by a wide variety of perpetrators of different national and ethnic backgrounds that cannot easily be 'profiled' as threats." Such could be the description of the Boston Marathon terrorist attack perpetrated by two Chechen refugee brothers brought to the United States as children.

Yet despite the diversification of the terrorist threat and the huge volume of border crossings, this nation still lacks a comprehensive exit system.

Not having an exit system in place led the 9/11 commissioners to conclude that our border system must include data about who is leaving and when, with the following recommendation: "The Department of [Homeland Security](#), properly supported by the Congress, should complete, as quickly as possible, a biometric entry-exit screening system. As important as it is to know when foreign nationals arrive, it is also important to know when they leave. Full deployment of the biometric exit ... should be a high priority. Such a capability would have assisted law enforcement and intelligence officials in August and September 2001 in conducting a search for two of the 9/11 hijackers that were in the U.S. on expired visas."

Our more recent experience with terrorist threats and attempts reiterates the commissioners point. In the wake of the Christmas Plot and the near-getaway by would-be Times Square bomber Faisal Shahzad (who had already boarded a flight leaving the United States when he was arrested), we are once again reminded that border [security](#) is an essential element of national security, and exit control is part of that rubric.

## B. S. 744 Confuses Multiple Laws Already on the Books Requiring Exit, While Eliminating the Current Land Border Requirement

Other nations, like Australia, have made a biographic exit part of their immigration controls for years. Yet issues of money, politics, and practicalities of infrastructure have haunted this issue for the last 17 years in this country. Various laws requiring exit control have sat on the books since 1996. There have been discussions, policy platforms, even pilot programs, but to this day, we do not have a full-fledged exit program covering air, sea and land ports of entry.

In the post-9/11 era, the issue of national security and biometrics dominated border security discussion and policy. The issue has never failed to engage Congress. Even before 9/11, in 2000, two separate laws were passed, one that set up exit and the other that tied it to the Visa Waiver Program. In 2001, the USA Patriot Act chimed in again, demanding exit. In 2002, the Border Security Enhancement law again required exit, and in 2004, the intelligence reform act emanating from 9/11 Commission recommendations included it again. Beginning in 2004, and until 2007, pilot programs for exit were undertaken at the demand of Congress. The technology worked, but compliance rates were low since the kiosks were not manned by government and not clearly mandatory.

Then in 2007, the 9/11 Commission Recommendations Act reiterated the need for exit and required exit apply to all foreign nationals entering under the Visa-Waiver Program, adding in a biometric component. The basic idea behind a biometric exit requirement was to reassert the 9/11 Commission recommendation that the federal government assure that people are who they say they are in real time, and that no derogatory information be linked to them to prevent departure.

Data gathered – depending in part on whether the data was gathered and vetted in real time – would provide overstay data and watchlists hits. Overstays would give CBP and the State Department better data to determine who gets to visit the US again, and ICE better information about who returned or illegally overstayed. Exit data may even give Joint Terrorism Task Forces the ability to curtail terrorist absconders who sought to slip out of the US unnoticed based on verified watchlist hits – akin to what we saw with the Times Square bomber – or those of us on the 9/11 Commission staff hoped. US-VISIT, the DHS program that takes 10 fingerprints and a digital photo of foreign nationals when they enter the country, seemed the perfect fit to do a biometric exit.

Then in 2008, DHS put out a proposed rulemaking for the “Collection of Alien Biometric Data Upon Exit From the United States at Air and Sea Ports of Departure,” but it put the onus on airlines to collect biometric data anywhere in the international departure process, with no money. The airlines balked. A viable exit system was far from implementation.

In 2009, congressional appropriators, clearly frustrated by the lack of progress in implementing exit, required two airport pilot programs before appropriating further monies for exit. In the June 2009 pilot programs conducted by US-VISIT at Detroit and Atlanta international airports, one tested TSA checkpoints, the other required CBP to screen departures on the jetway. Airlines refused to participate in the pilot programs, reiterating the emerging agreement that exit, like entry, is primarily a government function. Both programs successfully used border inspection

personnel to take biometric exit data, at the jetways (in Detroit) and TSA checkpoints (in Atlanta).

Both went very well, with no increase in processing time that amounted to missed flights, or even flow time or longer lines. Those processed complied. Overstays and considerable watchlists hits were found, proving that a biometric exit fulfilled both immigration and security functions simultaneously. Moreover, the technology worked. Overall, the Air Exit pilots confirmed the ability to biometrically record the exit of those aliens subject to US-VISIT departing by air.

In October 2009, the appropriations committees received the evaluation report from US-VISIT as required by law. However, Secretary Napolitano decided not to pursue exit, as she testified before this committee stating her conclusions as to why.

#### C. Appropriators Just Shifted the Exit Requirement to CBP Changing the Implementation Dynamic -- It May Well Work

From its inception, US-VISIT was involved with the statutory requirement for exit because of the legal requirement that the program be biometric. Being the only true biometric and immigration shop, US-VISIT was saddled with conducting exit pilots and rendering massive reports that President Obama's DHS never allowed to see the light of day. Meanwhile, CBP, which would be ultimately responsible for full implementation of exit as they are now at entry, was included in pilots and contributed input, but never had final say, control, or accountability for getting the job done.

However, Congressional appropriators, in just the past few weeks, took the issue off the table and in one set-aside paragraph, made clear that CBP is fully in control and accountable for getting the exit done.

The appropriators also finally broke down the various legal requirements pertaining to exit into a viable, practical, phased approach that was desperately needed, adding clarity to convoluted exit-tracking requirements listed in a handful of different laws. CBP has clear marching orders: the agency must produce an enhanced biographic exit-tracking plan first, and quickly, with a later phase-in of a biometric exit plan.

One more potential benefit of the new shift of overstay analysis to ICE (done at the same time by the appropriators) and exit implementation to CBP: this change may cause the necessary friction to actually make exit happen. ICE now relies on many forms of exit data, but getting the same data in the same manner with the same standardized sets of information consistently from CBP would make their job more accurate and efficient. As CBP uses exit data to determine admissions and State to issue visas, mutual agency symbiosis may create the atmosphere to finally get exit done, and should be given a chance to succeed.

#### Part Four. Immigration Benefit Identity Verification as Vital to National Security

*OH GOD, you who open all doors, please open all doors for me, open all venues for me, open all avenues for me.*

- Mohammed Atta, operational lead for 9/11 terrorist attack

The overarching border security problem with S. 744 is not as much with the Comprehensive Southwest Border Strategy as with the legalization side of the legislation. The failure is simple and pervasive: there is no way to assure most applicants are who they say they are, and have no derogatory information attached to their identity that would make them a national security or public safety threat. Why? Because most of these individuals have no verifiable identity information or authenticatable identity documents. This includes those watchlisted, since the current US watchlist exists with no requirement for the attending biometrics. Thus, if a terrorist or criminal changes their name, and has no immigration or criminal background, that individual will likely be able to enroll in S. 744's legalization program.

#### A. 98 Percent Watchlisted are Foreign-Born

To place in perspective the national security aspect of creating integrity in immigration benefits adjudications, it is important to note that 98 percent of those watchlisted are foreign-born. That means that there is a significant terrorist population that could seek to change their identity and apply for immigration benefits under S. 744.

More specifically, in 2010, the FBI's Terrorist Screening Center confirmed the identity of 4,876 alleged terrorists who had encounters — usually for reasons unrelated to terrorism — with law enforcement. Today, more than 98 percent of those individuals on the federal government's sole Terrorist Watchlist are associated with international terrorism (foreign nationals or Americans attacking Americans based on international extremist ideologies).

Senior FBI sources put the number of current terrorists residing in the U.S. conservatively at 20,000 to 30,000 of the approximate 550,000 individuals listed on the FBI's official terror watchlist. 10,000 to 20,000 of those in the United States are foreign-born. For the full CIS Memorandum detailing the fact that 98 percent of the terrorist watchlist, see "[Administrative Amnesty and the Thousands of Watchlisted Terrorists Residing in the United States](#)".

The bottom line is that S. 744 needs to take into consideration that the 10,000 to 20,000 terrorists that law enforcement is well aware of may change their identity and seek legalization. Without thorough vetting, there remains the possibility that at least some of these individuals (those listed without attending biometrics) could be legalized under S. 744.

#### B. Identity Vetting Critical to Preventing Fraud Used by Terrorists and Others

The processing and vetting provided in the legalization of an unknown illegal population is critical to assure an individual is who they say they are, and does not pose a public safety or national security threat to the United States. Thankfully, S. 744 does provide that no application for provisional status be approved until "national security and law enforcement clearances" have been completed.

However, if an individual has never encountered the U.S. criminal system, we will not know their criminal past. If an individual has never encountered our immigration system nor our criminal system, there will be no biometrics to vet those individuals' identities.

Further, there is no way for the immigration system under this type of legalization to verify birth certificates, passports, or other core identifying information since these individuals' origins lay

outside the United States. Thus, the immigration system will not be able to adequately determine if an individual applying for legalization is who they say they are, or has used the legalization process to create an entirely new identity which hides a personal history that makes clear the individual is a serious public safety or terrorist threat.

The USCIS is in a constant struggle with fraud based on counterfeit or stolen identities. According to the Federal Trade Commission, identity theft itself cost taxpayers \$1.52 billion in 2011. S. 744 does not make clear how the vetting process assures against identity theft and fraud. S. 744 does not assure against the national security risk posed by terrorists, or members of drug cartels, seeking to game the system. At base, S. 744 does not verify that individuals are who they say they are, a key fundamental concept to achieving border security that the 9/11 Commission put forth in its Final Report recommendations.

This next section reviews in detail these abuses from 1990-2005, and a later evaluation I conducted on terrorist attempts/attacks from 2009-2013.

### C. Terrorist Abuse of Immigration Loopholes and Amnesties

In light of the Boston Marathon terrorist attack, we are reminded once more that border security is essential to national security, a concept which is reignited with every terrorist attempt by a foreign born individual in the United States since 9/11. S. 744 reminds us of past amnesty laws, and their abuse by terrorists. In fact, the 1986 amnesty program was fraudulently used five times in attempts to establish residency. One terrorist, Mir Aimal Kansi, sought amnesty under the 1986 law for illegal entrants. Four others, three convicted for their roles in the 1993 World Trade Center bombing and one in the 1993 Landmarks case, sought amnesty under the Special Agricultural Workers Program. Three who sought amnesty under this program attained it.

Many successfully obtain other immigration benefits while here. These facts I noted in my 2005 report Immigration and Terrorism: Moving Beyond the 9/11 Staff report on Terrorist Travel.

This report covered the immigration histories of 94 terrorists who operated in the United States between the early 1990s and 2004, including six of the September 11th hijackers. Other than the hijackers, almost all of these individuals were indicted or convicted for their crimes.

My work on the 9/11 Commission made it clear that terrorists need travel documents for movement at some point during their journey here as much as they need weapons for operations. Once within U.S. borders, terrorists seek to stay. Or, some are radicalized once here. Doing so with the appearance of legality helps ensure long-term operational stability. Terrorist travel handlers overseas are well of this fact, and seek out those with legal status in the United States. At the 9/11 Commission we called this practice embedding.

The 2005 report findings show widespread terrorist violations of immigration laws. The terrorist events of the last decade highlights the danger of our lax immigration system, not just in terms of who is allowed in, but also how terrorists, once in the country, used weaknesses in the system to remain here. The 2005's report makes clear that strict enforcement of immigration law -- at American consulates overseas, at ports of entry, and within the United States -- must be an integral part of our efforts to prevent future attacks on U.S. soil. Unfortunately, these findings remain relevant today.

The 2005 report's findings included:

- Of the 94 foreign-born terrorists who operated in the United States, the study found that about two-thirds (59) committed immigration fraud prior to or in conjunction with taking part in terrorist activity.
- Of the 59 terrorists who violated the law, many committed multiple immigration violations -- 79 instances in all.
- In 47 instances, immigration benefits sought or acquired prior to 9/11 enabled the terrorists to stay in the United States after 9/11 and continue their terrorist activities. In at least two instances, terrorists were still able to acquire immigration benefits after 9/11.
- Temporary visas were a common means of entering; 18 terrorists had student visas and another four had applications approved to study in the United States. At least 17 terrorists used a visitor visa -- either tourist (B2) or business (B1).
- There were 11 instances of passport fraud and 10 instances of visa fraud; in total 34 individuals were charged with making false statements to an immigration official.
- In at least 13 instances, terrorists overstayed their temporary visas.
- In 17 instances, terrorists claimed to lack proper travel documents and applied for asylum, often at a port of entry.
- Fraud was used not only to gain entry into the United States, but also to remain, or "embed," in the country.
- Seven terrorists were indicted for acquiring or using various forms of fake identification, including driver's licenses, birth certificates, Social Security cards, and immigration arrival records.
- Once in the United States, 16 of 23 terrorists became legal permanent residents, often by marrying an American. There were at least nine sham marriages.
- In total, 20 of 21 foreign terrorists became naturalized U.S. citizens.

#### D. Foreign-Born Individuals Remain a Significant Terrorist Threat

There has been much emphasis in the past few years on a "homegrown" threat. Often the focus is on radicalized native born Americans. However, the Boston Marathon attacks remind us once more that "homegrown" can still mean foreign-born, with often those foreign-born having received significant immigration benefits.

In taking a close look at the most significant terrorist events within the United States since 2009, the immigration violations and abuse of immigration benefits is remarkably similar. Most incidents in the past five years were committed by foreign-born individuals, not Americans. In fact, four of the 13 most notorious terrorism arrests since 2009 involved naturalized U.S.

citizens. Five cases involved native-born U.S. citizens, while eight involved foreign nationals (it appears the Boston Marathon bombing included two foreign-born brothers), all of whom had received multiple U.S. immigration benefits. What follows is not a comprehensive list, but it does reflect the most significant U.S.-based terrorist incidents since 2009.

#### Illegal Overstays

February 2012: Amine el-Khalifi, a 29-year-old Moroccan man arrested for an attempted suicide bombing two blocks from the Capitol building while exiting the parking garage at the Labor Department. He thought he had a suicide bomb vest and an automatic weapon. He had been living in the United States since he was 16 as an illegal immigrant, having overstayed his tourist visa by 13 years.

September 2009: Hosam Smadi, a 19-year Jordanian illegal overstay by a year, attempted to detonate what he thought was a car bomb to destroy a 1.2 million-square-foot, 60-story Dallas office building.

#### Multi-Entry Visa

December 2009: Umar Farouq Abdulmutallab, a Nigerian with a multi-entry visa to the United States and prior travel into the country for a religious conference, detonated a malfunctioning explosive on board an international flight about to land in Detroit on Christmas Day.

#### Legal Permanent Residents

April 2013: Tamerlan Tsarnaev, 26, the alleged bomber of the Boston Marathon who was killed during a manhunt during the early morning hours of April 19, and his brother Dzhokhar Tsarnaev (see below), are believed to have used two homemade bombs that killed three and injured about 175 individuals aged five to 78. Both had come to the United States 10 years ago from Chechnya as refugees. Tamerlan was reportedly a legal permanent resident. U.S. law requires asylum and refugee applicants to apply for legal permanent residence within one year of arrival.

September 2009: Najibullah Zazi, an Afghan legal permanent resident residing in the United States since 1999, conspired to conduct suicide bombings (with others) on four rush-hour New York City subway lines on or near the 9/11 anniversary. The conspiracy had operational support from Al Qaeda abroad and explosives materials were stockpiled.

#### U.S. Citizens (Naturalized)

April 2013: Dzhokhar Tsarnaev, 19, reportedly a naturalized citizen at 18 who conspired with his brother, Tamerlan Tsarnaev (see above), to bomb the Boston Marathon.

November 2010: Mohamed Osman Mohamud, a 19-year-old Somali-born U.S. citizen, attempted to detonate what he thought was a car bomb during a Christmas tree lighting ceremony in Portland, Ore. He had told undercover agents he had dreamed since he was 15 of a "spectacular fireworks show" where he hoped all would be dead or wounded.

October 2010: Farooque Ahmed, a Pakistani-born immigrant who grew up on Staten Island and became a U.S. citizen at 17, conspired to bomb four Metro subway stations near the Pentagon in Virginia — Arlington Cemetery, Pentagon City Mall, Crystal City, and Court House — and a Washington, DC, hotel. Ahmed had conducted extensive surveillance and drawn up plans.

May 2010: Faisal Shahzad, a Pakistani-born U.S. citizen, detonated a "vehicle-borne explosive device" that malfunctioned in Times Square. He came to the United States in 1997 (likely on a tourist visa), but did not acquire a student F-1 visa until 1998. In 2002, he acquired an H-1B worker visa. In 2004, in an arranged marriage in Pakistan, he wed a U.S. citizen of Pakistani descent. In 2006, he became a legal permanent resident and in April 2009, just before the terrorist attempt, he acquired citizenship. His American passport enabled him to attempt to flee the country in May without concern of jeopardizing his legal status or calling attention to himself while his naturalization application was still pending.

#### U.S. Citizens (Native-Born)

December 2010: Antonio Martinez, an Islamic convert, attempted to detonate what he thought was a car bomb in front of a military recruiting center near Baltimore, Md.

November 2009: Nidal Malik Hasan, born to Jordanian immigrants of Palestinian descent, killed 13 soldiers and wounded 43 others in a shooting spree at Fort Hood, Texas.

October 2009: David Coleman Headley, of Pakistani descent, was arrested as a surveillance accomplice for the 2008 Mumbai (Bombay) terrorist attacks that killed over 160 people.

September 2009: Michael Finton, an Islamic convert, attempted to detonate what he thought was a car bomb in front of a federal government building in Springfield, Ill.

June 2009: Carlos Bledsoe, an Islamic convert, killed one soldier and wounded another at a military recruiting station in Little Rock, Ark.

#### E. A Note on Naturalization

As S. 744 seeks to legalize a large swath of the illegal population that eventually will be able to garner legal residency, and about which many of whom the immigration system knows little or nothing, it is important to note that perhaps the most current and graphic example we may have of a failure to properly vet an individual may be that of Dzhokhar Tsarnaev, the 19 year old just taken into custody in the Boston Marathon bombing.

What requires emphasis is the ease with which terrorists have moved through the U.S. border system and obtained significant immigration benefits such as naturalization. The Boston Marathon is yet another example of how the security gaps that existed in 2001, in many instances, exist today. The younger Tsarnaev brother just received his naturalization a few months ago, on September 11, 2012. Tsarnaev's older brother was a legal permanent resident known to the FBI for his terrorist sympathies. Both had come to the United States as children, aged 8 and 16, with families as refugees seeking asylum. At that point, the asylum system would not be aware of terrorist leanings. Perhaps there were none to be found.

However, ten years later at the age of 18, was there no way of learning of Tsarneav's terrorist intentions that may have been brewing before naturalization was granted? Would the fact that his brother had known terrorist ties and was interviewed by the FBI require a closer look by adjudicators of Tsarneav's naturalization application? Not likely. Immigration adjudications remain deeply stovepiped, a complicated problem where privacy issues and national security interests collide, sometimes to the detriment of national security. These issues remain unresolved today.

#### F. A Note on Political Asylum

The Boston Marathon terrorist attack bears in mind the special instances where political asylum enabled terrorists to legally embed while awaiting determination of their application, and work within 150 days. While the Tsarneav brothers responsible for the Boston attacks came as children of a family seeking asylum and thus it is not likely they would have sufficient intent to abuse the asylum system, the issue of asylum processing raises an important point in regard to those terrorists or terrorist affiliates who do embed in the United States by using the asylum system.

While asylum processing may have been tweaked over the past few years, such processing has not been tweaked enough to deny and deport individuals with known terrorist affiliations. Take for example the case of a Syrian that law enforcement knew well had ties to at least five 9/11 hijackers who remains in north Jersey and is now virtually immune from deportation. While 400,000 people wait for U.S. citizenship, Daoud Chehazeh has received political asylum for a third time after a series of bureaucratic screw ups. According to news reports, it is well known in the law enforcement community that Chehazeh facilitated the moves and protection of the 9/11 hijackers, including obtaining housing in Virginia for a few of them. Chehazeh had come from Saudi Arabia in 2000. He had no real job, and was closely associated with Anwar al-Awlaki-- who the President ordered killed with a drone in Yemen in September 2011. Because of national security requirements, the immigration judge was unaware of Chehazeh's terrorist past and helped him fill out immigration applications. Secretary of Homeland Security, Janet Napolitano, when asked whether she would intervene to reopen the case and seek deportation, described the Chehazeh case as closed with "clarity and finality". These are the unfortunate mistakes that can take place with asylum claims where there is a national security concern.

S. 744 provides that aliens who file frivolous applications of asylum are still eligible for provisional status, completely overturning current immigration law that specifically states that aliens who knowingly make a frivolous application are permanently ineligible for any benefits under the Immigration and Naturalization Act. Someone like Chehazeh, who could have been deported, could use this S. 744 provision even if he lost out on asylum. Asylum applications are already extremely difficult for courts to make fair determinations due to the long standing abuse by those gaming the system to stay in the United States. Enabling frivolous filings to still obtain provisional status usurps the difficult and delicate process of asylum by rendering the claim almost unnecessary.

S. 744 will also enable the President to classify not just individuals, but an entire community or group as refugees humanitarian reasons or if in the national interest, including tourism. The bill's language is unclear as to whether these individuals are required to be vetted through the

same scrutiny as regular asylum and refugee applicants. He can designate a whole group for humanitarian reasons or if in the national interest. While this provision may seem to be relatively innocuous, they are not. Under the rubric of 9/11 Commission border recommendations which have held their value with time, each applicant -- fairly and equally -- should be scrutinized for risk in a manner that enables, in the balance of equities, for national security to remain a high priority.

A few years ago, there were about 50,000 to 75,000 asylum cases are filed annually. In May 2005, Congress passed The REAL ID Act. It includes provisions dealing with key aspects of U.S. asylum law. The law narrowly reforms our asylum procedures to better ensure that all courts better scrutinize asylum claims so that legitimate claims survive and fraudulent claims get thrown out. In 9/11 and Terrorist Travel, we discussed in some depth that terrorists like 1993 World Trade Center mastermind Ramzi Yousef (whose uncle is KSM) used political asylum claims effectively to get in and stay in the United States. Even with the revision of the law, immigration personnel who deal with asylum applicants must remain cognizant that those who claim political persecution in a country that the United States considers a high national security risk should receive extra scrutiny.

There are a few reasons why these claims are an excellent choice for terrorists. First, the claim itself keeps the applicant from a potential automatic removal or detention. Second, if an applicant for asylum (whether at a port of entry, a hard border, or in a court room) does not appear to pose a threat to public safety, the lack of detention space usually means the applicant is free to move about the United States. Third, often the only information available to a judge is the word of the applicant without corroborating evidence, so fraudulent claims are easily made by those motivated to make them. For all of these reasons, political asylum claims usually permit terrorists to do what they seek: buy time to live here freely.

On June 14, 2004, Nuradin Abdi was indicted in Columbus, Ohio, on four counts, including conspiracy to provide material support to al Qaeda. In 1999, Abdi had applied for and received asylum. Abdi was allegedly involved in a plot with the admitted al Qaeda member Iyman Faristo blow up a Columbus shopping mall. In addition, Abdi allegedly received bomb-making instructions from a co-conspirator and had intended to travel to Ethiopia to receive training in guns, guerrilla warfare, and bombs at a military-style training camp. Federal investigators believe that the plot may have involved as many as five people. The three other men, unnamed, were truck drivers with Faris.

Up through 2005, there were 16 other instances of political asylum being used to either prevent removal or deportation are as follows:

\* Kamran Sheikh Akhtar was detained in Charlotte, North Carolina while videotaping buildings there in July 2004. He entered the United States illegally through Mexico in December 1991 and claimed political asylum in 1992. Five years later, in 1997, the asylum request was denied. A month later, he sought to resist removal by filing for residency based on marriage to an American. In March 1998, he is found by an immigration judge to be removable and is given voluntary departure, but a month later the marriage petition secures a permanent residency.218

\* Abdul Halim Hassan Al-Ashqar came to the United States on a student visa in 1989. He had received a scholarship through the U.S. government from the Thomas Jefferson Center "in order to complete my higher education in Business Administration" at the University of Mississippi. He was able to do so despite the fact that he had co-founded a university on the West Bank with Abu Marzook (eventually deported for his role as U.S. leader of Hamas) and Hamas founder Sheikh Ahmed Yassin. He had run public relations at that university for eight years prior to coming to the United States. Once in the United States, Al-Ashqar overstayed his visa and continued working for Hamas in a variety of functions. He was imprisoned for refusing to testify about Abu Marzook during a grand jury investigation. Al-Ashqar was then placed in deportation hearings himself, but claimed political asylum. The asylum claim was denied, but he fought that denial for six years in U.S. courts. In 2004, he agreed to voluntarily depart, but was instead indicted on RICO charges for running Hamas in the United States with Marzook. In January 2005 announced he was an independent candidate for president of the Palestinian Authority.

\* Hesham Hedayet, who killed airline personnel at LAX on July 4, 2002, filed for political asylum in 1992 but ended up acquiring legal status through a diversity immigration lottery.

\* Rabih Haddad, a Lebanese citizen and a co-founder and chairman of the Global Relief Foundation (GRF), was arrested on December 14, 2001, the same day that its offices were raided. GRF's assets were frozen by the U.S. Treasury Department on December 14, 2001, for financially supporting al Qaeda. Also on December 14, 2001, the government detained Haddad on a visa violation. Haddad was originally admitted to the United States in 1998 with the status of a non-immigrant visitor. His visa expired on August 31, 1999. Haddad was ordered deported. Despite a series of appeals and the filing of an application for asylum and withholding of removal, in November 2002 an Immigration Judge concluded that he presented "a substantial risk to the national security of the United States." Haddad appealed again and was denied again, and on July 14, 2003, Haddad was deported to Lebanon. After his deportation, the Department of Immigration and Customs Enforcement (ICE) issued a press release that reiterated GRF's ties to Wadi El-Hage and stated again that GRF was a Specially Designated Global Terrorist.

\* At least three people closely associated with the September 11 hijackers claimed political asylum, one that helped them obtain Virginia identification cards, and two other "friends."

\* Malek Mohamed Seif, a friend of 9/11 hijacker Hanjour filed a false application for asylum and was indicted for social security, mail, and immigration fraud.

\* Eyad Mohammed Mohammed Mustafa helped 9/11 hijackers (unknowingly) to obtain VA ID cards. He made a false claim of asylum during deportation in October 2002. The application was denied and he was deported to Jordan.

\* Mohdar Abdullah was a friend of two 9/11 hijackers. He claimed political asylum defensively in 2000 after overstaying his visitor's length of stay by a year and a half. He was charged with fraud in November 2001 and was deported to Yemen in May 2004. Yemen.

\* Abdel Hakim Tizegha, an associate of the LAX Millennium plotters, claimed political asylum based on persecution by Muslim fundamentalists. He said he entered at Boston as a stowaway on

an Algerian gas tanker. Hearings were rescheduled five times. The claim was denied two years later, and then appealed. Nine months later his location was unknown.

\* Abu Mezer, responsible for the New York City subway plot in August 1997, was arrested in Washington state in January 1997 after his third attempt to illegally enter the United States. The next month, he applied for political asylum, denying an affiliation with Hamas. In July, he did not show up for his hearing. Instead, he called his attorney and stated he had married a U.S. citizen and was living in Canada. On Aug. 1, 1997, he was arrested in New York City based on an informant's tip.

\* Muin Mohammad (aka Muin Shabib, Kamel Mohammad Shabib, and Abu Muhammad) is one of the original founders of AAEF and is listed on the group's 1993 IRS Form 990 as the secretary of the AAEF Executive Committee. According to an FBI Action Memorandum, Muin Kamel Mohammed Shabib attended the October 1993 Hamas conference in Philadelphia along with Abdelhaleem Al-Ashqar and others. Documents submitted by the Department of Justice in *HLFRD v. John Ashcroft* show that Shabib was identified by the government of Israel as a senior Hamas operative formerly in charge of Hamas' Central Section (Ramallah-Jerusalem) in the West Bank.

On March 16, 1994, the FBI in Falls Church, Va., at the home of Yasser Bushnaq, interviewed Shabib. During the interview, Shabib admitted supporting Hamas financially and politically. Shabib was interviewed under the pretext of gaining information relating to his immigration status (he had applied for political asylum in December 1993).

\* Faraj Hassan was arrested and charged with naturalization fraud in June 2004 after being granted refugee status from Syria in 1993. He worked for the Benevolence International Foundation that was considered a strong source of funding for Al Qaeda.

\* Three terrorists involved in the Feb. 26, 1993, World Trade Center bombing, Ramzi Yousef, Sheik Omar Abdel Rahman, and Biblal Alkai, all sought political asylum. Yousef, mastermind of the bombing, was initially arrested with fraudulent travel documents upon entry at JFK International Airport in August 1992. Yousef claimed political asylum and was released pending a hearing. Alkai, also a key witness in the Meir Kahane murder, filed for both "temporary protected status" using a fake birth certificate and fake immigration entry record in August 1991, and for political asylum in May 1992 falsely claiming a prior illegal entry. Sheik Rahman, who issued the fatwa for Anwar Sadat's assassination and was also convicted for his role as the spiritual leader of the 1995 conspiracy to bomb New York City landmarks, had a long history of immigration violations and fraud, including a March 1992 political asylum claim to prevent his pending deportation.

\* Mir Aimal Kansi, who killed two people outside CIA headquarters on Jan. 25, 1993, became an illegal overstay in February 1991. In February 1992, he simultaneously sought both political asylum and amnesty under a 1986 law. While the applications were pending, he was able to obtain a Virginia driver license and work as a courier.

\* Ibrahim Parlak of the Kurdistan Worker's Party applied for political asylum upon his arrival to the United States in 1991. In 1992, he was granted asylum and LPR status the following year. In

October 2004, he was charged with inciting terrorism and providing material support for terrorist activities. He was also charged with lying on his INS applications for failing to disclose his membership in the Kurdistan Worker's Party along with his prior aggravated felon record from Turkey.

Unfortunately, as made clear by the multiple appeals and despite law enforcement involvement in the 2013 asylum case of Daoud Chehazeh, these 2005 findings of fact are still relevant today.

Statement by Chris Crane, President,  
National Immigration and Customs Enforcement Council 118  
of the  
American Federation of Government Employees

Before the  
Senate Committee on the Judiciary

April 22, 2013

Good afternoon Chairman and members of the Committee,

I would like to begin by thanking the members of this committee who have met with me and expressed concerns for law enforcement and the needs of our officers. In particular I would like to say thank you to Ranking Member Grassley.

Americans should understand that this legislation only guarantees legal status for illegal aliens. It contains no promise of solving our nation's immigration problems; no guarantee of stronger enforcement on our nation's interior, or its borders. It ignores the problems that have doomed our current immigration system to failure.

I testify today without having the opportunity to read this bill in its entirety as the Gang of 8's rush to pass this bill denies their fellow Americans the time and means of effectively studying the bill and adding input.

This legislation was crafted behind closed doors with big business, big unions and groups representing illegal aliens – groups with their own interests. Groups that stand to make millions from this legislation. Anyone with a significantly different opinion on immigration reform was prohibited by the Gang of 8 from having input.

Lawmaking in our Nation has indeed taken a strange twist, as Senators invite illegal aliens to testify before Congress, and groups representing the interests of

illegal aliens are brought in to develop our nations laws, but American Citizens working as law enforcement officers within our nation's broken immigration system are purposely excluded from the process by lawmakers and prohibited from providing input.

Last week, desperate to be heard, Border Sheriffs, Interior Sheriffs, deputies and Immigration Agents all came to Washington, DC with the hope that the Gang of 8 would hear their concerns. They held two meetings on two separate days; not one member of the Gang of 8 attended.

Last week, when I respectfully asked a question of the Gang of 8 at their press conference, I was escorted out by police and Senate Staff; I was spoken to with anger and disrespect. Never before have I seen such contempt for law enforcement officers and I have seen from the Gang of 8.

Suffice it to say, following the Boston terrorist attack, I was appalled to hear the Gang of 8 telling America that its legislation is what America's law enforcement needs.

Since 2008, President Obama has ignored many of the immigration laws enacted by Congress, and has instead created his own immigration system that unlawfully provides protections for millions of illegal aliens. Of course, Congress has done nothing to stop the President, and I submit to everyone that America will

never have an effective immigration system, as long as Presidents and their appointees are permitted to ignore the United States Congress and pick and choose the laws they will enforce, and indeed enact their own laws without Congress through agency policy. This bill does nothing to address these problems. In fact, unbelievably it gives far greater authority and control to the President and the Secretary of DHS. Exactly the opposite of what our country needs to create a consistent and effective immigration system. If the laws enacted by Congress are not enforced by the Executive, America has no promise of future enforcement. That much is certain.

- Currently at ICE, Immigration Agents have filed a lawsuit against DHS and ICE because both have refused to enforce the immigration laws enacted by Congress.
- Agents cannot arrest individuals for entering the United States illegally, or overstaying a visa.
- Agents are prohibited from enforcing laws regarding fraudulent documents and identity theft by illegal aliens.
- Agents are not permitted to arrest public charges.
- Agents are forced to apply the Obama dream act not to children in schools, but to adult inmates in jails. Releasing criminals back into communities -

Criminals who have committed felonies, who have assault officers and who prey on children.

- At an alarming rate, ICE deportation numbers have plummeted since 2008; evidence that interior enforcement has in large part been shut down.

Contrary to reports by presidential appointees at ICE and DHS.

In closing, my initial impression of this bill thus far is that in large part it appears to have a lot of loopholes. Everything from Gang activity, to arrest records, to criminal backgrounds and fraudulent activities – at many levels are acceptable or waiver able under this bill. The entry exit system doesn't even utilize biometrics making it ineffective yesterday. We already know aliens are engaged in illegal activities that will bypass this system.

At a time when Congress is proposing legalization for millions, I think Americans expected stronger enforcement across the board that would prevent another wave of illegal immigration.

Unfortunately, in terms of enforcement and providing for public safety, I think this bill is going to fall short. In terms of legalization and eventual citizenship for 11 million illegal aliens I think its success is guaranteed.

Thank you and that concludes my testimony

## **Why Less-Skilled Immigration and Amnesty are so Costly to Taxpayers**

**Testimony Prepared for Senate Committee on the Judiciary  
April 22, 2013**

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## Overview

*In the modern American economy those with relatively little education (immigrant or native) earn modest wages on average, and by design they make modest tax contributions. Because of their relatively low incomes, the less-educated, or their dependent children, are often eligible for welfare and other means-tested programs. As a result, the less-educated use more in services than they pay in taxes. This is true for less-educated natives, less-educated legal immigrants and less-educated illegal immigrants. There is simply no question about this basic fact.*

*The relationship between educational attainment and net fiscal impact is the key to understanding the fiscal impact of immigrants, legal or illegal. Research that has focused on immigrants' net fiscal effect shows exactly what one would expect: on average those who have not completed high school and those with only a high school education are a significant net fiscal drain, while those with at least a college degree are, on average, a significant net fiscal benefit. In the case of illegal immigrants, the vast majority of adults have modest levels of education, averaging only 10 years of schooling. This fact is the primary reason they are a net fiscal drain, not their legal status.*

*It must also be understood that use of welfare and work often go together. Of immigrant-headed households in using welfare in 2011, 86% had at least one worker during the year. The non-cash welfare system is specifically designed to help low-income workers, especially those with children. There are also a number of other programs that provide assistance to low-income workers, such as the Earned Income Tax Credit and the cash portion of the Additional Child Tax Credit. Because low-income workers and their families can and do access welfare and other means-tested programs, and because they are taxed at relatively low levels, it is very common for a worker, even a full-time worker, to be a significant net fiscal drain.*

*We may decide to amnesty illegal immigrants and/or continue to admit large numbers of less-educated immigrants through family-based immigration or a new foreign worker program. If we do this, however, we should at least be honest with the American people, making it clear that such policies have a sizable negative impact on taxpayers.*

*It is important **not** to see this situation as a moral failing on the part of the less-educated (immigrant or native); rather, it simply reflects the realities of the modern American economy, coupled with the existence of a well-developed welfare state. In my view, immigration policy should reflect this reality.*

### Key Findings of Research:

- The Pew Hispanic Center, the Center for Immigration Studies, and others have all estimated that about three-fourths of illegal immigrants have no education beyond high school.<sup>i</sup>
- The National Research Council (NRC) estimated in 1996 that immigrant households (legal and illegal) create a net fiscal burden (taxes paid minus services used) on all levels of government of between \$11.4 billion and \$20.2 billion annually.<sup>ii</sup>

- At the individual level, excluding any costs for their children, the NRC estimated a net lifetime fiscal drain of -\$89,000 (1996 dollars) for an immigrant without a high school diploma, and a net fiscal drain of -\$31,000 for an immigrant with only a high school education. However, more educated immigrants create a lifetime net fiscal benefit of +\$105,000.<sup>iii</sup>
- Updated to 2013 dollars the NRC net lifetime fiscal drain for an immigrant with less than a high school education would be -\$132,000 while the drain for an immigrant with only a high school education would be -\$46,000.
- A 2007 study by the Heritage Foundation estimated that households headed by immigrants without a high school education received \$19,588 more in direct and indirect benefits than they paid in taxes each year.<sup>iv</sup>
- In another 2007 study, Heritage also found that the fiscal drain caused by all households headed by someone without a high school diploma (immigrant and natives) was very similar to the drain for households headed by immigrants with this level of education. This is an indication that it is the education level that creates the drain, not whether the household head is immigrant.<sup>v</sup>
- Figure 1 at the end of this testimony illustrates the importance of education. For example, it shows that 59% of households headed by an immigrant who has not graduated high school access one or more welfare programs, and 70% have no federal income tax liability. In contrast, 16% of households head by an immigrant with bachelor's degree access welfare and only 21% had no federal income tax liability.
- Figure 2 shows welfare use and tax liability for native-headed households by education level. Like Figure 1, the results in Figure 2 show the enormous implication of education when thinking about fiscal impacts.
- Table 1 provides additional information by education and length of residence in the United States. It shows that a large share of less-educated immigrants struggle in the United States in terms of income, poverty, health insurance coverage, welfare use, or language ability. This is the case even when they have lived in the country for 20 years.
- The table also shows that immigrants with a bachelor's degree generally do quite well in the United States. Even newly arrived, well-educated immigrants generally prosper.
- In a study I authored for the Center for Immigration Studies (CIS), we found that in 2002 illegal immigrant households imposed costs of \$26 billion on the federal government (state and local governments were not included) and paid \$16 billion in federal taxes, creating an annual net fiscal deficit of \$10.4 billion at the federal level, or \$2,700 per household.<sup>vi</sup>
- If illegal immigrants were legalized and began to pay taxes and use services like households headed by legal immigrants with the same education levels, CIS estimates that the annual net fiscal deficit would increase to \$29 billion, or \$7,700 per household at the

federal level.<sup>vii</sup>

- Illegal immigrants with little education are a significant fiscal drain, but less-educated immigrants who are legal residents are a much larger fiscal problem because they are eligible for many more programs. For this reason amnesty increases costs in the long run.

### Counterarguments

There is a pretty clear consensus that the fiscal impact of immigration depends on the education level of the immigrants. Certainly other factors also matter, but the human capital of immigrants, as economists like to refer to it, is clearly very important. There is no better predictor of one's income, tax payments, or use of public services in modern America than one's education level. The vast majority of immigrants come as adults, and it should come as no surprise that the education they bring with them is a key determinate of their net fiscal impact.

Advocates of amnesty and allowing in large numbers of less-educated immigrants have three main responses to the above analysis. First they argue that less-educated immigrants are no worse in terms of their net fiscal impact than less-educated natives. Second, they argue that examining households overstates the costs because it includes the U.S.-born children of immigrants. Thirdly, they argue that less-educated immigrants, and immigrants generally, create large economic benefits that offset the fiscal costs they create. As will be discussed below, none of these arguments holds much water.

**Claim: "Less-educated immigrants are no worse than less-educated natives."** As I have emphasized in the discussion above, and as the figures and table below make clear, both less-educated natives and less-educated immigrants are likely to be significant fiscal drain. But this observation is largely irrelevant to the immigration debate. What matters is the actual fiscal impact of immigrants not whether that impact is similar to similarly-educated natives.

Immigration is supposed to benefit the country. As a sovereign country we have a right to select well-educated immigrants if we think that makes sense for our country. We also have a right to enforce our law against illegal immigration. In contrast, less-educated natives are here and it is their birth right to remain. Their low income or high use of welfare is certainly a concern. But common sense suggests that we do not want to add to the concern through immigration. Put simply, the fiscal drain created by less-educated natives does not in any way justify allowing into the country less-educated immigrants. Of course, there may be other arguments to allowing in less-educated immigrants.

**Claim: "Children should not count."** Advocates for high immigration often object to doing analysis by households because it includes the U.S.-born children of immigrants. They argue that the costs for education, welfare, and other programs that benefit children should not be counted because these children are not immigrants. (More than 80 percent children in immigrant households are U.S.-born.) Of course such an argument ignores the fact that the child would not be here but for their parents having been allowed into the country. Further the critics argue that someday the child will grow to adulthood and pay back these costs. This may or may not turn out to be true, but it does not change the very real costs created in the present.

First, the NRC study cited above did individual level analysis, excluding U.S.-born

children, and still found a large fiscal drain if the original immigrant arrived without a high school education or with only a high school education. In other words even without the children, there was still a significant net fiscal drain from less-educated immigrants.

Second, it is not clear that an individual rather than a household-level fiscal analysis makes sense. At the very least it is difficult to do accurately because tax liability and eligibility for means-tested programs are based on the income and number of dependents in a household. Although the Cato Institute today is critical of the idea of doing household-level analysis, the late Julian Simon, who was a scholar at the Cato Institute and helped shape the institute views on immigration, thought that individual level analysis did not make sense. In a 1984 article Simon was clear that to evaluate the fiscal impact of immigration one had to examine both the immigrant and the family “he brings or acquires.” He states, “One important reason for not focusing on individuals is that it is on the basis of family needs that public welfare, Aid to Families with Dependent Children (AFDC), and similar transfers are received.” For this reason Simon examined families, not individuals. This is very similar to a household-level analysis. As Simon himself observed, the household “in most cases” is “identical with the family.”<sup>xiii</sup>

Support for a household-level analysis is very common among academics. The National Research Council states that the, “household is the primary unit through which public services are consumed and taxes paid”, in their analysis of the fiscal impact of immigrants. In their study of New Jersey, Deborah Garvey and Princeton University professor Thomas Espenshade also used households as the unit of analysis because as they pointed out, “households come closer to approximating a functioning socioeconomic unit of mutual exchange and support.”<sup>xiv</sup> Harvard University professor and labor economist George Borjas and economist Lynette Hilton, in their 1996 study of immigrant welfare use also examined households.<sup>x</sup> The Census Bureau itself has reported welfare use for immigrants and natives by household.<sup>xv</sup> Household-level analysis makes sense because a child can only be enrolled in Medicaid or free/reduced school lunch if the total income of his or her family or household is below the eligibility threshold. Moreover, many welfare benefits can be consumed by all members of the household such as food purchased with food stamps.

On a more practical level, the costs created by children are quite real for taxpayers. Any hoped-for fiscal benefit these children may or may not create in the future is a long way off and unknown, while the current costs are real and must be paid.

Finally, it must be pointed out that if the critics are correct — that children should not count — then the same must be true for native-headed households. But if programs and benefits that go to children are excluded, a large share of the federal current budget deficit does not exist. Similarly, if education is not counted then most state and local governments are flush with money. Of course, such a conclusion is total nonsense. Taxpayer money spent on children is real and significant.

Suggesting that money spend on the children of immigrants or children, generally, should not be counted as real cost is completely contrary to common sense. This type of argument only obscures the issue and not is unhelpful when thinking about the costs and benefits of immigration.

**Claim: “Economic benefits offset Fiscal Costs.”** This argument takes several forms but the idea is that immigration increases the income of natives and this offsets the fiscal costs immigration creates. The National Research Council study mentioned above is the only study of which I am aware that tried to measure both the economic and fiscal impact of immigration. That study concluded that the economic gain to the native-born, which is referred to by economists as

the “immigrant surplus”, was \$1 billion to \$10 billion a year in 1996. At the same time the NRC estimated that the net fiscal drain (taxes paid, minus services used) from immigrant households was negative \$11 billion to \$20 billion a year. Thus, there was an economic benefit, but it was smaller than the fiscal drain.

Recently some immigration advocates have argued that the Gang of Eight immigration plan will result in significant net gains for public coffers based on the idea of “dynamic scoring” or “dynamic analysis.” Chief among them has been Sen. John McCain’s former economic advisor, Douglas Holtz-Eakin. Mr. Holtz-Eakin lays out his argument in an opinion piece published by the American Action Forum, which he heads.<sup>xii</sup> He also recently testified before this very committee.

I have provided a much longer critique of his arguments elsewhere.<sup>xiii</sup> Below I touch on some of the main problems with his formulation.

The central point of Holtz-Eakin’s “dynamic analysis” is to argue that immigration-induced population growth by itself will have a positive, indirect impact on per capita GDP, thereby benefiting public coffers. The few studies he cites to support this argument do not deal with immigration; it is theoretic work suggesting a relationship between a larger population and positive economic outcomes. It is not at all clear whether this work is even relevant to immigration-induced population growth.

Probably the biggest weakness of his analysis is that he ignores the actual characteristics of immigrants, generally, and illegal immigrants, in particular, factors which bear directly on their fiscal impact. This includes relatively high poverty, welfare use, lack of health insurance, and their more modest tax payments (See Table 1, below). Holtz-Eakin even ignores the research indicating that the education level of immigrants at arrival has direct bearing on their income, tax payments, use of public services, and their resulting net fiscal impact.

He further ignores the economic literature focusing on immigration’s economic impact which shows that immigration does not significantly increase the per capita GDP or income of the existing population. As the nation’s leading immigration economist, George Borjas of Harvard points out in a recent paper, “Although immigration makes the aggregate economy larger, the actual net benefit accruing to natives is small, equal to an estimated two-tenths of 1 percent of GDP.”<sup>xiv</sup>

A larger economy from immigration is not a richer economy, though it is not a poorer one either. It may also be worth noting that to generate these tiny gains immigration has to redistribute income. In the United States, the workers who lose from immigration tend to be the least-educated and poorest workers, who very likely have to use more government services as their income declines.

The above mentioned NRC study came to the same conclusion as Borjas — immigration’s main impact is to redistribute income. The study estimated that the economic benefit from the redistribution created by immigration was at most \$10 billion, one- to two-tenths of 1 percent of GDP at the time of the study. This is very similar to the Borjas estimate and it is very far from the kinds of per capita gains Holtz-Eakin asserts in his article.

In addition to ignoring the immigration research, Holtz-Eakin also ignores the literature that looks at the impact of population growth on per capita income in developing countries, which would appear to be directly related to his argument. That research generally does not support the idea that by itself population growth increases per capita GDP. A 2009 review of 29 different studies on the impact of population growth on economic development concludes: “Particularly strong is the evidence in support of the increasingly adverse effects of population growth in the

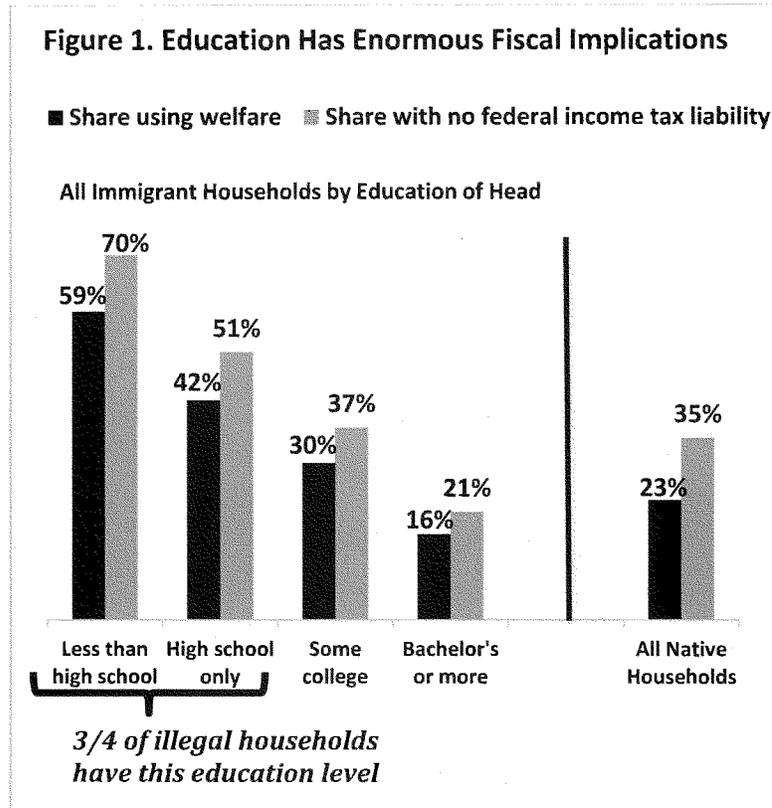
post-1980 period.”<sup>xv</sup> Maybe he feels that this work is not relevant to developed countries like the United States. But he does not say so.

Holtz-Eakin’s argument is highly speculative. He completely fails to mention the fiscal impact of legalizing illegal immigrants even though this issue is at the center of the immigration reform debate.

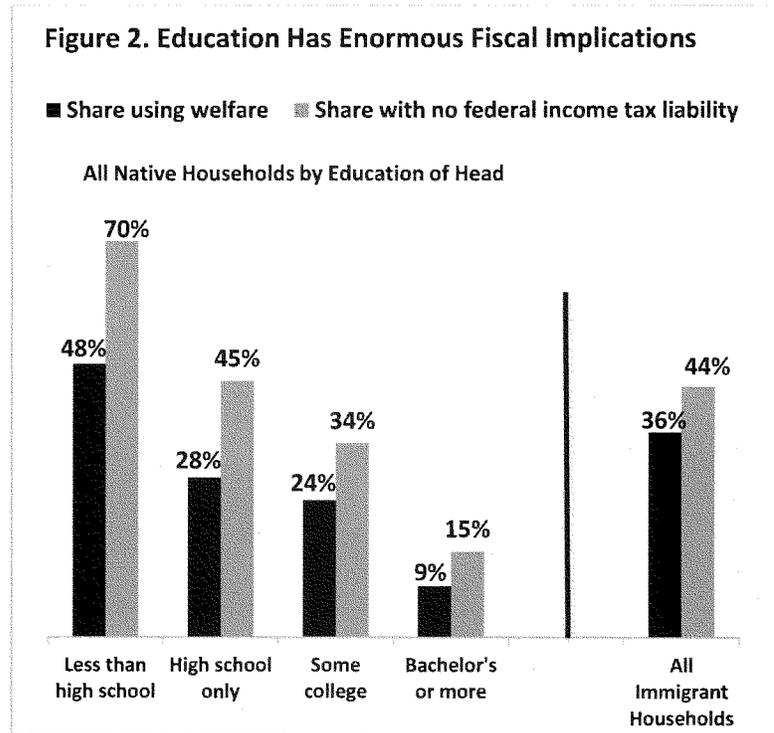
### **Conclusion**

If you take nothing else away from my testimony, it should be remembered that it is simply not possible to fund social programs by bringing in large numbers of immigrants with relatively little education. This is central to the debate on illegal immigration given that such a large share of illegal immigrants have modest levels of education. The fiscal problem created by less-educated immigrants exists even though the vast majority of immigrants, including illegal immigrants, work and did not come to America to get welfare. The realities of the modern American economy coupled with the modern American administrative state make large fiscal costs an unavoidable problem of large scale, less-educated immigration.

This fact does not reflect a moral defect on the part of immigrants. What it does mean is that we need an immigration policy that reflects the reality of modern America. We may decide to let illegal immigrants stay and we may even significantly increase the number of less-educated legal immigrants allowed into the country. But we have to at least understand that such a policy will create large, unavoidable costs for taxpayers.



Source: Public use file of the March 2011 Current Population Survey. Welfare programs include SSI, TANF, food stamps, WIC, free lunch, public/subsidized housing and Medicaid.



Source: Public use file of the March 2011 Current Population Survey. Welfare programs include SSI, TANF, food stamps, WIC, free lunch, public/subsidized housing and Medicaid.

<b>The underlying reason both amnesty and letting illegal immigrants stay is so costly</b>								
<b>Important Fact 1: Half of illegal immigrants haven't graduated high school. One-fourth have only a high school education.</b>								
<b>Important Fact 2: Less-educated immigrants make progress the longer they live in the U.S., but this progress still leaves them dramatically poorer, and much more likely to use welfare and be uninsured than the average native-born American.</b>								
		Adults 18+					Households	
		Average Total Income	Poverty	In or near Poverty	Without Health Insurance	Only English or speaks it very well	Welfare Use	Home Ownership
<b>All Education levels</b>	Native	\$ 36,073	11.8%	28.7%	15.5%	98.6%	22.8%	67.5%
	Immigrant	\$ 29,152	18.9%	42.4%	34.4%	46.9%	36.3%	52.6%
	Recent immigrants ≤ 5 Yrs	\$ 20,463	28.3%	50.9%	44.3%	34.8%	30.6%	16.2%
	Immigrant in US 20 Yrs.	\$ 31,214	17.7%	41.7%	34.3%	46.8%	42.5%	52.4%
<b>Less Than High School</b>	Native	\$ 13,746	28.6%	57.8%	22.5%	95.4%	48.1%	54.6%
	Immigrant	\$ 14,878	31.7%	66.0%	49.1%	18.9%	58.8%	44.0%
	Recent immigrants ≤ 5 Yrs	\$ 10,461	41.3%	70.9%	60.9%	11.8%	55.8%	12.5%
	Immigrant in US 20 Yrs.	\$ 16,605	30.0%	66.2%	47.6%	19.2%	63.2%	41.5%
<b>High School Only</b>	Native	\$ 25,631	14.0%	35.8%	19.8%	98.7%	28.2%	65.8%
	Immigrant	\$ 20,449	20.0%	46.7%	40.7%	42.2%	41.8%	48.4%
	Recent immigrants ≤ 5 Yrs	\$ 14,593	30.9%	57.8%	56.9%	24.3%	42.9%	13.6%
	Immigrant in US 20 Yrs.	\$ 21,658	19.1%	45.1%	39.3%	43.6%	49.2%	47.5%
<b>Some College</b>	Native	\$ 30,662	10.7%	27.2%	16.0%	99.0%	23.7%	64.3%
	Immigrant	\$ 26,697	13.1%	33.0%	28.4%	63.5%	29.8%	55.5%
	Recent immigrants ≤ 5 Yrs	\$ 17,071	27.3%	50.3%	38.4%	46.2%	26.4%	19.8%
	Immigrant in US 20 Yrs.	\$ 26,708	11.5%	31.6%	30.3%	64.5%	35.6%	54.7%
<b>Bachelor's or more</b>	Native	\$ 61,851	4.2%	11.5%	7.6%	99.3%	8.8%	76.6%
	Immigrant	\$ 55,534	7.4%	18.2%	15.8%	72.7%	16.3%	61.4%
	Recent immigrants ≤ 5 Yrs	\$ 34,123	17.1%	31.1%	25.8%	58.9%	14.4%	17.5%
	Immigrant in US 20 Yrs.	\$ 62,456	6.4%	10.4%	16.3%	73.1%	21.0%	67.1%

With the exception of language and home ownership, all figures are from a Center for Immigration Studies analysis of the public use March 2011 Current Population Survey. Home ownership and language skills are based on a Center for Immigration Studies analysis of the public use 2010 American Community Survey. Poverty, income, and health insurance figures are for adults only. Welfare use and home ownership are based on the nativity of the household head. Welfare programs include TANF, SSI, WIC, food stamps, free/reduced lunch, public/subsidized housing and Medicaid.

- <sup>i</sup> A Portrait of Unauthorized Immigrants in the United States. 2009. Jeffrey S. Passel D`Vera Cohn Pew Hispanic Center <http://www.pewhispanic.org/files/reports/107.pdf> See also "Immigrants in the United States, 2010: A Profile of America's Foreign-Born Population" 2012 Steven A. Camarota Center for Immigration Studies
- <sup>ii</sup> The National Research Council's 1997 report is report entitled, *The New Americans: Economic, Demographic, and Fiscal Effects of Immigration*. A summary of the report's findings can be found at [www.cis.org/articles/1999/combinednrc.pdf](http://www.cis.org/articles/1999/combinednrc.pdf).
- <sup>iii</sup> See end note ii.
- <sup>iv</sup> "The Fiscal Cost of Low-Skill Immigrants to the U.S. Taxpayer" 2007 Robert Rector and Christine Kim <http://www.heritage.org/research/reports/2007/05/the-fiscal-cost-of-low-skill-immigrants-to-the-us-taxpayer>
- <sup>v</sup> "The Fiscal Cost of Low-Skill Households to the U.S. Taxpayer" 2007 Robert Rector, Christine Kim and Shanea Watkins, Ph.D. <http://www.heritage.org/research/reports/2007/04/the-fiscal-cost-of-low-skill-households-to-the-us-taxpayer>
- <sup>vi</sup> The High Cost of Cheap Labor Illegal Immigration and the Federal Budget. 2004 Steven A. Camarota <http://www.cis.org/articles/2004/fiscal.pdf>
- <sup>vii</sup> See endnote vi.
- <sup>viii</sup> "Immigrants, Taxes, and Welfare in the United States 1984. Julian L. Simon *Population and Development Review*, Vol. 10, No. 1 (Mar., 1984), pp. 55-69 on)))
- <sup>ix</sup> "State and Local Fiscal Impacts of New Jersey," in *Keys to Successful Immigration: Implications of the New Jersey Experience*, Thomas J. Espenshade, ed., Washington, DC: Urban Institute Press, p. 143.
- <sup>x</sup> George J. Borjas and Lynette Hilton, "Immigration and the Welfare State: Immigrant Participation in Means-Tested Entitlement Programs," *Quarterly Journal of Economics*, May 1996.
- <sup>xi</sup> The Census Bureau reports welfare use by household based on the nativity of the household head. See, for example, Figures 20-1, 20-2 and 21-3 in "Profile of the Foreign-Born Population: 2000," pp. 23-206. U.S. Census Bureau, December 2001. <http://www.census.gov/prod/2002pubs/p23-206.pdf>.
- <sup>xii</sup> Douglas Holtz-Eakin, "Immigration Reform, Economic Growth, and the Fiscal Challenge", April 2013. <http://americanactionforum.org/sites/default/files/Immigration%20and%20the%20Economy%20and%20Budget.pdf>
- <sup>xiii</sup> "Dynamic Scoring of Immigration? A Critique of Douglas Holtz-Eakin's Analysis" 2013, Steven A Camarota Center for Immigration Studies. <http://cis.org/dynamic-scoring-of-immigration>
- <sup>xiv</sup> See "Immigration and the American Worker A Review of the Academic Literature", 2013 Center for Immigration Studies.
- <sup>xv</sup> "The Effect of Population Growth on Economic Growth: A Meta-Regression Analysis of the Macroeconomic Literature" 2009. Derek D. Headey and Andrew Hodge *Population and Development Review*, Vol. 35, No. 2.



**AMERICANS  
for  
TAX REFORM**

**Written Testimony of Grover Norquist  
President  
Americans for Tax Reform**

**Before the United States Senate  
Committee on the Judiciary**

**April 22, 2013**

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Chairman Leahy, Ranking Member Grassley, and Members of the Committee, my name is Grover Norquist, and I am President of Americans for Tax Reform (ATR). ATR is a nonprofit advocacy organization that promotes free market principles and a fiscally conservative approach to public policymaking.

Mr. Chairman, people are an asset, not a liability. America is the most immigrant-friendly country in the world, and we are the richest country in the world. This is not a coincidence. Those who would make us less immigrant-friendly would make us less successful, less prosperous, and less American.

Now, how do we evaluate the specific legislation before the Senate? The Border Security, Economic Opportunity, and Immigration Modernization Act of 2013's stated aim is to uphold America's tradition of strengthening its economy by maintaining its openness to immigrants.

**Dynamic Analysis: A Conservative Consensus**

The consensus conservative, free market approach to evaluating any public policy change is to do so dynamically. Dynamic scoring takes into account both the costs and benefits of any policy change. Specific to immigration, providing a tough but fair pathway to legal status for America's undocumented population while facilitating a adequate future flow of legal immigrants will increase the size and productivity of our workforce and thus lead to accelerated economic growth for all Americans.

Wall Street Journal editorial board member Jason Riley made the case for dynamic scoring in his 2008 book:

Supply siders have for decades been critical of the way federal agencies like the Congressional Budget Office and the Joint Committee on Taxation estimated, or "scored," the effects of tax cuts on revenue without figuring in their effects on the overall economy. And rightly so. Under static modeling, for instance, if a state doubles its cigarette tax, it will double its revenue from that tax. But that doesn't take into account, as a dynamic model would, the fact that the tax increase will affect behavior. Some smokers, for example, may quit or smoke less. The tobacco taxes they previously paid would be lost to the state, offsetting some of the

additional revenue anticipated by increasing the tax rate. Similarly, a tax cut might not result in a revenue reduction if it stimulates more economic activity.<sup>1</sup>

Riley also provides a history of conservative policy organizations driving the center-right consensus on dynamic scoring:

Along with other conservative outfits like the National Center for Policy Analysis and the Institute for Policy Innovation, [the Heritage Foundation] helped pioneer the use of dynamic analysis. Whether the issue was trade liberalization or tax policy, free-market conservatives regularly mocked economic studies that took into account only static impacts. “[No] matter how many times a ‘static’ analysis is disproved,” Heritage Foundation president Ed Feulner once wrote, “Congress keeps doing business in the same wrongheaded way.” When President Bush’s 2007 budget proposal included a plan to create a Dynamic Analysis division inside the Treasury Department to assess how tax laws affect economic activity, William Beach, Heritage’s top numbers cruncher, praised the move. “Inside the Beltway, this type of work is called ‘dynamic analysis,’” Beach wrote in *BusinessWeek*. “Outside the Beltway, this is called ‘economics.’”<sup>2</sup>

Indeed, any sound conservative evaluation of public policy changes must include an accounting of the legislation’s costs and benefits. Conservatives do not consider tax cuts statically, because of behavioral changes that result when we incentivize work and investment. That dynamic increase in economic activity that takes place when the government loosens its grip on the private sector leads to more revenue than a static projection would suggest.

A number of conservative and free market organizations and leaders have added their voices to the debate, speaking to the importance of dynamic analysis.

Recently departed Heritage Foundation President Ed Feulner put forth a convincing argument about the flaws of static scoring:

Indeed, some lawmakers are fighting a proposal that would require them to take real-world considerations into account. They prefer to keep “scoring” each bill—estimating how it will affect the economy and the amount of taxes they take in—with the “static” model used by the store owner’s friend. If, say, a 5 percent tax on something brings in \$50 million, they assume a 10 percent tax will fetch \$100 million.

Not surprisingly, this approach has caused lawmakers to come up with some wildly inaccurate assumptions over the years. Consider what happened with President Kennedy’s tax cut. Many lawmakers were sure that, with the top marginal tax rate being slashed from 91 percent to 70 percent, tax revenues would plunge. Instead, the cut spurred economic growth. Between 1961 and 1968, tax revenues rose by one-third.

<sup>1</sup> Riley, Jason. *Let Them In, The Case for Open Borders*. New York: Penguin. 2008.

<sup>2</sup> *Ibid.*

The same thing happened when President Reagan cut taxes in the early 1980s. Many lawmakers predicted financial ruin as the top rate plummeted from 70 percent to 28 percent. Again, they were wrong. Once the cuts were phased in, tax revenues soared. The amount of money the federal government was taking in through personal income taxes had increased 28 percent (adjusted for inflation) by 1989.

Yet no matter how many times a "static" analysis is disproved, Congress keeps doing business in the same wrong-headed way.<sup>3</sup>

Newt Gingrich and Peter Ferrara criticized the static analyses of the Congressional Budget Office, Office of Management and Budget, and Joint Committee on Taxation thusly:

The methodologies used by analysts across the federal government to score the impact of legislation still do not take into account the dynamic, pro-growth effects of policy changes. They continue to use mostly static methodologies that assume no significant changes in behavior in response to changes in incentives. The result of these antiquated scoring practices is that Congress is forced to discount any policy change that would increase economic growth or enhance efficiency in federal programs. Instead, Congress is constrained to consider legislation designed to meet a politically acceptable score from the CBO, even though experience demonstrates that the scoring will surely be erroneous -- indeed, is effectively designed to be so.<sup>4</sup>

Americans for Prosperity (AFP), the conservative advocacy group, argued:

CBO's current static scoring system fails to account for behavioral changes that individuals, households, and firms make in response to new economic policies. This makes tax increases look better and tax cuts look worse than they actually are...

Adjusting to dynamic scoring accounts for these (behavioral) changes and provides better cost estimates for Congress to weigh its decisions.<sup>5</sup>

Other free market institutions such as the Club for Growth, FreedomWorks, the Cato Institute, and the National Taxpayers Union have been broadly supportive of dynamic scoring. This is a consensus issue in the center-right policy community.

#### **Dynamic Scoring Specific to the Immigration Debate**

To score legislation dynamically we need to understand its impact on the economy first. The broad issue of dynamic scoring applies specifically to immigration reform because immigrants increase both the supply and demand sides of the economy. On the supply

<sup>3</sup> Feulner, Edwin. *Less "Static," Please*. Heritage Foundation blog, July 22, 2002. <http://www.heritage.org/research/commentary/2002/07/less-static-please>.

<sup>4</sup> Gingrich, Newt and Ferrara, Peter. *Doesn't Anyone Know the Score?* Wall Street Journal, September 26, 2005. <http://online.wsj.com/article/SB112770080908551793.html>.

<sup>5</sup> Americans for Prosperity Foundation. *Inside the Congressional Budget Office: Static vs. Dynamic Budget Scoring*. November, 2011. [http://americansforprosperityfoundation.com/files/NtK\\_19\\_Static\\_Dynamic\\_Scoring.pdf](http://americansforprosperityfoundation.com/files/NtK_19_Static_Dynamic_Scoring.pdf).

side, immigrants work and thereby increase economic production and the productivity of Americans. Because immigrants have different skills, they are complements rather than competitors to the vast majority of Americans. On the demand side, immigrants purchase and rent goods, services, and real estate produced by other Americans, thus incentivizing production.

Immigrants and Americans, in the face of such changes, do not respond statically. Both groups change their behavior in response to incentives, and it is incumbent upon us to measure the economic effects of these behavioral changes dynamically. For instance, immigrant incomes increase over time just as incomes increase during the working life of Americans. After the legalization of immigrants during the Reagan amnesty, their incomes rose by an average 15 percent just by gaining legal status. Those immigrants today are making much more than they did then and, as a result, paying more in taxes. In response to immigration, Americans also increase their investments in machines and capital to invest in a faster growing and productive workforce. Those are just two changes but they illustrate the magnitude of dynamic changes to the economy. Since both the supply and demand sides change in relation to each other, we have to use a dynamic scoring process to accurately estimate the broad effects.

The broader economic impacts are gigantic. A 2009 study prepared for the Cato Institute by economists Peter Dixon and Maureen Rimmer employed a dynamic economic model called USAGE to estimate the effects of changes in the U.S. economy due to an immigration policy change very similar to today's Senate legislation. It found that the incomes of U.S. households would increase by \$180 billion dollars a year. Increased legal immigration will add millions of consumers, workers, renters, and others who will make our economy larger by working with Americans to produce more of the goods and services we demand.

Another similar study commissioned by Cato and written by Professor Raul Hinojosa-Ojeda of UCLA employed a similar analysis using a dynamic model called the GMig2. The study found that an additional \$1.5 trillion in GDP growth would occur ten years after immigration reform similar to the Senate's plan.<sup>6</sup>

As a comparison, Professor Hinojosa-Ojeda ran a simulation on the GMig2 model whereby immigration reform was instead replaced by an effective enforcement-only policy that produced the mass removal of all illegal immigrants - a policy desired by immigration restrictionists. The result of that simulation was a \$2.6 trillion decrease in estimated GDP growth over the same decade.<sup>7</sup>

Most recently, American Action Forum President Douglas Holtz-Eakin, former Director of the Congressional Budget Office, authored a dynamic study on the economic impact of immigration reform. While not specifically related to the legislation before us today, Holtz-Eakin's study measures the costs and benefits of a "benchmark immigration

<sup>6</sup> Peter B. Dixon and Maureen T. Rimmer. *Restriction or Legalization? Measuring the Economic Benefits of Immigration Reform*. Cato Institute, Trade Policy Analysis #40, August 13, 2009. <http://www.cato.org/publications/trade-policy-analysis/restriction-or-legalization-measuring-economic-benefits-immigration-reform>.

<sup>7</sup> Raúl Hinojosa-Ojeda. *The Economic Benefits of Comprehensive Immigration Reform*. Cato Journal Vol. 32, No. 1, Winter 2012. <http://www.cato.org/sites/cato.org/files/serials/files/cato-journal/2012/1/cj32n1-12.pdf>.

reform," concluding that significantly increasing legal immigration would boost GDP growth by 0.9 points annually.<sup>8</sup>

Holtz-Eakin's findings are primarily driven by immigration's impact on the size of the labor force. He writes:

The mechanics of reform and the research literature suggest that immigration reform can raise the overall pace of population growth – indeed, in the absence of immigration, low birth-rates mean that the U.S. population will actually shrink. Because foreign-born individuals tend to have higher rates of labor force participation, this translates into an even more rapid pace of growth in the labor force. At historic rates of population growth, this immediately translates into more rapid overall growth in Gross Domestic Product.<sup>9</sup>

Additionally, Holtz-Eakin cites the entrepreneurial vigor associated with immigrants as further evidence that more immigration will lead to higher rates of economic growth. This assertion is supplemented by the Kauffman Foundation, which found that immigrants in 2011 were twice as likely as native-born Americans to start a new business.<sup>10</sup>

### **Immigrants and Productivity Gains**

To get a sense of how the productivity of today's undocumented workers might increase once they have earned legal status, imagine the converse. If your siblings or your children were denied the ability to have a driver's license and therefore fly on airplanes or drive themselves to and from work, how productive would they be? How would their income suffer? How many career opportunities would they be denied?

Allowing undocumented workers to move from job to job, travel easily and safely, search out and interview for different jobs in different sectors and locations would greatly increase their productivity, and they would become greater contributors to their own well-being and the wealth of our nation.

The majority of those undocumented immigrants currently here are low-skilled. Some argue that we should not be importing or legalizing this type of talent. But in reality, the U.S. economy demands an enormous number of low-skilled workers. They work in construction, retail, hospitality, food preparation, agriculture, manufacturing, and other industries. But the domestic labor supply is inadequate for these types of jobs. We need immigrant labor to fill demand for low-skill jobs.

For evidence of this, see the economic consequences of Georgia's House Bill 87, passed in 2011. Similar to harsh enforcement-first measures passed recently in Alabama and Arizona, HB 87 was intended to eliminate the supply of illegal immigrant labor in the

<sup>8</sup> Douglas Holtz-Eakin. *Immigration Reform, Economic Growth, and the Fiscal Challenge*. April, 2013. <http://americanactionforum.org/sites/default/files/Immigration%20and%20the%20Economy%20and%20Budget.pdf>.

<sup>9</sup> *Ibid.*

<sup>10</sup> Robert Fairlie. *Kauffman Index of Entrepreneurial Activity*. Kauffman Foundation, March 2012, page 9. [http://www.kauffman.org/uploadedFiles/KIEA\\_2012\\_report.pdf](http://www.kauffman.org/uploadedFiles/KIEA_2012_report.pdf).

state by imposing strict penalties on undocumented immigrants and the businesses that hired them.

The problem with HB 87 is that it worked. Undocumented immigrants fled the state in droves, and left a crippled agricultural industry behind them. Labor shortages led to \$140 million in agricultural losses, with crops left unpicked and rotting in the fields.<sup>11</sup> Georgia Gov. Nathan Deal even introduced a program for unemployed ex-convicts on probation to fill these vacant agriculture jobs. According to Georgia's Agriculture Commissioner Gary Black, many of these new workers promptly quit because the jobs were too strenuous.<sup>12</sup>

Increasing the supply of low-skilled immigrants doesn't only ensure that more vacant jobs are filled. It increases the overall productivity of the American economy by injecting talent that is complementary to the existing domestic labor supply. Immigrants are generally either lower-skilled or higher-skilled than most native-born workers. That means they aren't competing with Americans for the type of jobs they are qualified to do. Instead, they fill jobs that complement the existing American labor supply, raising productivity and wages across the board.

Think about this in the context of a restaurant. Immigrants, because of their low skills and lesser English speaking proficiency, work in non-communications jobs like dishwashing, cooking, bussing tables, and janitorial work. The Americans who filled these jobs in previous generations are now performing higher-paid jobs like waiting tables, hosting, and managing the restaurant. The availability of lower-skilled labor allows native-born Americans to work better jobs and earn more money.

By the same account, high-skilled immigrants are vital to America's dynamic economy. Similar to low-skilled immigrants, they rarely directly compete with native-born workers, but for different reasons. High-skilled labor is extremely entrepreneurial. They grow the economic pie by innovating and building new businesses. They directly create opportunity for Americans.

Immigrants or their children founded more than 40 percent of Fortune 500 companies. Those immigrant-founded Fortune 500s employ more than 10 million people worldwide, and have combined global revenues of \$4.2 trillion.<sup>13</sup>

### **Baseless Criticism**

Some people who choose to play politics with this issue have ignored dynamic analysis and instead considered only the inflated costs of reform. Errors found in pseudo-analysis by anti-immigration groups include:

<sup>11</sup> Benjamin Powell. *The Law of Unintended Consequences: Georgia's Immigration Law Backfires*. *Forbes*. May 17, 2012. <http://www.forbes.com/sites/realspin/2012/05/17/the-law-of-unintended-consequences-georgias-immigration-law-backfires/>.

<sup>12</sup> Associated Press. *Crackdown on illegal immigrants left crops rotting in Georgia fields, ag chief tells US lawmakers*. October 4, 2011. [http://blog.al.com/wire/2011/10/crackdown\\_on\\_illegal\\_immigrant.html](http://blog.al.com/wire/2011/10/crackdown_on_illegal_immigrant.html).

<sup>13</sup> The Partnership for a New American Economy. *The 'New American' Fortune 500*. June, 2011. <http://www.renewoureconomy.org/sites/all/themes/pnae/img/new-american-fortune-500-june-2011.pdf>.

- **Exaggerating public benefit costs by citing household costs, rather than individual immigrant costs.** By counting welfare costs on a household basis, critics including millions of native-born American spouses and children into their estimation. This is a misleading trick that inflates the true cost of public benefits for immigrants, and assumes native-born Americans are only public charges because of their association with their immigrant spouses or parents.
- **Portraying impossible levels of welfare use.** Putting aside the evidence that immigrants come to America to pursue economic opportunity, it is important to point out that leading criticisms of increased immigration predict levels of welfare use that are impossible under this bill. Most undocumented immigrants are barred from accepting public benefits, including Obamacare, for 13 years at the earliest. Those on a quicker path – agricultural workers and DREAMers – still must wait eight years. Yet prominent criticisms of the bill assume immediate adoption welfare benefits by those legalized.
- **Assuming immigrant wages will remain stagnant throughout their lives.** With legalization come labor market flexibility and productivity gains, resulting in higher wages. After the 1986 Reagan amnesty, immigrant wages increased immediately after they became legal, sometimes by as much as 15 to 25 percent.<sup>14</sup>
- **Ignoring the costs of an enforcement-only approach.** Professor Raul Hinojosa-Ojeda of UCLA using the GMig2, a dynamic bilateral labor flows model, to estimate the economic effects of a successful enforcement-only policy that included mass removal of all illegal immigrants - a policy desired by immigration restrictionists. The result of that simulation was a \$2.6 trillion decrease in estimated GDP growth over the same decade, decreasing tax revenues. Direct government costs of such a program are also enormous. Economist Rajeev Goyle estimated that deporting 11 million people would cost the government \$206 billion over a five year period.<sup>15</sup> More conservatively, Immigration and Customs Enforcement (ICE) assumed that the marginal immigrant costs \$12,500 to deport which, assuming no increase in marginal costs, would cost the government approximately \$140 billion to deport 11 million unauthorized immigrants.<sup>16</sup>
- **Conceding the size of the current welfare state, rather than working to reform it.** Building a wall around the welfare state is a far more effective and economically beneficial policy than building a wall around the country. It is also politically possible.

There are groups that oppose growing the American economy via more immigration because of their extreme environmental and population control views, because they have a flawed Malthusian view of the economy, and because they don't understand free markets. Their failed arguments against immigration are also arguments against having children. These groups view people not as assets, but as liabilities. This is a fatally flawed argument, and completely inconsistent with conservative principles.

Some argue that the fiscal burden of America's entitlement programs make more immigration cost prohibitive. That is a false choice. That our entitlement systems are broken is not an argument for less immigration; it is an argument to fix our entitlement systems.

<sup>14</sup> Baker. *Effects of the 1986 Immigration Reform and Control Act on Crime*. SSRN Working Paper, 2011.

<sup>15</sup> Goyle and Jaeger. *Deporting the Undocumented: A Cost Assessment*. July, 2005.  
[http://www.djaeger.org/research/reports/deporting\\_undocumented.pdf](http://www.djaeger.org/research/reports/deporting_undocumented.pdf)

<sup>16</sup> Associated Press. *Feds Estimate Deportation Costs \$12,500 Per Person*. January 27, 2011.  
<http://cnsnews.com/news/article/feds-estimate-deportation-costs-12500-person>

The legislation before us today puts at least 13 years between legal status and access to public benefits for most undocumented immigrants, mitigating the negative fiscal impacts of our bloated entitlement programs. Those who insist or imagine that this bill would impose trillions of dollars in new entitlement costs have not read the legislation, nor do they understand the current eligibility requirements.

Furthermore, immigrants come at the beginning of their working lives, which means they will have years to pay taxes and contribute to the economy before being eligible for entitlements. The American Community Survey estimates that the average age of immigrants who have come since the year 2000 is 31 while the average native-born American is 36 years old.<sup>17</sup> Immigrants typically arrive in their mid-20s after their home countries pay for their education so they can begin to work and pay taxes in the U.S. immediately. By coming at such a young working age the government does not have to pay for their education but they could work around 40 years before being eligible for entitlements if they decide to stay.

Also, many low-skilled immigrants work for years in the U.S. before returning home with their savings as part of a phenomenon called circular migration. Forcing them to work in the illegal market means they will stay here longer than they otherwise would because if they did leave the U.S., there would be no guarantee they could come back later to work if they had to. Allowing them to come legally or to legalize the ones here would reignite circular migration, allowing immigrants to plan on coming here for a few years to work and pay taxes and then returning home with their savings. Princeton Sociologist Doug Massey has observed that 20 percent to 30 percent of Mexican immigrants from 1965 to 1986 followed that pattern.<sup>18</sup>

For almost all means-tested federal welfare programs, immigrants are substantially restricted access until they have had a green card for at least five years. Programs they are restricted from include: Medicaid, Supplemental Nutrition Assistance Program, Temporary Assistance for Needy Families, and Supplemental Security Income. The current legislation would construct even larger barriers to welfare, with a 10-year waiting period for most newly legalized immigrants to receive a green card, and then another 3 years until access to means-tested public benefits. That is a high wall around the welfare state.

### **The Shining City on a Hill**

Mr. Chairman, it is my belief that a position in favor of more legal immigration and a fair and humane path to citizenship for those undocumented immigrants already here is wholly consistent with the ideals of the center-right movement I have worked my entire life to help build. I believe that free markets lead to economic growth and prosperity for all. This includes free and flexible labor markets, which will benefit not only those who

<sup>17</sup> American Community Survey, 2011, Chart S0502, Selected Characteristics of the Foreign-Born Population by Period of Entry into the United States and S0501 Selected Characteristics of the Native and Foreign-Born Populations, 1-year estimates.

<sup>18</sup> Douglas S. Massey, Jorge Durand, and Nolan J. Malone, *Beyond Smoke and Mirrors: Mexican Immigration in an Era of Economic Integration* (New York: Russell Sage Foundation, 2002): 63-64

wish to come here to pursue the American Dream, but also those of us blessed enough to have been born in the United States of America.

I conclude with an excerpt from President Ronald Reagan's farewell address to the nation, in January of 1989.

***I've spoken of the shining city all my political life, but I don't know if I ever quite communicated what I saw when I said it. But in my mind it was a tall, proud city built on rocks stronger than oceans, wind-swept, God-blessed, and teeming with people of all kinds living in harmony and peace; a city with free ports that hummed with commerce and creativity. And if there had to be city walls, the walls had doors and the doors were open to anyone with the will and the heart to get here.***

**Statement Of Senator Patrick Leahy (D-Vt.),  
Chairman, Senate Judiciary Committee,  
Hearing On Oversight Of The Department Of Justice  
March 6, 2013**

This week is the anniversary of “Bloody Sunday” when voting rights marchers, including now Congressman John Lewis, were beaten by state troopers as they attempted to cross the Edmund Pettis Bridge in Selma. Attorney General Holder spoke this weekend about living up to our founding ideals and the power of our legal system. The law protects the rights of all Americans. That is what this Attorney General and the Justice Department he leads are dedicated to doing.

In 2009, the Attorney General worked with us in Congress to pass landmark hate crimes legislation to address crimes committed against Americans because of race, ethnicity, religion, sexual orientation, or gender identity. The Justice Department is enforcing that law. This week the President will sign historic legislation building upon the Violence Against Women Act and the Trafficking Victims Protection Act to protect all victims of abuse. The Justice Department will implement those laws.

And the Justice Department is defending the protections provided by section 5 of the Voting Rights Act to ensure that all Americans have the right to vote and to have their votes matter. This Committee played a key role in reauthorizing the Voting Rights Act six years ago. After nearly 20 hearings before the House and Senate Judiciary Committees, we found that modern day barriers to voting persist in our country. We passed and President Bush signed the current extension of the Voting Rights Act in order to safeguard the fundamental rights of all Americans.

I commend the Attorney General, FBI Director Mueller and all those who work every day to keep Americans safe. The follow up attack to 9/11 that so many predicted has not occurred--not on this President’s watch. Constant vigilance is part of the reason. I also thank the Attorney General for reaching out, not only to me, but to Senator Grassley on issues of national security.

While the Department’s success in disrupting threats to national security has been remarkable and its efforts to hold terrorists accountable commendable, I remain deeply troubled that this Committee has not yet received the materials I have requested regarding the legal rationale for the targeted killing of United States citizens overseas. I am not alone in my frustration or in my waning patience. The relevant Office of Legal Counsel memoranda should have been provided to members of this Committee. It is our responsibility to ensure that the tools at Government’s disposal are used in a way that is consistent with our Constitution, laws and values.

We have worked together effectively to help keep Americans safe from crime and to help crime victims rebuild their lives. Together, we have worked to strengthen Federal law enforcement and to support state and local law enforcement, and crime rates have experienced a historic decline despite the struggling economy.

We have worked together to fight fraud and corporate wrongdoing, which had such a devastating impact on the American people in the recent economic downturn. Congress passed the Fraud Enforcement and Recovery Act, which Senator Grassley and I drafted together, and important

new anti-fraud provisions as part of the Affordable Care Act and the Dodd-Frank Wall Street Reform and Consumer Protection Act. Armed with these new tools, the Justice Department has broken records over the last several years for civil and criminal fraud recoveries and has increased the number of fraud prosecutions.

This Committee has also worked with the Department to try to ensure that the criminal justice system works as it should. This month marks the 50<sup>th</sup> anniversary of the seminal Supreme Court decision in *Gideon v. Wainwright*, which affirmed that no person should face prosecution without the assistance of a lawyer. I am encouraged by the Justice Department's Access to Justice Office but so much more needs to be done to ensure justice for all. I was also glad to see the announcement of a joint initiative to help standardize and improve forensic science across the country, incorporating many of the ideas from my Criminal Justice and Forensic Science Reform Act.

I appreciate the Attorney General joining me in recognizing the mounting problem of our growing prison population. This is having devastating consequences at a time of shrinking budgets at all levels of government. We all must do more to find constructive ways to solve it. Turning away from excessive sentences and mandatory minimums for nonviolent offenders would be a good start.

When the Senate confirmed Attorney General Holder four years ago, the Department of Justice was still reeling from scandal, mismanagement, and findings of impermissible politicization. Since that time, the credibility of the Justice Department among the American people and in courtrooms throughout the country has increased dramatically, and the morale of its hardworking agents, prosecutors, and professionals has been largely restored.

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**Senator Grassley's questions to witnesses regarding the hearing on "The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744" on April 22, 2013**

Questions for Dr. Steven Camarota

1. At the April 22, 2013 hearing, we heard many perspectives on comprehensive immigration reform. Was there any testimony offered by other witnesses that you found problematic, and how would you respond to it? Do you have any additional comments on issues that were discussed at the hearing?
2. As you know, Department of Homeland Security Secretary Janet Napolitano testified before the Judiciary Committee on April 23, 2013. Much of her testimony focused on the issue of border security and the discretion that the proposed bill gives to the DHS Secretary. Do you agree with Secretary Napolitano's assessment that this legislation should be enacted largely as it is currently written? What do you believe comprehensive immigration reform must include so that it avoids the problems that followed the 1986 reform?
3. In your opinion, how should comprehensive immigration reform strike a balance between family-based and merit-based immigration?
4. In your opinion, will the bill's legalization provisions create a burden on the national economy or public programs?
5. In what ways, if any, does this bill use immigration reform to strengthen the national economy?

**Senator Grassley's questions to witnesses regarding the hearing on "The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744" on April 22, 2013**

Questions for Chris Crane

1. At the April 22, 2013 hearing, we heard many perspectives on comprehensive immigration reform. Was there any testimony offered by other witnesses that you found problematic, and how would you respond to it? Do you have any additional comments on issues that were discussed at the hearing?
2. As you know, Department of Homeland Security Secretary Janet Napolitano testified before the Judiciary Committee on April 23, 2013. Much of her testimony focused on the issue of border security and the discretion that the proposed bill gives to the DHS Secretary. Do you agree with Secretary Napolitano's assessment that this legislation should be enacted largely as it is currently written? What do you believe comprehensive immigration reform must include so that it avoids the problems that followed the 1986 reform?
3. In your opinion, does this bill strengthen or weaken our current immigration laws?
4. Does this bill help or hurt the enforcement of immigration laws?
5. How meaningful are the triggers in this bill?
6. In your opinion, are the border security provisions of this bill strong enough to prevent another wave of illegal immigration? Why or why not?
7. Are you concerned that the discretion afforded to DHS to legalize aliens will lead to fraud or other abuse? Why or why not?
8. Page 548 discusses "Profiling." It articulates a standard where race and ethnicity may not be used by law enforcement even where the use of race or ethnicity might otherwise be lawful. Why would current standards/law not be what guides law enforcement?
9. Page 48-49 discusses "Use of Force." Specifically, it says: "The Secretary in consultation with the Assistant Attorney General of Civil Rights shall issue policies governing the use of force, accepting and investigating complaints, disciplining personnel, and reviewing all uses of forces by personnel." Since every arrest necessitates some use of force, does that provision open the door to review every arrest made by an agent?
10. Page 49 discusses "Training." Specifically, it says: "The Secretary shall in collaboration with the Assistant Attorney General of Civil Rights provide training." Does the Civil Rights Division generally train your agents on "interrogations, stops, searches, seizures, arrests, and detention?"

**Senator Grassley's questions to witnesses regarding the hearing on "The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744" on April 22, 2013**

Questions for Professor Ron Hira

1. At the April 22, 2013 hearing, we heard many perspectives on comprehensive immigration reform. Was there any testimony offered by other witnesses that you found problematic, and how would you respond to it? Do you have any additional comments on issues that were discussed at the hearing?
2. As you know, Department of Homeland Security Secretary Janet Napolitano testified before the Judiciary Committee on April 23, 2013. Much of her testimony focused on the issue of border security and the discretion that the proposed bill gives to the DHS Secretary. Do you agree with Secretary Napolitano's assessment that this legislation should be enacted largely as it is currently written? What do you believe comprehensive immigration reform must include so that it avoids the problems that followed the 1986 reform?
3. Do you believe that the bill as written appropriately addresses the economic needs of the country through the immigration system?
4. Some people have suggested that the bill should focus more on family-based immigration. What is your view of the right balance between merit-based and family-based immigration?
5. In your opinion, does this bill treat American workers fairly?
6. Are there sufficient safeguards for American and foreign workers in the bill?
7. Given the testimony of Brad Smith, do you have any further thoughts on why the business community opposes the Grassley/Durbin "good faith effort" requirement, which is a simple and straight forward measure that would provide qualified people at home with a chance at high skilled, high paying jobs?
8. During the hearing, Brad Smith of Microsoft claimed that there are severe and systemic shortages of STEM workers. Do you agree with this claim?
9. It is clear that the top firms using the H-1B visa program are taking about 50% of the available visas each year. Can you explain how outsourcing firms work and how they are taking work offshore?
10. Will the bill eliminate the use of the H1-B visa for outsourcing?
11. How does it impact the use of the L-1 visa and OPT for outsourcing?
12. Could you explain your concerns about the L-1 and OPT visas?
13. Do you have any suggestions for improving the law so that companies based in the United States have a shot at the visas available each year?
14. Can you elaborate on any other provisions in the bill that 1) protect American workers and 2) ensure that companies are not abusing the program?
15. Why do you believe that allowing greencard applications (intending immigrant) to reduce the H-1B counts is not good policy?

**Senator Grassley's questions to witnesses regarding the hearing on "The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744" on April 22, 2013**

Questions for Janice Kephart

1. At the April 22, 2013 hearing, we heard many perspectives on comprehensive immigration reform. Was there any testimony offered by other witnesses that you found problematic, and how would you respond to it? Do you have any additional comments on issues that were discussed at the hearing?
2. As you know, Department of Homeland Security Secretary Janet Napolitano testified before the Judiciary Committee on April 23, 2013. Much of her testimony focused on the issue of border security and the discretion that the proposed bill gives to the DHS Secretary. Do you agree with Secretary Napolitano's assessment that this legislation should be enacted largely as it is currently written? What do you believe comprehensive immigration reform must include so that it avoids the problems that followed the 1986 reform?
3. How meaningful are the triggers contained in the bill?
4. In your opinion, does the bill guarantee that the problems with our current level of border security will be addressed?
5. What are the national security implications of granting legalization without establishing objective standards to measure border security?
6. Do you believe that the bill strengthens our national security and makes our homeland safer? Why or why not?
7. In your opinion, does the bill strengthen or weaken our current immigration laws?

**Senator Grassley's questions to witnesses regarding the hearing on "The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744" on April 22, 2013**

Questions for Hon. Kris Kobach

1. At the April 22, 2013 hearing, we heard many perspectives on comprehensive immigration reform. Was there any testimony offered by other witnesses that you found problematic, and how would you respond to it? Do you have any additional comments on issues that were discussed at the hearing?
2. As you know, Department of Homeland Security Secretary Janet Napolitano testified before the Judiciary Committee on April 23, 2013. Much of her testimony focused on the issue of border security and the discretion that the proposed bill gives to the DHS Secretary. Do you agree with Secretary Napolitano's assessment that this legislation should be enacted largely as it is currently written? What do you believe comprehensive immigration reform must include so that it avoids the problems that followed the 1986 reform?
3. Do the legalization provisions of the bill promote the rule of law?
4. Does this bill give too much discretion for DHS to waive conditions for immigrants who evade the law that would otherwise make them ineligible for legalization?
5. Will the bill encourage increased litigation over people's immigration status?
6. Does the bill adequately address border security concerns, and does it guarantee that an effective employer verification system will be implemented?
7. Are you concerned that the bill gives illegal aliens multiple opportunities to get legal status, and does not mandate deportation after denials of citizenship?
8. Do you believe that the bill's does enough to prevent and deter fraud and abuse of the immigration system? Why or why not?
9. What does the preemption provision of E-Verify mean for various states across the country?
10. Do you think that employers should be required, or at least allowed to, verify the work eligibility of their current workforce?
11. Some have stated that this bill creates more loopholes than it closes. Are you aware of any specific provisions that will create loopholes down the road?

**Senator Grassley's questions to witnesses regarding the hearing on "The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744" on April 22, 2013**

Questions for Mark Krikorian

1. At the April 22, 2013 hearing, we heard many perspectives on comprehensive immigration reform. Was there any testimony offered by other witnesses that you found problematic, and how would you respond to it? Do you have any additional comments on issues that were discussed at the hearing?
2. As you know, Department of Homeland Security Secretary Janet Napolitano testified before the Judiciary Committee on April 23, 2013. Much of her testimony focused on the issue of border security and the discretion that the proposed bill gives to the DHS Secretary. Do you agree with Secretary Napolitano's assessment that this legislation should be enacted largely as it is currently written? What do you believe comprehensive immigration reform must include so that it avoids the problems that followed the 1986 reform?
3. How meaningful are the triggers contained in the bill?
4. In your opinion, does the bill guarantee that any problems with our current level of border security will be addressed?
5. Does the bill put meaningful restraints on the discretion of the Department of Homeland Security with respect to both border security and the ability of immigrants who would otherwise be ineligible for legalization to attain waivers allowing them to become legalized?
6. Are you concerned that the creation of the RPI status will lead to fraud, increased litigation, or high administrative costs? Why or why not?
7. In your opinion, what are the most egregious provisions in this bill?
8. What are your thoughts on the new electronic monitoring system, to be modeled after SEVIS, and for employers who use the W visa program?
9. Is there anything in the bill that would incentivize people to return to their country?
10. In your opinion, is the temporary worker program truly temporary?
11. Is it your understanding that this bill provides illegal immigrants with many opportunities to apply for legalization as well as more opportunities to appeal adverse decisions made by the Department of Homeland Security? If so, would you discuss how the bill accomplishes this?

**Hearing on S.744, The Border Security, Economic Opportunity,  
and Immigration Modernization Act  
April 22, 2013  
Senator Leahy  
Questions for the Record for Brad Smith**

- Q. The Uniting American Families Act (UAFAs) would allow American citizens who are in long term committed relationships, or are married, to sponsor their foreign partners or spouse for green cards under the family immigration system, just as heterosexual married couples are currently allowed to do under the law. I have championed this proposal since 2003, when I first introduced the legislation. This year, I welcomed Senator Susan Collins (R-Maine) as an original cosponsor of this bipartisan legislation.
- a. **Does Microsoft have a position on the Uniting American Families Act?**
  - b. **Why do you believe that UAFAs is important to American companies?**

**Questions for the Record**  
**Comprehensive Immigration Reform**  
**Senator Mike Lee**  
**April 22, 2013**

**Brad Smith**

In your testimony, you expressed several concerns with the burdens the H-1B reforms would place on your business.

- Could you elaborate on those concerns?
- How can we ensure that H1-B visas are not exploited by outsourcing companies, without overly burdening businesses that use them for legitimate reasons?

**Questions for the Record**

**Comprehensive Immigration Reform**

**Senator Mike Lee**

**April 22, 2013**

**Tamar Jacoby**

The new W-visa has a cap of 200,000 per year after the phase-in. The Pew Hispanic Center shows that in March 2000, the annual flow of illegal immigrants was 500,000.

- As our economy improves, will there be enough visas to fill the jobs that are available?
- If there not enough visas, will we see more illegal entries?

**Questions for the Record**

**Comprehensive Immigration Reform**

**Senator Mike Lee**

**April 22, 2013**

**Janice Kephart**

By what metric is “border security” currently determined? Is this metric effective? Is the same metric used in the bill?

When calculating total illegal entries, besides watching someone cross the border without apprehending them, how does DHS decide that an illegal entry has occurred?

What specific border security measures does this bill require in the non-high-risk sectors?

If, five years after the enactment of the bill, one of the current non-high-risk sectors becomes “high-risk” due to an increase in illegal crossings, do the border security requirements for those sectors also increase?

**Questions for the Record**  
**Comprehensive Immigration Reform**  
**Senator Mike Lee**  
**April 22, 2013**

**Kris Kobach**

Mr. Kobach, you noted in your written testimony that the bill's definition of employer exempts employment that is "casual, sporadic, irregular, or intermittent." I also noted this exemption and was troubled by it.

- What employment would be exempted from using E-Verify that shouldn't, under this definition?

**Senator Jeff Sessions**  
**Questions for the Record**  
**Fred Benjamin, Chief Operating Officer, Medicalodges, Inc.**

1. If S. 744 were to become law, do you believe that the Department of Homeland Security would deport those who enter the country illegally or overstay their visas after the bill's enactment?
2. If S. 744 were to become law, how many total new immigrants, including those currently here illegally who would be granted some form of legal status and those who would be admitted to the country under all categories of chain migration, would be added to the United States over a ten-year period following the date of enactment and over a fifteen-year period following the date of enactment?

**Senator Jeff Sessions  
Questions for the Record**

**Brad Smith, General Counsel and Executive Vice President, Microsoft**

1. If S. 744 were to become law, do you believe that the Department of Homeland Security would deport those who enter the country illegally or overstay their visas after the bill's enactment?
2. If S. 744 were to become law, how many total new immigrants, including those currently here illegally who would be granted some form of legal status and those who would be admitted to the country under all categories of chain migration, would be added to the United States over a ten-year period following the date of enactment and over a fifteen-year period following the date of enactment?

**Senator Jeff Sessions  
Questions for the Record**

**Dr. Steven Camarota, Director of Research, Center for Immigration Studies**

1. If S. 744 were to become law, do you believe that the Department of Homeland Security would deport those who enter the country illegally or overstay their visas after the bill's enactment?
2. If S. 744 were to become law, how many total new immigrants, including those currently here illegally who would be granted some form of legal status and those who would be admitted to the country under all categories of chain migration, would be added to the United States over a ten-year period following the date of enactment and over a fifteen-year period following the date of enactment?

**Senator Jeff Sessions  
Questions for the Record**

**Charles Conner, President & CEO, National Council of Farmer Cooperatives**

1. If S. 744 were to become law, do you believe that the Department of Homeland Security would deport those who enter the country illegally or overstay their visas after the bill's enactment?
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**Senator Jeff Sessions  
Questions for the Record**

**Chris Crane, President, National Immigration and Customs Enforcement Council 118  
of the American Federation of Government Employees**

1. If S. 744 were to become law, do you believe that the Department of Homeland Security would deport those who enter the country illegally or overstay their visas after the bill's enactment?
2. If S. 744 were to become law, how many total new immigrants, including those currently here illegally who would be granted some form of legal status and those who would be admitted to the country under all categories of chain migration, would be added to the United States over a ten-year period following the date of enactment and over a fifteen-year period following the date of enactment?

**Senator Jeff Sessions**  
**Questions for the Record**  
**Neeraj Gupta, CEO, Systems in Motion**

1. If S. 744 were to become law, do you believe that the Department of Homeland Security would deport those who enter the country illegally or overstay their visas after the bill's enactment?
2. If S. 744 were to become law, how many total new immigrants, including those currently here illegally who would be granted some form of legal status and those who would be admitted to the country under all categories of chain migration, would be added to the United States over a ten-year period following the date of enactment and over a fifteen-year period following the date of enactment?

**Senator Jeff Sessions  
Questions for the Record  
Professor Ron Hira**

1. If S. 744 were to become law, do you believe that the Department of Homeland Security would deport those who enter the country illegally or overstay their visas after the bill's enactment?
2. If S. 744 were to become law, how many total new immigrants, including those currently here illegally who would be granted some form of legal status and those who would be admitted to the country under all categories of chain migration, would be added to the United States over a ten-year period following the date of enactment and over a fifteen-year period following the date of enactment?

**Senator Jeff Sessions**  
**Questions for the Record**  
**Tamar Jacoby, President & CEO, Immigration Works USA**

1. If S. 744 were to become law, do you believe that the Department of Homeland Security would deport those who enter the country illegally or overstay their visas after the bill's enactment?
2. If S. 744 were to become law, how many total new immigrants, including those currently here illegally who would be granted some form of legal status and those who would be admitted to the country under all categories of chain migration, would be added to the United States over a ten-year period following the date of enactment and over a fifteen-year period following the date of enactment?

**Senator Jeff Sessions  
Questions for the Record**

**Rick Judson, Chairman, National Association of Home Builders**

1. If S. 744 were to become law, do you believe that the Department of Homeland Security would deport those who enter the country illegally or overstay their visas after the bill's enactment?
2. If S. 744 were to become law, how many total new immigrants, including those currently here illegally who would be granted some form of legal status and those who would be admitted to the country under all categories of chain migration, would be added to the United States over a ten-year period following the date of enactment and over a fifteen-year period following the date of enactment?

**Senator Jeff Sessions**  
**Questions for the Record**  
**Janice L. Kephart, Former Counsel, September 11 Commission,**  
**Principal, 911 Security Solutions**

1. If S. 744 were to become law, do you believe that the Department of Homeland Security would deport those who enter the country illegally or overstay their visas after the bill's enactment?
2. If S. 744 were to become law, how many total new immigrants, including those currently here illegally who would be granted some form of legal status and those who would be admitted to the country under all categories of chain migration, would be added to the United States over a ten-year period following the date of enactment and over a fifteen-year period following the date of enactment?

**Senator Jeff Sessions**  
**Questions for the Record**  
**Honorable Kris Kobach, Secretary of State, State of Kansas**

1. If S. 744 were to become law, do you believe that the Department of Homeland Security would deport those who enter the country illegally or overstay their visas after the bill's enactment?
2. If S. 744 were to become law, how many total new immigrants, including those currently here illegally who would be granted some form of legal status and those who would be admitted to the country under all categories of chain migration, would be added to the United States over a ten-year period following the date of enactment and over a fifteen-year period following the date of enactment?

**Senator Jeff Sessions  
Questions for the Record  
The Honorable Jim Kolbe**

1. If S. 744 were to become law, do you believe that the Department of Homeland Security would deport those who enter the country illegally or overstay their visas after the bill's enactment?
2. If S. 744 were to become law, how many total new immigrants, including those currently here illegally who would be granted some form of legal status and those who would be admitted to the country under all categories of chain migration, would be added to the United States over a ten-year period following the date of enactment and over a fifteen-year period following the date of enactment?

**Senator Jeff Sessions  
Questions for the Record**

**Mark Krikorian, Executive Director, Center for Immigration Studies**

1. If S. 744 were to become law, do you believe that the Department of Homeland Security would deport those who enter the country illegally or overstay their visas after the bill's enactment?
2. If S. 744 were to become law, how many total new immigrants, including those currently here illegally who would be granted some form of legal status and those who would be admitted to the country under all categories of chain migration, would be added to the United States over a ten-year period following the date of enactment and over a fifteen-year period following the date of enactment?

**Senator Jeff Sessions  
Questions for the Record**

**Laura L. Lichter, Esq., President, American Immigration Lawyers Association**

1. If S. 744 were to become law, do you believe that the Department of Homeland Security would deport those who enter the country illegally or overstay their visas after the bill's enactment?
2. If S. 744 were to become law, how many total new immigrants, including those currently here illegally who would be granted some form of legal status and those who would be admitted to the country under all categories of chain migration, would be added to the United States over a ten-year period following the date of enactment and over a fifteen-year period following the date of enactment?

**Senator Jeff Sessions**  
**Questions for the Record**  
**Janet Murguia, President & CEO, National Council of La Raza**

1. If S. 744 were to become law, do you believe that the Department of Homeland Security would deport those who enter the country illegally or overstay their visas after the bill's enactment?
2. If S. 744 were to become law, how many total new immigrants, including those currently here illegally who would be granted some form of legal status and those who would be admitted to the country under all categories of chain migration, would be added to the United States over a ten-year period following the date of enactment and over a fifteen-year period following the date of enactment?

**Senator Jeff Sessions**  
**Questions for the Record**  
**Grover Norquist, President, Americans for Tax Reform**

1. If S. 744 were to become law, do you believe that the Department of Homeland Security would deport those who enter the country illegally or overstay their visas after the bill's enactment?
2. If S. 744 were to become law, how many total new immigrants, including those currently here illegally who would be granted some form of legal status and those who would be admitted to the country under all categories of chain migration, would be added to the United States over a ten-year period following the date of enactment and over a fifteen-year period following the date of enactment?
3. Dynamic macroeconomic models of the U.S. economy assume an average wage rate that is applied over the entire population of workers. With respect to the analysis that you relied on for your testimony, please explain what wage rate was used, how much that wage rate changed over the course of the forecast period, and whether it was based on income earned only by legal workers or on income earned by both legal and illegal workers.
4. Although your testimony concludes that a large-scale amnesty will result in budget savings from lower deficits, your testimony is silent with regard to inflation and interest rates, which often make significant differences in budget outcomes. Please provide the the interest rate and inflation (CPI or GDP deflator) results in the simulation that you relied upon in your testimony.
5. Experts on the current illegal population report that the average educational level adjusted for age is below that of the legal population. However, worker productivity is closely associated with educational attainment and productivity is causally connected to growth in the economy. Please explain whether the economic model or analysis you relied upon in your testimony suggests that the illegal population will gain the training and education needed to support your claims regarding economic growth.
6. In your written testimony you state: "The majority of those undocumented immigrants currently here are low-skilled. Some argue that we should not be importing or legalizing this type of talent. But, in reality, the U.S economy demands an enormous number of low-skilled workers. . . We need immigrant labor to fill demand for low-skill jobs."
  - a. Please explain how you anticipate that many of the low-skilled workers who would be legalized under S. 744 would find employment in light of the current unemployment rate of 7.6 percent and the fact that 90 million Americans are outside of the labor force.
  - b. Please list the sources that you used to reach your conclusion that the U.S. needs more labor to fill a low-skill job demand.

7. In your testimony you asserted that S. 744 “puts at least 13 years between legal status and access to public benefits for most undocumented immigrants, mitigating the negative fiscal impacts of our bloated entitlement programs.” Your testimony went on to say that immigrants come at the beginning of their working lives, which means they will have years to pay taxes and contribute to the economy before they receive any benefits. Eugene Steuerle and Caleb Quakenbush of the Urban Institute published a report in 2012 titled “Social Security and Medicare Taxes and Benefits over a Lifetime.” Their report provides data indicating that even among two-household couples where one earns a high wage (\$71,400) and the other a lower wage (\$44,600), the amount paid in total lifetime taxes is lower than the total lifetime benefits they receive as they get older.
- a. Please provide the data on which you rely that suggests illegal immigrants will pay enough taxes to mitigate any negative fiscal impacts of receiving entitlement benefits over the long-term.
  - b. Please explain how you reconcile your conclusions with those of the report by Steuerle and Quakenbush.
  - c. Please provide the data on which you rely to calculate the average wages that illegal immigrants will earn once they are authorized to work in the U.S.
  - d. Under S. 744, when is the earliest that illegal immigrants who become legalized would be eligible for federal benefits?
  - e. Under S. 744, when is the earliest that illegal immigrants who become legalized would be eligible for state and local benefits?
  - f. Under S. 744, when is the earliest that a household headed by an illegal immigrant who becomes legalized would become eligible for federal benefits?

**Senator Jeff Sessions  
Questions for the Record**

**Arturo Rodriguez, President, United Farm Workers**

**S.744, The Border Security, Economic Opportunity, and Immigration Modernization Act**

1. If S. 744 were to become law, do you believe that the Department of Homeland Security would deport those who enter the country illegally or overstay their visas after the bill's enactment?
2. If S. 744 were to become law, how many total new immigrants, including those currently here illegally who would be granted some form of legal status and those who would be admitted to the country under all categories of chain migration, would be added to the United States over a ten-year period following the date of enactment and over a fifteen-year period following the date of enactment?

**Senator Jeff Sessions  
Questions for the Record**

**Mark Shurtleff, Partner, Troutman Sanders LLP**

1. If S. 744 were to become law, do you believe that the Department of Homeland Security would deport those who enter the country illegally or overstay their visas after the bill's enactment?
2. If S. 744 were to become law, how many total new immigrants, including those currently here illegally who would be granted some form of legal status and those who would be admitted to the country under all categories of chain migration, would be added to the United States over a ten-year period following the date of enactment and over a fifteen-year period following the date of enactment?

**Senator Jeff Sessions**  
**Questions for the Record**  
**The Honorable Bill Vidal, President & CEO,**  
**Hispanic Chamber of Commerce of Metro Denver**

1. If S. 744 were to become law, do you believe that the Department of Homeland Security would deport those who enter the country illegally or overstay their visas after the bill's enactment?
2. If S. 744 were to become law, how many total new immigrants, including those currently here illegally who would be granted some form of legal status and those who would be admitted to the country under all categories of chain migration, would be added to the United States over a ten-year period following the date of enactment and over a fifteen-year period following the date of enactment?

**Senator Jeff Sessions**  
**Questions for the Record**  
**Fred Benjamin, Chief Operating Officer, Medicalodges, Inc.**

1. If S. 744 were to become law, do you believe that the Department of Homeland Security would deport those who enter the country illegally or overstay their visas after the bill's enactment?

I believe that if enacted, this legislation would provide a mechanism to track those individuals who are allowed to enter the U.S. legally and overstay their visa. I also believe that this legislation would deter illegal entrants because of new legal programs that would be made available to foreign nationals to enter the U.S. lawfully. Those who enter the country illegally, would have a difficult time finding employment and would most likely be deported.

2. If S. 744 were to become law, how many total new immigrants, including those currently here illegally who would be granted some form of legal status and those who would be admitted to the country under all categories of chain migration, would be added to the United States over a ten-year period following the date of enactment and over a fifteen-year period following the date of enactment?

This question is beyond my scope of expertise. I have looked at the bill with respect to the current and future needs for workers in the senior care industry. I believe that it addresses those needs.

**Questions for the Record**  
**Comprehensive Immigration Reform**  
**Senator Mike Lee**  
**April 22, 2013**

**Brad Smith**

*In your testimony, you expressed several concerns with the burdens the H-1B reforms would place on your business.*

- *Could you elaborate on those concerns?*

Thank you for the opportunity to provide additional detail on some of the concerns we have with the current language of S.744, the Border Security, Economic Opportunity, and Immigration Modernization Act of 2013.

Two sections of the bill that would benefit from further clarification and refinement are the recruitment requirements and nondisplacement provisions relating to H-1B workers. As I explained at the hearing, Microsoft is and intends to be a strong supporter of this bill. It makes many important improvements to bring the supply of employment-based green cards and H-1B visas into line with the skills demands of today's innovation economy. With respect to H-1B visas, though, if the recruitment and nondisplacement requirements are not refined, they would stand as unnecessary obstacles to use of the visas by employers who create jobs in this country.

Recruitment

For the first time, the bill includes a recruitment requirement even for employers with a small overall population of H-1B workers. For each H-1B petition—including petitions seeking to extend the H-1B status of existing employees—every employer would need to attest that it has advertised the job on a new website created by the Secretary of Labor, and has offered the job to any U.S. worker who applies and is equally or better qualified for the job than the H-1B worker. Employers that are H-1B dependent would have to make an additional attestation that they have taken good faith steps to recruit in the U.S. using procedures that meet industry-wide standards and are offering compensation that is at least as great as that required to be offered to the H-1B nonimmigrant.

As a threshold matter, it is important to understand that we are not dealing with a choice between hiring U.S. workers and hiring foreign workers. The talent shortage is so acute that we need both to address today's workforce needs. And, to be clear, Microsoft endorses the idea of requiring that H-1B employers make good faith efforts to recruit U.S. workers in the occupations for which H-1Bs are sought, using industry-wide standards and offering the same level of compensation. At Microsoft, we do this already, not just because it is the right thing to do, but also because it is a necessity to meet our business needs. Microsoft engages in massive recruitment efforts for talent—including U.S. workers—on a daily basis. We spend millions of dollars each year in our recruitment efforts, with a staff of over 300 recruiters whose key assignment is to find qualified candidates for our job openings. We hire people from hundreds of U.S. universities, and we conduct significant targeted recruitment efforts at 100 of those

schools with whom we have cultivated deep connections and relationships over the years to ensure the opportunities available at Microsoft are widely known. We also dedicate significant resources to the recruitment of experienced candidates within the industry, and we leverage a multitude of connection points, including professional networks and associations, a robust employee referral program, dozens of job search websites, social media and our own careers website. We even have a blog at [www.microsoftjobsblog.com](http://www.microsoftjobsblog.com) that is devoted to generating as much visibility as possible for our opportunities. We don't just wait for potential candidates to find us. We do everything we can to find them.

When we make our hiring decisions, we evaluate our candidates thoughtfully to ensure that the candidate with the best qualifications receives an employment offer. We are confident in how we hire and the opportunities that we provide to American workers. Our main concern is with having those hiring decisions second-guessed by Department of Labor auditors years after those decisions are made. This introduces a deep level of uncertainty, particularly with regard to how regulators would make appropriate assessments of employers' hiring decisions. The imposition of new requirements on non-dependent employers—whose workforces are already comprised primarily of U.S. workers—to keep voluminous records on each applicant and every hiring decision would also add a significant level of administrative overhead and expense without improving protections for U.S. workers or helping drive innovation and business growth. This level of regulation would certainly create substantial new resource demands for the government as well, and in the context of compliant, non-dependent employers, would not be the best use of limited enforcement resources. Ultimately, employers are in the best position to assess applicants and their qualifications in relation to their workforce needs, and it is in our clear business interest to hire the most qualified candidates. We believe that this provision must recognize that reality.

#### Nondisplacement

The bill also includes a requirement that even companies with very small percentages of H-1B workers not have displaced a U.S. worker within the 90 days prior to an H-1B petition, and that they will not do so within 90 days following a petition. Again, we fully endorse the principle that H-1B visas should not be used to displace U.S. workers, but we should be certain to focus the restriction on the practice we all want to prohibit—replacing an American worker with an H-1B worker. But as drafted, this provision could disrupt a number of situations that Congress would consider to be both legitimate and important business options—such as changes in the number of U.S. workers due to acquisition or divestiture activity—none of which would involve actual displacement of U.S. workers. Particularly for companies like Microsoft with a well-documented record of job creation and hiring U.S. workers, these provisions should be carefully crafted to preserve the critical flexibility that employers need to make workforce decisions that enable important strategic business decisions.

The bill recognizes these types of situations and includes an exemption for situations where the number of U.S. workers in the professional ranks has not decreased in the prior year. This is a sensible exemption, but it may not be broad enough to accommodate for common situations such as divestitures, acquisitions, and other noncontroversial occurrences in the corporate ecosystem. The framework of the exemption—based on job zones—also creates challenges in calculating

the qualifying metrics for the exemption. There are simple refinements to address this concern. One option would be to require an attestation of nondisplacement that more precisely provides that the employer is not filing an H-1B petition for the intent or purpose of displacing a specific U.S. worker. We recognize that compromises are necessary for a bill of this magnitude, but we are optimistic that this provision can be refined while still ensuring strong protections against the displacement of U.S. workers.

- *How can we ensure that H-1B visas are not exploited by outsourcing companies, without overly burdening businesses that use them for legitimate reasons?*

We often hear general concerns about wages in relation to the overall H-1B program. Microsoft creates thousands of high skilled, high paying jobs in the U.S. every year. As required by the existing provisions of the H-1B program, we pay our H-1B employees the same as their peers who are U.S. citizens. As a result, at our headquarters in Redmond, WA, software development engineers who have recently graduated college have starting salaries in excess of 36% above the Department of Labor's Level 1 wage for the occupation, not to mention the additional opportunities for bonuses and stock awards. This bill would restructure the prevailing wage system and substantially increase the minimum wage floor for all H-1B employees. Microsoft is supportive of this approach because it protects U.S. workers and it helps disprove the common misperception that H-1B workers are used as a cheap source of labor.

We think it makes sense to differentiate and tailor the restrictions and enforcement applied to companies based on whether they are dependent or non-dependent employers—and the bill takes strong steps in this direction. For example, firms with a U.S. workforce more than 50% comprised of H-1B and L-1 employees will be barred from obtaining new H-1Bs after a three year phase in period. H-1B dependent employers will also be required to pay the highest wage level for its H-1B employees. And H-1B dependent employers will be subject to strong requirements to recruit U.S. workers as well as restrictions on nondisplacement. We do agree with the approach taken by the drafters of the bill to exclude H-1 and L-1 employees being sponsored for permanent residence from the dependency calculations in the bill.

While these additional burdens make sense for employers who are H-1B dependent, nondependent employers should have a different level of attestation requirements applied to them. These are companies who, like Microsoft, are clearly recruiting and hiring U.S. workers, as evidenced by the low percentage of their workforces that are comprised of H-1B employees. These are also the companies that do not use the H-1B visa to displace U.S. workers. Simple revisions to the existing language on both of these attestation requirements would alleviate these concerns. Specifically, it makes sense to require nondependent employers to attest that they have attempted in good faith to recruit U.S. workers in the occupations for which H-1B employees are sought, but they shouldn't be subjected to regulators second-guessing individualized hiring decisions years after those decisions are made. Similarly, employers should be required to attest that H-1B petitions are not being filed to displace specific U.S. workers. But the definition of displacement under the current language must be narrowed to properly exclude circumstances where no specific displacement has actually taken place.

**Hearing on S.744, The Border Security, Economic Opportunity,  
and Immigration Modernization Act  
April 22, 2013  
Senator Leahy  
Questions for the Record for Brad Smith**

Q. The Uniting American Families Act (UAFAs) would allow American citizens who are in long term committed relationships, or are married, to sponsor their foreign partners or spouse for green cards under the family immigration system, just as heterosexual married couples are currently allowed to do under the law. I have championed this proposal since 2003, when I first introduced the legislation. This year, I welcomed Senator Susan Collins (R-Maine) as an original cosponsor of this bipartisan legislation.

a. Does Microsoft have a position on the Uniting American Families Act?

Yes, Microsoft supports the Uniting American Families Act and sent a formal letter of support on June 27, 2011. A copy of the letter is attached.

b. Why do you believe that UAFAs is important to American companies?

As an innovation leader, our most critical asset is the brainpower of the people in our workforce. Our talented employees are the key to our competitive strength, our ability to generate new ideas and products, and our ongoing capacity to create new jobs in the American economy.

Currently, same-sex permanent partners of U.S. citizens and lawful permanent residents cannot access similar benefits extended to married couples which impose a tremendous hardship on a number of our employees as well as the individuals we seek to recruit. These highly talented individuals are forced to choose between abandoning successful careers and established lives in the U.S. or living indefinitely in separate countries. Neither is a choice that makes sense and UAFAs would change this outdated barrier.

**Senator Jeff Sessions  
Questions for the Record  
Brad Smith, General Counsel and Executive Vice President, Microsoft**

1. If S. 744 were to become law, do you believe that the Department of Homeland Security would deport those who enter the country illegally or overstay their visas after the bill's enactment?

In testimony last week before the Judiciary Committee, Janet Napolitano, the Secretary of the Department of Homeland Security noted that this legislation will strengthen both national security and border security by helping to better identify individuals who are physically present in the U.S. Our understanding of the bill is that it does not change the current policy or practice of the Department of Homeland Security with respect to removal proceedings.

2. If S. 744 were to become law, how many total new immigrants, including those currently here illegally who would be granted some form of legal status and those who would be admitted to the country under all categories of chain migration, would be added to the United States over a ten-year period following the date of enactment and over a fifteen-year period following the date of enactment?

Respectfully, Microsoft is not in a position to provide a qualified answer to these specific questions. We believe U.S. government officials are in the best position to provide an estimate on the future flow of immigrants under S. 744.

**Senator Chuck Grassley**  
**Responses to Questions for the Record**  
**Hearing on “The Border Security, Economic Opportunity, and Immigration**  
**Modernization Act S.744” on April 22, 2013**  
**Dr. Steven Camarota, Director of Research, Center for Immigration Studies**

1. At the April 22, 2013 hearing, we heard many perspectives on comprehensive immigration reform. Was there any testimony offered by other witnesses that you found problematic, and how would you respond to it? Do you have any additional comments on issues that were discussed at the hearing?

*Grover Norquist’s testimony was the most odd. He seems entirely unaware of how our welfare system and income support system actually work. Moreover, he seems unaware of the actual welfare use rates of immigrants, especially less-educated immigrants. His argument that past immigration was not a problem, so today’s immigration is not a problem is entirely out of touch with current realities. For example, in 1900, during the last great wave of immigration, government expenditures (at all levels) equaled only about 5% of GDP, today it is roughly 35%. Today, each individual has to be able on average to pay a good deal in taxes to cover their consumption of services, direct and indirect. This means the arrival of less-educated immigrants who often earn low incomes has enormous negative implications for public coffers. Mr. Norquist does not seem aware of any of this. He simply wishes to state platitudes as a basis for policy.*

2. As you know, Department of Homeland Security Secretary Janet Napolitano testified before the Judiciary Committee on April 23, 2013. Much of her testimony focused on the issue of border security and the discretion that the proposed bill gives to the DHS Secretary. Do you agree with Secretary Napolitano’s assessment that this legislation should be enacted largely as it is currently written? What do you believe comprehensive immigration reform must include so that it avoids the problems that followed the 1986 reform?

*There are too many problems with the bill to explore here. But let me touch on just a few.*

- 1) *Employers are not required to start verifying the legal status of new workers for five years.*
- 2) *Employment verification never covers existing workers only new hirers, even after it is implemented in five years.*
- 3) *The bill actually scraps the existing employment verification system (called E-verify), and creates a whole new system that will almost certainly take years to get up and running.*
- 4) *Only 3 of 9 border sectors are required to be 90% secure.*
- 5) *DHS only has to submit a border control “plan” before amnesty goes into effect. Since the administration already considers the border controlled, this “requirement” means very little.*

6) *No in-personal interview is required to verify identity; amnesty applications can all be done by mail.*

7) *The information amnesty applicants provide can never be used in an enforcement action. If, for example, if a previously deported murderer applies under a false name and is discovered, agents are prohibited from using the address or place of work he provided in his application to pick him up. Confidentiality also means that if someone has been using a stolen identity, USCIS cannot inform the person whose identity has been stolen. Further, the illegal alien is given an amnesty for having stolen an identity.*

8) *Illegal immigrants are not required to pay back taxes (no matter how much is owed), even though prior to the bill's release there was the belief that it would include such a provision.*

9) *Illegal immigrants receive amnesty without any English language requirement. In ten years when illegal immigrants begin to apply for green cards (permanent residence) they only have to state that they are signed up for an English class.*

10) *Illegal immigrants with two drunk driving convictions can still receive amnesty.*

11) *There is no mechanism to detain and deport those who apply for amnesty, but are found ineligible. There is no requirement that DHS make any effort to locate and remove these individuals. The bill could have required applicants to receive approval in person, and those found ineligible could then be arrested. But there is no such provision. This fact, coupled with the probation on using information in the application for enforcement, means that the S744 will not be weeding out criminals, terrorists, and other bad actors.*

3. In your opinion, how should comprehensive immigration reform strike a balance between family-based and merit-based immigration? There are many way to think about this question but consider this as a starting point.

*If one thinks immigration is supposed to benefit the United States, then selecting as few immigrants as possible based on the family relations is best. In my view family immigration should be limited to the spouses and minor children of U.S.-citizens.*

4. In your opinion, will the bill's legalization provisions create a burden on the national economy or public programs?

*As I made clear in my testimony, immigration makes the economy larger but not richer. Its primary effect is to redistribute income, reducing the wages of some workers (those in competition with immigrants), who are often the least-educated, while increasing profits for business and the wages of those workers not in competition with immigrants. There are no large net gains for natives. Second the fiscal impact (taxes paid minus services used) of immigrant household or families is almost certainly negative. In other words, they use more in services than they pay in taxes.*

*As I indicated in my testimony, the National Research Council found that immigrant households overall were a net fiscal drain in 1996 of \$11 to \$20 billion annually. The illegal population is overwhelmingly less-educated, averaging only 10 years of schooling. Allowing them to stay is very costly; giving them legal status will increase the costs further.*

5. In what ways, if any, does this bill use immigration reform to strengthen the national economy?

*The provisions allowing in more skilled immigrants could have a positive impact economically and fiscally. However, the amnesty provisions, the increase in immigration for family members, and the new guest worker program for the less-skilled immigrants all have negative fiscal implications in particular.*

Senator Jeff Sessions

Responses to Questions for the Record

**Dr. Steven Camarota, Director of Research, Center for Immigration Studies**

1. If S. 744 were to become law, do you believe that the Department of Homeland Security would deport those who enter the country illegally or overstay their visas after the bill's enactment?

*There is nothing in the bill to mandate this. Thus those found ineligible for the amnesty will continue to live and work in the United States. It must be remembered that border enforcement and an enter/exit system will have no impact on those turned down for the amnesty. Further, the E-verify system is not implemented for 5 years and never applies to existing workers. All of this means that those who do not qualify can and will continue to live in the United States.*

2. If S. 744 were to become law, how many total new immigrants, including those currently here illegally who would be granted some form of legal status and those who would be admitted to the country under all categories of chain migration, would be added to the United States over a ten-year period following the date of enactment and over a fifteen-year period following the date of enactment?

*I am not sure of the number. However, Numbersusa has estimated that it roughly doubles the number of green cards each year to 2 million. Their findings is consistent with my reading of the bill.*

**Senator Jeff Sessions  
Questions for the Record**

**Charles Conner, President & CEO, National Council of Farmer Cooperatives**

1. If S. 744 were to become law, do you believe that the Department of Homeland Security would deport those who enter the country illegally or overstay their visas after the bill's enactment?

*Yes I do assuming sufficient resources are provided and visa holder tracking systems are in place.*

2. If S. 744 were to become law, how many total new immigrants, including those currently here illegally who would be granted some form of legal status and those who would be admitted to the country under all categories of chain migration, would be added to the United States over a ten-year period following the date of enactment and over a fifteen-year period following the date of enactment?

*I do not have access to information which would allow me to answer this question.*

**Senator Jeff Sessions  
Questions for the Record  
Neeraj Gupta, CEO, Systems in Motion**

1. If S. 744 were to become law, do you believe that the Department of Homeland Security would deport those who enter the country illegally or overstay their visas after the bill's enactment?
2. If S. 744 were to become law, how many total new immigrants, including those currently here illegally who would be granted some form of legal status and those who would be admitted to the country under all categories of chain migration, would be added to the United States over a ten-year period following the date of enactment and over a fifteen-year period following the date of enactment?

Answer: .

Senator Sessions,

I am unable to answer the above questions. I am not an expert at DHS matters and don't have any data on question #2.

**Senator Grassley's questions to witnesses regarding the hearing on "The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744" on April 22, 2013**

Responses from Professor Ron Hira

1. At the April 22, 2013 hearing, we heard many perspectives on comprehensive immigration reform. Was there any testimony offered by other witnesses that you found problematic, and how would you respond to it? Do you have any additional comments on issues that were discussed at the hearing?

A key issue not addressed in the hearing was the number of legal permanent residents who will be cleared from backlogs, as well as future flows of greencards. While I believe that the US economy and American labor market can absorb somewhat higher levels of greencards without adversely impacting American workers, the numbers in this bill may be high enough to create significant negative impacts for American workers. **Many of the skilled greencard provisions are uncapped and bypass the labor certification process, so there is no way to predict, nor control, the future dynamics of those seeking greencards.**

There are very low standards, a STEM degree and work in a related field, required to gain one of these greencards. So, we can easily predict that the program will be so attractive that large numbers of ordinary skilled workers will soon begin to crowd out American workers and students in those fields.

This key issue was not addressed in any of the hearings on this bill yet it might have the most lasting and largest impact on the American labor market.

The skilled greencard provisions in the bill should be modified to significantly raise the standards, institute a labor certification, and the program should be capped.

2. As you know, Department of Homeland Security Secretary Janet Napolitano testified before the Judiciary Committee on April 23, 2013. Much of her testimony focused on the issue of border security and the discretion that the proposed bill gives to the DHS Secretary. Do you agree with Secretary Napolitano's assessment that this legislation should be enacted largely as it is currently written? What do you believe comprehensive immigration reform must include so that it avoids the problems that followed the 1986 reform?

Improve the H-1B, L-1, OPT safeguards, and place better standards on the greencard provisions.

3. Do you believe that the bill as written appropriately addresses the economic needs of the country through the immigration system?

I don't believe that the bill addresses the economic needs in high-skilled labor markets, especially for STEM fields. With respect temporary work visas, the bill does not raise the wage floors for

H-1Bs high enough - H-1Bs can still be paid 20% below the average wages of Americans. And it doesn't create wage floors for either the L-1 or the OPT visas.

With respect to legal permanent residence, the bill eliminates labor certification for all STEM graduate students and eliminates the cap on their numbers. This will create perverse incentives in the market. Employers will be tempted to replace their older incumbent workers with cheaper fresh graduates, fueling age discrimination. And universities will be placed in a conflict of interest by becoming the sole gatekeeper for issuing greencards. **Universities will essentially be able to sell greencards to foreign students.** Given that Masters degrees are short in duration, and have little oversight from outside bodies, this provision will make it inexpensive for foreigners to purchase greencards. We will see a flood of foreign student applications, which will crowd out American students from the STEM fields. Those foreign students will in turn flood the labor market in the STEM fields, depressing wages, and further steering American students from studying these fields.

All significant studies find that there are no systemic shortages in the STEM labor markets, and therefore there is no justification for such a provision. The most recent labor market study by Salzman, Lowell, and Kuehn (SLK) uses wage data as well as supply of graduates to show that there is no systemic shortage of STEM workers

It can be found here: <http://www.epi.org/publication/bp359-guestworkers-high-skill-labor-market-analysis/>

SLK find:

“Our examination of the IT labor market, guestworker flows, and the STEM education pipeline finds consistent and clear trends suggesting that *the United States has more than a sufficient supply of workers available to work in STEM occupations:*

- The flow of U.S. students (citizens and permanent residents) into STEM fields has been strong over the past decade, and the number of U.S. graduates with STEM majors appears to be responsive to changes in employment levels and wages.
- For every two students that U.S. colleges graduate with STEM degrees, only one is hired into a STEM job.
- In computer and information science and in engineering, U.S. colleges graduate 50 percent more students than are hired into those fields each year; of the computer science graduates not entering the IT workforce, 32 percent say it is because IT jobs are unavailable, and 53 percent say they found better job opportunities outside of IT occupations. These responses suggest that the supply of graduates is substantially larger than the demand for them in industry.

Analyzing new data, drawing on a number of our prior analyses, and reviewing other studies of wages and employment in the STEM and IT industries, we find that industry trends are strikingly consistent:

- Over the past decade IT employment has gradually increased, but it only recovered to its 2000–2001 peak level by the end of the decade.
- Wages have remained flat, with real wages hovering around their late 1990s levels.

We also find that, while there were strong increases in the number of computer science graduates and entrants from other fields that supply the IT industry during the late 1990s, after the dot-com bubble burst in 2001 a declining number of both guestworkers and U.S. students entered the IT pipeline. But since then, the number of IT college graduates has recovered modestly, while the number of guestworkers has increased sharply, suggesting a fundamental change in this labor market.

Our review of the data finds that *guestworkers make up a large and increasing portion of the IT labor market*:

- The flow of guestworkers has increased over the past decade and continues to rise (the rate of increase dropped briefly with the economic collapse of 2008, but the flow of guestworkers has since continued its rapid upward pace).
- The annual inflows of guestworkers amount to one-third to one-half the number of all new IT job holders.

It could appear to casual observers that the striking increase in guestworkers might be a response to increased labor demand in the IT field. But employment and wage levels in IT jobs have been weak, trends that are *not* consistent with strong demand. The data also show that there are multiple routes into IT employment, most of which do not require a STEM degree:

- Only about a third of the IT workforce has an IT-related college degree.
- 36 percent of IT workers do not hold a college degree at all.
- Only 24 percent of IT workers have a four-year computer science or math degree.

The data also strongly suggest that *there is a robust supply of domestic workers available for the IT industry*:

- The number of domestic STEM graduates has grown strongly, and many of these graduates could qualify for IT jobs.
- The annual number of computer science graduates doubled between 1998 and 2004, and is currently over 50 percent higher than its 1998 level.”

4. Some people have suggested that the bill should focus more on family-based immigration. What is your view of the right balance between merit-based and family-based immigration?

I believe that this is a value judgment. There are merits to both sides of the argument.

5. In your opinion, does this bill treat American workers fairly?

American workers and students will face more unfair competition from lower cost guestworkers, dramatically higher numbers of STEM greencard holders, and the increased outsourcing of jobs overseas. There are some positive elements in this bill, but on balance it will make the STEM labor market more unattractive for American workers and students.

6. Are there sufficient safeguards for American and foreign workers in the bill?

No. Firms will still be able to pay below-market wages for guestworkers. And American workers will not be given a first and legitimate shot at these jobs.

7. Given the testimony of Brad Smith, do you have any further thoughts on why the business community opposes the Grassley/Durbin “good faith effort” requirement, which is a simple and straight forward measure that would provide qualified people at home with a chance at high skilled, high paying jobs?

During the hearing, Mr. Smith claimed that Microsoft was doing the kinds of recruitment efforts contained in Grassley/Durbin. The company would simply be asked to attest that they are doing what he claims Microsoft already does. It doesn’t make logical sense why he would oppose it.

There is plenty of evidence to show that many firms, including many that are non-dependent, are not conducting the good-faith recruitment that Microsoft claims to be doing. This is why all firms should be required to meet these standards to ensure that American workers are given a true first shot at the jobs.

8. During the hearing, Brad Smith of Microsoft claimed that there are severe and systemic shortages of STEM workers. Do you agree with this claim?

The Salzman, Lowell, and Kuehn paper as well as a recent paper by EPI’s Daniel Costa show that this is simply untrue. **Microsoft’s Brad Smith is making elementary, but significant, mistakes in the ways in which he is interpreting the BLS data. He is making apples to oranges comparisons.**

Costa’s paper addresses Microsoft’s misinterpretations in detail  
(<http://www.epi.org/publication/pm195-stem-labor-shortages-microsoft-report-distorts/> )

I will highlight two of these mistakes.

First, Brad Smith claims that the BLS projects 120,000 openings for workers with Bachelors in Computer Science. This is based on the false assumption that the only workers who do, and could, fill Computer Occupations have a BS in Computer Science. As Costa finds, “less than one-fourth to less than one-half of workers in computing occupations have a computer science degree.” This finding, which is based on NSF data, has been true for many years. The National

Academies had a similar finding in its landmark 2000 study, "Building a Workforce for the Information Economy." In it the authors found that there is no tight coupling between Information Technology occupations and specific fields of education. The upshot is that most IT workers do not have a Computer Science degree, and most do not need one now or in the future. Also, to be clear, the BLS would never sign on to the claim that Brad Smith is making.

Second, Brad Smith claims that a 3.2% unemployment rate for Computer Occupations is below the full employment unemployment rate. This is also false. We would expect 1.5%-2% unemployment rates to be an indicator that these occupations could be close to full employment. But to make this determination, one needs to look at other labor market indicators including the employment level growth and changes in wages. In fact, Salzman finds that for IT,

- Wages have remained flat, with real wages hovering around their late 1990s levels.

There are always spot shortages in certain sub-specialties and emerging fields where significant technological disruptions have occurred. But to be clear that no one has found systemic and broad-based shortages in STEM or IT occupations. In some STEM fields, like the Life Sciences, there are large surpluses of workers.

Employers do not have to demonstrate a shortage before hiring an H-1B, L-1 or OPT worker.

9. It is clear that the top firms using the H-1B visa program are taking about 50% of the available visas each year. Can you explain how outsourcing firms work and how they are taking work offshore?

There are three principal ways in which the outsourcing firms utilize these visas:

First, they can bring in cheaper workers into the US to serve clients. They are able to bill out at lower rates to because the cost of their labor is less than hiring American workers.

Second, the firms use the H-1B or L-1 visa program to bring in guestworkers who shadow American workers, learning the American worker's job. This is called knowledge transfer –an American worker teaches the foreign guestworker to take over their job. The American worker is then laid off and the guestworker may either remain in the US or take the work with him back to his home country.

Third, the H-1B or L-1 guestworker acts as a liaison to an offshore team.

In all of these cases, American workers could have and should have kept or gotten the job. Instead, they got to guestworkers.

10. Will the bill eliminate the use of the H1-B visa for outsourcing?

No, unfortunately, the bill falls short in this respect. Many firms, like IBM and Accenture, which use the program for outsourcing in the same ways that Infosys do, will simply pick up the work that Infosys might lose as a result of the bill's curbs on outsourcing.

But American workers won't be the beneficiaries. The work will continue to go to guestworkers, but they will be working for IBM or Accenture instead of Infosys. This is still extremely harmful to American workers and to the American economy.

Also, the greencard loophole in the bill is very significant. It enables firms to get below the 50-50 rule as well as even H-1B dependency. This loophole will surely be exploited by outsourcing firms in order to avoid any of the more stringent requirements for heavy H-1B users.

11. How does it impact the use of the L-1 visa and OPT for outsourcing?

The bill does very little to curb the use of the L-1 visa program to facilitate outsourcing. Eight of the top L-1 employers from 2008 (the most recent data that is public) are using it to offshore jobs. These are mostly the same firms that exploit the H-1B loopholes to use it to offshore jobs.

12. Could you explain your concerns about the L-1 and OPT visas?

Both are work visas and neither has a cap nor any protections for US and foreign workers alike. OPT workers have been found by analysts to be paid at a steep discount to equivalent American workers. The OPT extension allows workers to stay 29 months in a very wide variety of disciplines. Some analysts have found that OPT workers are being paid at 40% discounts over American workers. There is almost no transparency in either program and no one knows, including the government, the wages and working conditions being offered these workers.

No other country operates its intra-company transfer visas this way. The UK government sets a high wage floor for intra-company transfers and the Canadian government requires that they be paid average wages.

13. Do you have any suggestions for improving the law so that companies based in the United States have a shot at the visas available each year?

Raise the wage floors and demand by firms seeking cheaper labor will use far fewer of the visas. This is the best way in which to meet the needs of these firms. Where real needs can be shown the visa program should be used. Right now, the program is being dominated by firms using it for cheaper workers. This is crowding out the legitimate use of the program.

Industry has offered a false choice by claiming that the only way to bring in the best and brightest is by allowing firms to bring in much larger numbers of cheaper indentured workers.

14. Can you elaborate on any other provisions in the bill that 1) protect American workers and 2) ensure that companies are not abusing the program?

The outplacement clause for the H-1B program is very important to curb abuse. Non-dependent firms should also be prohibited from outplacement.

Another key provision that should be added to the bill is a regular audit for all firms. Right now, the bill includes audits only for H-1B Dependent firms. The H-1B program has been so rife with abuse that it needs much more oversight to ensure compliance. To date compliance has relied on whistleblowers to come forward. Relying on whistleblowers is the worst possible choice in designing accountability into any program.

15. Why do you believe that allowing greencard applications (intending immigrant) to reduce the H-1B counts is not good policy?

This is a very significant loophole that has little justification. If news reports are correct, this was placed in at the behest of Facebook and outsourcing firm Cognizant.

In the case of Facebook, the company received 305 H-1Bs in FY12. The company applied for 73 greencards for its H-1B workers in FY12. Of those greencard applications, 58 were for wages at the current Level I or Level II. It is questionable why it is so critical for Congress to enable Facebook to pay lower wages when it is H-1B Dependent.

**This provision may save Facebook money by allowing it to pay lower wages to its H-1B workers, but it comes at a very high cost to American workers.**

**Many firms are likely to take advantage of the greencard loophole, and the biggest beneficiaries will be the outsourcing firms.** There is nothing stopping Infosys or Cognizant from applying for greencards for all of its H-1B and L-1 workers. Given that there is likely to be a backlog for EB-3 visas, they could have workers tethered to them for many years at below-market wages. Further, companies like IBM and Accenture, which are likely close to the H-1B Dependent threshold of 15%, will be able to avoid the additional safeguards.

Industry insiders like Neeraj Gupta believe that this will result in the outsourcing firms viewing the greencard application simply as an additional cost of doing business, which will be more than offset by the lower fees and lower wages they will be able to pay.

**Companies would begin to sponsor workers for greencards not because they want them to stay permanently, but instead to exploit the temporary worker programs. This is a perverse use of a precious asset, greencards.**

**Senator Jeff Sessions**  
**Questions for the Record**  
**Responses from Professor Ron Hira**  
**“The Border Security, Economic Opportunity, and Immigration Modernization Act,**  
**S.744”**

1. If S. 744 were to become law, do you believe that the Department of Homeland Security would deport those who enter the country illegally or overstay their visas after the bill's enactment?

I do not have expertise in this area.

2. If S. 744 were to become law, how many total new immigrants, including those currently here illegally who would be granted some form of legal status and those who would be admitted to the country under all categories of chain migration, would be added to the United States over a ten-year period following the date of enactment and over a fifteen-year period following the date of enactment?

I believe this is a critical number that should be calculated and estimated. Large numbers will have significant impacts on the American labor market. The extent of the labor market impact is difficult to determine without making reasonable estimates of the numbers of greencards that will be granted, to clear out backlogs, and also for future flows. In sum, it looks like this bill would vastly increase the number of greencards and temporary work permits, swelling the labor pool significantly.

The U.S. already has complex formulas to admit legal permanent residents. We currently grant approximately 1 million new greencards per year. The bill seeks to eliminate backlogs of those waiting for a greencard. This includes the approximately 11 million undocumented workers plus family-based and employment-based backlogs. I do not have good estimates of the latter two but I understand that combined they are in the neighborhood of 6 million. That would mean the bill would grant 17 million greencards just for clearing out backlogs – that would be equivalent to 17 years' worth of greencards. The labor market impact is mitigated somewhat because many of these 17 million are already here. However, the future flows of workers on greencards and temporary workers looks to be very expansive.

On the temporary side, the H-1B program is likely to at least double from its already large current size of 700,000 some workers here. And the L-1 and OPT work visas remain uncapped and largely unregulated.

A key issue not addressed in the hearing was the number of legal permanent residents who will be cleared from backlogs, as well as future flows of greencards. While I believe that the US economy and American labor market can absorb somewhat higher levels of greencards without adversely impacting American workers, the numbers in this bill may be high enough to create significant negative impacts for American workers. **Many of the skilled greencard provisions**

**are uncapped and bypass the labor certification process, so there is no way to predict, nor control, the future dynamics of those seeking greencards.**

There are very low standards, a STEM degree and work in a related field, required to gain one of these greencards. So, we can easily predict that the program will be so attractive that large numbers of ordinary skilled workers will soon begin to crowd out American workers and students in those fields.

This key issue was not addressed in any of the hearings on this bill yet it might have the most lasting and largest impact on the American labor market.

The bill eliminates labor certification for all STEM graduate students and eliminates the cap on their numbers. This will create perverse incentives in the market. Employers will be tempted to replace their older incumbent workers with cheaper fresh graduates, fueling age discrimination. And universities will be placed in a conflict of interest by becoming the sole gatekeeper for issuing greencards. **Universities will essentially be able to sell greencards to foreign students.** Given that Masters degrees are short in duration, and have little oversight from outside bodies, this provision will make it inexpensive for foreigners to purchase greencards. We will see a flood of foreign student applications, which will crowd out American students from the STEM fields. Those foreign students will in turn flood the labor market in the STEM fields, depressing wages, and further steering American students from studying these fields.

The skilled greencard provisions in the bill should be modified to significantly raise the standards, institute a labor certification, and the program should be capped. The H-1B, L-1, and OPT programs need significantly more safeguards included.

**Questions for the Record**  
**Comprehensive Immigration Reform**  
**Senator Mike Lee**  
**April 22, 2013**

**Tamar Jacoby**

The new W-visa has a cap of 200,000 per year after the phase-in. The Pew Hispanic Center shows that in March 2000, the annual flow of illegal immigrants was 500,000.

- As our economy improves, will there be enough visas to fill the jobs that are available?

I fear not. As the economy improves, I fear there will not be enough W visa holders under the quotas proposed in S.744 to fill jobs for which there are no willing or able Americans.

Unauthorized immigrants come to the U.S. to work, drawn across the border by a powerful demand for less-skilled labor. The reason for this demand: the U.S. workforce is changing. American families are having fewer children, with birthrates well below replacement level. Baby boomers are retiring: 10,000 older workers are leaving the workforce every day. And the younger workers coming up behind them are much more educated than their parents. In 1950, 64 percent of U.S. workers were high school dropouts. Today, the figure is less than 10 percent.

Together, these trends are creating a perfect storm, and it is what drew the annual inflow of 500,000 unauthorized immigrants measured by the Pew Hispanic Center in 2000. In subsequent years, Pew Hispanic Center founder Roberto Suro left Pew for the University of Southern California where he created the Mexico Migration Monitor, which continues to count the annual inflow of unauthorized Mexicans. According to his estimates, every year from 2003 and 2009, more than 350,000 unauthorized Mexicans alone entered the U.S. to work. At the height of the housing boom, in 2006 and 2007, more than 600,000 entered every year. And even in 2011, with the economy just coming out of recession, more than 150,000 came to the U.S. to fill jobs for which there were no available Americans.

The most recent numbers available from the Mexico Migration Monitor, for the first half of 2012, show a slow but continued upturn – just as one would expect with economic recovery.

Bottom line: the W Visa program is not likely to be large enough to accommodate the number of workers who entered the country illegally during the boom years of the early 2000s – or the number likely to enter in the future when the nation's economy has fully recovered.

- If there not enough visas, will we see more illegal entries?

I fear we will.

Effective immigration control requires three essential elements: border security, workplace enforcement and legal channels that can accommodate the flow of foreign workers drawn to the U.S. to fill jobs for which there are no willing and able Americans.

Border security and workplace enforcement together will restrict the flow somewhat. But unless enforcement measures are accompanied by a worker visa program, they are unlikely to stop the immigrant influx. As long as jobs beckon to poor workers on the other side of the border, nature is likely to find a way.

Some people argue that the solution to this problem is eliminating the “jobs magnet.” But surely in the long run, that would be counterproductive. We can mechanize some of the jobs that draw immigrant workers. Over time, effective enforcement might create worker shortages that force employers to pay somewhat higher wages for this work. But there are limits to how high wages can go before consumers stop buying products and services. And even with higher wages, it remains unclear how many relatively educated Americans will want to work, say, washing dishes in the back of a restaurant. (And even if they did, it would hardly be an economically productive use of their educations.) The only other way to “eliminate the jobs magnet” is to restrict economic growth so as to reduce the growth of low-skilled jobs – but that hardly seems like the right answer.

Surely a better solution is to create a visa program big enough to meet U.S. labor needs with a lawful foreign labor force.

**Senator Jeff Sessions**  
**Questions for the Record**  
**Tamar Jacoby, President & CEO, ImmigrationWorks USA**

1. If S. 744 were to become law, do you believe that the Department of Homeland Security would deport those who enter the country illegally or overstay their visas after the bill's enactment?

My area of expertise and my testimony pertain to fixing the legal immigration system so it works for the future, providing U.S. business owners with lawful foreign workers to fill jobs when there are not enough willing and able Americans.

2. If S. 744 were to become law, how many total new immigrants, including those currently here illegally who would be granted some form of legal status and those who would be admitted to the country under all categories of chain migration, would be added to the United States over a ten-year period following the date of enactment and over a fifteen-year period following the date of enactment?

My testimony concerned the new W Visa program created by S. 744 to allow less-skilled foreign workers to enter the United States to fill jobs when there are not enough willing and able Americans. What I can try to shed some light on: the number of immigrants – technically nonimmigrants – likely to be admitted under that new program.

In truth, even this is extremely difficult to estimate. Among the many unpredictable variables:

1/ How rapidly the W Visa program will grow in size beyond the minimal quotas mandated by the bill.

S.744 envisions that the number of employer permits issued annually will start in the program's first year at 20,000 and could eventually rise as high as 200,000. But after Year 4, when the program will be capped at 75,000 permits, we have no idea how quickly it will grow.

2/ How many W visa holders will choose to bring spouses to the United States.

The bill allows for this, but it is highly unlikely that all program participants will choose to do so – after all, many are not married and others will have no intention of relocating permanently. They will be coming to the U.S. for temporary work stints – and maintaining a family in the U.S. is much more expensive than maintaining one at home.

3/ How many W visa holders will take advantage of the opportunity to switch from a short-term visa to a green card track, exiting the W Visa program and applying for legal permanent residence under the bill's new merit-based green card preference.

It's highly unlikely that all program participants will choose to switch tracks and, if the past is any guide, it may be less than half. In previous decades, most unauthorized migrants have come to the U.S. for short work stints. Some stayed longer than they initially intended because they were afraid that intensified border enforcement would prevent them from reentering the U.S. again at a later date for another work stint. But most of the unauthorized migrants entering the country in recent years were young people looking to work in the U.S. for a brief period, accumulating skills and capital to take back to their home countries.

4/ How many employers who qualify to participate in the program will reapply to renew their hiring permits, and how many who do so will retain the same workers they hired initially under the program.

This variable is highly relevant because some reapplying employers (those who do not retain the same workers) will count against the annual cap when they renew and some (those who do retain workers) will not count against the cap.

Of these three variables, arguably the most important is the last one – because no matter what the breakdown, as long as some reapplying employers count against the cap, this provision will eventually halt the growth of the W visa program. Over time, renewals will take up all the available W visas.

In my view, far from being a good thing, this is a significant problem – limiting the number of new workers available to fill jobs for which there are no willing and able Americans. But here's how it would work:

Pretend for simplicity's sake that the program is capped at 100 hiring permits. Permits last for three years, after which employers can renew. (That part is true – not a hypothetical assumption.) If all 100 employers who get permits the first year renew in Year 4 and none have retained their original W visa workers, then all will count against the cap and NO new employers will be able to enter the program that year – and as a consequence no additional workers will be authorized to enter the country under the W Visa program. This despite the fact that the nominal quota for that year is actually 100 permits.

Similarly, if all employers who get permits the first year decide to renew in Year 4 and 75 percent of them have experienced a turnover of W Visa workers and therefore count against the cap, only 25 new employers – and 25 new workers – will be able to participate in the program that year. And so on every year after Year 4. (After all, there will be a cohort renewing every year from Year 4 on.)

Where this really begins to bite: in Year 7 and again even more intensely in Year 10. The number of employers participating in the program will inevitably grow in the early years. Every time permits must be renewed – every three years – there will be more employers who want to renew. And because some percentage of these businesses will inevitably count against the cap, as their numbers grow, they will increasingly cannibalize the quota. Eventually – just when depends on variables #1 and #4 – there will simply be no new permits available and no increase in the

number of visas issued. (No new workers will be permitted to enter the country unless they are replacing departing workers.)

On net, how many foreigners will accumulate in the U.S. as a result of the W Visa program?

As difficult as it is to estimate, we can speculate about two scenarios – one relatively low-growth, one relatively high-growth.

Plausible conditions that would produce low growth:

- The formula designed to regulate the growth and shrinkage of the W Visa program produces an annual quota of 100,000 permits in Year 5, but then no further increase in the quota.
- All of the employers who enroll continue to need workers after three years, so all seek to renew, but none are still employing the workers they started with three years before, so 100 percent of them count against the cap in Year 4 and thereafter.
- Under this scenario, the number of new workers admitted to the U.S. under the W Visa program would reach zero in Year 8 and would not grow thereafter. (In subsequent years, new workers could enter only to replace departing workers.)

Plausible conditions that would produce higher growth:

- The formula designed to regulate the growth and shrinkage of the program produces a steadily rising quota that reaches 200,000 permits in Year 9.
- All of the employers who enroll continue to need workers after three years, so all seek to renew, but only half are still employing the workers they started with three years before, so 50 percent of them count against the cap in Year 4 and thereafter.
- Under this scenario, the number of new workers admitted to the U.S. under the program would begin declining in Year 9, trending gradually toward zero in the years thereafter.

On net, in my estimation, over 10 years, the low-growth scenario would allow a total of 300,000 W visa holders to enter the United States. Under the high-growth scenario, by Year 10, there could be as many as 800,000 less-skilled W visa workers present in the country.

As for Year 15, under the low-growth scenario, the only new workers entering the country after Year 8 would be replacing departing workers, so there would be no net growth in the stock of workers present in the U.S. between Year 10 and Year 15. Under the high-growth scenario, by Year 15, the stock present in the U.S. would reach 1.075 million.

Let's assume further that half of these nonimmigrants bring spouses with them to the United States. In my view, that's unlikely – I think the percentage will be lower than half – but for argument's sake, let's use the median figure. If this is the case,

under the low-growth scenario, the total number of foreigners admitted under the W Visa program and still in the country after 10 years would be 450,000. The number produced by the high-growth scenario would be 1.2 million.

After 15 years, the stock produced by the low-growth scenario will not change. The high-growth scenario would produce a stock 1.6 million.

These numbers may seem high, but not in comparison to the number of unauthorized immigrants who would likely enter the country in this 15-year period if S.744 fails to pass and there is no W Visa program.

Every year from 2003 to 2009, more than 300,000 unauthorized Mexicans entered the U.S. to fill jobs for which there were no willing or able Americans. At the height of the housing boom, in 2006 and 2007, the figure was more than 600,000. Even in 2011, with the nation just coming out of recession, more than 160,000 unauthorized Mexicans came to find work. And according to the respected Migration Policy Institute, in years ahead even a tepid economy will likely require upward of 320,000 Mexican workers a year to fill jobs that will not be filled by U.S. workers.

What do these MPI projections tell us about the total number of unauthorized workers likely to enter the U.S. over the next decade absent a worker visa program like the W Visa? At 320,000 a year, at the end of 10 years, 3.2 million additional unauthorized Mexican workers will have entered the United States. If half of them bring spouses – the same percentage we assumed would bring spouses in the scenarios above – the total number of new unauthorized Mexicans present in the U.S. will grow to 4.8 million.

At the end of 15 years, there will be 4.8 million unauthorized workers, and the total stock – with spouses – will add up to 7.2 million.

Which outcome would be better for the U.S. – the W visa scenario or continued illegal immigration? As I see the options, in Year 15 we could have 7.2 million *new* unauthorized immigrants living among us but beyond the rule of law – many of them people whose real names we don't know, who have never undergone a background check and who we have little or no power to force to return to their home countries. Or we could be benefiting from the labor of 1.6 million guest workers and spouses here *lawfully* on permits and scheduled to return home on a date certain.

In my view, it's an easy choice – not really a choice at all.

The best answer to illegal immigration is a legal immigration system that works.

The W Visa program is a thoughtful, well-crafted blueprint. In my estimate, if anything, it may be too small to meet the labor needs of a vibrant, growing U.S. economy. But it certainly strikes me as preferable to a new generation – much larger in number – of unauthorized immigrants living beyond the rule of law.



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**Rick Judson**

NAHB 2013 Chairman of the Board

May 1, 2013

The Honorable Jeff Sessions  
U.S. Senate  
326 Russell Senate Office Building  
Washington, DC 20510

Dear Senator Sessions:

It is with appreciation that I received your questions following the Senate Committee on the Judiciary hearing entitled, "The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744" on April 22, 2013. On behalf of the more than 140,000 members of the National Association of Home Builders (NAHB), I appreciate the opportunity to testify.

I agree with you that a thorough analysis of the legislation is imperative. I regret, however, that I am unable to comment on the U.S. Department of Homeland Security's capacity for fulfilling its responsibilities, which is outside our range of expertise. NAHB is also unable to comment on migration patterns in the United States, as we do not have data on this for analysis.

We look forward to continuing to work with you as S.744 moves forward in the legislative process. Thank you again for sharing your questions with us.

Sincerely,

A handwritten signature in cursive script that reads "Rick Judson".

Rick Judson  
2013 Chairman of the Board

cc: Chairman Patrick Leahy

**Senator Grassley's questions to witnesses regarding the hearing on "The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744" on April 22, 2013**

Questions for Janice Kephart

1. **At the April 22, 2013 hearing, we heard many perspectives on comprehensive immigration reform. Was there any testimony offered by other witnesses that you found problematic, and how would you respond to it? Do you have any additional comments on issues that were discussed at the hearing?**

My main concern is that there are numerous national security loopholes in the bill that have gone unaddressed. My expertise is not in what nearly all the other witnesses spoke to, so I would like instead to speak to what is problematic in issues I did not hear discussed during the course of the hearing.

The first is a general statement about the basic premise of granting immediate RPI status to millions of individuals whose identities we can not know. Today, USCIS struggles to find fraud and root it out in its current application vetting process. Adding 11 million on to that, or as some estimates state, 33 million potential recipients of RPI status in a timely manner, requires USCIS to either (1) rubber stamp the RPI applications or (2) produce tremendous backlogs that by the very nature of the bill will put current applicants more out of time with current processing.

Former executive-level long-time employees of USCIS tell me that USCIS cannot even handle current applications and problems. The processing problems persist and S. 744 does not solve them. The result is a tremendous fraud and national security vulnerability that takes us back to before 9/11. Even on 9/11, all applicants were receiving vetting and most were interviewed. There are no controls in S. 744 at all. The process is completely blind without identity vetting, and a criminal background check does little in these circumstances to assure security.

Here are some other issues with S. 744, perhaps the most visible and egregious. I do not attempt to capture them all here, but hope this listing provides some insight into substantial issues with S. 744, and recommendations for solving them. Many of these reflect the bipartisan agreements made in the 2007 push for comprehensive immigration reform

**Border Security:**

- Require *actual fencing* per an update to the specific fencing language in the *Secure Fence Act of 2006*.
- *Remove triggers, high risk sector* demarcation, and require instead "operational control on 100 percent of the border" as defined in the Secure Fence Act. Right now, S. 744 puts forth a metric that can be summed up as follows: "only 1/3 (if that) of the southwest border, not northern or coastal borders, measured only by apprehensions we say are happening, need be 90 percent secure, to trigger the path to citizenship". That's not a measure of border security. That's a permission slip for an open border.
- *Exit* -- strike provision which marginalizes and further confuses current law, and reaffirm that land exits and an eventual biometric (referencing appropriation language on US VISIT from April 2013).

**National Security:**

- Strike language allowing *absconders and aliens who have already been deported to claim the amnesty* -- these individuals have already been provided due process and removed for reasons that range from violating immigration law to being a national security threat.
- Strike language that enables dangerous felons given temporary status under DACA to be legalized.

**Identity Vetting and Document Fraud:**

- Require identity documents (passport or government issued ID) presented at time of initial application, and checks via watchlists, criminal data, national security data, immigration data, interviews as an option but required for any watchlist hit (Tsarneav was on watchlist but not interviewed) no matter at time of application or seeking re-admission to US -- to assure against terrorists like Tsarneav from using legalization to then go abroad for terror support/training and return, no questions asked.
- No RPI issuance prior to completion of all the checks listed above.
- Require that five percent (or more) of RPI applicants receive random interviews.
- Require the RPI and all applications be electronic
- Penalize those who knowingly engage in immigration benefit fraud should also be fined and barred/precluded from filing applications and petitions with USCIS for at least five years, and then only after having paid the fine and demonstrating rehabilitation.

**Agricultural, W and Day Workers:**

- *Biometric exit* required per prior law, pilot projects that were never completed. If biometrics are not required, then this workforce will likely not honor their length of stay, nor will we know who they really are. This is a well vetted idea that was piloted previously, but not well.
- Strike the *new definition of "employer,"* found in the amendment to INA Section 274A(b)(3) on page 402 of the bill exempts any employment that is "casual, sporadic, irregular, or intermittent." The express definition of "employer" excludes anyone that hires someone in any of those situations. Currently, many of the ways in which illegal immigrants obtain labor will thus no longer be unlawful.

**Monetary Impact of Low Skill Workers:**

- Require *back taxes* per first draft of bill and President's promises -- why do illegals no longer have to pay their debt to America?

**Higher Workers:**

- *E-Verify* as is (not the change in the bill that starts E-Verify at ground zero) and mandatory.

- 2. As you know, Department of Homeland Security Secretary Janet Napolitano testified before the Judiciary Committee on April 23, 2013. Much of her testimony focused on the issue of border security and the discretion that the proposed bill gives to the DHS Secretary. Do you agree with Secretary Napolitano's assessment that this legislation should be enacted largely as it is currently written? What do you believe comprehensive immigration reform must include so that it avoids the problems that followed the 1986 reform?**

S. 744 takes America back to pre-9/11 standards, recreating - in much larger volume - many of the immigration vulnerabilities which the 9/11 hijackers and many other terrorists have taken advantage of time and again. This bill does not solve serious bureaucratic problems with legal immigration processing, which should be the core focus of reform alongside of attaining a secure border which can operationally control the flows of illegal aliens, terrorists and contraband through our borders while providing a well, fair, and just processing for those seeking to immigrate legally.

- 3. How meaningful are the triggers contained in the bill?**

The triggers in the bill are meaningless. Beyond that, the triggers will roll back current security by not requiring a truly secure border. As I stated in my answer to Q 1: Right now, S. 744 puts forth a metric that can be summed up as follows: "only 1/3 (if that) of the southwest border, not northern or coastal borders, measured only by apprehensions DHS says are happening, need be 90 percent secure (a measure impossible to measure), to trigger the path to citizenship". Maybe securing 1/3 of the border is not an attempt at securing the border. That's a permission slip for an open border.

- 4. In your opinion, does the bill guarantee that the problems with our current level of border security will be addressed?**

Not at all. See prior answers.

- 5. What are the national security implications of granting legalization without establishing objective standards to measure border security?**

S. 744 enables anyone who applies for RPI to get the status minus identity vetting, national security vetting, as soon as the application is submitted. There is no requirement for vetting first. And no requirement to secure the border before this initial status is granted. That means any terrorist or criminal can use the legalization process to embed and assimilate for as long as necessary to carry out an attack. The facts and circumstances of the April 2013 Boston Marathon Terrorist attacks is a perfect example, as I discuss in my written testimony.

- 6. Do you believe that the bill strengthens our national security and makes our homeland safer? Why or why not?**

Absolutely not, for all the reasons stated here and in my testimony.

- 7. In your opinion, does the bill strengthen or weaken our current immigration laws?**

I'm not sure whether S. 744 strengthens or weakens current immigration law. I would say it usurps most immigration law, including the need for enforcement in many instances.

**Questions for the Record**  
**Comprehensive Immigration Reform**  
**Senator Mike Lee**  
**April 22, 2013**

**Janice Kephart**

**Q 1. By what metric is “border security” currently determined? Is this metric effective? Is the same metric used in the bill?**

Today there exists no definition of “border security”. However, there are at least three versions currently in government circles which are stated as measuring border security.

- The first is “**operational control**”, a legal term which requires the border be maintained to keep out illegal aliens, terrorists and contraband across 100 percent of the border. This definition is set out in the Secure Fence Act of 2006. Prior to its legal definition, “operational control” was a term used within the Border Patrol to allocate resources to areas so that the Border Patrol could determine what was necessary to be operational in that locale. That term, whether the Border Patrol has decided to use another measure or not, remains law. I discuss that term and its meaning below at length.
- The second is **lower apprehension numbers**. Secretary of Homeland Security Napolitano has stated numerous times that lower apprehension numbers indicate that the border is as secure as it has ever been.
- The third is what I will call a “**we feel safe**” measure, a relatively new metric that remains undefined, is not in law, and has no objective measure to make the determination as to whether the border is secure. In fact, the measure does not describe nor help determine whether the actual border is secure, or safe, or under operational control as defined in the Secure Fence Act, at all. Border Patrol Chief Mike Fisher testified before the House in February 2013 about this new measure, which is not law, as follows:

We are here today to discuss what a secure border looks like. ... For border communities, a secure border means living free from fear in their towns and cities. It means an environment where businesses can conduct cross-border trade and flourish. For other American communities, it means enjoying the benefits of a well-managed border that facilitates the flow of legitimate trade and travel. *See*

<http://docs.house.gov/meetings/HM/HM11/20130226/100300/HHRG-113-HM11-Wstate-FisherM-20130226.pdf>, from House hearing, 'What Does a Secure Border Look Like?' 2/26/13

In contrast to the limiting measure of “low apprehensions” and amorphous measure of “we feel safe”, there is a metric the measure the Border Patrol traditionally understood and built its resources upon, known as “**operational control**”. That is defined clearly and succinctly under the **Secure Fence Act of 2006**, PL 109-367 [<http://www.gpo.gov/fdsys/pkg/PLAW-109publ367/html/PLAW-109publ367.htm>]. This is not the metric in S. 744.

The White House Fact Sheet for the Secure Fence Act of 2006 (and the 2006 outline of comprehensive immigration reform) is here [<http://georgewbush-whitehouse.archives.gov/news/releases/2006/10/20061026-1.html>].

The Secure Fence Act makes clear the definition of “operational control” (my emphasis added below):

**SEC. 2. <<NOTE: 8 USC 1701 note.>> ACHIEVING OPERATIONAL CONTROL ON THE BORDER.**

*(a) <<NOTE: Deadline.>> In General.--Not later than 18 months after the date of the enactment of this Act, the Secretary of Homeland Security shall take all actions the Secretary determines necessary and appropriate to achieve and maintain operational control over the entire international land and maritime borders of the United States, to include the following--*

*(1) systematic surveillance of the international land and maritime borders of the United States through more effective use of personnel and technology, such as unmanned aerial vehicles, ground-based sensors, satellites, radar coverage, and cameras; and*

*into (2) physical infrastructure enhancements to prevent unlawful entry by aliens the United States and facilitate access to the international land and maritime borders by United States Customs and Border Protection, such as additional checkpoints, all weather access roads, and vehicle barriers.*

*(b) Operational Control Defined.--In this section, the term “operational control” means the prevention of all unlawful entries into the United States, including entries by terrorists, other unlawful aliens, instruments of terrorism, narcotics, and other contraband.*

*(c) Report.--Not later than one year after the date of the enactment of this Act and annually thereafter, the Secretary shall submit to Congress a report on the progress made toward achieving and maintaining operational control over the entire international land and maritime borders of the United States in accordance with this section.*

**Top Ten Reasons Why the S. 744 Border Security Metric is Unnecessary and Unhelpful**

1. The S. 744 “**effectiveness rate**” metric only requires the Secretary of Homeland Security to assure Congress via reporting that the border is secure, not actually secure the border. On numerous occasions, including before the Senate Judiciary Committee, the current Secretary Napolitano has asserted that the border is more secure than it ever has been and that the metric for security the Secretary has been using -- apprehensions statistics - are down.

However, internal DHS documents, received on a daily basis by DHS, show that for two years the apprehension numbers on the southwest border are going up. Considering that S. 744 focuses on the southwest border, the fact that border apprehensions have risen for two years, not declined, would have been helpful to the nation’s consideration of whether we are ready for comprehensive immigration reform.

What we now know is that internal Department of Homeland Security documents produced daily by the Border Patrol make clear that as of April 2, 2013, southwest apprehensions across nine Border Patrol sectors rose during this same time frame in both 2011 and 2012. More specifically, the **FY2103 compared to FY 2012 shows a 13 percent increase in apprehensions (from 170,223 to 192,298) and a 16 percent increase in apprehensions comparing FY2013 to FY2011 (from 165, 244 to 192,298).**

Here are excerpts from DHS extensive data highly relevant to the debate today pertaining to the southwest border:

U.S. BORDER PATROL STATISTICAL DATA 4/2/13

**Southwest Border Apprehensions (9 USBP Sectors)**

FY2013 YTD Cumulative	192,298
FY2012 YTD Cumulative	170,223
FY2011 YTD Cumulative	165,244
<b>FY2013 compared to FY2012:</b>	<b>13 % increase</b>
FY2013 compared to FY2011:	16 % increase

**Total U.S. Border Patrol Apprehensions**

FY2013 YTD Cumulative	195,287
FY2012 YTD Cumulative	174,187
<b>FY2013 compared to FY2012:</b>	<b>12 % increase</b>

**Total Year to Date U.S. Border Patrol Drug Seizures**

FY2013 YTD Marijuana Totals	1,331,512
FY2012 YTD Marijuana Totals	1,272,456

**5 % increase**

(Note: Data shows total apprehensions down in northern and coastal sectors)

- As I stated in my testimony, the 90 percent “effectiveness rate” laid out in S. 744 to measure border security depends on a **100 percent detection rate** of illegal aliens crossing the border. As Secretary Napolitano has agreed in her April 23, 2013 testimony before this Committee, the ability to detect 100 percent of illegal crossings is not occurring today, and likely is not possible due to geographic constraints. Thus the metric’s construction fails because the denominator (detections) can not be accurately measured.
- The S. 744 border security metric **only measures Border Patrol activity (apprehensions) and not results** (actual reduction in illegal crossings and contraband, and enhanced national security and public safety). A sole focus on apprehension numbers both (1) focuses on what the Border Patrol is doing and not on results; (2) reduces accountability to Congress and the American people as to how secure the border actually is; and (3) excludes from the definition what the Secure Fence Act includes “means the prevention of all unlawful entries into the United States, including entries by terrorists, other unlawful aliens, instruments of terrorism, narcotics, and other contraband.”<sup>1</sup>

I have written much on terrorist entry and need not repeat it here, but any metric that only considers numbers of apprehensions important when one terrorist can attack and kill Americans, does not make much sense. Neither does ignoring contraband, weapons or drugs. Nor does ignoring special considerations when surges occur in illegal crossings from those from Special Interest Countries (which does not include any of the former Soviet Republics, but most other countries known to harbor terrorists).

- The GAO [<http://www.gao.gov/assets/660/652331.pdf>] agrees that the sole focus of the DHS on apprehensions means **Congress cannot adequately provide oversight of DHS activities, nor of DHS headquarters over CBP**. Here is an excerpt from GAO February 2013 testimony before the House Homeland Security Committee:

*Since fiscal year 2011, the Department of Homeland Security (DHS) has used changes in the number of apprehensions on the southwest border between ports of entry as an interim measure for border security as reported in its annual performance plans. In fiscal year 2011, DHS reported a decrease in apprehensions, which met its goal to secure the southwest border.*

...

*At the end of fiscal year 2010, DHS reported achieving varying levels of operational control of 873 (44 percent) of the nearly 2,000 southwest border miles. In fiscal year 2011, citing a need to establish new goals and measures that reflect a more quantitative methodology and an evolving vision for border control, DHS transitioned to using the number of apprehensions on the southwest border as an interim goal and measure. As GAO previously testified, this interim measure, which reports on program activity levels and not program results, limits DHS and congressional oversight and accountability.*

5. **A metric that measures apprehensions and turnbacks only, but ignores surges and lulls in activity, does not represent actual illegal activity.** I lay out a series of examples in my testimony, which focuses on the surge currently taking place over the Arizona central border region. This area, representing most of the Tucson Sector, had a 494 percent surge in illegal crossings and activity from August 2012 to December 2012, and Border Patrol pilot audio from March 1, 2013 state that pilots are seeing group sizes of crossings now that has those in the field stating they are being “inundated”. Yet the numbers for actual apprehensions for the first four months of 2103 in Tucson are -1%. Does that make sense? Perhaps there is an explanation, but the apprehension metric does not reflect or explain this type of data. Rather, the DHS apprehension data appears to contradict it. Thus, the metric appears to be incomplete at best, and misleading at worst.
6. **The secure border definition of “operational control” already exists in the Secure Fence Act.** This definition is comprehensive yet flexible, and one which the Border Patrol was working to achieve in past years, if not fully implemented. The current definition creates a clear standard and mission that is inclusive of what it takes to preserve our national security, expanded to include lessons learned from 9/11 and terrorist travel studies I subsequently conducted after the 9/11 Commission.

Maintaining the DHS mission of seeking operational control of the border, and a continued build-out of creating an accurate metric from within the Border Patrol, approved by CBP and authenticated at the DHS headquarters level, is the best option to do so. CBP has been on this path for some time, continued to improve its “operational control” metrics which are reflected in part in the vast data they produce to determine where to allocate resources currently. Allowing them to continue to do so -- while encouraging DHS headquarters to support that mission with technology, infrastructure and sound enforcement policy -- is the best option for securing the border.

“High risk sectors” in the bill are an arbitrary, capricious, limiting and unhelpful added element that micro-manages the Border Patrol’s ability to realign resources in sectors that may be under significant threat. To be clear, I do not see the problem of achieving border security as residing with the current law’s definition of “operational control”. Changing the law now will not create better border security, but likely exacerbate current problems.

**7. Requiring “effective control” in only *three* high risk sectors does not align with current Border Patrol data regarding apprehensions, and does not reflect the need for flexibility in order to be effective to the ebb and flow well known to exist in smuggling operations that can concentrate in one sector or spread out, contract again, etc., all in relatively short time frames. Right now four Texas sectors are surging in activity while Tucson remains at nearly double the others in apprehensions, indicating that only requiring three sectors to be secure to declare an “effectively” secure border to trigger a second wave of legalization, is out of sync with data and any common sense approach to determining whether a border is operationally under control and secure.**

These short time frames are made stiff and stringent in S. 744, with only annual reviews of “effective” sectors.

According to the internal documents shared within the Border Patrol and with headquarters on a daily basis, as of April 2, 2013, *four* Texas sectors have seen a significant increase in apprehension numbers in comparison to the same time frame last year, and *one*, Tucson has remained almost the same producing almost twice the illegal apprehensions than any other sector.

The chart below breaks down apprehensions with percentage change across the southwest border sectors. Note in my testimony that at least in major portions of the Tucson sector, we know the Border Patrol is not detecting all illegal activity across the border, and not all smuggling operations are pursued.

Sector	Percent Change	FY2012 to date	FY2013 to date	FY13 to date daily average
San Diego	-9%	14,654	13,332	72
El Centro	-26	11,773	8,686	47
Yuma	-21	4,140	3,255	18
Tucson	-1	65,354	64,514	351
El Paso	+24	4,484	5,554	30
Big Bend	-5	2,117	2,001	11
Del Rio	+27	8,971	11,381	62
Laredo	+22	20,026	24,428	133
Rio Grande Valley	+53	38,704	59,147	321

8. **30,000 apprehended per year is not a number Congress should be requiring as a threshold.** Border control should be measured by a broader array of elements as the Secure Fence Act does-- terrorists, contraband, weapons and drugs-- which requires the Border Patrol to not just measure apprehensions and recidivism (although helpful), but also Special Interest Country aliens and Other Than Mexican statistics. The Border Patrol should be free to make that determination about threat, risk and allocation of resources. Having an arbitrary number set at 30,000 proscribed in law is a stiff calculation that is arbitrary and capricious, and limits the ability of the Border Patrol to respond in an appropriate and timely manner.
9. **Just because a sector does not see an increase in apprehensions does not mean it is not high risk;** if illegal crossings are always high, then that sector as well is a high risk sector. If certain special interest aliens are known to use a certain sector, than that area could also be considered high risk.
10. **The border security portion of S. 744 does require a border fencing strategy, but it neither (1) builds out on the requirements of the Secure Fence Act to maintain some level of consistency in infrastructure; (2) nor actually requires any fence to be built.** It will be nearly impossible for the Border Patrol to increase apprehensions and achieve effectiveness without necessary infrastructure in place such as double fencing where geographically feasible. Note that only a small portion of the over 2,000 miles of southwest border is fenced today. According to the CBP website [[http://www.cbp.gov/xp/cgov/border\\_security/ti/ti\\_news/sbi\\_fence/](http://www.cbp.gov/xp/cgov/border_security/ti/ti_news/sbi_fence/)], 652 miles of the project begun under the Bush administration has been completed.
- Of these 652 miles, only 352 of these miles is pedestrian fence. The 299 miles of vehicle fence does nothing to stop either pedestrian or vehicular traffic, and really only acts as a boundary demarcation. To be clear, the Obama administration did not, as far as I know, ever begin undertaking any new fencing, but rather completed contracts already in place during the Bush administration. In addition, much of the pedestrian fence is not doubled or reinforced to prevent cut-throughs or climb-overs as in San Diego or Arizona's Yuma Sector which has extremely successful fencing. Thus, while a fencing strategy in S. 744 is a helpful start to maintaining border integrity and supporting the Border Patrol mission, it is not that helpful. Requiring the infrastructure to be in place is what is actually helpful.
10. **Low risk sectors are largely ignored in S. 744.** There is a requirement, which is helpful, in Sec. 5(a)(5)(C)(iii) that requires that semi-annual border security reports submitted by CBP to Congress include (I) each sector's effectiveness rate; (II) number of recidivist apprehensions by sector; and (III) that recidivism rate meted out by criminal consequence. While helpful, that does not mean a reallocation of resources or support to any sector outside the top three as far as I can tell.

**Q 2. When calculating total illegal entries, besides watching someone cross the border without apprehending them, how does DHS decide that an illegal entry has occurred?**

Here is what the GAO [<http://www.gao.gov/assets/660/652331.pdf>] says about determining illegal border crossing activity:

*We defined these illegal entries as estimated “known” illegal entries to clarify that the estimates do not include illegal entrants for which Border Patrol does not have reasonable indications of cross-border illegal activity. These data are collectively referred to as known illegal entries because Border Patrol officials have what they deem to be a reasonable indication that the cross-border activity occurred. Indications of illegal crossings are obtained through various sources such as direct agent observation, referrals from credible sources (such as residents), camera monitoring, and detection of physical evidence left on the environment from animal or human crossings.*

**Q 3. What specific border security measures does this bill require in the non-high-risk sectors?**

I do not see that S. 744 requires border security measures in the six sectors on the southwest border not labelled high risk. Please see Answer no. 1, reason 10.

**Q 4. If, five years after the enactment of the bill, one of the current non-high-risk sectors becomes “high-risk” due to an increase in illegal crossings, do the border security requirements for those sectors also increase?**

It appears that the language of the bill only requires three sectors at a time to qualify for “high risk”. If one shifts into high risk, it appears to me that another will shift out and mandate a reallocation of resources no matter what the current circumstances include. I may be inaccurate in my analysis, but that is what appears to me to be the case under the language I have reviewed.

**Senator Jeff Sessions**  
**Questions for the Record**  
**Janice L. Kephart, Former Counsel, September 11 Commission,**  
**Principal, 911 Security Solutions**

1. **If S. 744 were to become law, do you believe that the Department of Homeland Security would deport those who enter the country illegally or overstay their visas after the bill's enactment?**

No, not unless the individuals fell in a high priority category, such as known terrorist or public safety threat to America. The "prosecutorial discretion" memos made clear two years ago that the Obama administration intended to not carry out immigration enforcement in a manner consistent with the law, including not apprehending or removing those who entered illegally or overstayed their visas. This was a stated policy that evolved from USCIS headquarters to DHS headquarters to ICE itself. For the politics behind the scenes on how immigration enforcement was intentionally set to be reduced over time, see my memo, "[Amnesty by Any Means](#)" and my series of "ICE Mission Melt" memos that outline how the reduction in interior enforcement manifested itself subsequently:

[ICE's Mission Melt 5: Another No Confidence Vote for Morton](#)

[ICE's Mission Melt 4: Houston. We Have a Problem](#)

[ICE's Mission Melt 3: Endangering America](#)

[ICE's Mission Melt 2: It Won't Say Yes to Congressional Support](#)

[ICE's Mission Melt: Agents Vote 'No Confidence' in Leadership](#)

In addition, the policy not only manifested itself in two votes of No Confidence for ICE leadership by ICE union members, mandated reductions in DOJ immigration caseload, failure to request appropriations for responsibilities ICE said it did not have the capability to respond to, but also in actual numbers. Here are some key items from a March 2013 Center for Immigration Studies Fact Sheet found [here](#):

- The most significant decline in arrests — 70 percent — was in the Homeland Security Investigations division, which is responsible for worksite enforcement, transnational gang cases, national security, and certain non-immigration related casework. HSI arrests declined from 54,000 in 2007 to 16,000 in 2011.
- Enforcement agencies can order aliens "removed", which includes a bar to future entry for a time, or "returned", a simpler procedure in which the alien departs, but without penalty or a hearing. Since 2007, the number of aliens ordered removed has increased by 23 percent, while the number returned has decreased by 64 percent.
- When taken together, the total number of removals and returns has declined 41 percent since 2007, from 1,210,000 to 716,000 in 2011.
- ICE reports that it removed and returned about 410,000 aliens from the country in 2012. This is an increase of 14 percent over the last five years, with the steepest increase occurring between 2008 and 2009. However, ICE's latest removal/return statistics include more than 85,000 aliens that were apprehended by the Border Patrol, which traditionally have not been counted with removals. ICE has not published a breakdown of border arrests vs. interior arrests.

- More than 1.2 million criminal aliens arrested by local police have been identified through the Secure Communities program since 2009. Of these, 247,000 have been removed so far. According to a Congressional Research Service analysis, over a 2.5-year period they studied, ICE also released tens of thousands of deportable criminal aliens, of whom 26,000 were later re-arrested for new crimes within the time frame of the study.
  - Data from the Secure Communities program indicate that about half of aliens selected for removal are either multiple or repeat immigration violators, and about one-fourth are individuals who illegally re-entered after a previous deportation, which is a felony under federal criminal statutes.
  - An independent research group at Syracuse University, the Transactional Records Access Clearinghouse (TRAC), which obtains immigration court data from the federal government, reports that, since 2009, there has been a significant decline in the number of aliens that ICE has brought to immigration court. The number of immigration court filings has declined 25 percent since last year, and 30 percent since 2009.
  - In addition, the percentage of aliens ordered deported by immigration judges is the lowest rate since 1998, according to TRAC. Last year, judges ordered removal in 57 percent of the cases, and granted the alien's request to stay 43 percent of the time.
  - It appears that the number of aliens who have failed to abide by deportation orders is rising. In 2012, ICE reported that there were 850,000 aliens present in the country who had been ordered removed or excluded, but who had not departed. In 2008, DHS said that there were 558,000 "fugitive aliens".
2. **If S. 744 were to become law, how many total new immigrants, including those currently here illegally who would be granted some form of legal status and those who would be admitted to the country under all categories of chain migration, would be added to the United States over a ten-year period following the date of enactment and over a fifteen-year period following the date of enactment?**

I do not know. The only organization I'm aware of that has attempted to place a number on those who would gain legal status under S. 744 is NumbersUSA, whose leadership states that "33 million lifetime work permits to be given to foreign citizens in the first decade after the bill passes." See the blog [here](#).

To be clear, I have no way of knowing how many total new immigrants S. 744 would legalize. I'm not sure anyone can really predict fully the numbers which encompass those already here that seek legalization, their family members, and some of those previously deported as well. What is even more troubling is that there is no way to truly predict over the next ten to fifteen years the consequences of far-reaching legalization provisions on future governmental programs; on culture and assimilation; nor public safety and national security. The effect of S. 744 should be thoroughly reviewed for a prudent, thoughtful discussion on what immigration means to America; what we want it to look like in years to come; and whether this legislation fulfills that mission.

**Senator Jeff Sessions  
Questions for the Record  
The Honorable Jim Kolbe**

1. If S. 744 were to become law, do you believe that the Department of Homeland Security would deport those who enter the country illegally or overstay their visas after the bill's enactment?
2. If S. 744 were to become law, how many total new immigrants, including those currently here illegally who would be granted some form of legal status and those who would be admitted to the country under all categories of chain migration, would be added to the United States over a ten-year period following the date of enactment and over a fifteen-year period following the date of enactment?

*These questions are beyond the scope of my testimony to the committee, so I would refer you to my colleagues on the panel who might provide answers to these questions.*

*Sincerely,*

*Jim Kolbe*

*Former Member of Congress*

**Senator Jeff Sessions  
Questions for the Record**

**Laura L. Lichter, Esq., President, American Immigration Lawyers Association**

1. *If S. 744 were to become law, do you believe that the Department of Homeland Security would deport those who enter the country illegally or overstay their visas after the bill's enactment?*

I do not see anything in the bill that would prohibit DHS from removing those not eligible for relief. The Department has broken all previous records when it comes to number of removals. If history predicts the future, it would appear that the Department would continue to remove people after enactment as they have before, and the bill would provide even more resources to do so.

2. *If S. 744 were to become law, how many total new immigrants, including those currently here illegally who would be granted some form of legal status and those who would be admitted to the country under all categories of chain migration, would be added to the United States over a ten-year period following the date of enactment and over a fifteen-year period following the date of enactment?*

The bill goes a long way towards providing a comprehensive solution, but will inevitably leave many immigrants out of the picture. Not everyone who wants to immigrate to the United States will have a path under the bill, but the bill does a reasonable job of identifying and providing a legal option for people who our economy and our values say we should let in. It could do better on family values, but it is a strong step forward regarding our economic needs. The number is unclear, but it's not the number that is important. What matters is that fairness and workability are built into the system.

**Senator Jeff Sessions**  
**Questions for the Record**  
**Janet Murguía, President and CEO, National Council of La Raza**

**Question: If S. 744 were to become law, do you believe that the Department of Homeland Security would deport those who enter the country illegally or overstay their visas after the bill's enactment?**

NCLR Response:

*Yes. In the last several years, deportations have risen and remain at record levels, measured in both absolute and relative terms. The additional investments and technological upgrades in immigration enforcement included in S. 744, if properly implemented, would give us reason to expect that immigration law enforcement not only will continue, but will be smarter and more effective in the future.*

**Question: If S. 744 were to become law, how many total new immigrants, including those currently here illegally who would be granted some form of legal status and those who would be admitted to the country under all categories of chain migration, would be added to the United States over a ten-year period following the date of enactment and over a fifteen-year period following the date of enactment?**

NCLR Response:

*To begin with, we would like to correct some misconceptions included in the question: First, neither the current undocumented population nor those already in line for visas would constitute "new" immigrants to this country. In the first case, one of the major catalysts for reform is the fact that the undocumented are already here, and many have been for years, working, raising families, and, in other ways, becoming part of American society. In the latter case, S. 744 would simply reduce the unconscionably long wait times for many of those who apply to reunite with their closest family members.*

*Second, "chain migration" is not a fact but a pejorative term used by opponents of legal immigration to denigrate and grossly exaggerate the impact of legal family immigration, a bedrock principle of our immigration system. As noted above, the process for reuniting with families is both quite arduous and prolonged. It can, and does, take years for qualified applicants to receive a visa and in the vast majority of cases, if and only if they meet certain eligibility requirements, demonstrate they can support themselves, and a family member also legally commits to supporting them. The idea that this process is either quick or easy is refuted by the considerable backlogs in many categories that S. 744 seeks to remedy.*

*As for the effect of S.744 on new immigrant entries, both authorized and unauthorized, there are a number of agencies and research organizations working on this but we would point the committee to the Center for American Progress (CAP), whose highly respected policy analysts have produced a series of estimates, summarized below, comparing net levels of immigration*

with and without enactment of S. 744. The National Council of La Raza (NCLR) believes it represents a credible, informed estimate of future immigration levels under either scenario. In short, CAP estimates that the legislation may result in a net annual decrease of 151,200 (see Chart 1 below). Current levels are calculated at 1.74 million, while new entries are estimated to be 1.59 million. One of the most significant impacts is on the levels of unauthorized immigration, which will be reduced by about 90%.<sup>1</sup>

Chart 1. Center for American Progress

**The Senate immigration reform bill will actually reduce the number of people entering the country**

Category	Current	Future <sup>1</sup>
Uncapped employment visas <sup>a</sup>	N/A	218,000
Capped employment visas	140,000	150,000 <sup>a</sup>
Merit-based visas <sup>a</sup>	N/A	185,000
Uncapped immediate relatives of U.S. citizens <sup>a</sup>	470,000	470,000
Uncapped immediate relatives of legal permanent residents (green card holders) <sup>a</sup>	N/A	170,000
Capped family visas	226,000	161,000
Diversity visas	50,000	0
Refugees, asylees, and "other" <sup>a</sup>	169,000	169,000
<b>Subtotal</b>	<b>1,055,000</b>	<b>1,523,000</b>
<i>Average unauthorized entry</i>	<i>688,000<sup>a</sup></i>	<i>68,800<sup>a</sup></i>
<b>Total</b>	<b>1,743,000</b>	<b>1,591,800</b>
<b>Net new immigrants under S. 744</b>		<b>-151,200</b>

Note: Estimates rounded to the nearest thousand.

<sup>1</sup> Center for American Progress, *Current and Estimated Future Immigration Based on S. 744*, April 30, 2013, <http://www.americanprogress.org/issues/immigration/news/2013/04/30/61942/current-and-estimated-future-immigration-based-on-the-senates-immigration-reform-bill/>

**Mr. Grover Norquist Responses to Senator Jeff Sessions Questions for the Record**

**4/22/13 Hearing: "The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744"**

*Question One: If S. 744 were to become law, do you believe that the Department of Homeland Security would deport those who enter the country illegally or overstay their visas after the bill's enactment?*

**S.744 improves America's immigration system to make it easier to identify and find those who overstay visas or cross illegally into the United States. The law would require anyone illegally entering the US to be deported. S.744 is a significant improvement in the government's ability to enforce the law when compared with present law.**

*Question Two: If S. 744 were to become law, how many total new immigrants, including those currently here illegally who would be granted some form of legal status and those who would be admitted to the country under all categories of chain migration, would be added to the United States over a ten-year period following the date of enactment and over a fifteen-year period following the date of enactment?*

**Comparing the results with S.744 to present law:**

**There are an estimated 11 million people now living without papers in the United States. After passage of S. 744 this number would decline, as those who arrived recently would not be allowed to stay, those with criminal records would not be allowed to stay and those who did not maintain work and income above the poverty level would not be allowed to stay.**

**S. 744 would reduce the future inflow of immigrants who are entering solely because they are the siblings of U.S. citizens or the married sons and daughters of U.S. citizens because those categories, which you refer as the "chain migration" categories, are being eliminated in the proposal.**

**There would be more immigrants in the future who come because they have specialized skills and talents needed in the United States than under present law.**

*Question Three: Dynamic macroeconomic models of the U.S. economy assume an average wage rate that is applied over the entire population of workers. With respect to the analysis that you relied on for your testimony, please explain what wage rate was used, how much that wage rate changed over the course of the forecast period, and whether it was based on income earned only by legal workers or on income earned by both legal and illegal workers.*

**I cited economic analysis recently released by Douglas Holtz-Eakin. He was a witness before the committee and one assumes you have asked him for this information, as he would be the best source.**

*Question Four: Although your testimony concludes that a large-scale amnesty will result in budget savings from lower deficits, your testimony is silent with regard to inflation and interest rates, which often make significant differences in budget outcomes. Please provide the the interest rate and inflation (CPI or GDP deflator) results in the simulation that you relied upon in your testimony.*

**I cited an economic study by Douglas Holtz-Eakin. He was also a witness before the committee the day before I testified. I assume you have asked him this question, as he would be most authoritative person.**

*Question Five: Experts on the current illegal population report that the average educational level adjusted for age is below that of the legal population. However, worker productivity is closely associated with educational attainment and productivity is causally connected to growth in the economy. Please explain whether the economic model or analysis you relied upon in your testimony suggests that the illegal population will gain the training and education needed to support your claims regarding economic growth.*

**The economic model I discussed before the committee was that of Douglas Holtz-Eakin. He testified before the committee on Friday and would be the best person to speak to his study and its assumptions/analyses.**

*Question Six (A): In your written testimony you state: "The majority of those undocumented immigrants currently here are low-skilled. Some argue that we should not be importing or legalizing this type of talent. But, in reality, the U.S economy demands an enormous number of low-skilled workers. . . We need immigrant labor to fill demand for low-skill jobs." Please explain how you anticipate that many of the low-skilled workers who would be legalized under S. 744 would find employment in light of the current unemployment rate of 7.6 percent and the fact that 90 million Americans are outside of the labor force.*

**S.744 would reduce the total number of those now working in the United States without authorization. First, by deporting those who entered the United States more recently, second, by deporting who could not pass background checks and third by denying legal status to those who do not consistently work and earn above the poverty level.**

**And by bringing those now in the United States living outside the protections of the law and into the legal workforce, even those who believe Malthus was a fine economist would recognize that this concern would be reduced.**

*Question Six (B): Please list the sources that you used to reach your conclusion that the U.S. needs more labor to fill a low-skill job demand.*

**The history of the past 10, 20, 30 years, and the assumption that our economy will continue to grow at least at Obama/French levels, and one hopes soon at Reagan levels. And the fact that the children of the 1960s forgot to have as many children as their parents and grandparents.**

*Question Seven: (A and B). In your testimony you asserted that S. 744 “puts at least 13 years between legal status and access to public benefits for most undocumented immigrants, mitigating the negative fiscal impacts of our bloated entitlement programs.” Your testimony went on to say that immigrants come at the beginning of their working lives, which means they will have years to pay taxes and contribute to the economy before they receive any benefits. Eugene Steuerle and Caleb Quakenbush of the Urban Institute published a report in 2012 titled “Social Security and Medicare Taxes and Benefits over a Lifetime.” Their report provides data indicating that even among two-household couples where one earns a high wage (\$71,400) and the other a lower wage (\$44,600), the amount paid in total lifetime taxes is lower than the total lifetime benefits they receive as they get older.*

- a. *Please provide the data on which you rely that suggests illegal immigrants will pay enough taxes to mitigate any negative fiscal impacts of receiving entitlement benefits over the long-term.*
- b. *Please explain how you reconcile your conclusions with those of the report by Steuerle and Quakenbush.*

**The study by Steuerle and Quakenbush, and other studies, point out that Social Security and Medicare will, on average, pay out more in benefits than they seize from American citizens in “contributions.” Is an indictment of the political class that created—and failed to reform--unsustainable entitlement programs.**

**They make a good case for passing the Ryan Budget which would fix this problem. The House has acted on this and the Senate should follow their wise path.**

**Yes, the present structure of entitlement programs must be reformed. This is not a good argument against having children, adopting children, or allowing immigrants to join our nation. Reasoning backwards from dumb government policy would argue for more abortions and more fatal car accidents.**

**While we reform the entitlement programs, let us as a nation remember that in a free society people are a resource and that includes both babies and immigrants.**

*Question Seven (C): Please provide the data on which you rely to calculate the average wages that illegal immigrants will earn once they are authorized to work in the U.S.*

**In my testimony I pointed out that S. 744 would result in those now working in the United States without papers earning higher wages, paying more in taxes and being more productive. After the 1986 Reagan amnesty, wages of immigrants increased 15 percent just by gaining legal status. But commonsense informs us also. Imagine if your son or sister was told to go earn as much money as they could with a few limitations: no driver’s license, no ability to fly on an airplane, and the real fear that any change in jobs might end in deportation. Imposing those restrictions would dramatically decrease the ability of any American to earn a living. Removing them would increase wages, opportunity, growth and wealth creation.**

*Question Seven (D): Under S. 744, when is the earliest that illegal immigrants who become legalized would be eligible for federal benefits?*

**I share your concern about welfare fraud and having immigrants become reliant upon federal tax dollars for their ability to survive in American society, but the fact is if the federal government does not meet its border security goals, does not make the current voluntary e-verify system mandatory for all employers, and does not fully implement the entry exit system at our airports and seaports, none of these people will be able to get green cards, which in turn means none of them will qualify for federal public benefits. Moreover, there are also immigrant visa backlogs that have to be dealt with before any of these people can get a green card. If those aren't dealt with in 10 years, the current illegal population won't be able to apply for a green card. Thus, to answer your question as forthrightly as I possibly can, if our border security and enforcement issues are effectively dealt with and our immigrant visa backlogs are taken care of in 10 years, then the current undocumented population can apply for a green card, but even then they still have to spend a certain amount of years in LPR status before they can apply for these benefits.**

*Question Seven (E): Under S. 744, when is the earliest that illegal immigrants who become legalized would be eligible for state and local benefits?*

**S. 744 is a federal law. Every state and local government can decide how to spend the money it wrenches from the hands of its citizens. Some will spend it wisely and some will spend it poorly.**

*Question Seven (F): Under S. 744, when is the earliest that a household headed by an illegal immigrant who becomes legalized would become eligible for federal benefits?*

**See the answer to Question Seven (D).**

Senate Committee on the Judiciary  
“The Border Security, Economic Opportunity, and Immigration Modernization Act, S. 744”  
April 22<sup>nd</sup>, 2013  
Responses from United Farm Worker President Arturo Rodriguez to questions from Senator Jeff  
Sessions  
Submitted May 3, 2013

**1. If S. 744 were to become law, do you believe that the Department of Homeland Security would deport those who enter the country illegally or overstay their visas after the bill’s enactment?**

Last year, the Department of Homeland Security deported about 410,000 individuals who entered the country illegally or overstayed their visas. We see nothing that would indicate that DHS will not continue to enforce the law in the future regardless of the passage of S. 744.

It is our hope, however, that at least in the agriculture sector, passage of S. 744 will greatly reduce the future flow of illegal entrants. In particular, the Blue card program is intended to create a more stable, domestic workforce of experienced farm workers. We can further insure against additional illegal migration by improving farm worker working conditions and increasing earnings for farm workers through longer periods of employment.

Your goal of reducing illegal immigration may be better served by such reforms than by simply focusing on deportations. The prospect of employment is a magnet of unauthorized workers. To the extent that job opportunities are secured by legal workers in a more stable labor market, the pull factor for illegal immigration is reduced.

**2. If S. 744 were to become law, how many total new immigrants, including those currently here illegally who would be granted some form of legal status and those who would be admitted to the country under all categories of chain migration, would be added to the United States over a ten-year period following the date of enactment and over a fifteen-year period following the date of enactment?**

We can only respond with respect to the situation of the farm workers in the United States. We believe that approximately 1.2 million individuals work during the course of the year in U.S. agriculture without legal status. If S.744 becomes law, we believe about 80% or about 1 million farm workers currently present in the U.S. would be eligible for the Blue Card program.

**Mark Shurtleff Responses to Questions for the Record  
From Senator Jeff Sessions  
“The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744”**

1. If S. 744 were to become law, do you believe that the Department of Homeland Security would deport those who enter the country illegally or overstay their visas after the bill's enactment?

Response: Yes. As Utah Attorney General, I worked closely with DHS agencies and am absolutely confident that those who enter the country illegally or overstay their visas after the bill's enactment will be deported.

2. If S. 744 were to become law, how many total new immigrants, including those currently here illegally who would be granted some form of legal status and those who would be admitted to the country under all categories of chain migration, would be added to the United States over a ten-year period following the date of enactment and over a fifteen year period following the date of enactment?

Response: I do not have sufficient information to respond to this question.



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**Senator Jeff Sessions  
Questions for the Record  
The Honorable Bill Vidal, President & CEO,  
Hispanic Chamber of Commerce of Metro Denver**

Thank you for the opportunity to follow up on my testimony in front of the Senate Judiciary Committee on S.744

1. If S. 744 were to become law, do you believe that the Department of Homeland Security would deport those who enter the country illegally or overstay their visas after the bill's enactment?

I believe the Department of Homeland Security would follow the new measures established by S. 744 as it is required to do.

2. If S. 744 were to become law, how many total new immigrants, including those currently here illegally who would be granted some form of legal status and those who would be admitted to the country under all categories of chain migration, would be added to the United States over a ten-year period following the date of enactment and over a fifteen-year period following the date of enactment?

I was asked to provide testimony as a business representative from Colorado, a former mayor of Denver and as an immigrant. My testimony was based on my experiences and knowledge of Colorado and the positive effects of allowing undocumented people to come out shadows and participate in our communities. Although I believe the benefits of S. 744 will be common around the nation, I do not feel comfortable providing an answer that is of such national scope as this question requires.

## MISCELLANEOUS SUBMISSIONS FOR THE RECORD



June 27, 2011

Senator Patrick Leahy  
437 Russell Senate Building  
United States Senate  
Washington, D.C. 20510

Dear Chairman Leahy:

I am writing to express Microsoft Corporation's support for the Uniting American Families Act. As an innovation leader, our most critical asset is the brainpower of the people in our workforce. Our human talent is the key to Microsoft's ability to generate new ideas and new products, and to create new U.S. jobs, and we place top emphasis on attracting and keeping the best and brightest.

Today's immigration laws create a particularly serious barrier to this goal by failing to provide immigration benefits to the same-sex permanent partners of U.S. citizens and lawful permanent residents. This barrier imposes tremendous hardships on a significant number of talented employees and recruits who, along with their foreign national partner or spouse, are forced to choose between: abandoning successful careers and established lives in the U.S. and moving to a country where they may remain together; living indefinitely in separate countries; or, separating permanently. This barrier also imposes an economic burden on Microsoft and other U.S. employers by impacting the productivity of key employees and creating substantial costs as we transfer employees to subsidiaries in other countries, where possible, to mitigate this hardship. More importantly, we are faced with the reality of losing some of our best employees as they deal with this challenge.

The provisions of the Uniting American Families Act would overcome this outdated barrier. Such a law would also bring U.S. immigration policy law into line with the growing number of countries—including economic competitors such as Sweden, Germany, the Netherlands, Canada, the United Kingdom, France, and Australia—that already provide immigration benefits to the same-sex permanent partners of citizens and permanent residents, recognizing that it is both fair and economically smart to do so. Passage of the Uniting American Families Act would permit key employees to keep their families together and remain as contributors to the U.S. economy, and it would allow Microsoft to build and keep the best possible talent within our workforce.

We commend you for your continued leadership on this very important issue.

Sincerely,



Karen F. Jones  
Vice President, Deputy General Counsel  
HR Legal Group



**TESTIMONY BEFORE THE UNITED STATES SENATE COMMITTEE ON THE JUDICIARY  
FOR THE HEARING ENTITLED "THE BORDER SECURITY, ECONOMIC OPPORTUNITY, AND  
IMMIGRATION MODERNIZATION ACT, S.744"**

**April 22, 2013**

**BY THE**

**ASIAN & PACIFIC ISLANDER AMERICAN HEALTH FORUM AND UNDERSIGNED  
ORGANIZATIONS**

The Asian & Pacific Islander American Health Forum (APIAHF) and sixty-eight undersigned organizations committed to improving the health and well-being of Asian Americans, Native Hawaiians, and Pacific Islanders (AAs and NHPs) and advancing health equity submit this written testimony for the record for the April 22, 2013 hearing before the Senate Committee on the Judiciary entitled "The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744."

The "Border Security, Economic Opportunity, and Immigration Modernization Act of 2013" (S. 744) is a major step forward for the nation, offering a sensible, comprehensive, bipartisan overhaul to our immigration system. While the bill makes substantial inroads, the compromised positions affecting access to care threaten the health, safety and economic future of the entire nation for short-term costsavings. Most importantly, cementing these barriers to affordable health care is an affront to our American values of responsibility, fairness and unity and is out of step with the desires of the majority of Americans who have made it clear that they are ready for a sensible and sustainable fix to our immigration system.

The guiding principle behind any improvements to our immigration laws must be unity for immigrants, unity for families and unity for the entire nation. The following testimony addresses one of the

cornerstones of these values: access to affordable health care. It is critical that this committee not view health care access in a vacuum. Right now, federal agencies and states are rapidly implementing the Affordable Care Act and other initiatives to combat uninsurance and mitigate the massive toll that uninsurance takes on the nation.

While these initiatives have the potential to drastically reduce uninsurance, S.744 and proposals being debated in the House will undermine these efforts and threaten the nation's health and economy in the long run.

**I. Americans and Aspiring Americans Alike Need Affordable Health Insurance and Care Options that Allow them to Take Responsibility for their Health, and a Majority of Americans Agree**

Immigration reform proponents often argue that immigrants must be responsible for their actions. The primary reason most immigrants come to the U.S. is to better their lives and that of their children through hard work and sacrifice. Those two principles are one of the many reasons the U.S. is seen as a nation built by immigrants.

Recent polling conducted by the Kaiser Family Foundation found that most Americans support offering the same opportunities for accessing affordable health care and insurance to aspiring Americans.<sup>1</sup> The poll found that six out of ten Americans surveyed believed that immigrants on the path to legalization should be able to fully participate in health reform and qualify for Medicaid coverage. Overwhelming majorities of Blacks and Latinos surveyed agreed with providing equal access to health care.

While the Kaiser survey did not provide disaggregated data on the views of Asian Americans surveyed, the 2012 National Asian American Survey found that one in six Asian American voters placed health care as a top issue and Asian Americans overwhelmingly supported the Affordable Care Act.<sup>2</sup> These numbers are telling as Asian Americans and Latinos supported progressive policies during the 2012

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<sup>1</sup> "Kaiser Health Tracking Poll: Public Opinion on Health Care Issues," Kaiser Family Foundation, February 2013, *available at* <http://www.kff.org/kaiserpolls/upload/8418-F.pdf>.

<sup>2</sup> "The Policy Priorities and Issue Preferences of Asian Americans and Pacific Islanders," National Asian American Survey, September 2012, *available at* <http://www.naasurvey.com/>.

election by substantial margins. As Asian Americans continue to be the fastest growing racial group in the nation, Asian American voters will continue to demand policies that serve their communities.

## **II. Federal Laws Already Restrict Access to Care for Immigrants. S.744 Would Cement these Barriers and Contribute to Costly and Unnecessary Health Disparities**

The complex interplay between existing federal health programs and immigration laws already restricts access for many immigrants and families, including the over 4 million citizen children living with undocumented parents. S.744 offers an estimated 11 million undocumented immigrants the chance at legal status and earned citizenship, but unfortunately cements existing federal laws that could have disastrous consequences.

The ACA already maintains existing immigration-based restrictions and goes even further and affirmatively bars undocumented immigrants from purchasing private health insurance coverage in the newly created insurance marketplaces, even at full price and with their own funds. S.744 goes further than current federal law and creates a new exclusion for persons who are “lawfully present” or those who are Registered Provisional Immigrant (RPI) status and excludes them largely from the benefits of health reform. RPIs, including DREAMers, are ineligible for the affordability programs including advance premium tax credits and subsidies that would make health insurance more affordable, despite the fact that these individuals would be legal and paying taxes. At the same time, they are subjected to the individual mandate.

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA, also known as the “welfare reform” law), created arbitrary and inhumane time limits and other restrictions for lawfully present immigrants to become eligible for federal means-tested public programs. As a result, legal aspiring citizens are barred from critical safety net programs for a minimum of five years. S.744 reaffirms this exclusion. The result is that, under the pathway to citizenship outlined in S.744, a newly legalized immigrant going through the ten year process to adjust from RPI to legal permanent resident would have to wait an additional five years after adjusting to LPR status to become eligible for safety net health programs like Medicaid. This—what effectively amounts to a bar of 15 years or

more— occurs during a time when the legalized individual is residing in the country and paying into the system.

PRWORA also bars citizens from the freely associated states of Micronesia, Republic of the Marshall Islands and Republic of Palau from the Medicaid program. These individuals, known as COFA (Compact of Free Association) migrants, are persons who are free to enter and work in the U.S. without restriction under long-standing agreements between the U.S. and pacific jurisdictions. COFA migrants suffer from a number of serious health disparities caused by America's militarization of the pacific islands, nuclear test bombing and lack of economic supports, including high rates of cervical cancer and other chronic diseases. The 1996 law revoked Medicaid coverage for COFA migrants, and, coupled with existing disparities and failure on the part of the U.S. to provide required supports, has created serious economic consequences for states like Hawaii and the territory of Guam, who have shouldered the burden of providing health care to this population.

These federal policies undermine America's values, further health disparities and put the entire nation's health at risk. These disparities will only worsen in 2014, when the ACA is fully implemented and the gap between the health of immigrants and those who qualify for new coverage options widens. As a result, immigration status will become one of the leading social determinants of health— affecting everything from whether or not a person can buy health insurance, whether a sick child can see the doctor, and whether a low-income worker can afford the treatment they need.

### **III. America Cannot Afford the Long Term Economic and Human Costs for a Short Term Compromise that Erects Barriers to Affordable Care**

The U.S. cannot afford to continue the unsustainable health care path the nation is currently on. This was one of the reasons lawmakers and President Obama prioritized the Affordable Care Act (ACA). While the ACA provides new, affordable insurance options for many of the currently 50 million uninsured individuals in the U.S., America will continue to have a population of uninsured workers, children and families even after full implementation of the law.

Uninsurance leads to poor health outcomes, but the opposite is true when an individual is insured. Individuals with health coverage, including Medicaid, report better physical and mental health.<sup>3</sup> They are more likely to have routine access to medical care, less likely to rely on expensive emergency room visits and have better access to essential preventive services, reducing the incidence of chronic diseases that take a major toll on the U.S. health care system. In contrast, research shows that the uninsured have significantly worse health outcomes across a number of chronic diseases including cancer and diabetes.<sup>4</sup>

The nonpartisan Institute of Medicine (IOM) has studied the issue extensively and their report, *America's Uninsured Crisis: Consequences for Health and Health Care*, outlines the resulting lack of access to routine preventive care. In addition to the physical toll, there are major economic costs. Shorter lifespans and worse health outcomes result in a loss of \$65 - 130 billion annually<sup>5</sup> and translate into lost economic productivity and threaten economic security as families live in fear of what might happen if they get sick.

The consequences are not limited to the individual, but impact communities and state economics and put America's security at risk. Expanding access to affordable health insurance would help to relieve overburdened safety net hospitals and clinics and reduce uncompensated care costs, which often falls to states and the federal government to pick up the tab. In total, eighty-five percent of the costs for uncompensated care fall on the government.<sup>6</sup>

While the initial cost of extending coverage to the newly legalized (RPIs) may be significant, the amount is an investment that is needed and cannot be avoided. Health costs will become due now or later. The need for any uninsured individual—regardless of immigration status—for basic health care will not disappear regardless of the number of complex restrictions put forth. Health care is out of reach for

<sup>3</sup> "What is the link between having health insurance and enjoying better health and finance?" Robert Wood Johnson Foundation, January 2012, available at [http://www.rwjf.org/content/dam/farm/reports/issue\\_briefs/2012/rwjf72145](http://www.rwjf.org/content/dam/farm/reports/issue_briefs/2012/rwjf72145).

<sup>4</sup> "American's Uninsured Crisis: Consequences for Health and Health Care," Institute of Medicine, February 2009, available at <http://www.iom.edu/~media/Files/Report%20Files/2009/Americas-Uninsured-Crisis-Consequences-for-Health-and-Health-Care/Americas%20Uninsured%20Crisis%202009%20Report%20Brief.pdf>.

<sup>5</sup> "Hidden Costs, Value Lost: Uninsurance in America," National Academies Press, 2003, available at [http://www.nap.edu/openbook.php?record\\_id=10719&page=1](http://www.nap.edu/openbook.php?record_id=10719&page=1).

<sup>6</sup> "The Cost of Care for the Uninsured: What do We Spend, Who Pays and What Would Full Coverage Add to Medical Spending?" Kaiser Family Foundation, May 2004, available at <http://www.kff.org/uninsured/upload/the-cost-of-care-for-the-uninsured-what-do-we-spend-who-pays-and-what-would-full-coverage-add-to-medical-spending.pdf>.

most of the uninsured. The average hospital stay in the U.S. costs over \$15,000 and the average cost for a doctor's visit is \$89—expenses that can add up quickly.<sup>7</sup>

Racial and ethnic minorities and other underserved populations are particularly impacted by access and cost barriers, resulting in expensive health disparities. Asian Americans and Pacific Islanders, for example, are overwhelmingly immigrant and account for 40% of recent immigrants to the United States. As of 2011, there are over 17.6 million Asian Americans living in the United States, and over 1.2 million Native Hawaiians and Pacific Islanders. These communities, like many other racial and ethnic minorities, are disproportionately uninsured for a number of reasons, including cost, challenges navigating enrollment and eligibility processes, and importantly for this Committee—the intersection of immigration-based eligibility restrictions on access to health insurance and health programs.

The choice is clear; America cannot afford the human or economic toll that access barriers have. Putting up roadblocks to good health risks individual, family and community health and the safety and security of the entire nation.

#### **IV. Offering Immigrants the Same Opportunities for Affordable Health Care and Coverage is Fiscally Responsible and Promotes Full Integration**

Providing equal access to affordable, quality care and insurance for immigrants is sound fiscal policy. Immigrants are often younger, healthier and have lower health care expenses than native-born Americans.<sup>8</sup> A recent report by leading health researcher Leighton Ku and Brian Bruen found that, analyzing the Census Bureau's March 2012 Current Population Survey, immigrants have lower utilization rates for public benefits and the value of those benefits received is less than that for

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<sup>7</sup> "Survey Shows that Americans Pay a Lot More for Healthcare," National Journal, March 25, 2012, *available at* <http://www.nationaljournal.com/healthcare/survey-shows-americans-pay-a-lot-more-for-health-care-20120304>.

<sup>8</sup> "Health Insurance Coverage and Medical Expenditures of Immigrants and Native-Born Citizens in the United States," *Am J Public Health*, Leighton Ku, 2009 July; 99(7):1322-1328, *available at* <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2696660/>.

nativeborn individuals.<sup>9</sup> In addition, the report found that analysis of the 2010 Medical Expenditure Panel

Survey (MEPS), costs for immigrants under Medicaid were substantially lower compared to native-born adults and for immigrant children, costs were less than half that of native-born children. Prior analysis has conclusively shown that immigrants as a whole underutilize health care compared to the U.S. born and, when they participate in federal and state funded health programs, use fewer resources.<sup>10</sup>

America needs commonsense immigration policies that align with our values, protect all families and communities, and put the nation on a path to a better, healthier future. Our laws should make health care more affordable and accessible for both Americans and aspiring Americans alike. Immigrants already feel the pain when archaic eligibility laws, language barriers and access challenges converge. We cannot afford to create new barriers to good health for anyone.

The undersigned organizations recommend the following four reforms to ensure that immigration policies support the full integration of immigrants and encourage all Americans to take responsibility for their health.

#### **a. Young Adults Granted Deferred Action Must be Allowed Access to Health Reform**

Including DACA-eligible youth and young adults in health reform is sound policy and fiscally responsible. DACA-eligible youth, commonly known as DREAMers, are a sizable population, with recent estimates suggesting that as many as 1.76 million young adults could be eligible for administrative relief.<sup>11</sup> An estimated 9% of these youth come from Asian countries, comprising over 170,000 individuals. These young adults are already part of America's fabric, having lived in the country for years, and share the same hopes and aspirations as all young Americans.

<sup>9</sup> "The Use of Public Assistance Benefits by Citizens and Non-Citizen Immigrants in the United States," CATO Institute, Leighton Ku and Brian Bruen, February 2013, available at [http://www.cato.org/sites/cato.org/files/pubs/pdf/workingpaper13\\_1.pdf](http://www.cato.org/sites/cato.org/files/pubs/pdf/workingpaper13_1.pdf).

<sup>10</sup> "Health Insurance Coverage and Medical Expenditures of Immigrants and Native-Born Citizens in the United States," *Am J Public Health*, Leighton Ku, 2009 July; 99(7):1322-1328, available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2696660/>.

<sup>11</sup> "Relief from Deportation: Demographic Profile of the DREAMers Eligible Under the Deferred Action Policy," Migration Policy Institute, August 2012, available at [http://www.migrationpolicy.org/pubs/fs24\\_deferredaction.pdf](http://www.migrationpolicy.org/pubs/fs24_deferredaction.pdf).

There is no principled reason to treat young people who receive deferred action through DACA differently from any other person who has received deferred action. In fact, until HHS decided to carve out DACA beneficiaries, they were covered by the ACA like all other persons who have been granted deferred action. Restoring eligibility for DACA-eligible young adults in health reform would allow these individuals to purchase coverage in the new health insurance marketplaces, pay their fair share of health care costs and see a doctor on a regular basis, instead of remaining uninsured. Including this population of overall younger and healthier individuals in the marketplace creates a more sustainable and robust risk pool and ensures that these young people are able to continue to work, pay taxes and build the nation's economy.

Shutting them out could increase costs for everyone. Excluding a large population of relatively healthy young adults from the insurance marketplaces increases the risk of adverse selection and ultimately drives up premiums for everyone. Even more worrisome is the fact that if premiums rise, citizens and lawfully present individuals alike may find it too costly to purchase coverage through the marketplace and instead choose to remain uninsured, further reducing the marketplace population and in turn driving up costs.

Finally, including DACA-eligible youth and young adults in health reform supports administrative efficiency. As states develop processes to facilitate seamless eligibility determinations and enrollment for individuals in private insurance plans, Medicaid and CHIP, they are faced with yet another complicated process. Treating DACA-eligible youth like all other immigrants granted deferred status would ease this process.

**b. All Immigrants Must be Allowed the Same Opportunity to Take  
Responsibility for their Health by Being Able to Purchase Coverage in the  
Insurance Marketplaces**

Federal law currently excludes undocumented immigrants from purchasing private health insurance in the newly created insurance marketplaces. This policy undermines our country's efforts to reduce the number of uninsured and prevents a large population of mostly healthy, working adults from being included in state insurance risk pools. It is also the first known statutory prohibition on a private market transaction based on an individual's immigration status. It's good fiscal policy to offer health

coverage to the largest number of people. Allowing everyone to pay in increases competition and spreads risks and costs across a larger population. As these immigrants continue to contribute to the U.S. economy, support their families and work toward a path of obtaining legal status, they must be able to take responsibility for their health by having the same opportunity to purchase affordable insurance.

**c. End Arbitrary and Inhumane Time Limits that Put Legal Aspiring Citizens at Risk**

Congress should remove the arbitrary time limits imposed on lawfully present immigrants whose taxes help support the social safety net programs they are barred from participating in. The arbitrary time limits currently in place create substantial barriers for low-income immigrants from being able to benefit from the same support systems critical to preventing needy individuals and families from slipping into poverty. As a result, eligible immigrants have lower rates of enrollment in federally supported programs than their citizen counterparts. This disparity is also true among citizen children living in immigrant households, putting these low-income children at risk of food insecurity and poor health outcomes.

States already recognize the importance of keeping women, children and families healthy. Four states and the District of Columbia use their own funds to provide health care for children regardless of their immigration status, and twenty states use the option under the Children's Health Insurance Program Reauthorization Act of 2009 to provide health coverage for lawfully present children subject to the five-year bar. Fourteen states and the District of Columbia provide CHIP or other medical coverage for pregnant immigrant women, regardless of immigration status, and an additional thirteen states provide Medicaid coverage for lawfully present pregnant women through the CHIPRA option.

We urge Congress to act again to permanently eliminate this arbitrary restriction for all lawfully present immigrants.

**d. America Must Uphold its Commitment to the Freely Associated States and Provide Parity in Health Care**

Migrants from the Compact territories should be able to access the federal health programs they pay into. COFA migrants are part of the fabric of America and share a complex relationship with the U.S. government, one in which the U.S. government has certain responsibilities. They contribute to the economy and pay taxes and therefore should be eligible for state funded programs. Lifting the current bar on eligibility will provide needed fiscal relief for states like Hawaii and the territory of Guam, which, as a result of the federal government's failure to provide economic supports for this population, have shouldered a disproportionate burden of this population's health care expenses.

## V. Conclusion

Every individual, regardless of immigration status, should have a fair opportunity to attain optimal health and well-being. Any fix to the nation's immigration system must include access to health care. The alternative risks putting recent reforms and advances at risk, potentially shifts costs to states and safety net providers, and puts the entire nation's physical health and economic well-being at risk.

For more information or questions, please contact Priscilla Huang, APIAHF Policy Director at [p Huang@apiahf.org](mailto:p Huang@apiahf.org) or (202) 466-3550.

### Signing organizations:

APAIT Health Center, Asian & Pacific Islander National Cancer Survivors Network, Asian & Pacific Islander Wellness Center, Asian American Health Coalition of Greater Houston, Asian Americans for Change, Asian and Pacific Islander Obesity Prevention Alliance, Asian Health Coalition, Asian Health Services, Asian Pacific American Labor Alliance, AFL-CIO, Asian Pacific American Network of Oregon, Asian Pacific Community in Action, Asian Pacific Islander American Public Advocacy Association, Asian Pacific Partners for Empowerment, Advocacy and Leadership, Asian Services In Action, Inc., Asian Women for Health, Inc., Association of Asian Pacific Community Health Organizations, BPSOS Inc., BPSOS California, Breast Cancer Action, California Healthy Nail Salon Collaborative, Center for Pan Asian Community Services, Inc., CHOW Project, Coalition for Asian American Children & Families , Empowering Pacific Islander Communities, Field Research Corporation, Health Through Action Arizona, Hep Free Hawaii, Hmong National Development, Inc., Island Liaison, Japanese American Citizens League, Japanese American Citizens League, Arizona, Kalusugan Coalition, Inc., Lao Assistance Center of MN, Laotian American National Alliance, Light and Salt Association, Malama Pono Health Services, Micronesian Islander Community, Midwest Asian Health Association, MQVN Community Development Corporation, National Asian Pacific American Families Against Substance Abuse, National Asian Pacific American Women's Forum, National Asian Pacific American Women's Forum, Arizona Chapter, National Council of Asian Pacific Islander Physicians, National Pacific Islander Educator Network, National Tongan American Society, OCA, One Global Family Foundation, Orange County Asian and Pacific Islander Community Alliance, Inc., Pacific American Foundation

Pacific Islander Community Partnership, PELE, The Sorority of Oceania, Philipino Senior Resource Center, Project CHARGE, Restaurant Opportunities Centers United, Saath USA, Samoan Community Development Center, Samoan National Nurses Association, SEAMAAC, Inc., Socio-Economic Development Center for Southeast Asians, Southeast Asia Resource Action Center (SEARAC), Tanusia Ma'a Tonga, Taulama for Tongans, The HYPE Movement, Tongan American Youth Foundation, Vietnamese American Young Leaders Association of New Orleans, Vietnamese Health Project at Mercy Medical Center, West Michigan Asian American Association, Inc., and Worksafe, Inc.



April 24, 2013

**TO:** The Honorable Patrick Leahy and Members of the US Senate Judiciary Committee

**RE: Testimony of the Community College Consortium for Immigrant Education** to the US Senate Judiciary Committee Hearing on Comprehensive Immigration Reform Legislation

**FROM:** Teresita B. Wisell, Executive Director, CCCIE, and Associate Dean, The Gateway Center, Westchester Community College, Valhalla, New York

Thank you for the opportunity to submit written testimony to the Senate Judiciary Committee in support of Comprehensive Immigration Reform.

The Community College Consortium for Immigrant Education is a national network of over 30 community colleges and other leading professional organizations committed to strengthening and expanding programs and services for immigrant students and leveraging the special role community colleges play in the immigrant integration and education ecosystem. **The members of CCCIE believe that the effective education and training of immigrants is a key component—indeed, a necessity—for successful immigrant integration.**

The programs and services CCCIE is interested in advancing span the skills continuum and mirror the varied needs that immigrant students have. These include English as a Second Language (ESL) instruction at all skill levels, college readiness, college completion, career readiness, and employment and advancement. **With immigration reform and labor force needs in the policy forefront, CCCIE and its members are poised to assist in reform implementation and immigrant integration and education efforts more broadly.**

CCCIE, which is housed at **Westchester Community College** in Valhalla, NY, sees both challenges and opportunities associated with the successful integration of immigrants into American society.

#### THE CHALLENGES

- Over 25 million foreign-born non-citizens age 18 and over have limited English proficiency. While their educational backgrounds differ, many could be served in various ways by community colleges.
- Each year about 65,000 undocumented students graduate from U.S. high schools, but only about 5-10 percent go on to college due to legal, financial, and other barriers.
- As the US population ages and millions of baby boomers retire, immigrants and their U.S.-born children will account for all workforce growth between now and 2050.
- Many of the 11.2 million unauthorized immigrants in the U.S. who could be legalized have limited English proficiency and skills that need to be adapted to the US market.
- An estimated 1.8 million foreign-educated, skilled immigrants residing in the U.S. are unemployed or underemployed. Many are scientists, engineers, or doctors who have been unable to re-enter their careers in the U.S.<sup>1</sup>

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<sup>1</sup> Sources for this entire section: Migration Policy Institute, Pew Hispanic Center, and Pew Research Center



#### THE OPPORTUNITIES

Resources and policies that support workforce and education efforts for immigrants support economic growth, educational attainment, college completion, and career enhancement for this fast growing segment of the US population. The nation's 1200 community colleges play an integral role in the linguistic, civic and economic integration of our nation's immigrants. Today, 1 in 4 community college students is an immigrant or child of an immigrant. On some campuses, the percentage of immigrants or children of immigrants is much higher.

Community colleges provide high quality:

- Certificate and 2-year degrees
- Career training and employer recognized credentials
- English as a Second Language (ESL) instruction
- Civics education and citizenship preparation

#### EXAMPLES OF CCCIE MEMBERS' SUCCESS AND INNOVATION

Community colleges assist thousands of newly arrived refugees each year with intensive job related English language instruction, vocational training and employability skills. Some exemplary programs: **Miami Dade College's REVEST program (Refugee/Entrant Vocational Educational Services Training), FL**, **Pima Community College's Refugee Education Project, AZ**, **Northern Virginia Community College's Adult Career Pathways program, VA**; and the **Montgomery County Refugee Training Program at Montgomery College, MD**.

Since 2005, **Wilbur Wright College, IL** and its partners have operated **Carreras en Salud (Careers in Health)**. This program has helped low skilled, limited English proficient immigrants become bilingual and bicultural Certified Nurse Assistants and Licensed Practical Nurses, filling a much-needed health care services gap in Chicago.

**Alamo Community College District, TX**, **Bunker Hill Community College, MA**; **City College of San Francisco, CA**; and **LaGuardia Community College, NY** are among several community colleges across the country that partner with the Welcome Back Initiative, a national program that helps internationally trained health care professionals rebuild their health care careers in the US.

Since last summer's implementation of Deferred Action for Childhood Arrivals (DACA), community colleges such as **Palm Beach State College, FL**; **Bluegrass Community and Technical College, KY**; **Johnson County Community College, KS**; **Rio Hondo College, CA**; **South Texas College, TX**; and **Westchester Community College, NY** have played a pivotal role in ensuring access to higher education for these eligible youth and have served as resource and referral hubs, partnering with community organizations and agencies.

The **Washington State Board for Community and Technical Colleges, WA** has replicated the highly successful **I-BEST model** throughout all 34 community colleges in Washington state. This model combines basic skills, ESL instruction, and job skills needed for specific careers and has greatly accelerated college completion and career readiness of community college students—immigrants and non-immigrants alike.

In San Mateo and Santa Clara counties (CA) **ALLIES**, a partnership of community colleges, adult education providers, community organizations, labor, business and public agencies works to increase the skills and credential attainment of the region's limited English proficient jobseekers and to meet the skill needs of employers.



#### CCCIE RECOMMENDATIONS FOR IMMIGRATION REFORM

- Provide a clear, earned pathway to citizenship for undocumented immigrant youth and their families.
- Create a National Office on Immigrant Integration Policy to ensure coordination of immigrant integration efforts across federal agencies and at state and local levels. CCCIE supports the provisions in the proposed legislation to develop the Office of Citizenship and New Americans within U.S. Citizenship and Immigration Services to coordinate immigrant integration initiatives, create a Task Force on New Americans to advise on implementing integration policies, and establish the United States Citizenship Foundation to help fund programs at state and local levels.
- Ensure that community colleges and other adult education providers have adequate funding to deliver programs that integrate ESL, vocational training and career pathways.
- Create a federal clearinghouse for information on professional re-credentialing for skilled immigrants for use by community colleges and community based service providers
- Ensure availability of GED resources to facilitate immigrant students' educational advancement and entry into college level work.
- Ensure availability of federal financial aid for undocumented or newly DACA authorized youth to increase their access to higher education.
- Expand use of Pell Grants to include support for noncredit ESL instruction and career-related certificates.
- Support on line and self-access learning for nontraditional and adult immigrants so they can achieve full linguistic, economic and civic integration.
- Provide financial incentives for employers who offer onsite education for workers via vocational ESL and other evidence-based integrated skills/language training models with proven outcomes.

For more information, contact:

Teresita Wisell, CCCIE Executive Director and Associate Dean, The Gateway Center,  
Westchester Community College; [Tere.Wisell@sunywcc.edu](mailto:Tere.Wisell@sunywcc.edu); 914-606-7866

Jill Casner-Lotto, CCCIE Director, [jill.Casnerlotto@cccie.org](mailto:jill.Casnerlotto@cccie.org); 914-606-5644



CCCIE Blue Ribbon Panel Members:

Alamo Community College District, TX (includes 5 community colleges)  
ALLIES (Alliance for Language Learners' Integration, Education and Success), CA (includes 10 community colleges and over 40 adult education providers, employers, labor unions, public agencies, community groups, and economic development agencies)  
American Association of Community Colleges, D.C.  
Bluegrass Community and Technical College, KY  
Bunker Hill Community College, MA  
City College of San Francisco, CA  
Johnson County Community College, KS  
LaGuardia Community College, NY  
Literacywork International, NM  
Miami Dade College, FL  
Migration Policy Institute, D.C.  
Montgomery College, MD  
National Community College Hispanic Council, CA  
Northern Virginia Community College, VA  
Palm Beach State College, FL  
Pima Community College, AZ  
Queensborough Community College, NY  
Rio Hondo College, CA  
South Texas College, TX  
Washington State Board for Community and Technical Colleges, WA (includes 34 community colleges)  
Westchester Community College, NY  
Wilbur Wright College, IL  
World Education Services, NY



April 24, 2013

The Honorable Patrick J. Leahy  
Chairman  
Committee on the Judiciary  
United States Senate  
Washington, D.C. 20510

The Honorable Chuck Grassley  
Ranking Member  
Committee on the Judiciary  
United States Senate  
Washington, D.C. 20510

Dear Chairman Leahy and Ranking Member Grassley:

The nation's governors and chief state school officers appreciate your work to create a Science, Technology, Engineering, and Math (STEM) education and training fund in the Border Security, Economic Opportunity, and Immigration Modernization Act (S. 744). Currently in S. 744, however, federal STEM funding would support the federal government for federally determined and prescribed priorities. States, not the federal government, fund and manage most of public education in the country.

As the Senate moves forward to design a sustainable pipeline to educate U.S. workers for careers in STEM fields, governors and chief state school officers encourage you to consider the Promoting American Ingenuity Account created by S. 169, the Immigration Innovation Act of 2013, with minor amendments. Governors and chief state school officers support S. 169's framework to expand access to STEM education, collaboration, and innovation as detailed in the attached legislative proposal. Governors and chief state school officers believe incorporating a modified S. 169 STEM framework into S. 744 is necessary to encourage systemic STEM education improvements, accelerate best practices, and spur ongoing state-led innovation by engaging state leaders, businesses, and other state agencies engaged in this critical venture.

The NGA/Chief State School Officers Proposal would ensure that:

- State leaders are empowered to work across and among state agencies to meet student and employer needs;
- States, not the federal government, would retain the authority to design innovative programs that strengthen STEM education; and
- All states and territories would be eligible to receive federal support to expand STEM education.

Governors and chief state school officers are leading the way in STEM education by increasing proficiency and growing the number of students who pursue STEM careers. Federal support, through increased visa fees, to expand state-led STEM reform would fuel economic growth and innovation in states. Inclusion of a robust and flexible STEM education funding stream to states would allow governors and chief state school officers to design STEM policies in a manner best suited to their state's educational and economic needs.

Page 2

Thank you for your consideration. If you have any questions regarding this matter, please contact Joan Wodiska at [jwodiska@nga.org](mailto:jwodiska@nga.org) or (202) 624-5361 or Peter Zamora at [PeterZ@CCSSO.org](mailto:PeterZ@CCSSO.org) or (202) 3367003.

Sincerely,

Governor Dannel P. Malloy



Chair  
Education and Workforce Committee



Governor Terry Branstad  
Vice Chair  
Education and Workforce Committee



Commissioner Mitchell Chester  
President  
Council of Chief State School Officers

CC: Members of the Judiciary Committee  
Senator Bennet  
Senator Flake  
Senator McCain  
Senator Menendez  
Senator Rubio



317 HAPPY DAY BLVD., SUITE 250  
 CALDWELL, IDAHO 83607  
 OFFICE: 208-454-1652  
 FAX: 208-459-0448

April 19, 2013

Dear Senate Judiciary Committee:

Our organization, Community Council of Idaho, Inc., serves over 16,000 individuals on an annual basis across Idaho. A large percentage of those we serve are farm workers. We submit this statement for inclusion in the record of the April 19, 2013 Senate Judiciary Committee hearing on "Comprehensive Immigration Reform Legislation." We believe that immigration reform is essential to helping farm workers and their families have the opportunity to lead productive and healthy lives. We are therefore grateful to you and your colleagues, who have spent considerable effort to recognize the interests and knowledge of stakeholders in agriculture and to develop legislation to reform our broken immigration system.

We're very pleased that farmworker and grower representatives have come to an agreement on immigration reform for agriculture. This compromise should greatly increase support for comprehensive immigration reform and get us closer to dignity for farm workers. As the Border Security, Economic Opportunity, and Immigration Modernization Act of 2013 (CIR bill) moves through the legislative process, we write to emphasize the importance of labor protections for immigrant farm workers and urge you to ensure that existing worker protections remain in the bill or are strengthened.

**The Current Landscape: Greater Protections Needed for Farm workers**

The lack of authorized immigration status of so many farm workers contributes to their poor wages and working conditions. Farmworker wages are among the lowest in the country. Many earn at or just above the minimum wage. Poverty among farm workers is more than double that of all wage and salary employees. Few farm workers receive any fringe benefits, such as paid sick leave or paid vacation. Decrepit, overcrowded housing is all too common. Health insurance is rarely provided by employers and few farm workers can afford to purchase it on their own. Yet, agriculture ranks among the most hazardous occupations. Federal laws on overtime pay and collective bargaining exclude farm workers, as do most federal occupational safety standards and many states' workers' compensation systems.

Such marginalized workers fear joining labor unions, seeking improved job terms, or challenging illegal employment practices. Agricultural workers experience rampant violations of employment laws, including minimum wage requirements. Frequently, farm operators hire workers through farm labor contractors, whom they claim are the sole "employers" for purposes of escaping



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immigration and labor laws. Undocumented workers who challenge illegal employment practices risk losing their job and breaking up their families and other dire consequences of deportation.

#### **Roadmap to Citizenship: the Blue Card**

We are very pleased that the CIR bill contains a roadmap to citizenship for current and future farm workers and their families. We strongly support the proposal for a "blue card" program, under which experienced undocumented farm workers and their family members could earn legal immigration status, permanent residency and citizenship within a reasonable period of time and at a reasonable cost given their low incomes. Farm workers and their families are contributing to America; it is only fair that they be given an opportunity earn legal immigration status. An above-board agricultural labor relations system will lead to better working conditions, less employee turnover and higher productivity, all of which will help ensure a prosperous agricultural sector. The entire food system will benefit by responding to consumers' increasing interest in the conditions under which their fruits and vegetables are produced.

#### **The New Nonimmigrant Agricultural Visa Program**

The new system would end or weaken certain longstanding H-2A labor protections but also would provide important new rights. We are very pleased that farm workers in the proposed future visa program will be covered by the Migrant and Seasonal Agricultural Worker Protection Act (AWPA), the main federal law that protects farm workers. The program would also maintain the requirement that U.S. workers in corresponding employment receive the same wages and benefits as the visa workers (with unfortunate exceptions of housing for certain workers), and it contains a cap to limit the number of workers that may be brought in on the visa. We hope that portability provisions of the new visa program would offer workers some ability to move from job to job, which should mitigate some of the problems in the current H-2A program associated with workers being tied to their employer by their visa. However, we note that contract workers in the program will have less freedom to change jobs, which could result in labor exploitation. There will need to be protections for contract workers, whose employers violate their labor rights. They should be assisted in transferring to another position.

The 50% job preference rule in the H-2A program that requires employers to hire any ready, willing and qualified U.S. worker up until 50% of the H-2A contract period is not in the current bill. The administration of the program by the U.S. Department of Agriculture instead of the U.S. Department of Labor causes concern. The Department of Labor has significant experience, expertise and infrastructure in operating guest worker programs and protecting workers. If this



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major change is maintained in the legislation, we support that the bill's provision of a consultative role for the U.S. Department of Labor.

We note that other reductions in the requirements for and oversight of recruitment of U.S. workers could result in U.S. workers being displaced by workers on the visa. Thus, the modest protections for U.S. workers that are included in the current compromise language will be essential to protect the jobs of current U.S. workers and future legalizing workers. Further, once the bill is enacted, there will need to be stringent enforcement of the protections in the program and labor laws protecting farm workers.

**The Broader Legalization Program and Worker Protections in the CIR Bill**

We applaud the bill's broader legalization program. We also strongly support the provisions in the bill that aim to protect immigrant and nonimmigrant workers from retaliation and abuse, including the protections against abuse in international labor recruitment. Workers' experiences during the recruitment process have a substantial impact on their earnings and conditions in the U.S. Many temporary foreign workers are charged high recruitment fees, in violation of federal law, to obtain employment. To afford those fees and transportation costs, workers often borrow money, frequently at high interest rates. Upon arrival in the U.S., these indebted workers, particularly under the H-2A program and potentially in the future, are too fearful of losing their jobs and deportation to challenge unfair or illegal conduct. The recruitment system must be regulated and transparent. Employers that use recruiters for guest workers should disclose to the government the identities of the recruiters, ensure workers do not pay recruitment fees, and be responsible for abuses inflicted on workers when they have used unlicensed recruiters.

In conclusion, we strongly support the proposal's road map to citizenship for undocumented farm workers and their families. We stress that the future nonimmigrant agricultural visa program is the product of a compromise and that its modest labor protections must remain in the bill and be enforced effectively in order for the program to be workable and fair. Thank you again for your efforts to bring farm workers one step closer to gaining legal status and the much-earned recognition for their contributions to the United States.

Regards,

*Anna L. Wein*

Preserving Families - Renewing Lives!

**Written Testimony of Farmworker Justice  
Before the Senate Judiciary Committee on  
“Comprehensive Immigration Reform Legislation”**

**April 22, 2013**

Dear Senate Judiciary Committee:

Farmworker Justice submits this statement for inclusion in the record of the April 22, 2013 Senate Judiciary Committee hearing on “the Border Security, Economic Opportunity, and Immigration Modernization Act, S.744.” For over thirty years, Farmworker Justice has engaged in policy analysis, education and training, advocacy and litigation to empower farmworkers to improve their wages and working conditions, immigration status, health, occupational safety and access to justice. Since its inception, Farmworker Justice has played an important role in immigration policy discussions, monitored the H-2A agricultural guestworker program throughout the country and helped farmworker organizations participate in policy debates.

We applaud the bipartisan efforts to reach agreement on reforming our broken immigration system that led to the Border Security, Economic Opportunity, and Immigration Modernization Act of 2013 (CIR Bill). We greatly appreciate the considerable time that the sponsors and their colleagues have spent to take into account the interests and knowledge of stakeholders in agriculture. We also commend the United Farm Workers (UFW) for its leadership in reaching a hard-fought compromise with agricultural employer organizations and a bipartisan group of U.S. Senators on immigration legislation regarding farmworkers. This compromise should greatly increase support for comprehensive immigration reform and get us closer to dignity for farm workers.

Farmworker Justice seeks public policies and private conduct that treat the men and women employed on our ranches and farms with dignity. The wages and working conditions of most farmworkers deserve improvement and immigration policy plays an important role in determining farmworkers’ ability to win such improvements. Immigration status is not only an important determinant of job terms, but also of the health and safety of farmworkers, their family members and their communities. For these and other reasons, immigration policy has been at the core of the mission of Farmworker Justice for its entire existence.

We strongly support the inclusion in S. 744 of a path to lawful permanent residency and citizenship for farmworkers and their families. We are troubled by some aspects of the bill. The new nonimmigrant worker program for W-3 and W-4 visas lacks certain protections and procedures that developed in agricultural guestworker programs to remedy and prevent serious abuses, but it also contains labor protections of significant importance. The bill also creates a modest but critically important effort to reduce serious abuses associated with international labor recruitment on behalf of employers in the United States. We recognize that immigration reform cannot pass Congress without the broad support that comes from difficult concessions to reach compromise.

We encourage members of Congress to adopt a final bill that ensures fair treatment for current and future farmworkers and their families. As the bill moves through the legislative process, we

write to emphasize the importance of granting a road map to citizenship for current and future farmworkers and their family members and including the bill's existing or stronger labor protections to help farmworkers improve their living and working conditions.

#### **The Current Landscape: Greater Protections Needed for Farmworkers**

Our nation's broken immigration system, labor laws that discriminate against farmworkers, and the labor practices of many agricultural employers have combined to create an agricultural labor system that is unsustainable and fundamentally unfair to our farmworkers. The resulting turnover in the farm labor force means that now more than one-half of the approximately 2 million seasonal farmworkers lack authorized immigration status.<sup>1</sup> The presence of undocumented workers depresses wages for all farmworkers, including the 700,000 to 1 million U.S. citizens and lawful immigrants in agriculture. But undocumented farmworkers are not leaving and they are needed.

The lack of authorized immigration status of so many farmworkers contributes to their poor wages and working conditions. Farmworker wages are among the lowest in the country. Many earn at or just above the minimum wage. Poverty among farmworkers is more than double that of all wage and salary employees. Few farmworkers receive any fringe benefits, such as paid sick leave or paid vacation. Decrepit, overcrowded housing is all too common. Health insurance is rarely provided by employers and few farmworkers can afford to purchase it on their own. Yet, agriculture ranks among the most hazardous occupations. Federal laws on overtime pay and collective bargaining exclude farmworkers, as do most federal occupational safety standards and many states' workers' compensation systems. The absence of such protections harms farmworkers and imposes a competitive disadvantage on those employers which voluntarily provide farmworkers with the same minimum standards that apply to other occupations.

Such marginalized workers fear joining labor unions, seeking improved job terms, or challenging illegal employment practices. Agricultural workers experience rampant violations of employment laws, including minimum wage requirements. Frequently, farm operators hire workers through farm labor contractors, whom they claim are the sole "employers" for purposes of escaping immigration and labor laws. Undocumented workers who challenge illegal employment practices risk losing their job and breaking up their families and other dire consequences of deportation.

#### **Roadmap to Citizenship: the Blue Card**

Farmworker Justice strongly supports the CIR bill's inclusion of a roadmap to citizenship for current and future farmworkers and their families. We support the proposal's "blue card" program, under which experienced undocumented farmworkers and their family members could earn legal immigration status, permanent residency and citizenship within a reasonable period of time and at a reasonable cost. Farmworkers and their families are contributing to America; it is

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<sup>1</sup> Findings from the National Agricultural Workers Survey (NAWS) 2001 – 2002: A Demographic and Employment Profile of United States Farm Workers, available at <http://www.doleta.gov/agworker/report9/chapter1.cfm#eligibility>.

only fair that they be given an opportunity to earn legal immigration status. With a roadmap to citizenship, all farmworkers, including the hundreds of thousands of current U.S. workers and the newly American, will be on a level playing field. An above-board agricultural labor relations system will lead to better working conditions, less employee turnover and higher productivity, all of which will help ensure a prosperous agricultural sector. The entire food system will benefit by responding to consumers' increasing interest in the conditions under which their fruits and vegetables are produced.

The bill imposes a harsh requirement. Despite having to prove that they have been employed in agriculture recently, the applicants must also continue to work in agriculture for three to five more years. The better policy would be to require employers to retain their workforce by improving job terms and provide farm workers with the same labor law rights of other workers. We are also troubled by delaying eligibility for certain public benefits until five years after obtaining a green card, despite existing federal law which would enable eligible workers to qualify for benefits, such as SNAP food stamps, if they have been employed in the U.S. for 40 work quarters. The wages of most farmworkers are so low that access to subsidized nutrition, health and other benefits are important to helping farmworker children develop. Such concessions may be necessary to reach an agreement and the opportunity to obtain lawful permanent residency and citizenship is of critical importance.

Implementation of the legalization program will present many challenges for farmworkers due to geographic, educational, language and other barriers. Applicants must hope that their previous employers – many of whom use fly-by-night labor contractors – will cooperate in documenting their past employment. Although the bill sets forth a reasonable application process, Congress must allocate sufficient resources to ensure that all eligible farmworkers are educated about the program and that government agencies are equipped to handle their applications efficiently and with understanding.

#### **The Current H-2A Temporary Agricultural Guestworker Program**

Currently, employers may hire foreign workers on temporary visas through the H-2A temporary foreign agricultural worker program. The H-2A program does not limit the number of visas available to employers each year, but contains important protections that were put in place in 1987 by the Reagan Administration and restored by the Obama Administration in 2010. The protections are intended to protect the jobs, wages and other labor standards of U.S. farmworkers by encouraging employers to hire U.S. workers before turning to the guestworker program and by preventing wage depression and the deterioration of working conditions. They are also aimed at reducing exploitation of foreign citizens of poor countries. These labor protections evolved over several decades and are rooted in the experiences of the Bracero program, which nonetheless became notorious for abuse of Mexican citizens during its twenty-two year history ending in 1964. These labor protections are inadequate to overcome the fundamentally flawed nature of the H-2A program and rampant violations of workers' rights are endemic.

The H-2A program's inherent flaws begin with the recruitment of the workers, who have typically paid illegal recruitment fees for the opportunity to work in the United States. Because the workers arrive indebted, they are desperate to work to repay their debt. The workers are tied to an employer for an entire season, must leave the country when the job ends and hope that the

employer will request a visa for them in a following year. All of these factors make workers extremely vulnerable to abuse. Often employers prefer guestworkers over U.S. workers because they are more vulnerable and less likely to challenge illegal conduct, in addition to other factors: (1) guestworkers will work at the limits of human endurance for low wages because they are tied to the employer and desperate to repay debt. U.S. workers seek more sustainable productivity expectations; (2) the H-2A employer does not pay Social Security or Unemployment Tax on the guestworkers' wages, but must do so on the U.S. workers' wages, saving about 10-13% per worker; (3) H-2A workers are excluded from the principal federal employment law for farmworkers, the Migrant and Seasonal Agricultural Worker Protection Act; and (4) employers are able to handpick their H-2A workers -they are virtually all young men- because anti-discrimination laws aren't enforced in the recruitment process abroad.

#### **The New Nonimmigrant Agricultural Visa Program**

The new system of W-3 and W-4 visas that would replace the H-2A program would end or weaken certain longstanding H-2A labor protections but it would also provide important new rights. We are very pleased that farmworkers in the proposed future visa program will be covered by the Migrant and Seasonal Agricultural Worker Protection Act (AWPA), the main federal employment law that protects farmworkers. The exclusion of H-2A guestworkers from AWPA has led to many abuses. The program would also maintain the requirement that a participating employer provide U.S. workers in corresponding employment the same wages and benefits as the visa workers (with unfortunate exceptions of housing). The bill contains a cap to limit the number of W-3 and W-4 visas. We hope that portability provisions of the new visa program, which offer workers some ability to move from job to job, mitigate some of the problems associated with H-2A workers being tied to their employer by their visa. However, we note that W-3 contract workers in the program will have less freedom to change jobs than the W-4 visa holders or U.S. workers, which creates the potential for labor exploitation. The bill contains some protections for contract workers but special attention will need to be paid to remedy and prevent violations of their labor rights. At a minimum, victimized contract workers should be assisted in transferring to another position.

Some of the other provisions give us pause. The 50% job preference rule in the H-2A program that requires employers to hire any ready, willing and qualified U.S. worker up until 50% of the H-2A contract period is not in the current bill. Nonimmigrant agricultural visa workers can remain in the U.S. for as long as 3 years and then renew their visa for another 3 years, but will not be able to bring their spouses and dependent children with them, which will separate families. The administration of the program by the U.S. Department of Agriculture instead of the U.S. Department of Labor causes concern. The Department of Labor has significant experience, expertise and infrastructure in operating guestworker programs and protecting workers. If this major change is maintained in the legislation, we support that the bill's provision of a consultative role for the Department of Labor. We also strongly support the bill's assignment of enforcement of worker protections to the Department of Labor, which will be able to accept worker complaints but also initiate investigations and remedy violations. However, the Department of Labor's limited resources means that the Congress must maintain the bill's provisions covering nonimmigrant workers under the Migrant and Seasonal Agricultural Worker Protection Act and continuing the guestworkers' eligibility for federally-funded legal aid programs' assistance.

We note that other reductions in the requirements for and oversight of recruitment of U.S. workers could result in U.S. workers being displaced by workers on the visa. Thus, the modest protections for U.S. workers that are included in the current compromise language will be essential to protect the jobs of current U.S. workers and future legalizing workers. Further, once the bill is enacted, there will need to be stringent enforcement of the protections in the program and labor laws protecting farmworkers.

We applaud the opportunity for nonimmigrant visa farmworkers to eventually apply for green cards but we are concerned that the waiting period could last many years.

#### **Other Provisions of the CIR Bill**

We also strongly support the provisions in the bill that aim to protect immigrant and nonimmigrant workers from retaliation and abuse, including the protections against abuse in international labor recruitment. Workers' experiences during the recruitment process have a substantial impact on their earnings and conditions in the U.S. Many temporary foreign workers – not just agricultural workers – are charged high recruitment fees, in violation of federal law, to obtain employment. To afford those fees and transportation costs, workers often borrow money from the recruiters, frequently at high interest rates. In some cases, recruiters misrepresent the amount and conditions of work that will be available in the U.S. Upon arrival in the U.S., these indebted workers, particularly under the H-2A program and potentially in the future, are too fearful of losing their jobs and deportation to challenge unfair or illegal conduct. It has often been said that many guestworkers “work scared” and therefore are compliant and highly productive at low wages in comparison to workers with freedom in the marketplace. The recruitment system must be regulated and transparent. International labor recruiters should be required to register with the government to aid in monitoring the treatment of migrating workers. Employers that use recruiters for guestworkers should disclose to the government the identities of the recruiters, ensure workers do not pay recruitment fees, and be responsible for abuses inflicted on workers when they have used unlicensed recruiters.

In conclusion, we strongly support the proposal's road map to citizenship for undocumented farmworkers and their families. We stress that the future nonimmigrant agricultural visa program is the product of a compromise and that its modest labor protections must remain in the bill and be enforced effectively in order for the program to be workable and fair. Thank you again for your efforts to bring undocumented farmworkers one step closer to gaining legal status and the much-earned recognition for their contributions to the United States.

Bruce Goldstein  
President  
Farmworker Justice  
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April 21, 2013

## Communication from Former Attorneys General

Senator Patrick J. Leahy  
Chair, Senate Judiciary Committee

Senator Chuck Grassley  
Ranking Member, Senate Judiciary Committee

Dear Senator Leahy and Senator Grassley:

We, the undersigned bipartisan group of former state Attorneys General, wish to convey our support for legislative efforts to pass common sense immigration reform in conjunction with increased border security. A practical, comprehensive reform to our federal immigration laws will significantly improve public safety within our states.

Having served as the chief law enforcement officer in each of our states and jurisdictions, we witnessed the myriad ways in which our broken federal immigration system makes the most basic law enforcement functions far more difficult.

The public safety problems created by the current broken system include:

- The large numbers of immigrants in an unauthorized status coming across our borders create many opportunities for the truly dangerous criminals to hide within their midst. Today, even with the reduced numbers coming across the border illegally, it is relatively easy for cartel operatives, traffickers, and other serious criminals to hide among the large number of people crossing for employment in the United States. In this way, the current immigration system often makes our border less secure.
- Law enforcement is seriously impaired by an inability to accurately identify residents in an unauthorized status they encounter. The current system encourages these immigrants to find false identification for employment and basic needs. As a result, law enforcement often cannot determine who a person is or reliably investigate that person's background. Thus, our current immigration system both undermines the ability of law enforcement officers to carry out their duties and adds to the risks they face.
- The current system decreases the effectiveness of community policing efforts throughout the Nation. Many immigrants, whether in this country legally or illegally, do not report crimes, serve as witnesses, or generally cooperate with law enforcement efforts for fear of generating inquiries into their immigration status. This lack of trust between immigrants and law enforcement officers makes it far more difficult to enforce laws and far easier for criminals to perpetrate their crimes, both against undocumented immigrants and others.

To address these problems, we should use every law enforcement tool available to keep dangerous individuals and drugs from illegally crossing the border into our country and money and guns from being transferred to organized criminals in Mexico. At the same time, immigration reforms should be adopted to address the 11 million undocumented immigrants already in the United States.

In the interest of public safety, increased border security and comprehensive immigration reform should not be an either/or proposition. We need both. Put simply, practical, comprehensive reform to our federal immigration laws will make us all safer.

We urge you to move forward expeditiously with consideration and action on comprehensive immigration reform. Thank you.

Sincerely,

Robert Abrams	New York Attorney General 1979-1993
David Armstrong	Kentucky Attorney General 1983-1988
Thurbert Baker	Georgia Attorney General 1997-2011
Paul Bardacke	New Mexico Attorney General 1983-1986
William J. Baxley	Alabama Attorney General 1970-1979
Mark Bennett	Hawaii Attorney General 2003-2010
Charlie Brown	West Virginia Attorney General 1985-1989
Richard H. Bryan	Nevada Attorney General 1979-1983
Bob Butterworth	Florida Attorney General 1986-2002
Bonnie Campbell	Iowa Attorney General 1991-1995
Pamela Carter	Indiana Attorney General 1993-1997
Steve Clark	Arkansas Attorney General 1979-1990
Walter Cohen	Pennsylvania Attorney General 1995
Frankie Sue Del Papa	Nevada Attorney General 1991-2003
Bob Del Tufo	New Jersey Attorney General 1990-1993
Larry Derryberry	Oklahoma Attorney General 1971-1979
M. Jerome Diamond	Vermont Attorney General 1975-1981
Richard Doran	Florida Attorney General 2002-2003
Jim Doyle	Wisconsin Attorney General 1991-2003
Mike Easley	North Carolina Attorney General 1992-2001
Rufus Edmisten	North Carolina Attorney General 1974-1984
Drew Edmondson	Oklahoma Attorney General 1995-2011
Tyrone Fahner	Illinois Attorney General 1980-1983

Lee Fisher	Ohio Attorney General 1991-1995
Steve Freudenthal	Wyoming Attorney General 1981-1982
David B. Frohnmayer	Oregon Attorney General 1981-1991
Jose Fuentes Agostini	Puerto Rico Attorney General 1997-2000
Richard Gebelein	Delaware Attorney General 1979-1983
Terry Goddard	Arizona Attorney General 2003-2011
Chris Gorman	Kentucky Attorney General 1992-1996
Slade Gorton	Washington Attorney General 1969-1980
Jan Graham	Utah Attorney General 1993-2000
Jennifer Granholm	Michigan Attorney General 1999-2003
Mike Greely	Montana Attorney General 1977-1988
Peter Harvey	New Jersey Attorney General 2003-2006
Peter Heed	New Hampshire Attorney General 2003-2004
Robert Henry	Oklahoma Attorney General 1987-1991
Drew Ketterer	Maine Attorney General 1995-2001
Bronson La Follette	Wisconsin Attorney General 1964-1968; 1974-1986
Peg Lautenschlager	Wisconsin Attorney General 2003-2007
Michael Lilly	Hawaii Attorney General 1984-1985
Patrick Lynch	Rhode Island Attorney General 2003-2011
Rob McKenna	Washington Attorney General 2005-2013
Mark Meierhenry	South Dakota Attorney General 1979-1986
Jeff Modisett	Indiana Attorney General 1997-2000
Mike Moore	Mississippi Attorney General 1987-2003
Hardy Myers	Oregon Attorney General 1997-2009
Richard Opper	Guam Attorney General 1983-1986
Jerry Pappert	Pennsylvania Attorney General 2003-2005
Jim Petro	Ohio Attorney General 2003-2007
Jeff Pine	Rhode Island Attorney General 1993-1999
Ed Pittman	Mississippi Attorney General 1984-1988
Hector Reichard	Puerto Rico Secretary of Justice 1981-1983
Dennis Roberts	Rhode Island Attorney General 1979-1985
Steve Rosenthal	Virginia Attorney General 1993-1994
Steve Rowe	Maine Attorney General 2001-2009
Jim Shannon	Massachusetts Attorney General 1987-1991
Mark Shurtleff	Utah Attorney General 2000-2012
Linda Singer	District of Columbia Attorney General 2007-2008

Steve Six	Kansas Attorney General 2008-2011
Gregory Smith	New Hampshire Attorney General 1980-1984
Jim Smith	Florida Attorney General 1979-1987
Nicholas Spaeth	North Dakota Attorney General 1985-1993
Robert Stephan	Kansas Attorney General 1979-1995
Iver Stridiron	Virgin Islands Attorney General 1999-2004
Roger Tellinghuisen	South Dakota Attorney General 1987-1990
Mary Sue Terry	Virginia Attorney General 1986-1993
Jim Tierney	Maine Attorney General 1995-2001
Anthony Troy	Virginia Attorney General 1977-1978
Mike Turpen	Oklahoma Attorney General 1983-1986
John Van de Kamp	California Attorney General 1983-1991
Knox Walkup	Tennessee Attorney General 1997-1999
Bob Wefald	North Dakota Attorney General 1981-1984
Mark White	Texas Attorney General 1979-1983
Duane Woodard	Colorado Attorney General 1983-1991
Grant Woods	Arizona Attorney General 1991-1999

cc: Senator Harry Reid and Senator Mitch McConnell  
Members of the Judiciary Committee  
Secretary Janet Napolitano, DHS  
Attorney General Eric Holder, DOJ



**The Farmworker Association of Florida, Inc.**  
**La Asociación Campesina de Florida**  
**Asosiyasyon Travayè Latè**

Dear Senate Judiciary Committee:

☐  
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 (407) 885-5151 Tel.  
 (407) 884-6544 Fax

☐  
**VOLUSTA COUNTY**  
 81 Fountain Dr.  
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 (385) 749-0477 Fax

☐  
**DADE COUNTY**  
 450 Dade Parkway  
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 (305) 247-0052 Fax

☐  
**COLLIER COUNTY**  
 1015 West Main Street  
 Unit #10  
 Immokalee, FL 34142  
 (239) 657-0263 Tel.  
 (239) 657-8262 Fax

☐  
**HIGHLAND RIVER COUNTY**  
 26 South Maple Street  
 Unit A  
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 Fellsmere, FL 32948  
 (772) 574-0081 Tel.  
 (772) 574-9832 Fax

Our organization, The Farmworker Association of Florida, serves farmworkers. We submit this statement for inclusion in the record of the April 19, 2013 Senate Judiciary Committee hearing on "Comprehensive Immigration Reform Legislation." We believe that immigration reform is of the utmost importance to helping farmworkers and their families have the opportunity to lead productive, healthy lives. We are therefore grateful to you and your colleagues, who have spent considerable effort to take into account the interests and knowledge of stakeholders in agriculture and to develop legislation to reform our broken immigration system.

We're very pleased that farmworker and grower representatives have come to an agreement on immigration reform for agriculture. This compromise should greatly increase support for comprehensive immigration reform and get us closer to dignity for farm workers. As the Border Security, Economic Opportunity, and Immigration Modernization Act of 2013 (CIR bill) moves through the legislative process, we write to emphasize the importance of labor protections for immigrant farmworkers and urge you to ensure that existing worker protections remain in the bill or are strengthened.

#### **The Current Landscape: Greater Protections Needed for Farmworkers**

The lack of authorized immigration status of so many farmworkers contributes to their poor wages and working conditions. Farmworker wages are among the lowest in the country. Many earn at or just above the minimum wage. Poverty among farmworkers is more than double that of all wage and salary employees. Few farmworkers receive any fringe benefits, such as paid sick leave or paid vacation. Decrepit, overcrowded housing is all too common. Health insurance is rarely provided by employers and few farmworkers can afford to purchase it on their own. Yet, agriculture ranks among the most hazardous occupations. Federal laws on overtime pay and collective bargaining exclude farmworkers, as do most federal occupational safety standards and many states' workers' compensation systems.

Such marginalized workers fear joining labor unions, seeking improved job terms, or challenging illegal employment practices. Agricultural workers experience rampant violations of employment laws, including minimum wage requirements. Frequently, farm operators hire workers through farm labor contractors, whom they claim are the sole "employers" for purposes of escaping immigration and labor laws. Undocumented workers who challenge illegal employment practices risk losing their job and breaking up their families and other dire consequences of deportation. With a roadmap to citizenship, all



The Farmworker Association of Florida, Inc.  
La Asociación Campesina de Florida  
Asosiyasyon Travayè Latè

farmworkers, including the hundreds of thousands of current U.S. workers and the newly American, will be on a level playing field.

#### Roadmap to Citizenship: the Blue Card

We are very pleased that the CIR bill contains a roadmap to citizenship for current and future farmworkers and their families. We strongly support the proposal for a "blue card" program, under which experienced undocumented farmworkers and their family members could earn legal immigration status, permanent residency and citizenship within a reasonable period of time and at a reasonable cost given their low incomes. Farmworkers and their families are contributing to America; it is only fair that they be given an opportunity earn legal immigration status. With a roadmap to citizenship, all farmworkers, including the hundreds of thousands of current U.S. workers and the newly American, will be on a level playing field. An above-board agricultural labor relations system will lead to better working conditions, less employee turnover and higher productivity, all of which will help ensure a prosperous agricultural sector. The entire food system and other non-catable farm products will benefit by responding to consumers' increasing interest in the conditions under which their fruits and vegetables are produced.

#### The New Nonimmigrant Agricultural Visa Program

The new system would end or weaken certain longstanding H-2A labor protections but also would provide important new rights. We are very pleased that farmworkers in the proposed future visa program will be covered by the Migrant and Seasonal Agricultural Worker Protection Act (AWPA), the main federal law that protects farmworkers. The program would also maintain the requirement that U.S. workers in corresponding employment receive the same wages and benefits as the visa workers (with unfortunate exceptions of housing for certain workers), and it contains a cap to limit the number of workers that may be brought in on the visa. We hope that portability provisions of the new visa program would offer workers some ability to move from job to job, which should mitigate some of the problems in the current H-2A program associated with workers being tied to their employer by their visa. However, we note that contract workers in the program will have less freedom to change jobs, which could result in labor exploitation. There will need to be protections for contract workers, whose employers violate their labor rights. They should be assisted in transferring to another position.

Some of the other provisions give us pause. The 50% job preference rule in the H-2A program that requires employers to hire any ready, willing and qualified U.S. worker up until 50% of the H-2A contract period is not in the current bill. The administration of the program

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by the U.S. Department of Agriculture instead of the U.S. Department of Labor causes concern. The Department of Labor has significant experience, expertise and infrastructure in operating guest worker programs and protecting workers. If this major change is maintained in the legislation, we support that the bill's provision of a consultative role for the Department of Labor. We note that other reductions in the requirements for and oversight of recruitment of U.S. workers could result in U.S. workers being displaced by workers on the visa. Thus, the modest protections for U.S. workers that are included in the current compromise language will be essential to protect the jobs of current U.S. workers and future legalizing workers. Further, once the bill is enacted, there will need to be stringent enforcement of the protections in the program and labor laws protecting farmworkers. We applaud the opportunity for nonimmigrant visa farmworkers to eventually apply for green cards but we are concerned that the waiting period could last many years.

#### **The Broader Legalization Program and Worker Protections in the CIR Bill**

We applaud the bill's broader legalization program. We also strongly support the provisions in the bill that aim to protect immigrant and nonimmigrant workers from retaliation and abuse, including the protections against abuse in international labor recruitment. Workers' experiences during the recruitment process have a substantial impact on their earnings and conditions in the U.S. Many temporary foreign workers are charged high recruitment fees, in violation of federal law, to obtain employment. To afford those fees and transportation costs, workers often borrow money, frequently at high interest rates. Upon arrival in the U.S., these indebted workers, particularly under the H-2A program and potentially in the future, are too fearful of losing their jobs and deportation to challenge unfair or illegal conduct. It has often been said that many guestworkers "work scared" and therefore are compliant and highly productive at low wages in comparison to workers with freedom in the marketplace. The recruitment system must be regulated and transparent. Employers that use recruiters for guestworkers should disclose to the government the identities of the recruiters, ensure workers do not pay recruitment fees, and be responsible for abuses inflicted on workers when they have used unlicensed recruiters. In conclusion, we strongly support the proposal's road map to citizenship for undocumented farmworkers and their families. We stress that the future nonimmigrant agricultural visa program is the product of a compromise and that its modest labor protections must remain in the bill and be enforced effectively in order for the program to be workable and fair. Thank you again for your efforts to bring farmworkers one step closer to gaining legal status and the much-earned recognition for their contributions to the United States.

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Written Statement of  
Chad Griffin  
President  
Human Rights Campaign

To the

Committee on Judiciary  
United States Senate  
Room 216  
Hart Senate Office Building  
April 22, 2013

Mr. Chairman and Members of the Committee:

My name is Chad Griffin, and I am the President of the Human Rights Campaign, America's largest civil rights organization working to achieve lesbian, gay, bisexual and transgender (LGBT) equality. On behalf of our over 1.5 million members and supporters nationwide, I applaud the bipartisan introduction of the Border Security, Economic Opportunity, and Immigration Modernization Act of 2013 (S. 744) and urge the members of this committee to amend S. 744 to provide relief to the lesbian and gay families who, under current immigration law, are often forced to choose between the country they love and the person they love.

John Beddingfield and Erwin de Leon are one such family. They have been together since 1998 and were married in Washington, DC in 2010. John, a North Carolina native, is an Episcopal priest and rector of All Souls Memorial Episcopal Church. Erwin, originally from the Philippines, is a Ph.D. candidate whose student's visa will expire when he completes his degree this year.

If John and Erwin were a straight couple, Erwin would receive a green card as a result of their marriage, making Erwin eligible for permanent residency in the U.S. But because they are gay, and even though they are legally married, they are faced with the prospect of either having to separate or to leave their home, friends, family—and the country they love.

All across our country, same-sex binational couples like John and Erwin are struggling to see a future for their families. There are an estimated 24,700 same-sex binational couples (one nativeborn U.S. citizen and one noncitizen) in the U.S. today, and it is estimated that these couples are raising over 11,000 children. These couples, these children and these families deserve better than the discriminatory treatment they receive under current laws.

There is no doubt that S. 744 brings us one step closer to the historic immigration reform this country desperately needs. From a pathway to citizenship, to a solution for young DREAMers, to

much-needed reform for asylum-seekers and our immigration detention facilities, this bill will change millions of lives for the better.

The bill will provide a brighter future to the 267,000 undocumented LGBT adult immigrants who are forced into the shadows of society. It will help the LGBT champions of the DREAM Act finally be recognized for who they are – Americans. It will ensure that individuals who flee anti-LGBT violence in their home countries will not be denied asylum because of an arbitrary filing deadline. And, it will protect LGBT immigrants in detention from experiencing abuse and solitary confinement by increasing detention oversight and detention alternatives.

However, as drafted, the bill omits critical language that would end discrimination against the tens of thousands of same-sex binational couples like John and Erwin. Because of the Defense of Marriage Act, U.S. citizens and residents cannot sponsor a same-sex partner for family-based immigration, unlike their heterosexual counterparts. Amending S. 744 to include the Uniting American Families Act (UAFAs) would remedy this injustice.

UAFAs provides lesbian and gay individuals the same opportunity as opposite-sex married couples to sponsor their partner. Lesbian and gay couples, just like their straight peers, would need to fulfill strict requirements to show proof of their relationship — including affidavits from friends and family or evidence of financial support. And, in line with current immigration law, UAFAs would impose harsh penalties for any fraud, including up to five years in prison and as much as \$250,000 in fines.

For decades, the family unit has been a cornerstone of immigration law. UAFAs not only keeps those families together, but it keeps our country economically secure by recognizing the family as the center of economic stability.

Alessandro (Sandro) Tomassetti and Alon Rosenfeld were married in California and spent 14 years building a life together in Los Angeles. Sandro, a Canadian, was recruited to the U.S. by Disney to work on feature films. Alon, who is Israeli-born, was brought to the U.S. by Microsoft. After 4 years of working in the special effect industry in Los Angeles, Sandro left his job, retrained and opened up a small business with the help of Alon. Alon, meantime, stayed at Microsoft and received his U.S. citizenship.

In 2010, Sandro's visa was set to expire and, because the U.S. does not recognize his marriage to Alon, the couple was forced to close their nationally-recognized small business in order to move their life abroad. Microsoft lost an employee with over a decade of experience. Los Angeles lost a small business that provided jobs for over 30 individuals.

Every year, highly-skilled couples like Sandro and Alon are forced to relocate their lives and livelihoods abroad. When they leave for one of over two dozen countries that offer residency for lesbian and gay partners, we lose their talent and skills to a foreign competitor. We lose the taxes they pay. We lose the small businesses they run. Our communities suffer. Discrimination has a

needlessly high cost. That is why nearly 30 Fortune 500 companies have supported UAFA, declaring that it will allow them to recruit and keep the best talent in America.

As a matter of basic justice, hardworking people who come to the U.S. seeking a better life should be treated fairly regardless of whom they love. At this moment of bipartisan consensus, this committee should seize the chance to do the right thing for couples like John and Erwin, and Sandro and Alon. With one amendment, you have the opportunity to adopt a commonsense policy that is rooted in legal and economic fairness—guaranteeing that immigration reform is truly comprehensive. Please adopt UAFA and send this vital bill to the floor for passage.



**Written Testimony**

**Of**

**Carl Camden**

**CEO**

**Kelly Services, Inc.**

**on**

**S. 74**

**“The Border Security, Economic Opportunity, and  
Immigration Modernization Act”**

**April 25, 2013**

Carl Camden  
4/25/2013

Mr. Chairman, members of the Senate Judiciary Committee, my name is Carl Camden. I am President and Chief Executive Officer of Kelly Services. I am pleased to submit testimony for the record on “The

Border Security, Economic Opportunity, and Immigration Modernization Act, S.74.”

I am encouraged that immigration reform is now gaining the attention it richly deserves. Even a year ago, it would have seemed unlikely that a broad based solution to repair and update our broken immigration system would be the subject of hearings such as these.

Common sense, solutions-oriented immigration reform is crucial to the long term competitiveness of the U.S. economy. It is a crucial ingredient in the sustainable and sustained economic growth that is required to effectively address our tax and budget issues. It is crucial to assure proper workplace protections to a group that is too easily exploited by unscrupulous bad actors. It is crucial to restoring a level playing field for those employers who do the right thing.

Kelly Services brings unique experience and expertise on the employment marketplace and sees, everyday, the impact of immigration policy in undermining US competitiveness. Founded in 1946, Kelly has evolved from a United States-based company concentrating primarily on traditional office staffing into a global workforce solutions leader offering a full breadth of specialty services. Kelly ranks as one of the worlds largest staffing companies across a range of disciplines from science, law, finance and engineering to contact center, and light industrial. As the human capital component of the U.S. and global economies has become more complex, Kelly has developed a suite of solutions to help many of the world’s largest companies manage the full range of their talent and workforce supply needs. We connect our workers with work in a way that allows them to choose a work style that meets their current needs and circumstances. We connect our clients with the talent they need to successfully execute strategies in the hyper competitive global economy. We help our clients bring state of the art human capital management practices to their entire workforce, not just their regular employees.

The nature of Kelly’s business gives us real time visibility into the talent needs of our nation’s top employers - the Fortune 100. Make no mistake; there is a fierce global war for talent going on right now. What we need to recognize is that talent always wins this war. Talent and work will always find each other. They always have; the frequent efforts of governments to the contrary notwithstanding. We must understand that talent now has a wider global array of choices that ever before. We need to do all we can to make the United States the best place in the world for the intersection of talent and opportunity.

Global companies are keenly aware of the increasing talent shortages in key disciplines. This concern repeatedly ranks near the top of the list in multiple surveys of what keeps CEOs awake at night. If the talent cannot come to the work, then global companies will have no choice but to take the work (and the associated capital investment) to the places that welcome and attract the talent.

The Border Security, Economic Opportunity, and Immigration Modernization Act, S.74 recognizes and responds to these new realities in several encouraging ways. The increase in H1-B visas is an important step, and the change to allow the dependents of H1-B visa holders not to count against the numeric limitation is a much needed change that will help make us more attractive to globally mobile talent.

Likewise, the creation in 2015 of a merit based pool of visas taking into account a mix of family ties, work history in the U.S., and strength of work skills, takes us directionally where we want to go. It is in America's enlightened self interest to do so, and importantly, it follows established international trends in immigration laws, as other country's act to address their own talent needs and economic competitiveness.

Perhaps most exciting is the creation of a new start-up visa for foreign entrepreneurs. Immigrants to our country have a rich and consistent history of starting and building successful businesses. Numerous studies document conclusively the positive economic benefits attributable to such immigrants. They create employment opportunities for others and economic growth in our communities. We no longer enjoy the luxury of being the only place in the world such people aspire to. This is another needed and positive step to make the U.S. the destination of choice for people with energy and vision. We need and want these people to pursue their dreams here as so many have done before them.

But the issue is not exclusively about high skill immigrants and high skill jobs. Benefits to our economy are not limited to the arrival of high skill immigrants alone. On the contrary, lower skill workers are needed now, and our demographic (an aging workforce) and educational (generally rising educational achievement) trends make clear that we will continue to need more low-skilled workers than are available in America in the future. Certain enterprises depend on these workers, and therefore, so do the higher skill workers of the same employer. The legislation rightfully addresses the needs of both the employers of low skill workers and their employees.

For those of us who generally favor free markets, the truly innovative feature of the proposed temporary worker program is that workers would not be tied to a single employer. While they would be required to have a job prior to entering the country, they would also be free to change jobs, and accept work from other employers in the program. This newfound autonomy and mobility is a significant step forward in empowering those workers, and is a practical and effective protection against potential overreach by employers.

All legitimate employers are concerned with competitors who play fast and loose with our immigration system. It hurts our reputation as employers and causes us economic harm. I welcome the strengthened employee verification provisions as a step needed to level the playing field for those businesses that play by the rules.

While I am not an expert on the proper numbers for any of the visa categories covered by the bill, nor the precise capital and employment requirements appropriate for the entrepreneurial visa; it is fair to say that a realistic opportunity for significant immigration reform does not occur often. Therefore, while we have that opportunity, let us make full use of it to build a new system that will serve future, as well as current needs.

I know the path forward is likely difficult and contentious. I commend and pledge my continued support for your efforts. Finally, I urge you in the strongest possible terms to press on despite the obstacles; to continue the hard work necessary to create a common sense system of legal immigration for the 21<sup>st</sup> century.

Thank you.



April 23, 2013

The Honorable Christopher Coons  
127A Russell Senate Office Building  
Washington, DC 20510

Dear Senator Coons,

As you know, America faces an immediate and long-term employment crisis due to a chronic shortage of qualified workers in STEM fields. Despite high unemployment, the number of available science, technology, engineering, computer science and mathematics jobs far outpaces our ability to fill them.

For example, according to a widely quoted Bureau of Labor Statistics report, only 40,000 U.S. bachelor degrees are awarded in the computer science field annually, despite the fact that around 120,000 new computer science jobs are created in the United States every year.

This systemic failure endangers the competitiveness of U.S. firms in a rapidly changing global economy, especially as many other nations successfully educate their own citizens in critical STEM areas. It also has longer term implications on the health and vitality of our educational system, as it will become increasingly difficult for our primary and secondary schools to develop curriculums that can interest and educate American students in cutting edge science and technology fields.

With this in mind, inSPIRE STEM USA was established to support a linkage between the temporary need for foreign high skilled workers and a longer term desire to promote STEM education in America. inSPIRE STEM USA, a coalition which is co-chaired by former Senator John E. Sununu and Maria Cardona, aims to address this problem by advocating for an approach that can immediately sharpen America's economic competitiveness through modernization of the H-1B visa process while providing long-term support to improve training of tomorrow's workforce.

inSPIRE STEM USA includes organizations, companies and leaders, who are committed to ensuring the United States remains competitive globally by training and graduating more engineers, mathematicians and computer scientists. Our membership is comprised of companies that rely on high tech workers, representatives of educational interests that are concerned with the erosion of effective STEM education in this nation, and a variety of groups supporting progressive immigration policies. We have attached a list of our coalition's membership.

inSPIRE STEM would like to thank the U.S. Senate for initiating a critical debate that could address immediate needs for high tech employers while developing a long term commitment to upgrading STEM and computer science educational opportunities in the United States.

In particular, we commend you and the other members who have advocated for the inclusion of a STEM and computer science education component in this bill. And while we applaud the bill in its current form, inSPIRE STEM USA recommends a more robust STEM fund like the one you and Senators Hatch, Rubio and Klobuchar included in the Immigration Innovation Act (I-Squared), which has 26 bipartisan Senate cosponsors. We hope you will strongly advocate for the inclusion of such a fund in any immigration reform package that is considered moving forward.

Finally, inSPIRE STEM USA hopes that that any STEM fund be administered to provide the most “bang for its buck,” to guarantee educational opportunities in STEM and computer science discipline areas, and ultimately to provide the largest long-term supply of STEM educated U.S. workers.

Again, we would like to thank you and your colleagues in the Senate for all the hard work you have put into crafting this important legislation, and we look forward to providing assistance as you continue your important work.

Kindest regards,

A handwritten signature in black ink, appearing to read "Beneva Schulte". The signature is stylized with a large initial "B" and a long, sweeping underline.

Beneva Schulte  
Executive Director inSPIRE STEM USA

# inSPIRE STEM USA



*Our paramount mission is to contribute to the security and stability of the United States. To that end, we shall propose and be advocated for immigration laws and policies that we believe serve those national interests, and we will oppose those that do not.*

**National Association of Former Border Patrol Officers**

Press Release      April 22, 2013

**NAFBPO Offers Alternative to Flawed Senate Immigration Bill**

In October 2010, NAFBPO developed and distributed to all members of the House and Senate a Comprehensive Immigration Enforcement and Reform proposal (CIER) This proposal was developed by a select group of subject matter experts who collectively have years of experience in immigration laws and border enforcement.

As stated in our CIER, we have immigration laws to regulate which and how many foreigners we are going to allow to enter this country; that is the sovereign right and duty of every country. Properly formulated and enforced immigration laws would:

- Protect national security and sovereignty
- Protect American jobs and social programs
- Enhance public safety
- Guard public health

As currently written, a number of the concepts outlined in the soon to be released Senate Bill ass several bureaucratic platforms that are non-verifiable and non-enforceable, which do not adequately address the four principles listed above that are critical to our national well-being and security.

The nation is about to undertake the largest collective legalization of illegal aliens in its history. It is estimated that 11 million illegal aliens will fall under the umbrella of the proposed Senate legislation. This legislation fails to adequately address "chain migration" (immediate family members to follow), that will undoubtedly add a significant number to the total. This will result in catastrophic consequences to our job market, healthcare institutions, public welfare, and educational institutions.

NAFBPO's CIER addresses these issues in a common sense way. The Temporary Worker Program detailed in NAFBPO's C IER adequately meets the needs of employers. Other existing

laws set forth in the commonsense CIER should be enforced. This CIER should be reviewed by our lawmakers prior to any final decision on this volatile issue.

NAFBPO, Inc.

P.O Box 2012, Brunswick, GA 31521-2012

Chairman: George (Zack) Taylor Vice-Chairman: Jeff Everyly

Contact for this press release: Al Ferguson, Executive Assistant

[NAFBPO@gmail.com](mailto:NAFBPO@gmail.com)

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2030 M Street, NW  
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<http://www.naag.org/>

April 15, 2013

The Honorable Harry Reid  
Majority Leader  
U.S. Senate

The Honorable Mitch McConnell  
Minority Leader  
U.S. Senate

The Honorable John Boehner  
Speaker of the House of Representatives  
U.S. House of Representatives

The Honorable Nancy Pelosi  
Minority Leader  
U.S. House of Representatives

Dear Majority Leader Reid, Minority Leader McConnell, Speaker Boehner,  
Minority Leader Pelosi,

We are a bipartisan group of state attorneys general who recognize that immigration policy is primarily a federal responsibility. We are writing to convey our support for federal immigration reform that improves our immigration system, keeps our communities safe and protects our borders.

We believe that maintaining the safety and security of the United States is the utmost priority. Our immigration system must ensure the protection of our communities and the integrity of our national borders. We support a law enforcement strategy that focuses on public safety, targets serious crime, safeguards witnesses and victims, and considers national security implications for porous borders. We further urge a reasonable and predictable regulatory environment that considers the interests of, and the unintended consequences to businesses, workers and consumers. A broader reform effort should eventually include a way to accurately, reliably and affordably determine who's permitted to work, ensuring an adequate labor force for a growing economy.

Our immigration system must be flexible enough to address the needs of businesses in the various states, with state input, while protecting the interests of workers. This includes a visa system that is both responsive and effective in meeting the demands of our economy. It should also acknowledge the beneficial economic contributions immigrants make as workers, tax payers, and consumers.

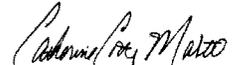
Our immigration policies, where possible, should prioritize keeping families together in order to ensure the most supportive home environment for all the children across our country.

Our immigration policies must provide a sensible means to deal with the immigrants who are currently in the country without legal status but are of good character, pay taxes and are committed to continuing to contribute to our society.

We look forward to working with you as you move forward in this process and lending our voice and expertise as you develop legislation.

Sincerely,

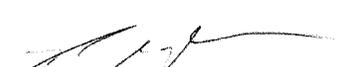
  
John Suthers  
Colorado Attorney General

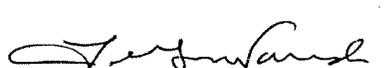
  
Catherine Cortez Masto  
Nevada Attorney General

**\*\*Signature Unavailable\*\***  
Afoa Leulumoega Lutu  
American Samoa Attorney General

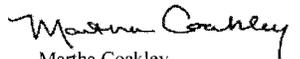
  
Kamala Harris  
California Attorney General

  
Joseph R. "Beau" Biden III  
Delaware Attorney General

  
Lenny Rapadas  
Guam Attorney General

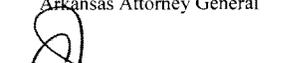
  
Lawrence Wasden  
Idaho Attorney General

  
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Martha Coakley  
Massachusetts Attorney General

  
John Swallow  
Utah Attorney General

  
Dustin McDaniel  
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George Jepsen  
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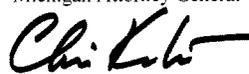
  
James "Buddy" Caldwell  
Louisiana Attorney General

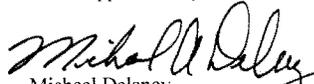
  
Janet Mills  
Maine Attorney General

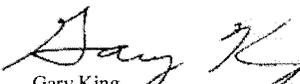
  
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Maryland Attorney General

  
Bill Schuette  
Michigan Attorney General

  
Jim Hood  
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Chris Koster  
Missouri Attorney General

  
Michael Delaney  
New Hampshire Attorney General

  
Gary King  
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Eric Schneiderman  
New York Attorney General

  
Roy Cooper  
North Carolina Attorney General

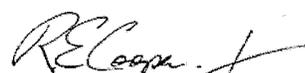
  
Wayne Stenehjem  
North Dakota Attorney General

  
Ellen Rosenblum  
Oregon Attorney General

  
Luis Sánchez Betances  
Puerto Rico Attorney General

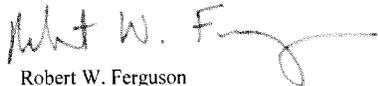
  
Peter Kilmartin  
Rhode Island Attorney General

  
Marty J. Jackley  
South Dakota Attorney General

  
Robert E. Cooper, Jr.  
Tennessee Attorney General

  
William H. Sorrell  
Vermont Attorney General

  
Vincent Frazer  
Virgin Islands Attorney General

  
Robert W. Ferguson  
Washington Attorney General

  
Gregory A. Phillips  
Wyoming Attorney General

Cc: United States Attorney General Eric Holder  
Secretary of Homeland Security Janet Napolitano



**Statement for the Record**

**Senate Judiciary Committee**

**“The Border Security, Economic Opportunity, and Immigration  
Modernization Act, S.744”**

**April 22, 2013**

The National Immigration Forum works to uphold America’s tradition as a nation of immigrants. The Forum advocates for the value of immigrants and immigration to the nation, building support for public policies that reunite families, recognize the importance of immigration to our economy and our communities, protect refugees, encourage newcomers to become new Americans and promote equal protection under the law.

First and foremost, our hearts and prayers go out to the people of Boston. We are extremely grateful for the fast and successful work of federal and local law enforcement officials in dealing with this atrocious attack that threatened all Bostonians. Any attack against America is an attack against all Americans regardless of their faith or ethnicity.

The National Immigration Forum applauds the Committee for holding this hearing on the matter of “Comprehensive Immigration Reform Legislation” and urges the Committee to take up Senate bill S. 744, the Border Security, Economic Opportunity, and Immigration Modernization Act. We applaud the bipartisan Senate working group for making progress on much-needed reform of our immigration laws.

Over the past two years, an alliance of conservative faith, law enforcement and business leadership has come together to forge a new consensus on immigrants and America: The Bibles, Badges, and Business for Immigration Reform Network, which formally launched in February. Their consensus lies in a common belief that all Americans prosper when our immigration system is humane, prioritizes public safety and empowers the U.S. economy. Since 2011, the National Immigration Forum and hundreds of “Bibles, Badges and Business” leaders have sounded the horn for fixing our immigration process at national summits in the Mountain West, Southeast and Midwest. In December 2012, a year’s worth of dialogues led to a National Strategy Session and Federal Lobby Day in Washington, D.C. where over 250 leaders, including three of today’s witnesses, Dr. David Fleming, Senior Pastor Champion Forest Baptist Church, Grover Norquist, President, Americans for Tax Reform and Mark Shurtleff, Partner, Troutman Sanders LLP communicated their full support for comprehensive immigration reform – an event which resulted in more than 60 news stories across the



country and 75 Hill meetings (57 with Republican offices). More importantly, faith, law enforcement and business leaders from across the country committed to work together to urge Congress to pass broad immigration reform in 2013.

Why the Bibles, Badges and Business Network Supports Comprehensive Immigration Reform?

- **Faith:**

National evangelical leaders have been on the front lines of America's broken immigration system. They have seen far too many church members have their families torn apart by a strident immigration system that does not respect the fundamental importance of the family. Parents should not be ripped away from their children, and no child should be forced to grow up without a parent simply because immigration laws are not cognizant of basic Biblical teachings such as welcoming the stranger and honoring your father and mother. The Evangelical Immigration Table was an unprecedented group formed to outline and submit a framework for immigration reform that coincides with Christian teachings.

- **Law Enforcement:**

Nationwide, law enforcement leaders including current and former state attorneys general, sheriffs and police chiefs are united in demanding smart immigration enforcement that acknowledges the realities of a police officer's community role and the importance of that officer's ability to maintain community trust. Law enforcement officials do NOT want to become immigration officers because it detracts from their ability to prioritize public safety threats. A new national immigration strategy must be intelligent and focus on detecting transnational smugglers and terrorists.

- **Business:**

Business leaders from coast to coast have been frustrated with an immigration system that relies on unrealistic and inflexible visa quotas for immigrant workers, which force many economic contributors to wait months or years to immigrate. The process should be less cumbersome and more in sync with a market economy that expands and contracts. Immigrant workers are vital for picking crops during seasonal harvest as well as working in our engineering and scientific laboratories. These business opportunities also provide upstream and downstream jobs for other professionals, thus driving the U.S. economy toward success.



The Border Security, Economic Opportunity, and  
Immigration Modernization Act, S.744

As the Committee discusses reforming our immigration system, we applaud the work of four of the committee's members, Senators Richard Durbin, Charles Schumer, Lindsey Graham and Jeff Flake, who helped craft the Border Security, Economic Opportunity, and Immigration Modernization Act. The bipartisan legislation is a strong start for the immigration debate this year. People on both sides of the political spectrum have concerns about certain parts of the package. However, that is the nature of compromise: yielding on something we care about to move forward on what all of us care about.

Now that the legislation is introduced, many will work to improve it as it goes through the regular order in the Senate, first in Committee and then to the Senate floor. This process is right and necessary to ensure that the bill has the broadest possible support. This bill is the product of a great deal of discussion and debate and negotiation already. We urge this Committee, and all Senators, as they consider this bill, to continually remember that the whole of the bill, is much more than just the sum of its parts. It strikes a careful balance among its most important pillars: interior enforcement and border security, earned legalization and a path to citizenship, needed reforms to our current immigration system, and efforts to deal with the current backlog of immigration.

A singular focus on immigration enforcement will not result in workable solutions to our overall immigration system, and may, if too expensive or difficult to achieve, unduly delay reform and further politicize border security.

The National Immigration Forum looks forward to continuing this positive discussion on how best to move forward with passing broad immigration reform into law this year. We cannot let the status quo continue any longer. The time is now for immigration reform.

The logo for the New York City Bar, featuring the text "NEW YORK CITY BAR" in a bold, serif font, centered between two thick, black horizontal bars.**COMMITTEE ON  
IMMIGRATION & NATIONALITY LAW**

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April 24, 2013

To the Senate Judiciary Committee:

The New York City Bar Association (the “City Bar”) and its Committee on Immigration and Nationality Law (the “Committee”) applaud the April 16 introduction of the Senate draft immigration reform bill entitled “Border Security, Economic Opportunity, and Immigration Modernization Act” (S. 744). The City Bar and its Committee have a longstanding commitment to support fair and humane immigration policies and to advancing human rights in the United States and abroad. In particular, the City Bar advocated for reforms to immigration detention, including the right to representation for detained immigrants, in a 2009 report.<sup>1</sup>

Recently, in an April 24, 2013 submission to the Senate Judiciary Committee, the City Bar supported the Senate’s efforts to increase access to and representation by counsel, and urged Congress to expand the legislation to include universal representation of indigent non-citizens facing detention or deportation proceedings.

This letter builds upon that submission. Here, the Committee supports the steps that S. 744 takes to reduce Department of Homeland Security (“DHS”) over-detention of non-citizens. Specifically, we support that S. 744:

- Revises mandatory detention into mandatory “detention or custody”;
- Encourages alternatives to detention, such as tracking bracelets and community-based supervision;
- Provides important due process protections, such as timely bond hearings; and
- Requires more oversight and transparency over DHS detention facilities.

THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK  
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These are important steps to reduce unnecessary restrictions on liberty and safeguard human rights while reducing costs to taxpayers. However, the Committee urges Congress to take further steps to reduce detention and ensure due process, including:

- Repealing mandatory “detention or custody” entirely, and requiring individualized judge review of each custody decision, with specific, transparent criteria and no artificial minimum bond amount;
- Repealing the “bed quota,” which requires 34,000 detainees regardless of flight or public safety risk;
- Providing appointed counsel to all immigrant detainees and requiring lawyers to review DHS custody decisions; and
- Giving American Bar Association (“ABA”) Civil Immigration Detention Standards the full force of law.

**“Civil” Immigration Detention Should Employ Less Detention With Fewer Criminal Conditions**

The U.S. immigration detention system has exploded into America’s largest system of incarceration, detaining a record 429,247 individuals in 2011—more than any federal or state prison system.<sup>2</sup> This increased detention of immigrants<sup>3</sup> has been driven in part by 1996 laws requiring mandatory detention pending adjudication of those with prior criminal convictions (even minor or from long ago),<sup>4</sup> the post-9/11 buildup of immigration enforcement,<sup>5</sup> and the recent expansion of enforcement to state and local police<sup>6</sup> through initiatives like Secure Communities. Whereas in 1995, the U.S. detained 7,500 people on any one day, the U.S. now detains 34,000 in over 250 facilities across America.<sup>7</sup> This occurs at great cost to American taxpayers. The U.S. government spends \$2 billion a year on immigration detention—\$164 per detainee per day—when lesser restrictive alternatives to detention cost \$14 per day or less.<sup>8</sup>

Further, this huge detention apparatus, requiring manpower to arrest, process, guard, transport, and house large numbers of people, means that essential personnel are diverted from other enforcement priorities. Certainly, due process has suffered. Immigration courts, unable to keep pace with the expansion, now conduct over 40% of removal hearings by video due to the cost of transporting detainees from remote locations. This raises serious issues for study, which the bipartisan Administrative Conference of the United States has begun to undertake after making recommendations to improve efficiency in immigration removal proceedings.<sup>9</sup>

Moreover, even though immigration violations are legally classified as “civil” proceedings, immigration detention facilities are more akin to criminal confinement.<sup>10</sup> Many immigrants are held in actual jails.<sup>11</sup> Worse, immigration facilities have been repeatedly denounced for substandard conditions, such as the use of excessive force, shackles, solitary confinement, poor food and exercise, fifteen minutes of phone access a day, visitation through Plexiglass, and inadequate law libraries containing English-only books.<sup>12</sup> As Dora Schriro, author of DHS’ 2009 report on immigration detention, stated, “in general, criminal inmates fare better than do civil [immigration] detainees.”<sup>13</sup> All this occurs without appointed counsel, which renders it nearly impossible for detainees to litigate their deportation cases.<sup>14</sup> Moreover, detainees are routinely transferred to rural facilities far from counsel or family who might assist.<sup>15</sup> And it is estimated that one percent of immigration detainees are U.S. citizens, for whom no justification to detain exists.<sup>16</sup>

DHS and its sub-agency Immigration and Customs Enforcement (“ICE”) have engaged in meaningful efforts to make immigration detention “truly civil,” as ICE Director John Morton stated.<sup>17</sup> We applaud this bill’s extension of those steps. However, if the term “civil” detention means anything, it is that ICE should detain not just better, but less.<sup>18</sup> Our recommendations further that goal.

**The City Bar Supports this Bill Because It Takes Steps to Reduce Over-Detention of Immigrants While Facilitating Increased Government Efficiency**

First, we applaud the bill’s steps to scale back mandatory immigration detention without bail. S. 744 revises mandatory detention into mandatory “detention or custody”—now including electronic tracking ankle bracelets—based on an individualized DHS determination.<sup>19</sup> This may, if DHS allows it, let thousands avoid unnecessary incarceration and remain with families pending their deportation hearing, for which they may more meaningfully prepare and participate.

We urge the Senate to go further and wholly repeal mandatory “detention or custody” so that DHS only detains those who pose a flight or public safety risk. There is no reason why immigration judges cannot determine flight or public safety risk as judges do every day in criminal courts. Yet the bill still excepts mandatory detention or custody from immigration court review.<sup>20</sup> Moreover, the bill *expands* the categories of criminal offenses that may subject one to immigration mandatory detention or custody (already including minor offenses like drug possession or subway turnstile jumping).<sup>21</sup> In addition, the bill retains the unfairness of retroactively subjecting immigrants to detention and custody for criminal offenses that had no immigration consequences when committed. The bill also retains the extremely high burden on those challenging mandatory “detention or custody”—i.e. that the Government only needs any non-frivolous legal rationale to detain.<sup>22</sup> Repealing mandatory “detention or custody” would eliminate these concerns.

Second, we applaud the bill’s steps to reduce over-detention by making detention the exception, not the rule, and encouraging alternatives to detention (“ATD”). Importantly, except for mandatory detainees, DHS must now demonstrate to an immigration judge that “no conditions, including . . . alternatives to detention” will “reasonably assure” appearance at hearings and public safety.<sup>23</sup> The bill further requires DHS to establish alternatives to detention that provide a “continuum of supervision . . . including community support,”<sup>24</sup> and incorporate case management services.<sup>25</sup> DHS is also required to review the level of supervision on a monthly basis.<sup>26</sup> And, positively, the bill may reduce over-restriction as well as over-detention. The bill requires alternatives to detention **not** to be used when bail or simple release would suffice to ensure appearance and public safety,<sup>27</sup> more like criminal court practices.<sup>28</sup>

We also support the bill’s requirement that DHS establish “community-based supervision programs” that screen detainees and provide appearance assistance and community-based supervision.<sup>29</sup> These programs have been shown to ensure appearance at hearings without risk to public safety, at a fraction of the cost. While detention costs taxpayers \$166/day, alternatives to detention cost \$14/day or less.<sup>30</sup> Meanwhile, DHS’s pilot programs for alternatives to detention achieved an appearance rate of 94%, far beyond its target rate and that of most criminal release programs.<sup>31</sup>

That said, Congress should repeal the “bed quota,” which requires DHS to detain 34,000 immigrants at any one time, regardless of risk.<sup>32</sup> Otherwise, the bill’s other reforms encouraging

alternatives to detention will be frustrated, and DHS will continue to unnecessarily detain immigrants who pose little risk at great taxpayer cost.

Also, Congress should repeal the \$1,500 minimum amount for individual immigration bond settings, which subjects immigrants to far greater bond settings than criminal pretrial detainees even though immigrants pose less risk.<sup>33</sup> Indeed, 80% of New York criminal arrestees receive bond settings of \$1,000 or less.<sup>34</sup> Moreover, Congress should provide clear criteria regarding risk of flight or risk to public safety to DHS officers and immigration court judges, such as the eight delineated factors a New York criminal judge considers when setting bail.<sup>35</sup>

Additionally, Congress should make transparent ICE's new risk assessment tool which will play a key role in individual detention determinations.<sup>36</sup> Risk assessment has promise to reduce over-detention, and provide empirical evidence that detainees pose little risk, thus further supporting reform of detention laws.<sup>37</sup> As of now, however, ICE appears to be making computerized determinations regarding immigrants' liberty based on a secret algorithm with no opportunity for immigrants to change or review information. Human rights advocates previously criticized the tool for being weighted toward over-detention.<sup>38</sup> If this continues, legal reforms to reduce detention may be for naught. Congress should require immediate disclosure of ICE's risk assessment criteria, and require that the risk assessment summary, currently placed in DHS' file on an immigrant (the "A-File"), be reviewed in immigration court.

**The City Bar Supports this Bill Because It Takes Steps to Improve Due Process for Immigrant Detainees**

Additionally, we applaud the bill's steps to improve due process for immigrant detainees, in line with American values and widespread public support. The bill requires DHS to "immediately" determine whether an immigrant is detained or released, inform the immigrant of his rights to a bond hearing, and serve a copy of the detention decision, with reasons, on the immigrant within 72 hours.<sup>39</sup> The bill then provides for a bond hearing before an immigration judge within 72 hours of service of the custody determination, and no later than one week from arrest.<sup>40</sup> Nine in ten Americans, of party affiliation, agree there should be a "time limit on how long someone can be held in jail for immigration violations before they see a judge."<sup>41</sup>

Although these basic due process protections are welcome and long-overdue, Congress should go further and provide counsel to all immigrant detainees.<sup>42</sup> As we set forth in our companion letter, under fundamental American fairness and due process values, this country provides representation for indigents when liberty and livelihood are at stake.<sup>43</sup> Both are at stake in deportation proceedings involving detention. Immigration judge Paul Grussendorf testified, "It is un-American to detain someone, send them to a remote facility where they have no contact with family, place them in legal proceedings where they are often unable to comprehend, and not to provide counsel for them."<sup>44</sup> Appointed counsel will also increase court efficiency and in turn, reduce unnecessary detention.<sup>45</sup>

Also, Congress should require DHS lawyers, rather than DHS officer non-lawyers, to review and render detention decisions and charging decisions.<sup>46</sup> Non-lawyers should not have the authority to jail immigrants for months or years based on incredibly complex legal determinations.<sup>47</sup>

**The City Bar Supports this Bill Because It Takes Steps to Improve Detention Conditions and Oversight**

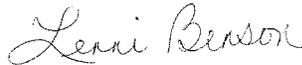
We applaud the bill's steps to provide long-needed oversight and transparency to immigration detention. The bill requires DHS to make all of its contracts with detention facilities contingent on compliance with ICE's detention standards, and requires the imposition of financial penalties on any facility that violates those standards.<sup>48</sup> Also, the bill requires DHS to report to Congress yearly on facility oversight, requires DHS to make all detention contracts, evaluations, and reviews public, and further makes those contracts, evaluations, and reviews subject to Freedom of Information Act requests, even regarding private prison corporations.<sup>49</sup>

That said, Congress should examine detention standards more closely and give them binding force. Congress should thoroughly examine the American Bar Association model Civil Immigration Detention Standards, and consider adopting them into law, rather than the ICE standards which remain modeled after criminal jail standards.<sup>50</sup> Moreover, whichever detention standards Congress adopts should be made binding with full force of law, as are Bureau of Prisons regulations, so as to provide legal relief to immigrant detainees who are mistreated.<sup>51</sup>

Lastly, Congress should require DHS to develop visitation policies for detained clients that are consistent, well-publicized, and less restrictive of access to counsel. Detention facilities have conflicting visitation standards, which make it difficult for representatives to access their clients. Some prohibit visitation unless lawyers submit to a criminal background check days in advance.<sup>52</sup> Congress should direct DHS to standardize its provisions for representatives to visit clients in detention facilities, and ICE should create online registries of representatives, as immigration courts are doing, to ease access.<sup>53</sup> ICE should also publicize policies regarding access to facilities, as immigration courts have done with *pro bono* information in each district.<sup>54</sup>

We thank the Senate Judiciary Committee for its consideration of these comments and recommendations.

Respectfully submitted,



Prof. Leni Benson  
Chair

<sup>1</sup> See Association of the Bar of the City of New York, Committee on Immigration & Nationality Law, *Report on the Right to Counsel for Detained Individuals in Removal Proceedings* (August 2009) [hereinafter "City Bar, *Right to Counsel*"], available at <http://www.nycbar.org/pdf/report/uploads/20071793-ReportontheRighttoCounsel.pdf>.

<sup>2</sup> John Simanski and Lesley M. Sapp, Department of Homeland Security, Office of Immigration Statistics, *Immigration Enforcement Actions: 2011 4* (September 2012), available at [http://www.dhs.gov/sites/default/files/publications/immigration-statistics/enforcement\\_ar\\_2011.pdf](http://www.dhs.gov/sites/default/files/publications/immigration-statistics/enforcement_ar_2011.pdf); see also Dora Schriro, *Improving Conditions of Confinement for Criminal Inmates and Immigrant Detainees* ("Improving Conditions"), 47 Am. Crim. L. Rev. 1441, 1446 (2010).

<sup>3</sup> See generally Anil Kalhan, *Rethinking Immigration Detention*, 110 Colum. L. Rev. Sidebar 42, 44-46 (2010).

<sup>4</sup> See 8 U.S.C. § 1226(c).

<sup>5</sup> Ted Hesson, *Five Ways Immigration System Changed After 9/11*, ABC News/Univision (Sept. 11, 2012), available at [http://abcnews.go.com/ABC\\_Univision/News/ways-immigration-system-changed-911/story?id=17231590#.UXngGLWR9d0](http://abcnews.go.com/ABC_Univision/News/ways-immigration-system-changed-911/story?id=17231590#.UXngGLWR9d0).

<sup>6</sup> See generally Lenni B. Benson, *As Old as the Hills: Detention and Immigration* (“As Old as the Hills”), 5 *Intercultural Hum. Rts. L. Rev.* 11, 11-13 (2010).

<sup>7</sup> *The release of criminal detainees by U.S. Immigration and Customs Enforcement: Policy or Politics?*, Hearing Before the H. Comm. On the Judiciary, 113<sup>th</sup> Cong. (2013) (Statement of John Morton) (2013) (“Morton, *Written Testimony*”), available at <http://www.dhs.gov/news/2013/03/19/written-testimony-us-immigration-and-customs-enforcement-director-john-morton-house>; see also Dora Schriro, U.S. Dep’t of Homeland Security, *Immigration Detention Overview and Recommendations* 6 (2009) (“Schriro, *Immigration Detention Overview and Recommendations*”), available at <http://www.ice.gov/doclib/about/offices/odpp/pdf/ice-detention-rpt.pdf>.

<sup>8</sup> National Immigration Forum, *The Math of Immigration Detention* 1 (August 2011), available at <http://www.immigrationforum.org/images/uploads/MathofImmigrationDetention.pdf>; *Building an Immigration System Worthy of American Values*, Hearing Before the S. Comm. On the Judiciary, 113<sup>th</sup> Cong. 19 (2013) (Statement of Ahilan T. Arulanantham, ACLU), available at <http://www.judiciary.senate.gov/pdf/3-20-13ArulananthamTestimony.pdf>.

<sup>9</sup> Two of the recommendations adopted at the Administrative Conference of the United States involved video teleconferencing. See Administrative Conference of the United States, *Administrative Conference Recommendations 2012-13* 16-17 (June 2012), available at <http://www.acus.gov/sites/default/files/documents/2012-3.pdf>.

<sup>10</sup> Schriro, *Immigration Detention Overview and Recommendations* at 2, 4.

<sup>11</sup> *Id.*

<sup>12</sup> Inter-American Commission on Human Rights, *Report on Immigration in the United States: Detention and Due Process* 117 (2010), available at <http://www.oas.org/en/iachr/migrants/docs/pdf/Migrants2011.pdf>; Amnesty International USA, *Jailed Without Justice-Immigration Detention in the USA* (2009), available at <http://www.amnestyusa.org/pdfs/JailedWithoutJustice.pdf>; see also Nat’l Immigration Law Ctr., *A Broken System: Confidential Reports Reveal Failures in U.S. Immigrant Detention Centers* (2009), available at [www.nilc.org/document.html?id=9](http://www.nilc.org/document.html?id=9); Human Rights First, *Jails and Jumpsuits: Transforming the U.S. Immigration Detention System—A Two-Year Review* (2011), available at <http://www.humanrightsfirst.org/wp-content/uploads/pdf/HRF-Jails-and-Jumpsuits-report.pdf>.

<sup>13</sup> Schriro, *Improving Conditions* at 1445.

<sup>14</sup> City Bar, *Right to Counsel* at 7.

<sup>15</sup> City Bar, *Right to Counsel* at 7; New York Immigrant Representation Study, *Accessing Justice: The Availability and Adequacy of Counsel in Immigration Proceedings*, 33 *Cardozo L. Rev.* 357, 363 (2011), available at [http://www.cardozolawreview.com/content/denovo/NYIRS\\_Report.pdf](http://www.cardozolawreview.com/content/denovo/NYIRS_Report.pdf).

<sup>16</sup> William Finnegan, *The Deportation Machine*, *THE NEW YORKER* 24 (Apr. 29, 2013); Jacqueline Stevens, *U.S. Government Unlawfully Detaining and Deporting U.S. Citizens as Aliens*, 18 *Va. J. Soc. Pol’y & L.* 606, 622 (2011).

<sup>17</sup> Nina Bernstein, *U.S. to Reform Policy on Detention for Immigrants*, *N.Y. TIMES*, Aug. 5, 2009, available at <http://www.nytimes.com/2009/08/06/us/politics/06detain.html>.

<sup>18</sup> See Benson, *As Old as the Hills* at 13-17 (2010); Mark Noferi, *New ABA Civil Immigration Detention Standards: Does “Civil” Mean Better Detention Or Less Detention?*, *CRIMMIGRATION.COM* (Aug. 28, 2012), available at <http://crimmigration.com/2012/08/28/new-aba-civil-immigration-detention-standards-does-civil-mean-better-detention-or-less-detention.aspx>.

<sup>19</sup> Sec. 3715(c), (d), sec. 3717 (a) (creating new INA section 236(f)(5)); see Rutgers School of Law-Newark Immigrant Rights Clinic, *Freed but Not Free: A Report Examining the Current Use of Alternatives to Immigration Detention 24-25* (July 2012) (arguing that INA § 236(c) should be interpreted to allow electronic monitoring), available at <http://www.law.newark.rutgers.edu/files/FreedbutnotFree.pdf>. The new bill exempts suspected terrorists certified by the Attorney General under INA § 236A (8 U.S.C. § 1226A).

<sup>20</sup> Sec. 3717(a) (creating new INA section 236 (f)(5) (“Except for aliens that the immigration judge has determined are deportable as described in section 236A and 236(c), the immigration judge shall review the custody determination de novo.... For aliens detained under 236(c), the immigration judge may review the custody determination if the Secretary agrees...”)(emphases ours).

- <sup>21</sup> See *Crimmigration Provisions of New Immigration Bill*, CRIMMIGRATION.COM (Apr. 18, 2013), <http://crimmigration.com/2013/04/18/crimmigration-provisions-of-immigration-bill.aspx>.
- <sup>22</sup> See, e.g. *Gayle v. Napolitano*, Civ. A. No. 12-2806 (D.N.J. filed May 1, 2012), available at <http://www.aclu.org/immigrants-rights/gayle-v-napolitano>.
- <sup>23</sup> Sec. 3717(a), creating new INA section 236 (f)(5).
- <sup>24</sup> Sec. 3715(b).
- <sup>25</sup> Sec. 3715(a).
- <sup>26</sup> Sec. 3715(c); see also Rutgers School of Law-Newark, *Freed but Not Free* at 12-14 (inconsistent and conflicting guidance for review of alternatives to detention leads to arbitrary and inconsistent restrictions).
- <sup>27</sup> Sec. 3715(c).
- <sup>28</sup> NYU School of Law Immigrant Rights Clinic et al., *Insecure Communities, Devastated Families: New Data on Immigrant Detention and Deportation Practices in New York City*, 8-11 (July 23, 2012) (in New York, while 80% of ICE detainees were denied bail, 68% of pretrial criminal defendant were released on recognizance with no bail at all), available at <http://immigrantdefenseproject.org/wp-content/uploads/2012/07/NYC-FOIA-Report-2012-FINAL.pdf>.
- <sup>29</sup> Sec. 3715(b); see also *Demore v. Kim*, 538 U.S. 510, 565 (2003) (Souter, J., dissenting).
- <sup>30</sup> National Immigration Forum, *The Math of Immigration Detention* 1 (Aug. 2011), available at <http://www.immigrationforum.org/images/uploads/MathofImmigrationDetention.pdf>.
- <sup>31</sup> Arulanatham at 26-27; Ophelia Field and Alice Edwards, UN High Commissioner for Refugees, *Alternatives to Detention of Asylum Seekers and Refugees* POLAS/2006/03 24 (April 2006), available at <http://www.refworld.org/docid/4472e8b84.html> ("In the criminal justice field, compliance figures for felony defendants who are released under non-custodial measures before trial usually range from 40-70%. This study, therefore, assumes that any alternative measure applied to asylum seekers to ensure their appearance that achieves a success rate over 80% can be considered 'effective'.")
- <sup>32</sup> Arulanatham at 19.
- <sup>33</sup> 8 U.S.C. § 1226(a)(2)(A) ("the Attorney General... may release the alien on... bond of at least \$1,500...").
- <sup>34</sup> See NYU, *Insecure Communities* at 11 (for New York ICE arrestees, 75% of bond settings are \$5,000 or more, and 35% are \$10,000 or more. 55% of ICE arrestees were unable to pay, and one in five of those have children. Conversely, for New York criminal pretrial detainees, 80% of bond settings are \$1,000 and below.).
- <sup>35</sup> See N.Y. Crim. Proc. Law § 510.30. When making a bond determination, a criminal court "must, on the basis of available information, consider and take into account: (i) The principal's character, reputation, habits and mental condition; (ii) His employment and financial resources; and (iii) His family ties and the length of his residence if any in the community; and (iv) His criminal record if any; and (v) His record of previous adjudication as a juvenile delinquent[]; and (vi) His previous record if any in responding to court appearances when required or with respect to flight to avoid criminal prosecution; and (vii) If he is a defendant, the weight of the evidence against him in the pending criminal action and any other factor indicating probability or improbability of conviction; or, in the case of an application for bail or recognizance pending appeal, the merit or lack of merit of the appeal; and (viii) If he is a defendant, the sentence which may be or has been imposed upon conviction." See generally NYU, *Insecure Communities* at 8-9.
- <sup>36</sup> On March 19, 2013, ICE Director John Morton confirmed to Congress that ICE had deployed nationwide its new automated "Risk Classification Assessment" tool. Morton, *Written Testimony* (Mar. 19, 2013), *supra* note 7.
- <sup>37</sup> See Robert Koulish and Mark Noferi, *Unlocking immigrant detention reform*, BALTIMORE SUN, Feb. 20, 2013, available at <http://www.baltimoresun.com/news/opinion/oped/bs-ed-immigrant-detention-20130220.0.5653483.story>.
- <sup>38</sup> Lutheran Immigrant Refugee Service, *Unlocking Liberty* 11, 21 (2011), available at <http://www.lirs.org/wp-content/uploads/2012/05/RPTUNLOCKINGLIBERTY.pdf>, citing Alice Edwards, UN High Commissioner for Refugees, *Back to Basics: The Right to Liberty and Security of Person and 'Alternatives to Detention' of Refugees, Asylum-Seekers, Stateless Persons and Other Migrants* 81 (2011) ("the US risk assessment tool... appears heavily weighted in favour of detention"), available at <http://www.refworld.org/cgi-bin/texis/vtx/rwmain?docid=4dc935fd2>.
- <sup>39</sup> Sec. 3717(a), creating new INA sections 236(f)(2), (7).
- <sup>40</sup> Sec. 3717(a), creating new INA sections 236 (f)(3), (4). A bond hearing was not previously required. See Mark Noferi, *Cascading Constitutional Deprivation: The Right To Appointed Counsel For Mandatorily Detained Immigrants Pending Removal Proceedings*, 18 Mich. J. Race & L. 63, 83 & n.103 (2012), citing 8 C.F.R.

§236.1(g)(1) (immigration official “may” issue an I-286 Notice of Custody determination “at any time... up to the time removal proceedings are completed”).

<sup>41</sup> Belden Russonello Strategists LLC, *American attitudes on immigration reform, worker protections, due process, and border enforcement* 3 (April 2013), available at <http://cambio-us.org/cirpoll2013/>.

<sup>42</sup> City Bar, *Right to Counsel*, supra note 1; The Constitution Project, *Recommendations for Reforming Our Immigration Detention System and Promoting Access to Counsel in Immigration Proceedings* 8 (2009), available at <http://www.constitutionproject.org/pdf/359.pdf>.

<sup>43</sup> Noferi, *Cascading Constitutional Deprivation*, 18 Mich. J. Race & L. at 71 & n.30, 101-05.

<sup>44</sup> *Building an Immigration System Worthy of American Values, Hearing Before the S. Comm. On the Judiciary*, 113<sup>th</sup> Cong. 8 (2013) (Statement of Paul Grussendorf), available at <http://www.judiciary.senate.gov/pdf/3-20-13GrussendorfTestimony.pdf>.

<sup>45</sup> Leni Benson and Russell Wheeler, *Enhancing Quality and Timeliness in Immigration Removal Adjudication* 59, 66-67, 80-82 (2012), available at <http://www.acus.gov/sites/default/files/Enhancing-Quality-and-Timeliness-in-Immigration-Removal-Adjudication-Final-June-72012.pdf>; City Bar, *Right to Counsel* at 7-8.

<sup>46</sup> Currently, non-lawyers are allowed to make such determinations. See Benson and Wheeler, *Enhancing Quality and Timeliness in Immigration Removal Adjudication* at 37; Noferi, *Cascading Constitutional Deprivation*, 18 Mich. J. Race & L. at 84; American Bar Association Commission On Immigration, *Reforming The Immigration System. Proposals To Promote Independence, Fairness, Efficiency, And Professionalism In The Adjudication Of Removal Cases* 1-49 (2010), available at [http://www.americanbar.org/content/dam/aba/migrated/Immigration/PublicDocuments/aba\\_complete\\_full\\_report.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/migrated/Immigration/PublicDocuments/aba_complete_full_report.authcheckdam.pdf).

<sup>47</sup> These determinations, such as whether a prior conviction is an “aggravated felony” or “crime involving moral turpitude,” are based on interlocking state criminal and federal immigration laws. Analysis may involve determining whether the correct statutory test is a “strict” or “modified categorical approach,” depending on whether a criminal statute is “divisible” and whether the immigration statute is “generic” or “specific.” See Noferi, *Cascading Constitutional Deprivation*, 18 Mich. J. Race & L. at 89-95.

<sup>48</sup> See generally sec. 3716.

<sup>49</sup> Sec. 3716 (c)(3), (d)(1)(D), (e).

<sup>50</sup> ABA Civil Immigration Detention Standards (2012), available at <http://www.americanbar.org/content/dam/aba/administrative/immigration/abaimmstdets.authcheckdam.pdf>; compare U.S. Immigration and Customs Enforcement, *Performance-Based National Detention Standards 2011* (Feb. 2012), available at <http://www.ice.gov/detention-standards/2011/>.

<sup>51</sup> Schriro, *Improving Conditions*, 47 Am. Crim. L. Rev. at 1446, 1451 (“The ultimate form of enforcement is regulation that also affords opportunity for relief. . . . Failure to comply with regulation is a basis for relief. Failure to comply with elective standards is not.”).

<sup>52</sup> We base this information on interviews by our committee members of detention facility staff in the New York and New Jersey area.

<sup>53</sup> See Daniel Kowalski, *EOIR Final Rule: Registry for Attorneys and Representatives* (Apr. 1, 2013), available at <http://www.lexisnexis.com/community/immigration-law/blogs/inside/archive/2013/04/01/eoir-final-rule-registry-for-attorneys-and-representatives.aspx>; 78 Fed. Reg. 19400-01 (Apr. 1, 2013), available at <http://www.gpo.gov/fdsys/pkg/FR-2013-04-01/pdf/2013-07526.pdf>.

<sup>54</sup> See Department of Justice, *Free Legal Services Providers*, available at <http://www.justice.gov/eoir/probono/states.htm>.



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April 24, 2013

To the Senate Judiciary Committee,

The New York City Bar Association (the “City Bar”) and its Committee on Immigration and Nationality Law (the “Committee”) applaud the April 16 introduction of the Senate draft immigration reform bill entitled “Border Security, Economic Opportunity, and Immigration Modernization Act” (S. 744). The City Bar and the Committee have a longstanding commitment to support fair and humane immigration policies and to advancing human rights in the United States and abroad. In particular, we have actively advocated for due process in immigration courts, including the right to representation for detained immigrants.<sup>1</sup>

As an initial matter, we believe that this bill is a strong and serious step forward. We are pleased that the bill contemplates the right to free counsel for certain particularly vulnerable groups. However, for the reasons set forth below, **we urge the Senate to adopt provisions to provide free counsel to all indigent individuals in deportation proceedings**, as well as certain other narrow circumstances as outlined below.

**The City Bar Supports this Bill Because The Right to Counsel Advances American Due Process Values**

S. 744 aligns with fundamental American fairness and due process values that provide representation for indigents when liberty and livelihood are at stake.<sup>2</sup> It is an “obvious truth,” as the Supreme Court stated 50 years ago, that “any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him.”<sup>3</sup> According to a recent poll, 76 percent of Americans, including 87 percent of Democrats and 67 percent of

Republicans, support ensuring that “immigrants can have legal representation if they face deportation.”<sup>4</sup>

The right to counsel at government expense should be guaranteed for any indigent non-citizen facing deportation (also known as “removal”), especially if he or she is jailed in detention during the proceedings. Deportation, although technically “civil,” involves much higher stakes than the typical civil proceeding—banishment from family, friends, livelihood, and property, or “all that makes life worth living,” as the Supreme Court said.<sup>5</sup> For these reasons, the right to counsel in criminal cases already includes immigration advice, since deportation can be “the most important part” of a criminal conviction to an immigrant.<sup>6</sup>

Indeed, deportation may send long-time immigrants to a “homeland” to which they have no ties and where they may be persecuted.<sup>7</sup> Deportation can also significantly impact other lives in America. Immigrants who own businesses—and seventeen percent of small businesses are immigrant owned<sup>8</sup>—may have to close the business, liquidate assets, and fire workers, resulting in significant economic loss. Families are abandoned, more than economically. In 2011, 5,000 children of deported U.S. parents were in foster care, causing untold human and social cost.<sup>9</sup> When the stakes are this high, it has become common to provide appointed counsel, whether in civil or criminal proceedings. The vast majority of states provide appointed counsel in proceedings to terminate parental rights and in abuse or neglect proceedings.<sup>10</sup>

Moreover, immigration law is incredibly difficult to understand without a lawyer. As Justice Alito stated, “[N]othing is ever simple with immigration law.”<sup>11</sup> The Immigration and Nationality Act has sixteen categories for grounds of removal alone, all with parts, subparts, exceptions, and waivers, each with multiple elements.<sup>12</sup> Qualifying for relief is even more complex. Without a lawyer, individuals (who also face language and cultural barriers), are unlikely to even know what facts will help them make their case, let alone argue it in court based on complex statutory analysis.<sup>13</sup>

On top of all this, detention during immigration proceedings exacerbates the stakes and the need for counsel. Detention — being locked up in jail — impinges personal liberties in a manner akin to criminal proceedings.<sup>14</sup> For this reason, the federal government already appoints counsel to everyone else it detains, whether criminally, civilly, or militarily, including convicted sex offenders facing civil commitment, and suspected terrorists facing military detention.<sup>15</sup> The Supreme Court has required appointed counsel for civil juvenile detention and civil psychiatric commitment.<sup>16</sup>

An immigration detainee may be held in a detention facility for 2 to 4 weeks before seeing an immigration judge for the first time.<sup>17</sup> Detainees thus face a Catch-22: they typically cannot escape detention by winning a bond hearing without the assistance of counsel, and they typically cannot find counsel, given the limited access to communication and information, until they escape detention. If a detainee decides to seek relief, he or she may be held for months at a time before receiving an adjudication of his or her immigration status.<sup>18</sup> Transfer to rural detention facilities compounds the problem of inadequate access, making it nearly impossible to collect and present favorable evidence at a deportation hearing.<sup>19</sup>

For these reasons, a New York study led by the Honorable Robert Katzmann, a Second Circuit Court of Appeals Judge, found that a stunning 97 percent of non-represented detainees lost their deportation cases, while 74 percent of non-detained, represented non-citizens ultimately succeeded.<sup>20</sup> As immigration judge Paul Grussendorf testified, “It is un-American to detain someone, send them to a remote facility where they have no contact with family, place them in legal proceedings where they are often unable to comprehend, and not to provide counsel for

them.”<sup>21</sup> Congress should, at the very least, provide appointed counsel to detained immigrants in removal proceedings.

Lastly, there is no citizenship test for counsel in America. When the U.S. or its states provide counsel, we provide it to citizens and non-citizens alike — whether in criminal, civil, or military proceedings. Put another way, the familiar words “*You have the right to an attorney. If you cannot afford an attorney, one will be provided for you*” do not include “only if you are a citizen.” We provide appointed counsel because procedural safeguards reflect American values of fairness and due process, regardless of the defendant’s identity.

**The City Bar Supports this Bill Because Providing a Right to Counsel Reduces Government Costs**

In addition to creating a system more in step with American values, providing counsel to indigent non-citizens *saves* the government money by 1) preventing unnecessary court proceedings, 2) reducing the amount of time non-citizens spend in detention, and 3) relieving the burden of government support to disrupted families.

First, having parties represented by counsel increases efficiency by preventing unnecessary court proceedings and continuances. For example, existing Legal Orientation Programs (“LOPs”) for detainees, in which advice is provided without full representation, has shortened case processing times for detainees by 13 days on average.<sup>22</sup> Applicants learn to better articulate what relief they are entitled to and move through the system more quickly,<sup>23</sup> while judges are relieved of the time and burden required to guide uncounseled respondents.<sup>24</sup> Although we applaud the bill’s expansion of this program into the formal establishment of a Legal Access Program (*see* Section 3503), full representation would likely increase efficiency even further. Having lawyers on both sides reduces the length of overall proceedings by allowing negotiations to take place outside of court and reducing the need to grant expensive continuances to provide respondents time to find counsel<sup>25</sup> or complete an application.<sup>26</sup> Two competent, opposing lawyers also better educate the court with the best information available, building a more complete and accurate record and preserving issues for review.<sup>27</sup> Furthermore, counsel, as officers of the court and subject to the professional rules of conduct, can help prevent fraud committed upon non-citizens by unscrupulous notaries peddling dubious legal advice at high cost.<sup>28</sup>

Second, these increased efficiencies lead to reduced costs of detention. With counsel, non-citizens eligible for bond are more likely to gain release and, rather than sitting in tax-supported detention, continue working and supporting their families while awaiting a hearing.<sup>29</sup> Non-citizens represented by counsel are also more likely to appear for their appointed court dates.<sup>30</sup> Others with no hope of relief can be counseled to accept removal rather than stay in detention, reducing the need for expensive court proceedings.<sup>31</sup>

Third, reduced detention and deportation of those with valid claims to lawful status saves significant human and social costs resulting from family disruption. Without counsel, non-citizens are much more likely to be removed, even if entitled to relief because of family ties or humanitarian protection.<sup>32</sup> Such non-citizens often leave behind U.S. citizen children to grow up in foster care at government expense—an expensive and heartbreaking result.<sup>33</sup>

We recommend the creation of an independent immigration defender’s office, modeled on the federal public defender office, with direct granting authority that would provide the Executive Office for Immigration Review with an independent stream of income.<sup>34</sup> Independence and direct granting authority would allow money to go directly into the program, thereby providing a more efficient use of federal money.

**The City Bar Supports the Right to Counsel Under Section 3502**

We applaud the work of the bipartisan committee that drafted S. 744, particularly Sections 3502 and 3503, in expanding access to legal advice for non-citizens facing immigration proceedings. These provisions both advance American ideals of justice and represent practical, cost-effective policy. We also support the bill's authorization of funding for "LOPs" from the Comprehensive Immigration Reform Trust Fund and its mandate that LOPs be made available to all immigration detainees within five days of arrival into custody. The expansion of LOPs is a welcome first step in creating a fairer and more efficient immigration system.

However, LOPs are not a substitute for full legal representation. Counsel is required to make the immigration system more efficient and fair. The Committee therefore urges the Senate to provide **appointed counsel to all indigent non-citizens in removal proceedings** (including expedited removal). Such non-citizens must at a minimum include indigent Lawful Permanent Residents ("LPRs"), those who have been determined to be children (whether unaccompanied or not), persons with serious mental disabilities (as already contemplated by Sec. 3502), and individuals seeking relief under humanitarian provisions such as asylum, the Trafficking Victims Protection Reauthorization Act ("TVPRA") or the Violence Against Women Act ("VAWA").

These objective standards better correspond to American values, are cost-effective and simple to apply (unlike open-ended language for the "particularly vulnerable"), and provide predictable guideposts for budgetary planning. Indeed, we anticipate that a determination of "vulnerability" will be onerous to evaluate, and that an "ad hoc review" will take unnecessary time and resources and potentially clog the courts with litigation.<sup>35</sup> Accordingly, LOPs should screen more broadly for these objective standards and recommend **all** such individuals for appointed counsel. At the very least, LOPs should have the discretion to recommend those indigent individuals for appointed counsel who have a prima facie meritorious case, a particularly complicated matter, or otherwise present special circumstances.

**Expedited Removal.** We urge appointment of counsel for individuals in expedited removal hearings. A growing number of United States citizens are being erroneously subjected to expedited removal, and there is no readily accessible mechanism to correct the error.<sup>36</sup> The consequences of a wrongful expedited removal are dire — citizens and non-citizens who are erroneously removed face a minimum of a five year bar to reentry after removal,<sup>37</sup> and if the government alleges misrepresentation or fraud as the basis of the expedited removal, removed individuals face a lifetime bar to entry.<sup>38</sup> Therefore, we believe that it is imperative that these individuals are afforded counsel, so as to ensure that they receive a "fair and efficient adjudication," just like the vulnerable classes of individuals afforded the same in Section 3502(c).

**Lawful Permanent Residents.** All indigent LPRs should have a right to counsel, because they have a deep stake in American society that the government has recognized by granting them LPR status. That stake entitles an LPR to stronger due process protections, including a right to counsel if the individual is indigent and facing removal or detention.<sup>39</sup> Granting LPRs such a right is not only cost-effective, as described above, but critical to the due process values at the heart of American ideals of justice.

**Children.** We urge that counsel be provided for those who have been determined to be children during the initiation of removal proceedings (i.e., non-citizens under the age of 21), because they are particularly vulnerable, even if they are not unaccompanied.<sup>40</sup> Children are

provided court-appointed advocates in other judicial proceedings related to their well-being and liberty interests such as child welfare<sup>41</sup> and juvenile delinquency<sup>42</sup> matters. Children are in particular need of appointed counsel in the immigration context given their more limited knowledge of the law and avenues for relief, lack of ability to contact and hire counsel for themselves, and greater potential for being victims of trafficking and other forms of abuse and neglect or abandonment.<sup>43</sup> In New York City, children's cases now represent 9-12 percent of the Immigration Court's docket, with many of these children being identified for immigration relief but unrepresented.<sup>44</sup>

**Serious Mental Disabilities.** Section 3502 appropriately includes the right to appointed counsel for non-citizens with "serious mental disabilities." Procedures for implementing this new policy were recently outlined by the Department of Justice and the Department of Homeland Security.<sup>45</sup> The City Bar supports appointed counsel for this group of particularly vulnerable persons.

**Humanitarian Claims.** Finally, claimants under humanitarian provisions, such as asylum, trafficking and relief under the Violence Against Women Act, should be given a right to counsel. These individuals are often traumatized and need legal assistance to help articulate their claims and achieve safety and protection.

We are encouraged by the provision in Section 3407 allowing applicants for refugee status to be represented at a refugee interview, albeit at no expense to the Government. We recommend that the phrase "at no expense to the Government" be deleted from this section, as it has proven problematic in other parts of the INA and is being removed by this bill as a result.

We further applaud the change to asylum law proposed in Section 3404 of the bill, which authorizes USCIS Asylum Division officers to conduct non-adversarial interviews of asylum-seekers identified at or near a U.S. border after such individuals have successfully passed a "credible fear" screening interview. Currently, individuals passing credible fear interviews move on to full adversarial hearings in the immigration courts.

We urge, however, that asylum seekers be appointed counsel prior to their credible fear determinations, or at least be provided an LOP presentation, so that they fully understand the international protections provided by the United States and can best prepare their claims. Asylees face particular hardships, including extremely dangerous conditions in the home country from which they have fled, and an erroneous adverse credible fear determination may put them back in danger, potentially of bodily harm.<sup>46</sup> Additionally, pending a credible fear determination, individuals seeking asylum are subject to mandatory detention, which can be psychologically damaging for an already fragile population.<sup>47</sup> Passing a credible fear interview within days of fleeing one's home country and while in detention can be extremely difficult and trying for an asylum seeker. Consequently, detention should not be mandatory for these individuals, and counsel should be appointed to help them seek release on bond. Therefore, we believe that Section 3404 should also include a provision securing the right to counsel for asylum seekers prior to the credible fear determination.

### **Conclusion**

The Committee urges the Senate to provide appointed counsel to all indigent non-citizens in removal proceedings, including expedited removal. Such non-citizens should at a minimum include Lawful Permanent Residents ("LPRs"), children (whether unaccompanied or not),

individuals with "serious mental disabilities" and individuals seeking relief under humanitarian provisions.

Thank you for considering these comments and for producing a draft bill that takes such a positive step towards achieving desperately needed immigration reform in this country.

Respectfully submitted,



Professor Lenni B. Benson

Chair

<sup>1</sup> See Association of the Bar of the City of New York, Committee on Immigration & Nationality Law, *Report on the Right to Counsel for Detained Individuals in Removal Proceedings* (August 2009) ("New York City Bar"), available at <http://www.nycbar.org/pdf/report/uploads/20071793-ReportontheRighttoCounsel.pdf>.

<sup>2</sup> American Immigration Council, *Two Systems of Justice: How the Immigration System Falls Short of American Ideals of Justice* 12 (March 2013) ("American Immigration Council"), available at [http://www.immigrationpolicy.org/sites/default/files/docs/aic\\_two\\_systems\\_of\\_justice.pdf](http://www.immigrationpolicy.org/sites/default/files/docs/aic_two_systems_of_justice.pdf); Mark Noferi, *Cascading Constitutional Deprivation: The Right To Appointed Counsel For Mandatorily Detained Immigrants Pending Removal Proceedings*, 18 Mich. J. Race & L. 63, 119-20 (2012).

<sup>3</sup> *Gideon v. Wainwright*, 372 U.S. 335, 344 (1963).

<sup>4</sup> Of those polled, 87 percent of Democrats, 67 percent of Republicans, and 73 percent of Independents supported the proposition. Belden Russonello Strategists LLC, *American attitudes on immigration reform, worker protections, due process and border enforcement* 3 (April 2013), available at <http://cambio-us.org/wp-content/uploads/2013/04/BRS-Poll-for-CAMBIO-APRIL-16-2013-RELEASE.pdf>.

<sup>5</sup> *Ng Fung Ho v. White*, 259 U.S. 276, 284 (1922); see also *Padilla v. Kentucky*, 130 S. Ct. 1473, 1486 (2010).

<sup>6</sup> *Padilla*, 130 S. Ct. at 1480.

<sup>7</sup> New York City Bar at 1.

<sup>8</sup> NALEO Education Fund, *Immigration Reform Must Provide the Integrations Services Immigrants and American Communities Need to Thrive Together*, 2 (2013), available at [http://s143989.gridserver.com/2013/Images/CLR-integration\\_overview.pdf](http://s143989.gridserver.com/2013/Images/CLR-integration_overview.pdf); Seth Freed Wessler, *Thousands of Kids Lost From Parents In U.S. Deportation System*, COLORLINES, Nov. 2, 2011, available at [http://colorlines.com/archives/2011/11/thousands\\_of\\_kids\\_lost\\_in\\_foster\\_homes\\_after\\_parents\\_deportation.html](http://colorlines.com/archives/2011/11/thousands_of_kids_lost_in_foster_homes_after_parents_deportation.html).

<sup>9</sup> *Id.*

<sup>10</sup> See Laura K. Abel and Max Rettig, *State Statutes Providing for a Right to Counsel in Civil Cases*, 40 Clearinghouse Review 245 (July-Aug. 2006), available at <http://www.civilrighttocounsel.org/pdfs/abelchart.pdf>; see also Rosalie K. Young, *The Right To Appointed Counsel In Termination Of Parental Rights Proceedings: The States' Response To Lassiter*, 14 Touro L. Rev. 247, 259-63 (1997).

<sup>11</sup> *Padilla*, 130 S. Ct. at 1490 (Alito, J., concurring).

<sup>12</sup> New York City Bar at 6; Noferi at 89-95.

<sup>13</sup> New York Immigrant Representation Study Report: Part II, *Accessing Justice II: A Model for Providing Counsel to New York Immigrants in Removal Proceedings* 19 (2012) ("New York Immigrant Representation Study Report: Part II"), available at [http://www.cardozolawreview.com/content/denovo/NYIRS\\_ReportII.pdf](http://www.cardozolawreview.com/content/denovo/NYIRS_ReportII.pdf).

<sup>14</sup> *Padilla*, 130 S. Ct. at 1481, 1484 n.11 (deportation is a particularly severe "penalty" akin to "banishment or exile"); *Turner v. Rogers*, 131 S. Ct. 2507, 2511 (2011) (freedom from incarceration lies "at the core of the liberty protected by the Due Process Clause"); see generally Noferi at 101-05.

<sup>15</sup> Noferi at 71 & n.30 (Congress has statutorily provided appointed counsel to criminal pretrial detainees, post-conviction sex offender civil commitment hearings, and military preventive detention hearings for Al Qaeda suspects).

<sup>16</sup> Noferi at 102 and n. 273-74.

<sup>17</sup> See American Immigration Council.

<sup>18</sup> Donald Kerwin & Serena Yi-Yang Lin, *Immigration Detention: Can ICE Meet Its Legal Imperatives and Case Management Responsibilities?* (Washington, D.C.: Migration Policy Institute 2009), 3-4, available at <http://www.migrationpolicy.org/pubs/detentionreportSept1009.pdf>.

<sup>19</sup> New York City Bar at 7; Noferi at 105-08 (articulating impact of detention on ability to litigate proceedings).

<sup>20</sup> New York Immigrant Representation Study, *Accessing Justice: The Availability and Adequacy of Counsel in Immigration Proceedings*, 33 *Cardozo L. Rev.* 357, 363-64 (2011), available at [http://www.cardozolawreview.com/content/denovo/NYIRS\\_Report.pdf](http://www.cardozolawreview.com/content/denovo/NYIRS_Report.pdf); see also New York Immigrant Representation Study Report: Part II (recommending appointed counsel for detainees because detainees face greatest barriers).

<sup>21</sup> *Building an Immigration System Worthy of American Values, Hearing Before the S. Comm. on the Judiciary*, 113<sup>th</sup> Cong. 8 (2013) (Statement of Paul Grussendorf) (“Grussendorf”), available at <http://www.judiciary.senate.gov/pdf/3-20-13GrussendorfTestimony.pdf>.

<sup>22</sup> Nina Siulc, et al., Vera Institute of Justice, *Legal Orientation Program, Evaluation and Performance and Outcome Measurement Report, Phase II* iv (2008), available at <http://www.justice.gov/eoir/reports/LOPEvaluation-final.pdf>.

<sup>23</sup> *Id.*

<sup>24</sup> Lenni Benson and Russell Wheeler, *Enhancing Quality and Timeliness in Immigration Removal Adjudication* 59 (2012) (“Benson and Wheeler”) available at <http://www.acus.gov/sites/default/files/Enhancing-Quality-and-Timeliness-in-Immigration-Removal-Adjudication-Final-June-72012.pdf>; Grussendorf at 8.

<sup>25</sup> Benson and Wheeler at 58; Grussendorf at 8. Each continuance for a detainee costs taxpayers between \$8,745 and \$10,890. *Building an Immigration System Worthy of American Values, Hearing Before the S. Comm. On the Judiciary*, 113<sup>th</sup> Cong. 13 (2013) (Statement of Ahilan T. Arulanantham, ACLU) (“just a few continuances in one case cost as much money as a single attorney who could represent dozens of people each year”) (“Arulanantham”), available at [http://www.aclu.org/files/assets/testimony\\_of\\_ahilan\\_arulanantham\\_for\\_3\\_20\\_13\\_senate\\_judiciary\\_committee\\_hearing\\_final\\_3\\_22\\_13.pdf](http://www.aclu.org/files/assets/testimony_of_ahilan_arulanantham_for_3_20_13_senate_judiciary_committee_hearing_final_3_22_13.pdf).

<sup>26</sup> Benson and Wheeler at 66-67.

<sup>27</sup> *Id.* at 59.

<sup>28</sup> See American Bar Association, *Reforming the Immigration System*, at ES-42 (2010), available at [http://www.americanbar.org/content/dam/aba/migrated/Immigration/PublicDocuments/aba\\_complete\\_full\\_report.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/migrated/Immigration/PublicDocuments/aba_complete_full_report.authcheckdam.pdf).

<sup>29</sup> Benson and Wheeler at 58.

<sup>30</sup> Siulc at 4.

<sup>31</sup> Benson and Wheeler at 58.

<sup>32</sup> New York City Bar at 2.

<sup>33</sup> In 2011, more than 5000 children were in foster care as a result of their parents’ deportation. Arulanantham, *Written Statement of the American Civil Liberties Union*, at 4. We note that Section 2107(c) of S.744 anticipates this issue by contemplating the care of a “separated child” — one who is in foster care because his or her parent, legal guardian, or primary caregiver has been detained or removed for immigration enforcement purposes.

<sup>34</sup> Ingrid Eagly, *Gideon’s Migration*, 122 *Yale L.J.* 101, 125-26 (2013), citing, e.g., David A. Martin, *Reforming Asylum Adjudication*, 138 *U. Pa. L. Rev.* 1247, 1329-30 (1990).

<sup>35</sup> *Lassiter v. Dep’t of Soc. Servs.*, 101 S. Ct. 2153, 2172 (1981) (Blackmun, J., dissenting).

<sup>36</sup> See generally Jacqueline Stevens, *States Without Nations*, <http://stateswithoutnations.blogspot.com> (last updated March 26, 2013); see also Anna Schoenfelder et al., *Uncovering USBP: Bonus Programs for United States Border Patrol Agents and the Arrest of Lawfully Present Individuals* (Jan. 2013), available at <http://familiesforfreedom.org/sites/default/files/resources/Uncovering%20USBP-FFF%20Report%202013.pdf>.

<sup>37</sup> A five year bar applies to removal under INA § 212(a)(9)(A)(1).

<sup>38</sup> A lifetime bar applies to removal under INA § 212(a)(6)(C).

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<sup>39</sup> Kevin R. Johnson, Gideon v. Wainwright and the Right to Counsel in Immigration Removal Cases: An Immigration Gideon for Lawful Permanent Residents?, \_\_\_ Yale L.J. \_\_\_ (forthcoming 2013), available at <http://ssrn.com/abstract=2186245>.

<sup>40</sup> For more information about unaccompanied children facing removal, see U.S. Citizenship and Immigration Services, *USCIS Initiates Procedures for Unaccompanied Children Seeking Asylum* (March 2009) available at [http://www.uscis.gov/files/article/tvpra\\_qa\\_25mar2009.pdf](http://www.uscis.gov/files/article/tvpra_qa_25mar2009.pdf).

<sup>41</sup> Child Abuse Prevention and Treatment Act, P.L. 93-247 (1974).

(Fed requirement that states must have a guardian ad litem (attorney or non atty) appointed in child welfare cases.)

<sup>42</sup> *In re Gault*, 387 U.S. 1 (1967).

<sup>43</sup> See, e.g. Catholic Relief Services, *Human Trafficking: An Overview* (2013), available at [http://crs.org/public-policy/in\\_depth.cfm](http://crs.org/public-policy/in_depth.cfm)

<sup>44</sup> Sonia Nazario, *Child Migrants, Alone in Court*, N. Y. Times, April 10, 2013, available at <http://www.nytimes.com/2013/04/11/opinion/give-lawyers-to-immigrant-children.html?pagewanted=all>

<sup>45</sup> See Press Release, Department of Justice, Executive Office for Immigration Review, *Department of Justice and the Department of Homeland Security Announce Safeguards for Unrepresented Immigration Detainees with Serious Mental Disorders or Conditions* (Apr. 22, 2013), available at <http://www.justice.gov/eoir/press/2013/SafeguardsUnrepresentedImmigrationDetainees.html>.

<sup>46</sup> See ABA at 1-15; see also United States Comm'n on Int'l Religious Freedom, *Asylum Seekers in Expedited Removal* (2005), available at [http://www.uscirf.gov/index.php?option=com\\_content&task=view&id=1892](http://www.uscirf.gov/index.php?option=com_content&task=view&id=1892).

<sup>47</sup> See generally Human Rights First, *US Detention of Asylum Seekers: Seeking Protection. Finding Prison* (2009), available at <http://www.humanrightsfirst.org/wp-content/uploads/pdf/090429-RP-hrf-asylum-detention-report.pdf>.



April 22, 2013

Dear Senate Judiciary Committee:

Our organization, National Farm Worker Ministry, submits this statement for inclusion in the record of the April 22, 2013 Senate Judiciary Committee hearing on "As the Border Security, Economic Opportunity, and Immigration Modernization Act, S.744." We believe that immigration reform is of the utmost importance to helping farmworkers and their families have the opportunity to lead productive, healthy lives. We are therefore grateful to you and your colleagues, who have spent considerable effort to take into account the interests and knowledge of stakeholders in agriculture and to develop legislation to reform our broken immigration system.

National Farm Worker Ministry (NFWM) has over 90 years of experience in service with farm workers. Based in state ministries which began providing charitable services to farm workers in the 1920's, we became a national organization in 1971 to engage people of faith across the country in support of farm worker efforts to improve their living and working conditions. NFWM is composed of thirty member organizations, which include national denominations, religious orders and regional groups, hundreds of supporting organizations, and thousands of concerned individuals. We believe in the biblical mandate to "welcome the stranger" and to "love our neighbor as ourselves". We believe in the God given dignity of all people, and their right to be treated fairness and respect.

We're very pleased that farmworker and grower representatives have come to an agreement on immigration reform for agriculture. This compromise should greatly increase support for comprehensive immigration reform and get us closer to dignity for farm workers. As the Border Security, Economic Opportunity, and Immigration Modernization Act of 2013 (CIR bill) moves through the legislative process, we write to emphasize the importance of labor protections for immigrant farmworkers and urge you to ensure that existing worker protections remain in the bill or are strengthened.

**MEMBER ORGANIZATIONS**

Alliance of Bishops  
 California Church Impact  
 Catholic Migrant Farmworker Network  
 Central Conference of American Rabbis  
 Church of the Brethren  
 Church Women United in Illinois  
 Church Women United of  
 S. California & S. Nevada  
 Cumberland Presbyterian Church  
 Christian Church (DOC), Disciples Farm  
 Worker Ministry  
 Dominican Sisters of Peace  
 Episcopal Church  
 Evangelical Lutheran Church in America,  
 Division for Church in Society  
 Franciscan Friars,  
 Province of Santa Barbara  
 Franciscan Sisters of Little Falls  
 The Loretto Community  
 National Federation of Priests' Councils  
 NFWM Florida Advisory Group  
 North Carolina Council of Churches  
 Farm Worker Ministry Committee  
 Orange County Interfaith Committee  
 to Aid Farm Workers  
 Oregon Farm Worker Ministry  
 Our Lady of Victory Missionary Sisters  
 Pinellas Support Committee  
 of The NFWM  
 Presbyterian Hunger Program PC (USA)  
 Sarasota-Manatee Farm Worker  
 Support Committee  
 School Sisters of Notre Dame,  
 Shalom North America  
 Sisters of Charity, BVM  
 Sisters of Charity of Nazareth  
 Sisters of St. Francis of Assisi  
 Society of the Sacred Heart  
 Southern California Ecumenical Council  
 Unitarian Universalist Migrant Ministry  
 United Church of Christ  
 Justice and Witness Ministries  
 United Methodist Church General Board  
 Of Church and Society  
 United Methodist Church General Board  
 of Global Ministries, Mission C & R  
 United Methodist Church General Board  
 of Global Ministries, Women's Division

**The Current Landscape: Greater Protections Needed for Farmworkers**

The lack of authorized immigration status of so many farmworkers contributes to their poor wages and working conditions. Farmworker wages are among the lowest in the country. Many earn at or just above the minimum wage. Poverty among farmworkers is more than double that of all wage and salary employees. Few farmworkers receive any fringe benefits, such as paid sick leave or paid vacation. Decrepit, overcrowded housing is all too common. Health insurance is rarely provided by employers and few farmworkers can afford to purchase it on their own. Yet, agriculture ranks among the most hazardous occupations. Federal laws on overtime pay and collective bargaining exclude farmworkers, as do most federal occupational safety standards and many states' workers' compensation systems.

Such marginalized workers fear joining labor unions, seeking improved job terms, or challenging illegal employment practices. Agricultural workers experience rampant violations of employment laws, including minimum wage requirements. Frequently, farm operators hire workers through farm labor contractors, whom they claim are the sole "employers" for purposes of escaping immigration and labor laws. Undocumented workers who challenge illegal employment practices risk losing their job and breaking up their families and other dire consequences of deportation.

National Farm Worker Ministry staff and board members have spent time with farm workers in the fields and labor camps and rural towns of Florida, North Carolina, California, Arizona, Washington, and Oregon and elsewhere. We have met undocumented workers who live in crowded bug infested labor camps, lacking clean sanitary facilities or safe drinking water, but are afraid to ask for better, lest they be fired and deported. We have met undocumented workers cheated out of the minimum wage, afraid to speak up lest they be fired and deported. We have met women who have endured sexual harassment, threatened with firing or deportation if they speak up. We have seen the burns on workers exposed to toxic pesticides beyond any tolerable limit, yet with no ready access to medical care. These are conditions experienced by people who are essential to our agricultural industry. It is an untenable situation for which we all bear responsibility.

We have also spoken to women and men who have lived and worked here on our farms, orchards and dairies for fifteen to twenty years, yet speak tearfully of their fear of deportation and separation from their children. We have met farm workers who came here over five years ago to work simply to be able to provide food and shelter for their families in their home country; they haven't been able to go back since they made their risky trip here, missing birthdays, baptisms, and funerals. We have met families of workers who have died here due to heat stress in the fields, and are only able to return home to be buried. We believe it is a moral travesty to separate families, in order to feed US families.

We are tremendously grateful for the work done by those who provide the food for our tables. We believe that they deserve a path to citizenship in recognition of their tremendous sacrifice and contributions to our economy and society. We welcome this bill which provides, that, and appreciate the work that has gone into its development.

**Roadmap to Citizenship: the Blue Card**

With a roadmap to citizenship, all farmworkers, including the hundreds of thousands of current U.S. workers and the newly American, will be on a level playing field. We are very pleased that the CIR bill contains a roadmap to citizenship for current and future farmworkers and their families. We strongly support the proposal for a “blue card” program, under which experienced undocumented farmworkers and their family members could earn legal immigration status, permanent residency and citizenship within a reasonable period of time and at a reasonable cost given their low incomes. Farmworkers and their families are contributing to America; it is only fair that they be given an opportunity earn legal immigration status. With a roadmap to citizenship, all farmworkers, including the hundreds of thousands of current U.S. workers and the newly American, will be on a level playing field. An above-board agricultural labor relations system will lead to better working conditions, less employee turnover and higher productivity, all of which will help ensure a prosperous agricultural sector. The entire food system will benefit by responding to consumers’ increasing interest in the conditions under which their fruits and vegetables are produced.

**The New Nonimmigrant Agricultural Visa Program**

The new system would end or weaken certain longstanding H-2A labor protections but also would provide important new rights. We are very pleased that farmworkers in the proposed future visa program will be covered by the Migrant and Seasonal Agricultural Worker Protection Act (AWPA), the main federal law that protects farmworkers. The program would also maintain the requirement that U.S. workers in corresponding employment receive the same wages and benefits as the visa workers (with unfortunate exceptions of housing for certain workers), and it contains a cap to limit the number of workers that may be brought in on the visa. We hope that portability provisions of the new visa program would offer workers some ability to move from job to job, which should mitigate some of the problems in the current H-2A program associated with workers being tied to their employer by their visa. However, we note that contract workers in the program will have less freedom to change jobs, which could result in labor exploitation. There will need to be protections for contract workers, whose employers violate their labor rights. They should be assisted in transferring to another position.

Some of the other provisions give us pause. The 50% job preference rule in the H-2A program that requires employers to hire any ready, willing and qualified U.S. worker up until 50% of the H-2A contract period is not in the current bill. The administration of the program by the U.S. Department of Agriculture instead of the U.S. Department of Labor causes concern. The Department of Labor has significant experience, expertise and infrastructure in operating guestworker programs and protecting workers. If this major change is maintained in the legislation, we support that the bill’s provision of a consultative role for the Department of Labor.

We note that other reductions in the requirements for and oversight of recruitment of U.S. workers could result in U.S. workers being displaced by workers on the visa. Thus, the modest protections for U.S. workers that are included in the current compromise language will be essential to protect the jobs of current U.S. workers and future legalizing workers. Further, once the bill is enacted, there will need to be stringent enforcement of the protections in the program and labor laws protecting farmworkers.

We applaud the opportunity for nonimmigrant visa farmworkers to eventually apply for green cards

but we are concerned that the waiting period could last many years.

**The Broader Legalization Program and Worker Protections in the CIR Bill**

We applaud the bill's broader legalization program. We also strongly support the provisions in the bill that aim to protect immigrant and nonimmigrant workers from retaliation and abuse, including the protections against abuse in international labor recruitment. Workers' experiences during the recruitment process have a substantial impact on their earnings and conditions in the U.S. Many temporary foreign workers are charged high recruitment fees, in violation of federal law, to obtain employment. To afford those fees and transportation costs, workers often borrow money, frequently at high interest rates. Upon arrival in the U.S., these indebted workers, particularly under the H-2A program and potentially in the future, are too fearful of losing their jobs and deportation to challenge unfair or illegal conduct. It has often been said that many guestworkers "work scared" and therefore are compliant and highly productive at low wages in comparison to workers with freedom in the marketplace. The recruitment system must be regulated and transparent. Employers that use recruiters for guestworkers should disclose to the government the identities of the recruiters, ensure workers do not pay recruitment fees, and be responsible for abuses inflicted on workers when they have used unlicensed recruiters.

In conclusion, we strongly support the proposal's road map to citizenship for undocumented farmworkers and their families. We stress that the future nonimmigrant agricultural visa program is the product of a compromise and that its modest labor protections must remain in the bill and be enforced effectively in order for the program to be workable and fair. Thank you again for your efforts to bring farmworkers one step closer to gaining legal status and the much-earned recognition for their contributions to the United States.

**Citizen Gain:  
Why a Roadmap to Citizenship is So Important for  
Immigrants and for the American Economy**

Statement of Manuel Pastor  
Director  
Center for the Study of Immigrant Integration  
University of Southern California

Before the Senate Judiciary Committee  
Full Committee  
United States Senate  
April 22, 2013



University of Southern California

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**Before the Senate Judiciary Committee  
Full Committee  
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**April 22, 2013**

Chairman Leahy, Ranking Member Grassley, and distinguished Members of the Senate Judiciary Committee, thank you for inviting me to present our analysis of the economic benefits of naturalization for immigrants and the economy. I direct the Center for the Study of Immigrant Integration (CSII) at the University of Southern California (USC). Our mission at CSII is to further the understanding of immigrant integration in America. To do so we bring together three emphases: scholarship that draws on academic theory and rigorous research, data that provides information structured to highlight the process of immigrant integration over time, and engagement that seeks to create new dialogues with government, community organizers, business and civic leaders, immigrants and the voting public.

Our center recently released a report entitled “Citizen Gain: The Economic Benefits of Naturalization for Immigrants and the Economy,” with support from the John S. and James L. Knight Foundation, and the Carnegie Corporation of New York (Pastor and Scoggins 2012). In it, co-author Justin Scoggins and I provide current estimates of the economic benefits of naturalization for non-citizen immigrants currently residing in the U.S. – both to newly naturalized immigrant workers themselves and to the economy as a whole. That report forms the basis of the testimony presented below.

**Introduction and Overview**

For a variety of reasons, legalization without a clear and reasonable path to citizenship is wrong for democracy. One set of reasons is grounded in commonly held notions of our national identity: we are, after all, a nation of immigrants, and perhaps as important, creating a permanent set of second-class residents runs directly against the principles of equality and full participation that are so central to the American ethos. However, another rationale of including citizenship in reform is purely economic: for a variety of reasons, citizenship has positive monetary benefits for both immigrants and the economy.

Why does naturalization pay off? There are three key factors at play: citizen immigrants tend to gain more U.S.-specific skills, they have access to a broader range of jobs, and they are

often a better match for employers because their documentation is undisputable. And while one might suspect that the economic gains we and others have found stem primarily from attaining legal status rather than citizenship (after all, only the documented can become citizens), in a set of special tests on California, a state in which we are able to generate estimates of who in the labor force is undocumented, we find an even bigger earnings difference between naturalized and non-citizen, but documented, immigrants.

Our results are largely consistent with previous research, and suggest that naturalization is associated with an 8 to 11 percent gain in annual earnings, on average. Using individual-level data from the 2010 American Community Survey, we were also able to model the length of time it to materialize for the typical newly-naturalized immigrant worker, and found that much of it occurs very soon after naturalization: our estimates suggest that about two-thirds of it is seen in the first two years following naturalization, and the rest of it shows up within about ten years.

The original intent of our work was not to inform the nature of comprehensive immigration reform but rather to encourage civic organizations and Citizenship and Immigration Services to step up their efforts to encourage naturalization. Because of this, we coupled these individual-level estimates with data on the existing pool of eligible-to-naturalize Lawful Permanent Residents (LPRs) from the U.S. Office of Immigration Statistics (OIS), in order to simulate the impact on aggregate earnings of programs aimed at increasing the rate of naturalizations enough to reduce the number of those eligible to naturalize by half over five to ten years. Depending on the program, we put the gain to the American economy over a 10-year period at roughly \$21 billion to \$45 billion. The key factor distinguishing these lower- and upper-bound estimates is not so much the gain to the individual (8 versus 11 percent) as it is the length of time before higher rates of naturalization are achieved.

The results, while originally developed for another purpose, are directly relevant to the reform package you will be discussing. I understand why the ten year delay in securing a green card is being proposed and I am pleased that the route to citizenship after that would only take three years. On the other hand, I would be even happier with a quicker path to the green card and citizenship: more naturalizations in the short term will mean that the economic gains are sooner realized and so the cumulative long-term gains will be that much larger. Establishing a path to citizenship is clearly in our national economic interest, but the length of that path is important too. Any movement to prolong or complicate that path unnecessarily in the context of immigration reform – under the guise of fairness to those who “played by the rules” – should explain why this is worth causing economic loss to the country as a whole.

### **Why Would We Expect Economic Benefits from Naturalization?**

Citizenship brings many benefits to immigrants, the opportunity to participate more fully in our democracy through the right to vote being primary among them. But beyond the clear civic gain is an often overlooked economic benefit: for a variety of reasons, naturalized

immigrants are likely to see a boost in their family incomes that can benefit their children, their communities and the nation as a whole.

Why might naturalization matter? The two main ways in which obtaining citizenship could lead to better economic outcomes are thoroughly examined in Bratsberg, Ragan, and Nasir (2002). They describe two broad channels: job access and the acquisition of “U.S.-specific human capital” which is incentivized by a decision to remain in the U.S. permanently.

Better access to jobs through attaining citizenship can occur for a variety of reasons, including the fact that many public-sector jobs actually require citizenship – and they tend to pay better (Shierholz 2010). Holding a U.S. passport is also an asset for jobs that require international travel. Beyond the actual job requirements, citizenship can also be a signal to employers that an immigrant has characteristics they are looking for in an employee, such as a basic command of English and possession of “good moral character” – both requirements for naturalization (USCIS 2012) – as well as a commitment to remain in the U.S. (and on the job) for the long term. Finally, some have suggested that citizenship is an assurance of legal status for employers who may be worried about facing sanctions for inadvertently hiring undocumented workers and would thus shy away from non-naturalized immigrants (Mazzolari 2009, 186).

Citizenship is also thought to be associated with the acquisition of U.S.-specific human capital. After all, with planned permanent residency in the U.S. may come a greater incentive to make long-term investments (e.g. obtaining tailored education and/or specific vocational training, starting a U.S.-based business, or social networking with those in the same regional labor market) that might not be made if a person was assuming that s/he might eventually (voluntarily or not) go back home. Unfortunately, because U.S.-specific human capital is not generally measurable in survey data – education just shows up as education rather than a set of courses in a very specific U.S.-based career – it can pose challenges for estimating the economic benefits of naturalization. On the other hand, this also means that finding a difference in income for a naturalized immigrant, once you’ve controlled for education level, regional labor market, and other factors, could be a signal of this sort of citizenship-induced investment in U.S.-specific human capital.

### **Research Broadly Agrees that Naturalization Has Economic Benefits**

On the whole, naturalized immigrants have better economic outcomes than their noncitizen counterparts – but they also tend to have substantially higher levels of what economists refer to as “human capital” (e.g. experience, education, and English language ability) and vary by other key characteristics as well (recency of arrival, country of origin, etc.). For that reason, the focus of the research has been on whether citizenship matters *per se* for the economic outcome of immigrants, or whether the differences in outcomes are actually explained by differences in other characteristics.

There are two broad approaches that have been employed in testing whether citizenship matters for immigrant economic outcomes. Both use regression analysis – a statistical technique that attempts to separate impact of citizenship on income from the impacts of other individual characteristics. One approach involves using cross-sectional data (i.e. data for multiple individuals at one point in time) and then modeling income as a function of citizenship and a set of “control variables” thought to affect individual income levels. A second (and far less common) approach tries to track the same individuals over time to see what difference naturalization may have made in their economic trajectory.

Examples abound of studies that have applied the cross-sectional approach, and they broadly concur that naturalization has a positive and statistically significant relationship to income (see, for example, Chiswick 1978, Chiswick and Miller 1992, DeVoretz and Pivnenko 2004, Bevelander and Pendakur 2011, and Shierholz 2010). However, the “over time” or longitudinal studies can be more convincing because they theoretically account for individual characteristics (e.g. personal drive or motivation) that are not captured in survey questions. Moreover, this analytical strategy puts aside the critique that the unauthorized are also noncitizen immigrants and cross-section comparisons can’t separate the effect (although we do so, as discussed below): after all, in order to become a citizen, one needs to be authorized first so any gain from citizenship seen over time for the same person is just that.

Unfortunately, such longitudinal studies are a challenge data-wise and hence are few and far between. The only study on immigrants in the U.S. using this method (that we are aware of) is Bratsberg, Ragan, and Nasir (2002). Using data on 332 young male immigrants followed from 1979 through 1991, they found (among other things) that naturalization was associated with a wage gain of around 5.6 percent in their sample; they note that this is not a one shot gain and use an alternative set of specifications to suggest that naturalization leads to a small initial increase followed by wage growth over time that is faster than that of immigrants who did not naturalize but were otherwise similar.

An interesting aspect of the Bratsberg et al. (2002) study is that the authors directly compare the cross-sectional approach and the longitudinal approach *on the same data*. The results for three cross-sectional analyses – all limited to young adult males – suggest that naturalization is associated with a wage increase of between 5 and 6 percent (with all controls in the regression analysis). This figure that is almost exactly what they find when they subject the one of those dataset to the “over-time” analysis described above. This suggests that cross-sectional approaches do yield reliable results – and it also suggests that a cross-section estimate that includes those who have had more time since naturalization might find a larger overall effect.

### **Our Recent Analysis Suggests Significant Economic Benefits of Naturalization**

With the available research suggesting that naturalization has some positive effect on income, we have tried to derive a current estimate of economic benefits of naturalization using the annual earnings of individual immigrant workers in the 2010 American Community Survey

(ACS, as processed by IPUMS-USA; see (Ruggles et al. 2010)). To do this, we conducted a multivariate regression analysis in which annual earnings was modeled as a function of as many factors as possible that are important in predicting income (“control variables”), along with a variable indicating if the individual was a naturalized citizen.

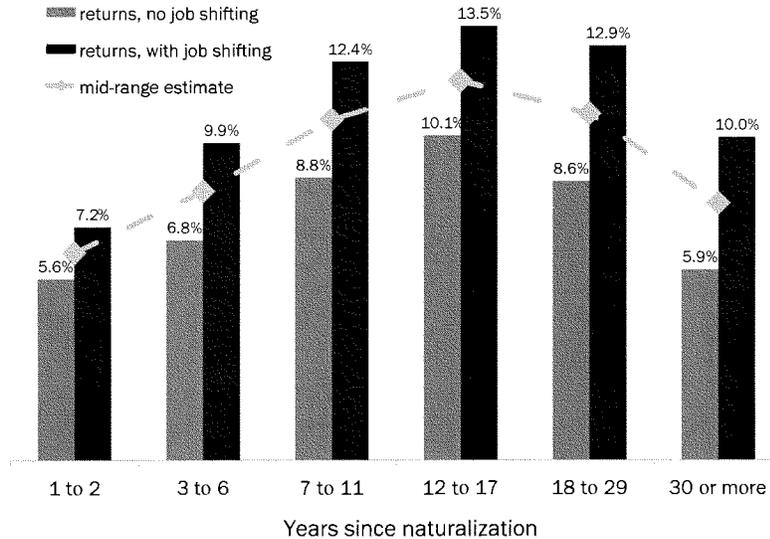
We generated two basic estimates, one that included detailed controls for industry and occupation of employment and that did not. The first estimate is more conservative since some authors stress that one of the paths to higher earnings through naturalization is increased job mobility between occupations and sectors (Bratsberg, Ragan, and Nasir 2002). With these considerations in mind, we suggest that the “true” impact on earnings from attaining citizenship falls somewhere between 8 percent (the estimate we get when including controls for industry and occupation), and 11 percent (the estimate we get without controls for industry and occupation), and treat the two results as lower- and upper-bound estimates, respectively.

In order to test these whether results are biased by the inclusion of the undocumented in the sample, we replicated our models for just Latinos in California – a group for which we are able to estimate who is documented and undocumented using a methodology developed by Enrico Marcelli of San Diego State University. We ran the models once with Latino immigrants, and then again after excluding the undocumented, and compared the results. We found that the impact of naturalization was essentially the same under both specifications, suggesting that citizenship really does make a difference.

Finally, we estimated the time it takes for gains to naturalization to be realized, drawing on information gleaned from a question on year of naturalization included in the 2010 ACS microdata. To do so, we ran the same regression model presented above, but rather than entering the citizenship dummy as a single variable, we split it into a set of dummy variables capturing those who naturalized during different periods of time prior to the survey.

The results of this exercise are summarized in Figure 1. There, we find a boost in earnings of 5.6 percent for those who naturalized one or two years ago, a figure that is fairly close to that found using a comparable specification from Bratsberg et al. (2002). The effect increases with experience since naturalization, reaching between ten and fourteen percent for immigrants who naturalized 12 to 17 years prior to the time of the survey, a rate of growth quite close to that obtained in Steinhardt (2008). In any case, our results do support the notion of a relatively immediate boost in earnings associated with naturalization, with additional gains over subsequent years.

**Figure 1: Earned Income Returns to Immigrant Naturalization by Recency of Naturalization**



### Reform and the Roadmap to Citizenship

In our original paper on this topic, we took these estimated gains over time, applied them to the pool of those eligible to naturalize, and estimated the economic gains to both those immigrants and the country that could be realized by a more aggressive program to promote naturalization. We have subsequently suggested that lowering the fees for naturalization (or shifting the relative fee structure to incentivize the acquisition of English, civics, and citizenship) might have real economic and civic payoffs (Pastor et al. 2013).

But the current discussion of immigration reform raises an important reason to revisit these results. After all, based partly on a provocative article authored by Boston College professor Peter Skerry (2013), some have suggested that we might have a path to legalization that does not include an eventual opportunity for citizenship. Moreover, the various triggers in the current proposal could postpone the granting of green cards and a delay in citizen gains.

Some may think this is a good way of punishing immigrants who didn't follow the rules – but it's really just a way to punish ourselves. A broad legalization program with a clear and rapid path to citizenship will help immigrants to be sure, but it will also help the American economy.

The legislation you are considering is headed in the right direction in this regard. Indeed, I would recommend a shorter period in which the formerly unauthorized would be in the Registered Provision Immigrant status and a more reasonable set of triggers with regard to determining whether border enforcement has improved.

Inevitably, however, you and your colleagues have had to make (and will continue to make) compromises between competing interests and views. As you do so, recognize the civic and economic benefits we will forego if we do not maintain and indeed accelerate the route to citizenship for the unauthorized as well as more strongly promote the naturalization of those who are currently lawful permanent residents (LPRS).

Thank you.

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STATEMENT OF

MARGARET HUANG, EXECUTIVE DIRECTOR RIGHTS  
WORKING GROUP

FOR THE HEARING ON  
THE BORDER SECURITY, ECONOMIC OPPORTUNITY,  
AND IMMIGRATION MODERNIZATION ACT, S.744

SENATE JUDICIARY COMMITTEE

APRIL 22, 2013

Chairman Leahy, Ranking Member Grassley, and members of the Committee: I am Margaret Huang, Executive Director of Rights Working Group. Thank you for the opportunity to submit testimony for inclusion in the record of today's hearing.

Rights Working Group (RWG) was formed in the aftermath of September 11<sup>th</sup> to promote and protect the human rights of all people in the United States. A diverse coalition of more than 350 local, state and national organizations, RWG works collaboratively to advocate for the civil liberties and human rights of everyone regardless of race, ethnicity, religion, national origin, citizenship or immigration status. Currently, RWG leads the Racial Profiling: Face the Truth campaign, which seeks to end racial and religious profiling.

RWG welcomes the introduction of the Border Security, Economic Opportunity, and Immigration Modernization Act of 2013, and applauds Senators Schumer, McCain, Durbin, Graham, Bennet, Lee, Menendez, and Flake for their tremendous effort in negotiating and drafting a bipartisan immigration reform bill. This legislation is an important step forward in creating an inclusive pathway to citizenship for millions of immigrants, while also promoting key due process protections and border reforms that are needed to uphold human rights for all people in the United States.

RWG is optimistic that the Senate Judiciary Committee will move forward thoughtfully and efficiently as it reviews this important legislation. As this process advances, we urge members of the Committee to preserve crucial civil and human rights provisions already present in the bill, and to strengthen protections in a few key areas that are important to our members throughout the country. Because of our leadership of a national campaign against racial profiling, we deeply appreciate the efforts of the Senate negotiators to include a provision prohibiting racial profiling in the legislation. This provision is an



important first step, but we would like to see the section strengthened during the Committee's consideration. Other top issues of interest include human rights protections in border enforcement; reforms to immigration courts and the expansion of judicial discretion; and worker protections and anti-discrimination provisions within the employment verification system.

#### Racial Profiling

RWG welcomes the inclusion of Section 3305 on Profiling in the bill. Racial profiling by local, state, and federal law enforcement officials is a pervasive problem throughout the United States, one that is a violation of Constitutional rights, that erodes trust between law enforcement and communities of color, and that wastes law enforcement resources and is counterproductive. It impacts all of the diverse members and communities of the Rights Working Group coalition. Concerns about racial profiling have escalated in recent years as the federal government has invested extraordinary resources in immigration enforcement measures. The "enforcement first" approach has doubled the number of Border Patrol agents since 2005, transferred immigration enforcement duties to local and state police throughout the country, and increased the federal budget expenditures on immigration enforcement to unprecedented levels, all without establishing meaningful protections of human rights and against racial profiling. Diverse immigrant communities and communities of color, including Latino, African American, Asian American, Muslim American, Arab American, and South Asian communities, have protested the negative impact of such policies. Section 3305 offers an important step forward in combating racial profiling, but we hope to see further amendments to the bill to strengthen its provisions.

Section 3305 would, for the first time, codify a prohibition against racial profiling into U.S. Federal law. This would be a groundbreaking step for advocates throughout the country who have worked on many successful state-based campaigns to ban racial profiling and have supported the introduction of the End Racial Profiling Act on the federal level. Unfortunately, the language in Section 3305 of this immigration reform legislation is taken from the 2003 Bush-Ashcroft Department of Justice Guidance Regarding the Use of Race by Federal Law Enforcement Agencies (2003 Guidance), a document that RWG and allies have found inadequate due to numerous loopholes that allow racial profiling to continue. The 2003 Guidance does not prohibit profiling on the basis of national origin or religion, and it exempts law enforcement activities related to national security and border enforcement. These exemptions narrow the prohibition to such a degree that many communities deeply affected by racial profiling would be denied any meaningful



protection. This concerns us greatly, especially in light of the vast increase in resources for immigration and border enforcement provided in other sections of this bill.

Complaints about racial profiling abound under current immigration and border enforcement policies. Customs and Border Protection (CBP), the federal agency charged with defending border security, currently patrols a 100-mile jurisdiction on each border, an area where nearly two-thirds of the U.S. population resides, and which includes such major cities as New York City, Detroit, Miami and Los Angeles.<sup>1</sup> This bill's prohibition language which includes an exception for border security could fail to protect racial profiling victims throughout that vast zone. This is particularly troubling given that CBP agents have been known to harass people of color on buses and trains that cross no international border; to respond to 911 calls placed by non-native English speakers; and to interrogate people at churches, hospitals, and other sensitive locations.<sup>2</sup>

Many residents of border communities as well as in other areas of the U.S. are targeted due to their religion and national origin, often under the pretext of national security. For example, at certain U.S. airports, Sikh travelers are stopped and searched 100% of the time.<sup>2</sup> At ports of entry and within the 100-mile jurisdiction along the Northern border, Muslims of all ethnic backgrounds are interrogated and searched with disproportionate frequency, and many have been asked inappropriate questions about their religious beliefs and interpretations of the Koran. The FBI has been known to map and surveil communities based on their specific national origin, without any basis for individualized suspicion.<sup>3</sup> Unless specific language is included to prohibit profiling on the basis of religion or national origin, and unless the national security and border security loopholes are removed from the bill, many communities will remain unprotected from unethical and counterproductive law enforcement practices.

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<sup>1</sup> <http://www.aclu.org/national-security-technology-and-liberty/are-you-living-constitution-free-zone> <sup>2</sup> <http://www.nyclu.org/news/nyclu-senate-immigration-reform-bill-good-first-step-needs-improvement>; <http://www.nytimes.com/2010/08/30/nyregion/30border.html?pagewanted=all>

<sup>2</sup> The Sikh Coalition, "The TSA Report Card: A Quarterly Review of Security Screenings of Sikh Travelers in U.S. Airports," Q2 2009 (Aug. 2009), accessible at <https://salsa.wiredforchange.com/o/1607/images/2009%20Q2%20Report%20Card.pdf>

<sup>3</sup> American Civil Liberties Union, "ACLU Eye on the FBI: The FBI is Engaged In Unconstitutional Racial Profiling and Racial 'Mapping,'" October 20, 2011, [http://www.aclu.org/files/assets/aclu\\_eye\\_on\\_the\\_fbi\\_alert\\_-\\_fbi\\_engaged\\_in\\_unconstitutional\\_racial\\_profiling\\_and\\_racial\\_mapping\\_0.pdf](http://www.aclu.org/files/assets/aclu_eye_on_the_fbi_alert_-_fbi_engaged_in_unconstitutional_racial_profiling_and_racial_mapping_0.pdf)



The End Racial Profiling Act of 2011 (ERPA), as introduced in the Senate, defines Racial Profiling as:

the practice of a law enforcement agent or agency relying, to any degree, on race, ethnicity, national origin, or religion in selecting which individual to subject to routine or spontaneous investigatory activities or in deciding upon the scope and substance of law enforcement activity following the initial investigatory procedure, except when there is trustworthy information, relevant to the locality and timeframe, that links a person of a particular race, ethnicity, national origin, or religion to an identified criminal incident or scheme.

Furthermore, it defines "routine or spontaneous investigatory activities" as:

interviews; traffic stops; pedestrian stops; frisks and other types of body searches; consensual or nonconsensual searches of the persons, property, or possessions (including vehicles) of individuals using any form of public or private transportation, including motorists and pedestrians; data collection and analysis, assessments, and predicated investigations; inspections and interviews of entrants into the United States that are more extensive than those customarily carried out; immigration-related workplace investigations; and such other types of law enforcement encounters compiled for or by the Federal Bureau of Investigation or the Department of Justice Bureau of Justice Statistics.

This language offers the strong protections needed to eliminate all types of racial profiling. We urge members of the Committee to strengthen the prohibition on profiling contained in Section 3305 of S.744 to make it consistent with the above language and provide enforceable protection from racial profiling for all of our country's diverse communities.

RWG is very pleased to see that Section 3305 creates a data collection requirement that will apply to all Department of Homeland Security (DHS) officers, including CBP, Immigration and Customs Enforcement (ICE), and Transportation Security Administration (TSA) law enforcement agents. Data collection and analysis is essential to the enforcement of any prohibition on racial profiling. We are optimistic that the data collection and subsequent DHS reports to the relevant Congressional Committees will



allow for the adoption of sound regulations to combat racial profiling by federal law enforcement agents.<sup>4</sup>

Data collection provisions as written in Section 3305 are an excellent start. We believe, however, that the data collection and reporting process ought to be further strengthened. First, we urge that data collection investigate profiling based not only on perceived race and ethnicity, but also on perceived religion and national origin. We also believe that data collection and reporting requirements should be continued after the initial report cited in the bill. Otherwise, there will be no mechanism to monitor ongoing compliance with the prohibition.

Lastly, RWG applauds the requirement that new regulations regarding the use of racial profiling by DHS agents be issued within a year and 90 days by the Secretary of Homeland Security. This is an important component, and we look forward to seeing those regulations in place. We urge the Committee to support this piece of the legislation, and to fortify it by ensuring that regulations require mandatory training by all DHS law enforcement agents on the racial profiling prohibition and their obligations. The regulations should also establish an oversight mechanism to hold DHS agents accountable for compliance with the prohibition against all types of profiling.

#### Border Enforcement

The expansion of border enforcement has been of particular concern to many of our members and their communities who live and work along the United States' borders with Mexico and Canada. In addition to racial profiling incidents described in the section above, federal law enforcement agents along the borders have been known to use excessive force, wounding and even killing individuals in response to minor or no provocation. RWG applauds the inclusion of new human rights protections within border enforcement, including strengthened provisions on excessive use of force, improved training for Border Patrol agents, expansion of the mandate of the CIS Ombudsman to address CBP and ICE issues, and the creation of a Department of Homeland Security Border Oversight Taskforce of community representatives.

We are concerned, however, by the bill's proposal to further expand expenditures on border enforcement and militarization at the border. Past expansions have often come with the loss of human rights and civil liberties protections in border communities. We do

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<sup>4</sup>For further RWG recommendations regarding data collection, see <http://rightsworkinggroup.org/sites/default/files/Data%20Collection%20Recommendations%20for%20DHS.PDF>



not support the increased funding for border fencing, surveillance technology, more Border Patrol agents, border crossing prosecutions, Operation Stonegarden, or National Guard deployment. We also urge the Senate to ensure that border “triggers” and the bill’s apprehension effectiveness rate requirements will not delay the legalization process and pathway to citizenship.

#### Court Reform and Judicial Discretion

We welcome language in the bill that restores discretion to immigration judges to assess individual circumstances before determining inadmissibility or deportation. We also welcome the addition of resources to immigration courts, which will help make immigration proceedings more efficient while also ensuring that individual immigrants’ rights to due process and a fair trial are upheld.

#### Employment Verification

RWG welcomes the due process and worker protections included in the legislation’s proposal for an employment verification system. We applaud the expansion of the scope of antidiscrimination protections under the Immigration and Nationality Act (INA) with respect to hiring, firing, and verification.

RWG is concerned, however, by threats to privacy implicit in the expansion of employment verification as proposed in this legislation. We are especially troubled by provisions to expand the use of biometric data of individual workers, including the expansion and mandatory use of a photograph database; the aggregation of state drivers’ licenses with E-Verify; and the creation of biometric work authorization cards, or biometric green cards, for all non-citizens. We urge the Senate to remove these provisions, to prevent hacking and other privacy breaches, and to avoid the creation of a de facto national ID.



**LGBT Concerns with the Border Security, Economic Opportunity, and Immigration Modernization Act, S.744**

**Testimony Submitted to U.S. Senate Committee on the Judiciary**

**Hearing:** “The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744”

Monday April 22, 2013

**Statement of Rachel B. Tiven, Esq., Executive Director, Immigration Equality; Bend the Arc Jewish Action; CenterLink: The Community of LGBT Centers; Council for Global Equality; The Episcopal Church; Family Equality Council; Friends Committee on National Legislation; Gay & Lesbian Advocates & Defenders; GetEQUAL; Lambda Legal; Log Cabin Republicans; National Center for Transgender Equality; National Gay & Lesbian Chamber of Commerce; National Immigrant Justice Center; National Latina Institute for Reproductive Health; Out4Immigration; Queer Undocumented Immigrant Project/United We Dream; and Transgender Law Center;**

Immigration Equality is a national organization that works to end discrimination in U.S. immigration law, to reduce the negative impact of that law on the lives of lesbian, gay, bisexual, transgender (“LGBT”) and HIV-positive people, and to help obtain asylum for those persecuted in their home country based on their sexual orientation, transgender identity or HIV-status. Immigration Equality was founded in 1994 as the Lesbian and Gay Immigration Rights Task Force. Since then we have grown to be a fully staffed organization with offices in New York and Washington, D.C. We are the only national organization dedicated exclusively to immigration issues for the LGBT and HIV-positive communities. More than 38,000 activists, attorneys, faith leaders, and other constituents subscribe to Immigration Equality’s emails and action alerts, and our website has over 380,000 unique visitors per year. The legal staff fields over 3,700 inquiries a year from individuals throughout the entire U.S. and abroad via telephone, email and in-person consultations.

We at Bend the Arc Jewish Action believe that our immigration system is broken and needs repair. The tools essential for this repair are not barbed wire and drones, but rather justice and equality.

CenterLink: The Community of LGBT Centers: LGBT families must be included in all aspects of immigration reform if we truly believe in liberty and justice for all.

Mark Bromley, Chair of the Council for Global Equality: Human rights begin at home, and as America’s face to the rest of the world, it’s important that our immigration laws reflect the equality and fair treatment that we seek in the world.

The Most Rev. Katharine Jefferts Schori, Presiding Bishop and Primate of The Episcopal Church: We are pleased to see that the Senate bill contains significant streamlining and expediting of the reunification process for citizens and green-card holders. We are gravely disappointed, however, that even as many families will experience the joy of reunification, some families and family members have been excluded from the Senate bill. As the process moves forward, we will strongly urge the inclusion of same-sex partners and spouses in the legislation. Every family deserves to live in unity.

Family Equality Council believes we must pass comprehensive immigration reform that provides for a safe path to citizenship, ends unjust detentions and deportations, abolishes the one-year filing deadline for asylum-seekers, and preserves the current family-based immigration system – which must include bi-national same-sex couples.

Friends Committee on National Legislation: Believing in the presence of the Light in each person, Friends (Quakers) are compelled to uphold the sanctity of the individual. ... Friends seek a society free from discrimination, including on the basis of race, creed, gender, ethnic or national heritage, age, sexual orientation, disability, medical condition, genetic background, and gender identification. Freedom from arbitrary or undue governmental intrusion and the equal treatment of all people by the state are inherent to each individual's realization of her or his potential.

In our daily work, Gay & Lesbian Advocates & Defenders sees the devastating impact of discrimination on LGBT individuals and families, and we know the issues highlighted in this testimony are critical to ending that discrimination.

GetEQUAL is a national LGBT civil rights organization and Comprehensive Immigration Reform is part of our pursue for equality because 267,000 undocumented immigrants identify as LGBT and 40,000 same-sex binational families are at risk of deportation. We will continue fighting for the full inclusion of LGBT people in this bill.

Because Lambda Legal has long endorsed a path to legalization for undocumented LGBT immigrants, and receives hundreds of calls annually from immigrants seeking to stay in the country with spouses or partners and their children, and from LGBT immigrants who have endured horrific persecution based on who they are, we enthusiastically support SB 744 to protect familial bonds and provide a safe home in the United States for those facing persecution.

Gregory T. Angelo, Executive Director, Log Cabin Republicans: Including provisions for LGBT individuals in comprehensive immigration reform isn't just the right thing to do; from a talent recruitment and retention perspective, it's the right thing to do for American business.

The National Center for Transgender Equality is a national social justice organization founded in 2003 and dedicated to advancing the equality of transgender people through advocacy, collaboration and empowerment. Recognizing that transgender immigrants are a highly vulnerable population within the immigration system, NCTE has led transgender organizations across the country in advocating for immigration reform.

National Gay & Lesbian Chamber of Commerce: Exclusion of LGBT people in the immigration bill would prevent a powerful business community (business owners, suppliers, employers and a lucrative consumer market segment) to thrive in the United States. A non-inclusive CIR shrinks the tax base, forces American jobs overseas and creates less jobs for hard-working Americans.

Every week the National Immigrant Justice Center (NIJC) counsels same-sex couples who are in binational families. These clients are often forced to choose between the grim alternatives of living thousands of miles away from their loved ones—frequently in countries where sexual minorities face persecution—or in fear of deportation. This is not a choice that the United States government should force on any family.

The National Latina Institute for Reproductive Health, as part of the National Coalition for Immigrant Women's Rights, believes that *truly inclusive and comprehensive* immigration reform must ensure equality for all immigrants, regardless of sexual orientation and gender identity, protect and promote their civil and human rights, and value the contributions of aspiring Americans to our economy and society by providing them access to quality and affordable health care.

Out4Immigration: Same-sex binational couples must be included in immigration reform and not be excluded by Congress, which is forcing us to choose between our families and our country. By excluding the more than 40,000 same-sex binational couples, this bill is not inclusive – nor is it comprehensive.

Queer Undocumented Immigrant Project/United We Dream: Protecting the unity of all families in immigration reform is crucial in our communities, including the unity of same-sex bi-national couples, and ensuring a pathway to citizenship is highly important for LGBTQ undocumented people and all undocumented people.

The Transgender Law Center applauds the Senate Judiciary Committee for considering S.744, The Border Security, Economic Opportunity, and Immigration Modernization Act. With the passage of S.744, transgender detainees will be protected from old policies that subject them to prolonged isolation and expose them to higher risk of sexual violence.

We applaud the Senate Judiciary Committee for convening these hearings and we applaud the Senate "Gang of Eight" for introducing The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744 ("S. 744"), a bill which addresses many of the problem areas in our current immigration system, and which includes many provisions which would improve immigration options and due process for LGBT aspiring Americans. This testimony will address provisions of S. 744 which we believe are critical to LGBT non-citizens and their families.

It is estimated that there are 267,000 LGBT people among the 11 million undocumented. Many of the provisions of S.744 could provide relief for some of these aspiring Americans. LGBT immigrants are part of many immigrant sub-communities, from brilliant entrepreneurs, to loving spouses, to youth who have seen themselves as Americans their whole lives, to asylum seekers fleeing desperate situations to stay alive, to undocumented individuals who came to the U.S. for a better life and are now living in the shadows with no means to legalize their status. While we are pleased to see that a pathway exists for some of these aspiring citizens to eventually legalize their status, this bill cannot be truly comprehensive until it includes LGBT families.

#### **S.744 Must Include Recognition of LGBT Family Ties**

Every day Immigration Equality hears from American citizens and lawful permanent residents who are struggling to find a means to remain lawfully together with their foreign national partners. Under current U.S. immigration law, there is no way for an American to sponsor her partner for immigration benefits, regardless of how long they have been together, whether they have formalized their

relationship, or whether they have children. In fact, studies have shown that among the roughly 36,000 lesbian and gay immigrant families, more than 46% are raising children together.<sup>i</sup>

S.744 provides no path to citizenship for lesbian and gay families. Although some foreign nationals who are present in the United States may be able to qualify for registered provisional immigrant status and may ultimately succeed in obtaining citizenship, that route would, at best, take thirteen years. Different-sex committed couples are able to file immediately for a green card upon solemnizing their relationship, and the foreign national can become a citizen within three years.

Moreover, many lesbian and gay immigrant families would not benefit at all from S.744. Often, finding no means to remain lawfully together in the United States, couples choose to live in exile, in one of the more than 25 welcoming countries across the globe which provide immigration benefits to same-sex families. For those abroad, the path to citizenship under S.744 does nothing. Likewise, many binational couples maintain long-distance relationships at great financial and emotional expense, taking long vacations to be together and otherwise maintaining contact through daily calls or Skype; these couples also get no relief. And finally, many couples remain together only because the foreign partner is able to juggle visas and maintain lawful status as a student or on a non-immigrant work visa, these couples too will find themselves without a path to legalization.

Every day Immigration Equality hears from lesbian and gay couples who tell us painful tales of trying to maintain their families despite almost impossible odds.

One of the striking features of the statistical analysis performed of the 2000 census is how many same-sex binational couples are raising children together. Almost 16,000 of the couples counted in the census – 46% of all same-sex binational couples – report children in the household.<sup>ii</sup> Among female couples, the figure is even more striking, 58% of female binational households include children. The vast majority of children in these households are U.S. citizens.<sup>iii</sup> Behind each of these statistics is a real family, with real children who have grown up knowing two loving parents. In each of these households, there is daily uncertainty about whether the family can remain together, or whether they will have to move abroad to new schools, new friends, and even a new language.

Every day Immigration Equality hears from lesbian and gay couples who tell us painful tales of trying to maintain their families despite almost impossible odds. For example:

*Adi Lavy and Tzila Levy are a loving, married couple, living in Brooklyn, New York. Adi is a U.S. citizen and Tzila a citizen of Israel. The couple met in 2010 and recently married in Brooklyn, New York. Adi has suffered from chronic kidney disease since the age of seventeen. Tzila is Adi's primary source of care and emotional support, and she entered the U.S. on a visitor's visa in order to care for her wife while Adi receives life-saving treatment from a respected expert in her illness. Because their marriage is unrecognized by the federal government, no other visa was available to Tzila.*

*Adi's health has continued to deteriorate and she has been placed on the kidney transplant list. Tzila extended her visitor visa to remain at Adi's side, but as the end of Tzila's authorized stay*

*approached, Adi and Tzila were left without a permanent solution for their family. In November 2012, the couple submitted a spousal petition for a green card. In January 2013, the family's request was denied because Adi and Tzila's family ties are not recognized under U.S. immigration law. Adi fears that she and her wife could be torn apart. She fears being left alone to face her chronic health issues without her primary caregiver and emotional support. Without a lasting immigration solution, this family will continue to face a life filled with uncertainty and fear.<sup>iv</sup>*

Adi and Tzila want nothing more or less than any other family; they want to live together, secure in the knowledge that they will not be separated.

The inability to sponsor a partner or spouse is even more devastating to women who are forming families. Many couples delay having children in the hope that the family can first stabilize its immigration status. For those who do have children, the uncertainty and stress of whether their family can remain together is multiplied exponentially.

*Kelly Costello and Fabiola Morales married in Washington DC in the summer of 2011. Fabiola, a citizen of Peru, has been living in the United States for six years, where she has been earning a degree in nursing. Fabiola also suffers from multiple sclerosis and is receiving experimental treatment at Georgetown University. Kelly is an elementary school teacher. In what should be a joyous time for their family, Kelly is pregnant with twins. But every day the couple must live with the knowledge that when Fabiola's student visa expires later this year, she could have to leave the country and leave her family behind.<sup>v</sup>*

The lack of recognition of same-sex relationships affects not only the individual family, but the larger community as well. In many instances, large companies are unable to retain talented workers who are forced to leave the United States to maintain their relationships. That is why a growing number of businesses have endorsed the Uniting American Families Act. On January 1, 2013, a diverse group of businesses signed onto a letter to the House and Senate supporting passage of UAFA or CIR that includes UAFA stating:

*"We have each worked to help American employees whose families are split apart because they cannot sponsor their committed, permanent partners for immigration benefits. We have lost productivity when those families are separated; we have borne the costs of transferring and retraining talented employees so they may live abroad with their loved ones; and we have missed opportunities to bring the best and the brightest to the United States when their sexual orientation means they cannot bring their family with them."<sup>vi</sup>*

The coalition includes over 30 businesses, such as Marriott, American Airlines, Dow Chemicals, Intel, Google, Medtronic, . . . To these companies it is clear that inclusion of UAFA in CIR is critical to their bottom line, and ability to compete internationally. There are currently at least two dozen countries that allow their citizens to sponsor long-term, same-sex partners for immigration benefits.<sup>vii</sup>

No Comprehensive Immigration Reform can be truly comprehensive if it leaves out thousands of LGBT families. S. 744 must be amended to include lesbian and gay immigrant families.

**S. 744's Path to Citizenship and DREAM Act**

Immigration Equality applauds S. 744 for providing a pathway to legalization for many of the unauthorized immigrants who have been in the United States for years and become part of their communities. We are particularly pleased to see that S. 744 includes a swift pathway to legalization for unauthorized immigrants who were brought to the United States as children and have attended school or served in the military here. The DREAM Act is crucial to the LGBT community, and LGBT activists have been a strong voice within the fight for immigration rights for these young people. The LGBT community stands with the DREAM activists and applauds S. 744 for the inclusion of the DREAM Act. We are particularly happy to see that there is no age-out provision in S. 744 for DREAM Act eligible applicants. It would be irrational to punish those who were brought to the U.S. as children and have been here for a long period thereafter with an arbitrary age cut-off.

LGBT organizations also believe that it is critical that any immigration reform include a pathway to citizenship for unauthorized immigrants in the United States. We are pleased that S. 744 would allow unauthorized immigrants to legalize their status relatively quickly and obtain work and travel authorization. We are concerned, however, by the length of time it will take for these individuals to obtain full citizenship – thirteen years minimum. We are also concerned that during this lengthy period of time, those in registered provisional immigrant (“RPI”) status will be foreclosed from any means-tested benefits as well as from basic health care. Further, we are worried that the “triggers” to legalization, including certification that the border is secure and the clearing of all current immigration backlogs, could stretch the legalization process out well beyond the thirteen year minimum. We believe strongly that the pathway to citizenship must be clear and achievable within a reasonable, finite timeframe.

**S. 744's Family Visa Provisions**

Family unity has been at the heart of the U.S. immigration system for decades. While we understand the need to increase employment-based visa numbers to remain economically competitive, this should not be a zero sum game. S. 744 eliminates the sibling category of visas and only allows U.S. citizens to petition for married sons and daughters if they are below the age of 31. We strongly oppose any cuts to the family visa system and believe that family unity must remain the central tenet of U.S. immigration law.

**S. 744's Asylum Provisions**

We are very happy to see positive changes in the asylum provisions under S. 744. Specifically, we are very pleased to see that S. 744 eliminates the one year filing deadline for asylum applications and allows reasonable mechanisms for individuals denied asylum solely because of the deadline to reapply. The arbitrary and unfair deadline on asylum cases was imposed in 1996 to fight fraud in the asylum system. In fact, by the time the deadline was imposed, other improvements to the asylum system, particularly requiring that cases be heard swiftly, and imposing lifetime bars on receiving immigration benefits for filing a frivolous claim, reduced the incentive to apply for asylum solely to receive work authorization. However, the filing deadline has resulted in harsh consequences for many genuine asylum seekers who simply did not find out about asylum quickly enough or who were unable to focus on legal issues during their first year in this country.

Each year Immigration Equality represents more than 400 LGBT asylum seekers through direct representation and partnerships with pro bono attorneys. These brave individuals literally leave everything behind to seek freedom from persecution, violence, and abuse simply because of who they are and whom they love. While many political dissidents are aware that if they reach the United States they can seek political asylum, there is no way for most LGBT people to know that asylum is potentially available to them based on their sexual orientation or gender identity.<sup>viii</sup> The primary reason that Immigration Equality's attorneys decline otherwise meritorious cases for legal representation is that the asylum seeker has missed the one year filing deadline; S. 744 would remove this unjust deadline.

We are also pleased to see that S. 744 allows asylum officers to conduct full interviews after finding that an arriving alien has a credible fear. Currently, asylum and refugee officers receive regular training on LGBT asylum issues and have a written training module to follow for these types of cases<sup>ix</sup> and immigration judge do not. We therefore support any efforts to expand the categories of cases which are heard by asylum officers.

#### **S. 744 and Detention**

We are pleased to see that S. 744 contains provisions which purport to expand the use of alternatives to detention. LGBT individuals are among the most vulnerable people held in immigration detention.<sup>x</sup> Every week, Immigration Equality hears from LGBT individuals who are subjected to verbal and physical abuse while detained. For transgender, as well as lesbian, gay, and bisexual asylum seekers who have suffered trauma in their home country, being housed in prison-like conditions while awaiting an immigration hearing is terrifying. We frequently hear from transgender detainees who are placed in administrative segregation – solitary confinement – purportedly to protect them from potential abusers. There, transgender detainees are isolated from all other detainees, denied access to vital programs, and often denied reasonable access to counsel. If transgender individuals must be detained, they must be detained safely, in housing that protects them from harm without blaming the victim for abuse.

S. 744 would make some important changes to the nation's massive immigration detention system. However, by increasing the use of Operation Streamline, expanding the categories of people subject to mandatory detention, and increasing the penalties on illegal entry, the bill will unnecessarily increase the number of people funneled into the immigration detention system. Mandatory detention is an inhumane and expensive practice, and we should not be expanding it.

We believe that S. 744 should include specific language that recognizes LGBT detainees as “vulnerable” and provides additional protections for them while detained. We also believe that S. 744 should set statutory boundaries on the limited circumstances when solitary confinement should be used and provide oversight protections for those who face solitary confinement.

#### **S. 744 and the Mandatory E-Verify Program and Biometric Identification Card**

S. 744 includes a gradual requirement that all employers implement E-verify and requires the Social Security Administration to explore the creation of enhanced cards that will include biometric data. We have some concerns over “false positives” in the current E-Verify system. We are also concerned that

any mandatory data tracking system may “out” transgender employees if their gender marker, name, or outward appearance has changed. We therefore believe that these systems should not include unnecessary personal information, such as gender markers, and should include strong privacy protections for all workers.

### Conclusion

We applaud the Senate for holding these hearings and for beginning the conversation on these needed reforms. We are hopeful that over the coming weeks, the Senate will amend the bill to provide needed relief to LGBT families, to preserve family unity as the heart of immigration law, and to provide a clearly achievable path to citizenship for those who are here without status. Too many individuals in the United States – lesbian, gay, bisexual, transgender, and straight – cannot fully access the American dream because of our antiquated immigration system. For LGBT families with young children, undocumented youth, and asylum seekers, it is time to pass rational, humane, *comprehensive* immigration reform that fully respects the unique needs and contributions of LGBT immigrants.

<sup>i</sup> Family, Unvalued: Discrimination, Denial, and the Fate of Binational Same-Sex Couples Under U.S. Law, joint report by Human Rights Watch and Immigration Equality, 2006, at 17, 3 available at <http://www.hrw.org/en/reports/2006/05/01/family-unvalued>. <sup>ii</sup> *Id.* <sup>iii</sup> *Id.* In female binational households, 87% of the children were U.S. citizens; in male households, 83% were U.S. citizens. <sup>iv</sup> See Erica Pearson, “Newlywed lesbians from Brooklyn hope feds decide on green-card bid after Supreme Court weighs in on DOMA,” NY Daily News, December 12, 2012 available at <http://www.nydailynews.com/new-york/lesbian-couplewaiting-doma-decision-article-1.1218693>.

<sup>v</sup> See Pamela Constable, “Federal marriage law may force deportation of many immigrant gay spouses,” Washington Post, December 29, 2012, available at [http://articles.washingtonpost.com/2012-12-29/local/36071393\\_1\\_gay-spousesbinational-gay-couples-doma](http://articles.washingtonpost.com/2012-12-29/local/36071393_1_gay-spousesbinational-gay-couples-doma). <sup>vi</sup> Available at [http://immigrationequalityactionfund.org/images/BusinessCoalition\\_signonletter.pdf](http://immigrationequalityactionfund.org/images/BusinessCoalition_signonletter.pdf).

<sup>vii</sup> These countries include Australia, Belgium, Brazil, Canada, Denmark, Finland, France, Germany, Iceland, Israel, the Netherlands, New Zealand, Norway, Portugal, South Africa, Spain, Sweden Switzerland, and the United Kingdom. See Family, Unvalued.

<sup>viii</sup> See, “The Gay Bar: The Effect of the One-Year Filing Deadline on Lesbian, Gay, Bisexual, Transgender, and HIVPositive Foreign Nationals Seeking Asylum or Withholding of Removal” by Victoria Neilson & Aaron Morris, 8 New York City Law Review 233 (Summer 2005), discussing the disproportionate impact of the one year filing deadline on LGBT applicants. <sup>ix</sup> See, “USCIS Guidance for Adjudicating Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) Refugee and Asylum Claims,” available at <http://www.uscis.gov/USCIS/Humanitarian/Refugees%20&%20Asylum/Asylum/Asylum%20Native%20Documents%20and%20Static%20Files/RAIO-Training-March-2012.pdf> <sup>x</sup> See, National Immigrant Justice Center, “Stop Abuse of Detained LGBT Immigrants,” <http://www.immigrantjustice.org/stop-abuse-detained-lgbt-immigrants>

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Lupe Martinez  
President &  
Chief Executive Officer

*Office of the President*

April 22, 2013

Dear Senate Judiciary Committee,

Our organization, United Migrant Opportunity Services/UMOS Inc., serves farmworkers. We submit this statement for inclusion in the record of the April 22, 2013 Senate Judiciary Committee hearing on "the Border Security, Economic Opportunity, and Immigration Modernization Act, S. 744." We believe that immigration reform is of the utmost importance to helping farmworkers and their families have the opportunity to lead productive, healthy lives. We are therefore grateful to you and your colleagues, who have spent considerable effort to take into account the interests and knowledge of stakeholders in agriculture and to develop legislation to reform our broken immigration system.

We're very pleased that farmworker and grower representatives have come to an agreement on immigration reform for agriculture. This compromise should greatly increase support for comprehensive immigration reform and get us closer to dignity for farm workers. As the Border Security, Economic Opportunity, and Immigration Modernization Act of 2013 (CIR bill) moves through the legislative process, we write to emphasize the importance of labor protections for immigrant farmworkers and urge you to ensure that existing worker protections remain in the bill or are strengthened.

**The Current Landscape: Greater Protections Needed for Farmworkers**

The lack of authorized immigration status of so many farmworkers contributes to their poor wages and working conditions. Farmworker wages are among the lowest in the country. Many earn at or just above the minimum wage. Poverty among farmworkers is more than double that of all wage and salary employees. Few farmworkers receive any fringe benefits, such as paid sick leave or paid vacation. Decrepit, overcrowded housing is all too common. Health insurance is rarely provided by employers and few farmworkers can afford to purchase it on their own. Yet, agriculture ranks among the most hazardous occupations. Federal laws on overtime pay and collective bargaining exclude farmworkers, as do most federal occupational safety standards and many states' workers' compensation systems.

Such marginalized workers fear joining labor unions, seeking improved job terms, or challenging illegal employment practices. Agricultural workers experience rampant violations of employment laws, including minimum wage requirements. Frequently, farm operators hire workers through farm labor contractors, whom they claim are the sole "employers" for purposes of escaping immigration and labor laws. Undocumented workers who challenge illegal employment practices risk losing their job and breaking up their families and other dire consequences of deportation. With a roadmap to

citizenship, all farmworkers, including the hundreds of thousands of current U.S. workers and the newly American, will be on a level playing field.

The Dairy Industry in Wisconsin is heavily dependent on the use of foreign born workers. According to studies by the University of Wisconsin, more than 4,000 foreign born individuals are employed in dairy farming.

The economic impact and significance of this labor source are enormous. The viability of the dairy industry can only be maintained by immediate and appropriate immigration reform.

#### **Roadmap to Citizenship: the Blue Card**

We are very pleased that the CIR bill contains a roadmap to citizenship for current and future farmworkers and their families. We strongly support the proposal for a "blue card" program, under which experienced undocumented farmworkers and their family members could earn legal immigration status, permanent residency and citizenship within a reasonable period of time and at a reasonable cost given their low incomes. Farmworkers and their families are contributing to America; it is only fair that they be given an opportunity earn legal immigration status. With a roadmap to citizenship, all farmworkers, including the hundreds of thousands of current U.S. workers and the newly American, will be on a level playing field. An above-board agricultural labor relations system will lead to better working conditions, less employee turnover and higher productivity, all of which will help ensure a prosperous agricultural sector. The entire food system will benefit by responding to consumers' increasing interest in the conditions under which their fruits and vegetables are produced.

#### **The New Nonimmigrant Agricultural Visa Program**

The new system would end or weaken certain longstanding H-2A labor protections but also would provide important new rights. We are very pleased that farmworkers in the proposed future visa program will be covered by the Migrant and Seasonal Agricultural Worker Protection Act (AWPA), the main federal law that protects farmworkers. The program would also maintain the requirement that U.S. workers in corresponding employment receive the same wages and benefits as the visa workers (with unfortunate exceptions of housing for certain workers), and it contains a cap to limit the number of workers that may be brought in on the visa. We hope that portability provisions of the new visa program would offer workers some ability to move from job to job, which should mitigate some of the problems in the current H-2A program associated with workers being tied to their employer by their visa. However, we note that contract workers in the program will have less freedom to change jobs, which could result in labor exploitation. There will need to be protections for contract workers, whose employers violate their labor rights. They should be assisted in transferring to another position.

Some of the other provisions give us pause. The 50% job preference rule in the H-2A program that requires employers to hire any ready, willing and qualified U.S. worker up until 50% of the H-2A contract period is not in the current bill. The administration of the program by the U.S. Department of Agriculture instead of the U.S. Department of Labor causes concern. The Department of Labor has significant experience, expertise and infrastructure in operating guestworker programs and protecting workers. If this major change is maintained in the legislation, we support that the bill's provision of a consultative role for the Department of Labor.

We note that other reductions in the requirements for and oversight of recruitment of U.S. workers could result in U.S. workers being displaced by workers on the visa. Thus, the modest protections for

U.S. workers that are included in the current compromise language will be essential to protect the jobs of current U.S. workers and future legalizing workers. Further, once the bill is enacted, there will need to be stringent enforcement of the protections in the program and labor laws protecting farmworkers.

We applaud the opportunity for nonimmigrant visa farmworkers to eventually apply for green cards but we are concerned that the waiting period could last many years.

**The Broader Legalization Program and Worker Protections in the CIR Bill**

We applaud the bill's broader legalization program. We also strongly support the provisions in the bill that aim to protect immigrant and nonimmigrant workers from retaliation and abuse, including the protections against abuse in international labor recruitment. Workers' experiences during the recruitment process have a substantial impact on their earnings and conditions in the U.S. Many temporary foreign workers are charged high recruitment fees, in violation of federal law, to obtain employment. To afford those fees and transportation costs, workers often borrow money, frequently at high interest rates. Upon arrival in the U.S., these indebted workers, particularly under the H-2A program and potentially in the future, are too fearful of losing their jobs and deportation to challenge unfair or illegal conduct. It has often been said that many guestworkers "work scared" and therefore are compliant and highly productive at low wages in comparison to workers with freedom in the marketplace. The recruitment system must be regulated and transparent. Employers that use recruiters for guestworkers should disclose to the government the identities of the recruiters, ensure workers do not pay recruitment fees, and be responsible for abuses inflicted on workers when they have used unlicensed recruiters.

In conclusion, we strongly support the proposal's road map to citizenship for undocumented farmworkers and their families. We stress that the future nonimmigrant agricultural visa program is the product of a compromise and that its modest labor protections must remain in the bill and be enforced effectively in order for the program to be workable and fair. Thank you again for your efforts to bring farmworkers one step closer to gaining legal status and the much-earned recognition for their contributions to the United States.

Sincerely,

John Bauknecht  
Corporate Attorney  
United Migrant Opportunity Services/UMOS Inc.

The Leadership Conference  
on Civil and Human Rights

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**STATEMENT OF  
WADE HENDERSON, PRESIDENT & CEO,  
THE LEADERSHIP CONFERENCE ON CIVIL AND HUMAN RIGHTS**

**HEARING ON  
THE BORDER SECURITY, ECONOMIC OPPORTUNITY, AND IMMIGRATION  
MODERNIZATION ACT, S.744**

**COMMITTEE ON THE JUDICIARY  
UNITED STATES SENATE**

**APRIL 22, 2013**

Chairman Leahy, Ranking Member Grassley, and members of Committee: I am Wade Henderson, President and CEO of The Leadership Conference on Civil and Human Rights. I appreciate the opportunity to present the views of The Leadership Conference for inclusion in the record of today's hearing on S. 744, the "Border Security, Economic Opportunity, and Immigration Modernization Act."

The Leadership Conference on Civil and Human Rights is the nation's oldest and most diverse coalition of civil and human rights organizations. Founded in 1950 by Arnold Aronson, A. Philip Randolph, and Roy Wilkins, The Leadership Conference seeks to further the goal of equality under law through legislative advocacy and public education. The Leadership Conference consists of more than 200 national organizations representing persons of color, women, children, organized labor, persons with disabilities, the elderly, gays and lesbians, and major religious groups. I am privileged to bring the voices of this community to today's hearing.

**Comprehensive Immigration Reform, a Matter of Civil and Human Rights**

The Leadership Conference is extraordinarily pleased that Congress is making a concerted effort to move forward this year with a full-scale overhaul of our nation's immigration system. While my staff and I are continuing to study the details of S. 744, and while there are likely to be a wide range of opinions about the bill as it moves forward, I would like to begin my statement by setting out what I hope are a few general points of agreement.

First, I believe that everyone in this debate can agree that our nation's immigration system is badly broken. It fails to keep up with economic realities, it fails to provide an orderly way to keep track of who is here, it inhumanely separates families and keeps them apart, it penalizes children for the actions of their parents, and it is so unfair and so burdensome that it fails to give people enough incentives to play by the rules. America's immigration system clearly needs sweeping changes, and it needs them soon.

Second, I think we can also agree that in fixing our immigration system, it is vital that we include more realistic and more humane immigration enforcement. For many reasons, it is undoubtedly important to know who is coming here and under what circumstances, and to protect communities from people who



would do us harm when they have no authorization to be here. Yet as evidenced by record-high numbers of deportations in the past four years, the notion that the laws are not being enforced is simply not true. The real problem, when it comes to enforcement, is that ongoing efforts – particularly since the implementation of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 – too often take a heavy-handed and even cruel approach. Countless numbers of immigrants – regardless of their legal status – are needlessly locked up and removed, even when detention and deportation do not serve the public interest, because immigration judges and other officials no longer have the ability or the incentive to exercise common sense. At the same time, many of the most complicated and sensitive decisions involving immigration law enforcement are being made in many parts of the country by untrained state and local law enforcement officials, or worse, by private for-profit corporations that have a financial incentive to lock up as many people as possible.

As a nation, we can and should take more sensible measures, such as hiring additional inspectors and border patrol agents to work in ports of entry, making better use of technology, and working more closely with Mexico to cut down on problems like human trafficking and the drug trade. At the same time, enforcement efforts must ensure due process and protect the civil rights of all people who are affected.

Third – and while this, of course, has long been the subject of contentious debate – I would hope that we might come to agree on the importance of giving unauthorized immigrants, living and working in our country, a realistic way to come out of the shadows and legalize their status. As a lifelong civil rights advocate, I see this not as an issue of economics but of morality, and I believe it goes directly to our most basic understanding of civil and human rights.

It is easy to focus on the fact that many immigrants have broken the rules in order to get or stay here. We do not condone violations of our immigration laws. But as we do in most other circumstances, we should also look at why these individuals have broken the rules. Motives count. And the overwhelming majority of unauthorized immigrants have broken the rules not to “steal jobs,” to live off the government, or to take advantage of anyone else. Instead, most of them have been motivated, to the point where many have even risked their lives to come here, by the desire to escape economic or political hardships that few native-born Americans today could fully understand. At the same time, they are all too often enticed here by employers who are perfectly willing to use and abuse them in the process.

When we consider the motives of most of the unauthorized immigrants who live and work in our country, it is clear to The Leadership Conference – and hopefully to everyone – that our policies should not treat them as fugitives to be hunted down, but as an economic and social reality that must be addressed in a thoughtful manner that best serves our nation and our communities as a whole. For example, unauthorized immigrants should not be so afraid of law enforcement, due to their immigration status, that they refuse to report crimes in their own neighborhoods. When they go to work, they – like all humans – have a right to know they will be treated safely and paid fairly, which protects the interests of native-born workers as well. If they drive on our roads, it is in the interest of everyone to make sure they are doing so safely. Regardless of how they may have initially come here, if they show a willingness to play by the rules and contribute to our economy and our society, we should have policies in place that will reward their hard work. At the very least, I would hope that we can agree that punishing the children of unauthorized immigrants for the actions of their parents is nothing short of insane, and is an affront to our deepest values and constitutional traditions.



Finally, we believe that family unity should be a key foundation of our immigration laws, in the same way that it is a key foundation of our society itself. Sadly, our current immigration system is chronically plagued by administrative backlogs in the family-based visa process, as well as by the woefully inadequate numbers of family-based visas that become legally available each year. As a result, it can often take years or even more than a decade for close relatives of U.S. citizens or permanent residents to obtain immigrant visas, and these delays simply encourage people to overstay temporary visas or find other ways to enter the country in order to be with their loved ones. Other families are kept apart by outright discriminatory federal policies, particularly the wrongly-named Defense of Marriage Act of 1996. Addressing these and numerous other problems in our immigration system is an essential component of the modern civil and human rights agenda.

#### **Immigration Reform and the African-American Workforce**

I am mindful that these are challenging times to take up an issue like immigration reform. Our economy is continuing to struggle, leaving far too many of Americans uncertain about their jobs and their economic well-being. Most recently, a horrifying act of terrorism in Boston has caused some to argue – very wrongly, in my opinion – that we should further delay fixing the massive, long-standing problems in our national immigration system. To the contrary, I believe the need for immigration reform remains as strong as ever.

That said, I would like to turn to another important yet complicated issue that affects the immigration reform debate: the impact that immigration has on minority communities, particularly African Americans. Needless to say, this topic has generated a great deal of controversy, particularly in recent years as our economy has struggled, and African Americans have faced much higher unemployment rates than usual.

I certainly share the legitimate concerns about unemployment and underemployment among African Americans. Indeed, advancing policies that would address these concerns has been one of my highest priorities throughout my career. The needs of low-wage workers – a group disproportionately composed of African-American workers – have long been neglected by policymakers, a situation that has needlessly exacerbated tensions between the African-American and immigrant communities. Many African Americans, as a result of the difficult economic conditions they face, understandably fear that the immigrant workforce will worsen their situation as the competition for jobs in our struggling economy reduces the opportunities and the wages of all vulnerable workers. Yet having said this, I do not share the simplistic and divisive view, advanced by some, that immigrants are to blame for “stealing jobs” on any widespread scale from native-born Americans.

#### **The Impact of Immigration on African-American Employment**

The situation facing African-American workers is a complicated one, and the impact of immigration on the employment prospects and the wages of African Americans is the subject of much debate among economists. As economists such as Steven Pitts of the Center for Labor Research and Education at the University of California have pointed out, for example, the employment crisis facing African Americans began long before our nation took a more generous approach to immigration policy in 1965. Looking at overall unemployment rates over the last half century, we see that the unemployment rate for African Americans has always been approximately twice as high as for White Americans, and has remained



approximately the same<sup>1</sup> even as the percentage of foreign-born Americans, relative to the population as a whole, has increased in the past several decades:

Year	Black Unemployment	White Unemployment	Black/White Unemployment Ratio
1956	8.3%	3.6%	2.3
1965	8.1%	4.1%	2.0
1975	14.8%	7.8%	1.9
1985	15.1%	6.2%	2.4
1995	10.4%	4.9%	2.1
2005	10.0%	4.4%	2.3

As most economists would explain, this employment crisis has a wide variety of causes that are remarkably difficult to sort out. These causes include both historical and contemporary racial discrimination, not only in the labor market, but also in other sectors of society such as housing markets, educational systems, and consumer finance. The higher rates – and the lasting stigmatic effects – of incarceration of African-American males are also significant.<sup>2</sup> Disparities in health care are both a cause and a consequence of unemployment.<sup>3</sup> In addition, the situation has certainly been compounded by broader changes in the U.S. economy as a whole, including the globalization of the economy and the movement of many types of jobs overseas.

As to the question of whether immigration might play a role in aggravating the long-existing causes of African-American unemployment, economists who have studied the issue have not been able to establish any sort of consensus.<sup>4</sup> Even among experts who do think there is an impact, there is disagreement over its extent. For example, Bernard Anderson, an economist at the University of Pennsylvania's Wharton School, believes that while immigrants have probably taken some jobs previously performed largely by African Americans, there is also evidence that African Americans are less likely to perform low-skill service jobs because they have largely moved on to take better-paying jobs or have retired from the labor force. The displacement that has taken place, Anderson argues, has not had a significant effect on the wages or opportunities of native-born workers.<sup>5</sup> Another study, by the Immigration Policy Center, found that in states and metropolitan areas with high levels of recent immigrants, unemployment among African Americans was actually *lower* than in areas with low levels of recent immigrants.<sup>6</sup> Finally, a study by the

<sup>1</sup> U.S. Department of Labor, Bureau of Labor Statistics; also Council of Economic Advisors, *Changing America: Indicators of Social and Economic Well-Being by Race and Hispanic Origin*, Sept. 1998, at 26.

<sup>2</sup> See, e.g., Jenny Bussey and John Trasviña, *Racial Preferences: The Treatment of White and African American Job Applicants by Temporary Employment Agencies in California*, Discrimination Research Center, Dec. 2003; Devah Pager, *The Mark of a Criminal Record*, AMERICAN JOURNAL OF SOCIOLOGY 108(5): 937–75.

<sup>3</sup> Kristen Suthers, *Evaluating the Economic Causes and Consequences of Racial and Ethnic Health Disparities*, Issue Brief, American Public Health Association, Nov. 2008.

<sup>4</sup> See, e.g., Harry J. Holzer, *Immigration Policy and Less-Skilled Workers in the United States: Reflections on Future Directions for Reform*, Migration Policy Institute, Jan. 2011; Roger Lowenstein, *The Immigration Equation*, THE NEW YORK TIMES, July 9, 2006.

<sup>5</sup> *The Immigration Debate: Its Impact on Workers, Wages and Employers*, KNOWLEDGE@WHARTON, May 17, 2006, available at <http://knowledge.wharton.upenn.edu/article.cfm?articleid=1482>.

<sup>6</sup> *Immigration and Native-Born Unemployment Across Racial/Ethnic Groups: Untying the Knot, Part II of III*, Special Report, Immigration Policy Center, May 2009.



Economic Policy Institute found that any negative effects of new immigration were felt largely by earlier immigrants, the workers who are the most substitutable for new immigrants.<sup>7</sup>

#### **Policies Aimed at Improving Conditions for Low-Income Minority Workers**

As explained above, economists simply do not – and perhaps cannot – know with certainty the full extent of the displacement of African-American workers by new immigrants. As such, I reject the sweeping, simplistic, divisive indictments of immigrants that have been offered by some advocates, and I urge this Committee to do the same. At the same time, I do recognize that it is possible that unskilled, native-born workers have been – or could be – displaced by increased immigration. There is certainly anecdotal evidence to that effect, even as the overall body of statistical evidence is far less clear. In any event, the prospect of job displacement caused by immigration has long caused concerns within the African-American community – a fact that has been exploited by some to drive a wedge between African Americans and Latinos.

For these reasons, The Leadership Conference takes the underlying concerns about job displacement very seriously. Because the unemployment crisis facing African Americans has a wide variety of causes, however, we believe that efforts focusing on widespread deportation – or on making immigrants feel so unwelcome that they “self-deport,” as some have proposed<sup>8</sup> – miss the mark completely.

There are numerous policy proposals that academics and advocates have advanced to assist low-wage native-born workers. The Leadership Conference is proud to have contributed to these ideas. In early 2007, we organized a summit of leaders from African-American, Latino, and Asian-American communities to discuss how the concerns of low-income workers might best be addressed in the ongoing debate over immigration reform. The organizations and leaders involved in those discussions produced a statement of principles and legislative recommendations that we urged Congress to take up as a part of comprehensive immigration reform. These recommendations call upon Congress to provide for:

- Better enforcement of antidiscrimination laws, through testing and other measures, and enhanced public education efforts to counter stereotypes about immigrants and African Americans;
- More open vacancy notification systems, to overcome the use of informal networks of friends and relations to fill low-wage jobs, which reduces job competition;
- Increased enforcement of workplace standards, including fair wage and overtime requirements, and safety, health and labor laws;
- Making it easier for workers to compete for jobs in other locations through better advertising of unskilled jobs and the allocation of resources to pursue and relocate for them; and
- More job skills, training and adult education opportunities for low-wage workers, including young people and high school dropouts.

During the 2007 debate in the Senate over comprehensive reform legislation, we worked with Sen. Sherrod Brown (D-OH) on an amendment focusing on the second point above, as a starting point. His

<sup>7</sup> Heidi Shierholz, *Immigration and Wages: Methodological Advancements Confirm Modest Gains for Native Workers*, Briefing Paper, Economic Policy Institute, Feb. 2010.

<sup>8</sup> See, e.g., Mark Krikorian, *Not Amnesty but Attrition: The Way to go on Immigration*, National Review, Mar. 22, 2004.



amendment would have required employers who want to hire immigrant workers, under the temporary employment visa provisions of the bill, to show that they have advertised – and to continue to advertise, for one year – all similar job vacancies with the state employment service. The requirement would have been extended to all vacancies that require comparable education, training, or experience as the job to be given to an immigrant worker. It would have helped ensure that native-born workers became aware of, and had the opportunity to apply for, job openings before employers resorted to hiring immigrant workers. Unfortunately, the Senate deliberations over immigration reform collapsed before Sen. Brown was able to offer his amendment. We believe, however, that his proposal could have earned widespread bipartisan support, and it would have been an important and constructive step in addressing the concerns of low-income minority workers.

I would urge Congress to move forward with all of these proposals – and I would note that they can be enacted even in the absence of comprehensive immigration reform legislation. By doing so, our elected officials can provide low-wage African-American workers with much-needed assistance, and can help mitigate tensions between African-American and immigrant workers. I would also urge the Subcommittee to consider a 2009 blueprint for immigration reform that was jointly issued by the two American labor federations, the AFL-CIO and Change to Win, together representing more than 60 different unions and about 16 million American workers. Their proposal, entitled *Framework for Comprehensive Immigration Reform*,<sup>9</sup> meets many of the concerns expressed in the African-American community by providing for the fair and humane treatment of immigrants, on one hand, and preventing immigrant workers from being exploited and used to undercut work standards to the detriment of native-born workers, on the other.

#### **So-called “Black vs. Brown” in the Immigration Debate: Perceptions and Realities**

Before I conclude, I would like to say more about the misperceptions about relations among African Americans and Latinos, misperceptions that some immigration reduction advocates have attempted to foster, in recent years, in an effort to pit community against community with the goal of preventing immigration reform. In 2007, for example, a group that called itself the Coalition for the Future American Worker, organized primarily by immigration reduction organizations, deliberately attempted to stir up African-American resentment toward immigrant communities and immigration reform by running full-page newspaper ads that blamed immigrants for taking hundreds of thousands of jobs from African Americans.

As with any controversial issue – and immigration reform is undoubtedly a controversial issue – there inevitably will be a range of individual opinions within any community. But on the whole, the relationship between the African-American community and immigrant communities has long been far too complex to neatly summarize in a newspaper ad.

On one hand, as minority groups in America, African Americans and immigrants share a strong common interest in fairness and equal opportunity. Indeed, because the immigrant community includes many individuals of African and Caribbean descent, including those admitted under the diversity visa program, African Americans do have a direct interest in fair immigration policies. For these reasons, the traditional civil rights movement was instrumental in eliminating discriminatory immigration quota laws in favor of

<sup>9</sup> Available at <http://www.aflcio.org/content/download/60511/854621/UnityFrameworkAug2009.pdf>.



more generous policies in the 1960s, and leading civil rights organizations have continued to speak out on behalf of immigrants' rights since then.

On the other hand, as I have explained above, it is clear that many African Americans, particularly those who struggle the most to make ends meet in today's economy, are concerned about the way their economic well-being is affected by increased immigration. Time and time again, immigration reform opponents focus only on these anxieties while ignoring the common ground that exists. For example, following the August 2008 immigration enforcement raid at Howard Industries in Laurel, Miss., immigration reduction advocates focused on a segment of some African-American workers who apparently celebrated the arrests, as an example of the divide between native-born and immigrant workers, while ignoring the fact that the African-American leadership at Howard Industries' union supported signing up Latino workers and forging solidarity to improve the living standards of all employees.

Contrary to what the propaganda of some groups might suggest, African-American concerns about the effects of immigration do not, on the whole, lead to any widespread resistance to the legalization of unauthorized immigrants or the other elements of comprehensive reform. Our own public opinion research confirms this. Last month, Lake Research Partners conducted telephone polling of 805 African-American likely voters nationwide.

Our most recent polling finds that 75 percent of respondents rate the economy negatively, and 54 percent worry that they or someone in their household will lose a job in the coming year. With respect to immigrants, 45 percent of respondents believe that immigrants take jobs away from Americans, and 51 percent believe that they drive down wages for Americans. Despite these fears, however, we found that 66 percent of respondents supported comprehensive immigration reform that includes increased border security, penalties on employers of illegal workers, and criteria for a path to citizenship, with only 16 percent opposing such reforms. Furthermore, 72 percent of respondents (69 percent in the Deep South) have a favorable impression of immigrants, with 68 percent believing they contribute to our economy and communities. Only 39 percent believe that immigrants drive down wages for African-American workers, a 20 percent decline since we conducted similar polling in 2007. Finally, our research in this and previous years confirms that strong majorities of African Americans believe that they can work together with immigrant communities on common social and economic goals such as expanding access to health care and education, reducing crime, and improving wages, work benefits, and job opportunities.<sup>10</sup>

In short, African Americans generally understand that it is inherently wrong to divide people along the lines of race or ethnicity or national origin, and that creating "us versus them" scenarios does not help anyone in the long run. If Congress did more to protect low-income, native-born workers, as a part of immigration reform or even independently, and consistent with the principles I outlined above, the numbers I have just cited would be even more favorable.

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<sup>10</sup> Polling conducted by Lake Research Partners, for The Leadership Conference on Civil Rights & Leadership Conference on Civil Rights Education Fund, March 25-30, 2013, among 805 African-American likely voters. The results are consistent with similar polling conducted for us by Lake Research Partners, December 8-17, 2007, among 700 African-American voters.



Finally, I would like to add that African Americans do tend to take note of how consistently – or inconsistently – immigration advocates show their concern for the well-being of the African-American community across the board. Unfortunately, evidence of that concern is often sorely lacking.

For example, from the 2006 reauthorization through the Supreme Court case that is now awaiting a decision, the Voting Rights Act – the most important civil rights law governing our most important civil right – has been under steady attack by many of the same groups and individuals who claim to be interested in protecting black Americans from the effects of immigration. As the 2008 financial crisis began, many of those same individuals dishonestly blamed the Community Reinvestment Act, a decades-old civil rights law that could have in fact reduced predatory subprime lending if it had been more uniformly applied.<sup>11</sup> More recently, many have supported budget policies that drastically cut spending in areas that are most important to African Americans such as education and health care, in order to protect millionaires or defense contractors from making sacrifices. Finally, some immigration reduction advocates have even gone so far as to propose rewriting the 14<sup>th</sup> Amendment of our Constitution,<sup>12</sup> striking at a core foundation of our nation's civil rights protections that is deeply cherished by most African Americans. While there are certainly exceptions,<sup>13</sup> it is clear that immigration reduction advocates have rarely gone out of their way to be our friends.

This concludes my remarks. Thank you for the opportunity to have my thoughts included in the record of today's hearing. I would be happy to answer any questions you may have.

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<sup>11</sup> Myths about the Community Reinvestment Act (CRA) contributing to the financial crisis have been thoroughly debunked by experts, but nevertheless continue to proliferate. *See, e.g.*, letter from Federal Reserve Chairman Ben Bernanke to Sen. Bob Menendez (D-NJ), Nov. 25, 2008, available at <http://menendez.senate.gov/pdf/112508ResponsefromBernankeonCRA.pdf> (explaining that he found no evidence to support the claim that the CRA was to blame for the mortgage crisis).

<sup>12</sup> *See, e.g.*, H.R. 140/S. 301, the Birthright Citizenship Act of 2013.

<sup>13</sup> I would certainly note, for example, the bipartisan effort that resulted in the enactment of the Fair Sentencing Act of 2010, which will help reduce racial disparities in cocaine sentencing. Its champions in Congress included a number of prominent opponents of comprehensive immigration reform.

## LIST OF FAITH-BASED ORGANIZATIONS

Al-Wafaa Center for Human Services  
Asamblea de Derechos Civiles  
Casa Guadalupana House of Hospitality, St. Paul (house of hospitality rooted in the spirit of Dorothy Day and the Catholic Worker Movement)  
Catholic Charities of St. Paul and Minneapolis  
Center for Public Ministry @ United Theological Seminary  
Cherokee Park United Church  
Church of All Nations  
Church World Service CROP, Minnesota  
Community of St. Martin, Minneapolis  
Conversations With Friends (detained immigrant visit program sponsored by Interfaith Coalition on Immigration)  
Episcopal Church in Minnesota  
Faith Mennonite Church, Minneapolis  
Immigration Task Force of the Northeast Synod - Evangelical Lutheran Church in America  
Immigration Team of the Minnesota Conference United Church of Christ  
Interfaith Coalition on Immigration  
International Association for Refugees  
ISAIAH Core Team Mayflower United Church of Christ, Minneapolis  
ISAIAH Mn.  
Islamic Center of Minnesota  
Islamic Civil Society of America  
Islamic Community Center of Minnesota  
Jewish Community Action  
Justice and Witness Team of the Minnesota Conference United Church of Christ  
Minneapolis Area Synod - Evangelical Lutheran Church in America  
Minnesota Annual Conference of The United Methodist Church  
Minnesota Catholic Conference  
Minnesota Council of Churches  
Minnesota Unitarian Universalist Social Justice Alliance  
Msjid Al-Iman  
People of Faith Peacemakers  
Sisters of St. Joseph of Carondelet & Consociates  
Southwest Minnesota Synod - Evangelical Lutheran Church in America  
St Frances Cabrini, Minneapolis  
St. Joseph the Worker Catholic Church, Maple Grove  
St. Paul Area Synod - Evangelical Lutheran Church in America  
Transform Minnesota - regional evangelical network of churches from nine evangelical denominations  
World Relief Minnesota

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Witness List

Hearing before the  
Senate Committee on the Judiciary

On

“The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744”

Tuesday, April 23, 2013  
Hart Senate Office Building, Room 216  
9:30 a.m.

The Honorable Janet Napolitano  
Secretary  
United States Department of Homeland Security  
Washington, DC



**The Honorable Janet Napolitano**

*testifying before the*

**United States Senate**

**Committee on the Judiciary**

**Comprehensive Immigration Reform Legislation**

**April 19, 2013**

**Hart Senate Office Building, Room 216**

**Washington, D.C.**

Thank you, Chairman Leahy, Ranking Member Grassley, and Members of the Committee for holding this noteworthy hearing today on the Border Security, Economic Opportunity, and Immigration Modernization Act. It is a pleasure to again appear before the committee, especially for such an occasion.

We are very encouraged by the work of this committee. I also want to commend the solid bipartisan work of eight senators and their staff to fashion a commonsense immigration reform bill that will address the most serious problems with our current system. The introduction of this legislation is an important first step that reflects significant momentum toward our shared goal to reform the nation's immigration laws.

As the President stated earlier this week, this bill is clearly a compromise, and there are some things we don't agree on, but the bill is largely consistent with the President's principles on commonsense comprehensive reform. The bill would continue to strengthen security at our borders and hold employers more accountable if they knowingly hire undocumented workers. It would provide a pathway to earned citizenship for the 11 million individuals who are already in this country illegally. It would also modernize our legal immigration system, allowing families to be reunited in a humane and timely manner and grow our economy by attracting the highly skilled entrepreneurs and workers who will help create good paying jobs. These are all commonsense steps that the majority of Americans support. The President and I, as well as the rest of the Cabinet, stand willing to do whatever it takes to make sure that comprehensive immigration reform becomes a reality as soon as possible. DHS is ready to work directly with this Committee to further refine the bill and pass the much-needed reforms that will help make our border safer and our country stronger.

America is a nation of immigrants and a nation of laws. Our history is rooted in immigration. At every great and momentous occasion throughout our proud history, immigrants, and the immigrant experience, have contributed to the richness of our culture, the strength of our moral character, and the advancement of our society.

As I noted in my testimony before the committee in February, DHS secures our Nation's borders to prevent the illegal entry of people, drugs, weapons, and contraband, while fostering legal trade and travel. We enforce immigration laws to protect public safety, promote economic fairness and competition, and maintain the integrity of our immigration system. We administer legal immigration benefits and services to millions of new and aspiring Americans, including members of our Armed Forces. And we work with a range of Federal, state, tribal, local, territorial, and international partners to advance all of these efforts, while ensuring that the civil rights of affected communities are respected.

We have made great strides in each of these areas over the past four years and, indeed, since the department's founding ten years ago. In order to build on this strong record, America needs a 21<sup>st</sup> century immigration system that meets the needs of law enforcement, businesses, immigrants, communities, and our economy. The current patchwork of outdated laws and requirements fails in each of these areas, and we are hopeful that this new bipartisan legislation will address each of these needs. We know what needs to get done to mend this broken system, to change our laws to create a 21<sup>st</sup> century system and one that lives up to our proud traditions.

The principles for commonsense immigration reform are encompassed in the Border Security, Economic Opportunity, and Immigration Modernization Act.

#### **Stronger Border Security and Immigration Reform**

These principles begin with continuing to focus on securing our borders. Over the past four years, the Obama Administration has made historic investments in border security, adding more personnel, technology, and infrastructure; making our ports of entry more efficient to lawful travel and trade; deepening partnerships with federal, state, tribal, and local law enforcement, and

internationally; improving intelligence and information sharing to identify threats sooner; and strengthening entry procedures to protect against the use of fraudulent documents and the entry of those who may wish to do us harm. We are proud of these achievements, which reflect the hard work of many DHS agents and officers and our partners, who work long hours and often at great personal risk.

These efforts have contributed to a border that is far stronger today than at any point in our nation's history, and border communities that are safe and prosperous. Since 2004, we have doubled the number of Border Patrol agents from approximately 10,000 in 2004 to more than 21,000 today. Even in a time of fiscal austerity, the President's budget includes adding nearly 3,500 additional Customs and Border Protection Officers to reduce growing wait times at our land, air, and sea ports of entry, while also increasing seizures of illegal items and counterfeit goods, and protecting our country from national security or public safety threats. Along the Southwest border, the number of Border Patrol agents has increased by 94 percent to nearly 18,500. Along the Northern border, we now have more than 2,200 Border Patrol agents.

To facilitate the secure flow of people and goods, we have also increased the number of U.S. Customs and Border Protection (CBP) officers ensuring the secure flow of people and goods into our nation also has increased from 17,279 customs and immigration inspectors in 2003 to more than 21,000 officers and 2,400 agriculture specialists today.

CBP also has deployed proven, effective technology to the border tailored to the operational needs of our agents on the ground. In addition, we have expanded unmanned aerial surveillance to the entire Southwest border and strengthened our air and marine interdiction capabilities.

The results of these efforts speak for themselves. Attempts to cross the Southwest border illegally, as measured by Border Patrol apprehensions, have decreased 49 percent over the past four years, and are 78 percent lower than what they were at their peak. Since 2009, DHS has also seized 71 percent more currency, 39 percent more drugs, and 189 percent more weapons along the Southwest border, compared to the previous four year period. Further, since 2008, crime in each of the four Southwest border states—Arizona, California, New Mexico, and Texas—has decreased significantly.

To build on these successes, efforts to strengthen security at our borders must continue. The President's proposal identified continued use of proven technologies to secure the land and maritime borders, strengthening and improving infrastructure at ports of entry, expanding smart enforcement efforts that target convicted criminals in correctional facilities, and cracking down on criminal networks engaging in passport and visa fraud and human smuggling, and improving partnerships with border communities and law enforcement.

I am pleased to see that the Border Security, Economic Opportunity, and Immigration Modernization Act, included similar provisions that would help us accomplish these efforts. In particular, funding for the Department to continue deployment of proven, effective surveillance technology along the highest trafficked areas of the southwest border will help us continue to achieve record levels of apprehensions and seizures. Funds will be used to procure and deploy

technology tailored to the operational requirements of the Border Patrol, the distinct terrain, and the population density within each sector. These provisions will allow us to sustain and build on our progress and ensure a border region that is safe and thriving.

**Strengthening Employee Tools and Employer Verification**

One of the best ways to reduce illegal migrant traffic across the border – and thereby strengthen border security – is by reducing opportunities for unauthorized work in the United States. We believe a mandatory employee verification system combined with stronger tools to help employers maintain a legal workforce will help us achieve that goal and should be part of any comprehensive immigration reform package.

The President's proposal calls for a mandatory, phased-in electronic employment verification to provide tools for employers to ensure a legal workforce and increases the penalties for employers who hire undocumented workers to skirt the workplace standards that protect all workers. The President's proposal also calls for protecting workers against retaliation for exercising their labor rights and ensuring confidentiality and privacy protections for personal information.

The Border Security, Economic Opportunity, and Immigration Modernization Act includes many of these proposals. The bill mandates a national system that would be phased in over 5 years, starting with federal government and critical infrastructure employers and ending with small employers and the agricultural industry. This timeline is essential for the Department to ensure that the System meets the needs of every employer in the country—the majority of which do not currently participate in the system—and the diversity of our workforce. The bill also includes identify fraud measures such as the ability for individuals to lock their own Social Security number or for the Department to lock suspected fraudulent use of Social Security numbers.

Businesses of all kinds and sizes must be able to find and maintain a stable, legal workforce, and have confidence that they are all playing by the same set of rules. When businesses break the law by hiring undocumented workers, it undercuts lawful businesses, creates an uneven playing field, and hurts all workers, affecting wages, employee safety, and creating further demand for illegal labor.

The employment verification system proposed in this bill will support stronger border security, the integrity of our immigration system, and the American economy, by providing businesses with a clear, free, and efficient means to determine whether their employees are eligible to work in the United States. By helping employers ensure their workforce is legal, electronic verification promotes economic fairness and a level playing field, prevents the illegal hiring that serves as a magnet for further undocumented immigration across our borders, and protects workers from exploitation.

The President's 2014 Budget includes \$114 million to operate E-Verify, improve the system's fraud-prevention and detection capabilities, modernize E-Verify customer service to improve ease of uses, and build additional capacity to support continued expansion. The Budget also enhances E-Verify Self Check, an online service that provides U.S. workers with the opportunity

to ensure employment authorization records are accurate before getting a job and improves employee understanding of the employment eligibility process.

We also believe that the penalties proposed in the bill for hiring undocumented workers serve as a further disincentive to illegal hiring. In combination with DHS's existing worksite enforcement strategy, these measures would significantly reduce the jobs magnet that drives much of the illegal flow across our borders and enhance border security.

#### **Earned Legalization with a Path to Citizenship**

Equally important, the President's framework for commonsense creates a mechanism to bring the millions of undocumented immigrants unlawfully present in the United States out of the shadows and into a legal, regulated pathway to earned citizenship. No one questions that those unlawfully in the United States should be held accountable for their actions. But they are here, and in many cases they have been in the United States for years, have raised families here, and are now contributing members of our communities. Removing all of them is not only impractical and cost-prohibitive, but inconsistent with our values.

For immigration reform to be successful, we believe these individuals should have a clear pathway to earned citizenship. But it must be evident from the outset that there is such a pathway and it is attainable. It won't be a quick process but it must be a fair process. The President's framework provides such a roadmap. It requires immigrants to register, submit biometric data, pass criminal background and national security checks, and pay fees in order to be eligible for provisional legal status. These individuals with provisional status would have to wait until the current legal immigration visa waiting lists are cleared and pay penalties before being able to apply for lawful permanent residency, and ultimately, United States citizenship. We also believe childhood arrivals—known as DREAMers—should be eligible for earned citizenship. Additionally, immigrant farm workers, many of whom are currently undocumented, must be provided a similar opportunity to get on the right side of the law.

Again, the Border Security, Economic Opportunity, and Immigration Modernization Act is consistent with the President's framework. This bill would allow individuals in the United States by December 31, 2011 to apply for registered provisional immigrant status, and eventually obtain permanent residence and citizenship. It's not an easy path. They will need to comply with many requirements, including documenting a history of work, paying penalties and taxes, and learning English. DREAMers and immigrant farm workers have also been included, and those who complete the rigorous requirements of the bill will be placed on an expedited path to citizenship.

Having a large population of undocumented immigrants in our country creates problems for law enforcement and leaves many immigrants vulnerable to exploitation and harm. Creating provisional legal status for these individuals, and an eventual path to earned citizenship for those who qualify, will ensure that our immigration enforcement resources remain focused on high priority cases and national security threats.

**Streamlining Legal Immigration**

Our nation's immigration system is just that – a system. Its elements work together and support each other, and must be considered in their totality, not as distinct, unrelated pieces. Therefore, what we do to strengthen border security and immigration enforcement is directly tied to our efforts to promote and strengthen lawful immigration. By extension, all of these elements must be included in comprehensive immigration reform.

We have already made progress in improving the legal immigration process over the past four years. Our commitment to improving legal immigration includes launching new initiatives to spur economic competitiveness; streamlining and modernizing immigration benefits processes; strengthening fraud protections; protecting crime victims; supporting and helping to integrate refugees and asylees; updating rules to keep immigrant families together; and promoting civic engagement and integration.

For example, USCIS has launched initiatives to spur economic competitiveness by attracting foreign entrepreneurial talent to create jobs, form startup companies, and invest capital in areas of high unemployment. DHS also has taken action using existing authorities to keep more talented science and math graduates in the country longer and to attract highly skilled immigrants who will be critical to continuing our economic recovery and encouraging job creation. USCIS also has begun to modernize its immigration benefits system, transitioning from a paper-based to an electronic system that will improve case management and efficiency, and it has improved its fraud detection capabilities and efforts to combat immigration-services scams.

We also have worked to help protect victims of domestic violence, human trafficking, and victims of devastating natural disasters and violent conflicts, as well as individuals from around the world seeking refuge or asylum in the United States. We have made rule changes that will reduce the time U.S. citizens are separated from their immediate relatives who are in the process of applying for immigrant visas to become lawful U.S. permanent residents. And we have continued to strengthen our work with communities nationwide to promote citizenship preparation, including civics-based English instruction and education on the rights and responsibilities of citizenship.

There is much more to be done in each of these areas, but further progress requires statutory changes. Outdated legal immigration programs need to be reformed to meet current and future demands. That is why the President's proposal calls for an overhaul of legal immigration system so that families can be reunited and to ensure it better aligns the available legal workforce with the needs of our economy and strengthens economic competitiveness.

Although not entirely consistent with the President's proposal, the Border Security, Economic Opportunity, and Immigration Modernization Act would also overhaul our current employment and family immigration systems and reduce the existing backlogs. The bill makes significant changes in employment based programs that will also us to attract and retain highly skilled workers and entrepreneurs. The bill provides green cards to both low and high skilled workers that our economy needs to recover. This is especially important in the STEM fields. The bill

would allow STEM PhD and Master's Degree graduates from qualified U.S. universities who have found employment in the United States to remain here as permanent residents. Providing visas to foreign entrepreneurs will enable them to start and grow their businesses in the United States, and create jobs for American workers, and strengthen our economy.

Like the President's proposal, the bill treats spouses and children of permanent residents as immediate relatives. Outdated legal immigration programs need to be reformed to meet current and future demands. I am pleased to see that the bill eliminates existing waiting lists in the family-sponsored immigration system by recapturing unused visas and temporarily increasing annual visa numbers, raising annual country caps, and revising current unlawful presence bars and providing broader discretion to waive bars in cases of hardship.

The bill also contains important protections for vulnerable immigrants, including those who are victims of crime and domestic violence, and asylum seekers by eliminating certain limitations that prevent qualified individuals from applying for asylum. The bill also contains provisions creating new temporary worker programs – one targeted to the agricultural industry and another broader based program – that are the product of compromise between business and labor leaders seeking to address worker shortages while also protecting American workers.

#### **Conclusion**

Over the past four years, DHS has worked very hard to meet our immigration responsibilities in a smart, common-sense manner. The results we are seeing today reflect the most serious and sustained effort to strengthen border security and enforce immigration laws that I've seen in the more than twenty years I've been engaged in immigration enforcement and policy. Our men and women on the frontlines, in the interior, and overseas deserve a great deal of credit for this success.

Today our borders are more secure and our border communities are among the safest communities in our country. We have removed record numbers of criminals from the United States and our immigration laws are being enforced according to sensible priorities. We have taken numerous steps to strengthen legal immigration and build greater integrity into the system. And we are using our resources in a smart, effective, responsible manner. We have matched words with action, and now is the time to take the next step and fundamentally reform the nation's immigration system to reflect the realities of the 21<sup>st</sup> century.

We must not miss this opportunity to enact meaningful reforms to not only strengthen our immigration system but also to ensure that our nation remains a land of opportunity for immigrants, businesses, and all those whose dreams, aspirations, hard work, and success have contributed to our nation's uniqueness, diversity, cultural richness, and economic strength since our founding. The time to modernize our immigration laws is long overdue, and we stand ready to work with this Committee and the Congress to achieve this important goal for our country, the American people, and all those seeking to contribute their talents and energy to our great nation.

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We are very encouraged by the progress that has been made thus far in developing the Border Security, Economic Opportunity, and Immigration Modernization Act. The introduction of this legislation is a true milestone, and we look forward to working with you to build on this momentum. Thank you, again, for the attention you are giving to this critical issue.

**Statement Of Senator Patrick Leahy (D-Vt.),  
Chairman, Senate Judiciary Committees,  
Hearing On Border Security, Economic Opportunity and Immigration Modernization Act,  
S.744  
April 23, 2013**

Let me begin by commending Secretary Napolitano and the men and women of the Department of Homeland Security who worked so hard last week as part of our coordinated national security effort in Boston. The Patriots' Day bombings and the identification and successful capture of the remaining suspect deserved her full attention.

Several Republican Senators not part of the bipartisan legislative effort for comprehensive immigration reform had demanded in March that you return to the Committee to testify about the workability of the legislation. Despite your appearance in February in which you testified extensively about this effort, I prevailed upon you to return. It is a testament to your commitment to reforming the immigration system that you were willing to return just two months after your last appearance and with the other important demands on you to help ensure our Nation's security. I suspect some will have questions about the events of the last week. I remind all Senators that this is their opportunity to ask you directly about the Border Security, Economic Opportunity and Immigration Modernization Act, which is the purpose of your appearance and testimony. Today, we meet to hear directly from the Cabinet Secretary who will be tasked with implementing this legislation about whether it is workable.

In welcoming you back before the Committee, I repeat that you and President Obama have done more in the administration's first four years to *enforce* immigration laws and strengthen border security than in the previous administration's entire eight years. The border patrol has more than 21,000 agents, more than at any point in its history. New technologies have been deployed to the border. Apprehensions along the border are the lowest we have seen in decades because fewer people are trying to cross. And according to a report by the Migration Policy Institute, the United States now spends more money on immigration enforcement agencies than it does on all our major federal law enforcement agencies put together. So it is hard to understand how some can still be saying that before we reform the immigration system we must do enforcement first. We have. I hope as we consider this legislation, Senators will acknowledge the tremendous progress that has been made.

It is long past time for us to reform our immigration system. We need an immigration system that lives up to American values – one that allows families to be reunited and safe. One that treats individuals with humanity and respects due process rights and civil liberties. One that shields the most vulnerable among us, including children, crime victims, asylum seekers and refugees. One that will help to reinvigorate our economy and enrich our communities.

I have commended Senator Schumer, Senator McCain, Senator Durbin, Senator Graham, Senator Menendez, Senator Rubio, Senator Bennet, Senator Flake and Senator Feinstein for their extraordinary work. I am concerned, however, that what some are calling "triggers" could long delay green cards for those who we want to make full and contributing participants in our society. I do not want people to move out of the shadows only to be stuck in some underclass.

Just as we should not fault “dreamers” who were brought here as children, we should not make people’s fates and future status depend on border enforcement conditions over which they have no control. And I am disappointed that the legislation does not treat all American families equally. We must end the discrimination that gay and lesbian families face in our immigration law. I also am concerned about changes to the visa system for siblings and the lack of clarity about how the new point-based visa system will work in practice. And I question whether spending billions more on a fence between the United States and Mexico is really the best use of taxpayer dollars.

Throughout our history, immigration has been an ongoing source of renewal of our spirit, our creativity, and our economic strength. From the young students brought to this country by their loving parents seeking a better life, to the hardworking men and women who play vital roles supporting our farmers, innovating for our technology companies, or creating businesses of their own, our Nation continues to benefit from immigrants. We need to uphold the fundamental American values of family, hard work and fairness. The dysfunction in our current immigration system affects all of us. It is time to fix it. Now is our opportunity to do so.

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**Questions for Secretary Napolitano  
From Senator Grassley  
For the Record following the April 23<sup>rd</sup> hearing**

◦ Border Security

1. You have emphasized that apprehensions at the border are down, and in doing so, praise the Administration's record on border security. However, Customs and Border Protection has just released numbers showing that apprehensions increased 13 percent over the last year. Does the fact that border apprehensions are up mean that the border is becoming less secure?
2. The bill only calls for establishing an entry/exit system for air and sea ports before implementing the path to citizenship. Aside from costs, what impediments are there to instituting the system at land ports?
3. The bill requires your Department to establish a strategy to identify where fencing should be deployed along the southern border. During the hearing, you indicated that the administration believes that sufficient fencing is in place and that you'd prefer not to increase fencing along the southern border. Do you anticipate that your study will call for *any* additional physical fencing?
4. During the hearing, we discussed the fact that the Northern border was not a part of the trigger and did not need to be secured before green cards are distributed. You said that the Northern border is a different border, but that it's a part of the discussion. Can you elaborate? Can you describe how the northern border is "different?" Please provide a list of "Other than Canadians" that have crossed the Northern border illegally in the last ten years, including their country of origin.
5. Section 1102 of S. 744 requires the Secretary to increase the number of CBP officers by 3,500; however, it does not specify how many of those agents will be used to secure the physical border versus customs enforcement and other mission requirements. How do you envision this section being implemented, and how would the department make decisions with regard to determining how many agents are hired to secure the physical borders?
6. Section 1104 provides funding for only the Tucson Sector of the Southwest Border region. Does the administration support only resources to this sector? Are there other sectors that should be included? If so, please provide details.
7. Section 1105 relates solely to the State of Arizona. Should this provision be expanded to all of the Southwest Border states?
8. Section 1107 provides for a grant program in which individuals who reside or work in the border region and are "at a greater risk of border violence due to lack of cellular service" can apply to purchase phones with access to 911 and equipped with GPS. Does the administration believe that the Southwest Border region is safe and secure, rendering this grant program unnecessary?

9. Does the administration have any views on Section 1111 on the Use of Force, including the requirement that the department collaborate with the Assistant Attorney General for the Civil Rights Division of the Department of Justice?

- WORKSITE E-VERIFY

E-Verify has proven to be an effective tool to help employers verify the work eligibility of its workforce. It's web-based and easy to use. The system has been ready for national deployment for years. Yet, this bill doesn't make it mandatory for all employers for five years from the time your Department issues regulations. How long will it take your Department to issue regulations with regard to the E-Verify program?

- Layers of Review

1. The bill is full of administrative reviews for people here illegally. What is your position on the ability of these people to take a denial or revocation to a U.S. Federal court?
2. The bill would grant Immigration Judges broad new discretion to allow an immigrant that DHS wants to remove to stay in the United States by waiving current bars to admission and removal grounds for numerous crimes such as drug crimes, firearms offenses, domestic violence, fraud, high speed flight at a checkpoint, and crimes involving moral turpitude, if the Immigration Judge finds hardship to a citizen or legal permanent resident or if he thought it was in the public interest. Do you think current immigration laws are too strict against illegal immigrants who engage in this type of criminal conduct?
3. The bill provides for broad authority for appeals to district courts and circuit courts if your Department denies an alien's application for the legalization program. Thus, if DHS denies an alien's request for legalization, the alien can appeal to federal court and delay his deportation for years. This would include criminal aliens. Do you think federal courts should be able to second guess your decision of whether to deny an application for the bill's legalization program and prevent you from removing aliens including criminal illegal immigrants?

- Legal Immigration

1. The bill provides for an increase in H-1B visas. It also includes a so-called "market escalator" that allows the cap to move up or down, based on demand. The agency has always had difficulty counting the visas, sometimes exceeding the congressional mandated cap. Some say this bill only complicates the matter. Do you support this approach to the H-1B cap?
2. The bill allows the U.S. CIS to "recapture" unused visas. Is there any such thing as an "unused" visa? Please list how many visas have been "unused" each year since 1990 and what category they fall under.

- New Temporary Worker Program

1. The new temporary worker program – known as the W visa program – is a brand new concept in which an employer applies independently from the foreign national. It's a two step process, giving instant portability to the worker and very little responsibility for the employer. Do you think this program is properly set up? How would you improve it?
  
2. In 1996, after the 1993 World Trade Center attack, Congress mandated that the immigration service, with cooperation from schools and universities, collect information on foreign students. This system took years to get up and running. In fact, it still wasn't in place on 9/11. While it's operational today, there's still work to be done to make that system effective. Yet, the bill would require the U.S. Citizenship and Immigration Service – the same agency in charge of the legalization program, E-Verify, and every other immigration benefit – to set up and operate a monitoring system for employers who use the new W visa program. The bill clearly lacks instruction on how your Department will establish and maintain this very critical monitoring system, exposing a huge vulnerability. How do you anticipate setting up this system, and when would it be operational?
  
3. The bill creates the Bureau of Immigration and Labor Market Research as an independent statistical agency within the U.S. Citizenship and Immigration Services. The Bureau will devise a methodology to determine the annual change to the cap for W visas. The new Commissioner of this Bureau will designate shortage occupations, in need of workers, so that an employer can petition the Commissioner for a determination of whether a particular occupation in a particular area has been deemed a shortage occupation.
  - Why is there a need to create this new Labor Market Research agency housed in the U.S. Citizenship and Immigration Services? Why not put it in the Labor Department, which undoubtedly has access to similar information? Particularly when the bill appropriates, not authorizes, but appropriates \$20 million to establish the Bureau. Aren't there more efficient and cost-saving ways to handle this?
  - The bill permits employers to “lobby” the Commission of the new Bureau for a determination of whether they can fill particular jobs with temporary workers as opposed to U.S. citizens. What kind of message does that send to the public, especially when the bureau is meant to be an “independent statistical agency”?
  
- Legalization RPI status
  1. Your testimony stated that the Department has removed a record number of criminals from the United States. But, I'm afraid that some parts of the bill we're considering would undermine the work of your agents, further weakening the confidence of the American people that we're serious about enforcing the laws. The bill states that individuals here illegally who apply for RPI status are not made ineligible even if they've been convicted of numerous misdemeanor offenses. As written, only if

someone's been convicted, on different days, of 3 or more offenses are they ineligible for RPI status. So, if someone was convicted of 10 misdemeanor offenses on one day, then that person isn't ineligible?

2. In the past, there has been an attempt to impose a time limit for federal agents to complete background checks on aliens who apply for legalization. Will you assure us that, under your leadership, no such time limit would be imposed?
3. The bill simply provides authority to the Secretary of Homeland Security to require an applicant for Registered Provisional Immigrant status to appear in person for an interview. Congress said that anyone applying to enter the country from abroad should undergo an in-person interview. Why should this be any different? Under your leadership, would you require those who apply for legal status to undergo an interview with agents? How many times, and under what circumstances, have DACA applicants been interviewed?
4. The bill prohibits the Secretary to detain or remove any person during the application period, with limited exceptions including those whose RPI status has been revoked. What action would the department take against aliens during the application process who are a serious national security, public safety or health risk?
5. One of the requirements under this bill – and previous bills in the last several years – is that those here illegally would have to pay back taxes before they are legalized. The bill lacks detail about how this would actually be carried out. Given that your department will have to process millions of people and determine if they paid all their tax liabilities, how do you envision this working?
6. If an alien provides information in an application that is law enforcement sensitive or criminal in nature, should that information be used by our government and not be protected under confidentiality provisions – even for law enforcement and national security purposes? b) Does the language, in the department's opinion, preclude the ability to disclose information related to visa fraud or immigration fraud with law enforcement entities? c) If an applicant provides information in an application that clearly renders him ineligible and commits a serious crime that would warrant his immediate removal, shouldn't the government be able to use that information to place him in deportation proceedings?
7. The bill doesn't make gang membership an inadmissible or deportable offense. It only renders them so if they commit a felony. Should gang members be allowed to benefit from a legalization program?
8. Does the bill allow those who have current investigations for having filed and been denied applications under another identity to be eligible for legalization/RPI status?
9. Should people that have been denied legalization through the program be placed in immigration proceedings and removed?
10. You responded to questions after the February 13<sup>th</sup>, 2013, hearing by saying that USCIS plans to hire a total of 1,422 positions to support the DACA workload. How

many more positions at USCIS, ICE and CBP will need to be hired to fulfill the requirements under S. 744?

11. Will the department publish guidelines or a broad policy memorandum regarding affidavits that are allowed under the bill? How will fraud and abuse be prevented, and will training be provided to adjudicators on affidavits? Given that the department has accepted various forms of evidence for DACA, including receipts for purchase of internet video games, what has the department learned about affidavits and what will the department change from the DACA guidelines?
12. Does this bill, or any other provision of law, penalize people here unlawfully from falsely claiming eligibility for RPI status? Is there concern that aliens could falsely claim eligibility in order to avoid detention and removal?

• Other

1. On April 23<sup>rd</sup>, the U.S. District Court for the Northern District of Texas concluded that the Plaintiffs in *Christopher L. Crane et al v. Janet Napolitano* are likely to succeed on the merits of their claim that the DACA directive violates 8 USC 1225(b)(2)(A). This preliminary decision reflects how the administration has overstepped its authority to reinterpret current law. How can the American people trust that you and this administration will faithfully carry out an immigration bill passed by Congress?
2. Section 3405 provides for protections for certain “stateless” persons in the United States and allows the Secretary of Homeland Security to designate specific groups of individuals who are considered stateless persons. This provision appears to grant blanket relief to any “stateless” person who is in the United States, even though a date of physical presence is not identified. Does the administration support this provision? Given that this provision has serious implications for national security and delegates unlimited power to you as Secretary, can you describe who would be designated under this section if the bill were to pass as written?
3. Are the timelines provided in the bill, including the requirements for reporting and issuing regulations, appropriate and realistic?
4. There is concern that terrorists have and will continue to exploit our immigration system to enter and remain in the United States. One witness on April 22 testified that terrorists have used our generous asylum laws to gain status. Can you provide statistics on the number of people in the United States that have sought asylum and were granted asylum in each of the last 10 years? Are there ways to improve the process so that terrorists don’t abuse the system?
5. During the hearing, Senator Feinstein inquired about a provision that would streamline the asylum screening process by allowing your Department to grant asylum immediately following a screening interview. She expressed fear that your Department would not confer with the State Department, as it does not, to verify the veracity of an asylum applicant’s claims. While you responded that your Department has good relationships with the State Department, you failed to answer whether proper checks would be done before granting asylum to anyone who shows up at our ports of entry.

Can you please elaborate on this matter and explain how the Department would work with State? How does this not make us more vulnerable to those who will try to take advantage of this expedited process?

- Tsarnaev Brothers
  - (a) When did Dzhokhar Tsarnaev first arrive in the United States?
  - (b) When did Tamerlan Tsarnaev first arrive in the United States?
  - (c) Please provide a timeline of when the Tsarnaev brothers' parents claimed asylum in the United States.
  - (d) What was the basis for granting the Tsarnaev brothers Legal Permanent Resident status?
  - (e) When did DHS officials first have questions about Tamerlan Tsarnaev? Please detail all investigative measures undertaken regarding him.
  - (a) Was DHS aware at any time in 2011 that the FBI was investigating Tsarnaev? If so:
    - a. When and for what?
    - b. Did DHS give any consideration at that time to revoking Tsarnaev's Legal Permanent Resident status? If so, why wasn't it ever revoked?

#### **Spelling Error**

During yesterday's hearing, I asked you: "Is it true that his identity document did not match his airline ticket?" You responded: "There was a mismatch there. . . . But even under—even with the misspelling, under our current system, there are redundancies, and so the system did ping when he was leaving the United States."

- (a) On what specific document was Tamerlan's name misspelled?
- (b) What redundancies were you referring to?
- (c) Did TSA crosscheck Tsarnaev's passport and Legal Permanent Resident Card with his boarding pass when he left the country?
- (d) What steps should TSA officials take if an individual's boarding pass does not match their identity documentation when they go through airport security?
- (e) Did TSA officials take those steps in the case of Tsarnaev in January 2012? If not, why?
- (f) Was Tsarnaev questioned upon his departure about the discrepancy regarding the misspelling to which you referred?

#### **Notification of Tsarnaev Departure from United States**

The Assistant Director of the FBI indicated to Senator Graham that they received no notification when Tamerlan Tsarnaev left the United States in January 2012. However, you stated yesterday: "The system pinged when he was leaving the United States. By the time he returned, all investigations had been -- the matter had been closed."

- (a) What "system pinged" when Tsarnaev was leaving the United States?
- (b) What are the positions and agencies of the individuals who received notification of this initial ping?

- (c) What further notifications did DHS make to other agencies, including the FBI, based on this initial ping? Please provide the date and method each further notification was made. By agency and position, what individuals received the further notifications?
- (d) What subsequent steps, if any, were taken with this notification?
- (e) Did any of DHS's component agencies notify FBI of Tamerlan's travel to Russia? If so, which agency, on what date, and by what method? If not, why not?
- (a) What was the date of Tamerlan's departure from the United States in January 2012?
- (b) What was the date of Tamerlan's return to the United States in July 2012?
- (c) You stated that when Tamerlan returned to the United States, "all investigations had been closed on him." What investigations were open or opened on Tamerlan in January 2012?
- (d) According to one press account, "many agencies were aware of Tsarnaev's return" to the United States in mid-July.<sup>[2]</sup> Did Tamerlan's return to the United States receive any notice by DHS or any of its components? Was this different from what a U.S. citizen or Legal Permanent Resident would typically receive when re-entering the United States? If so, why?
- (e) Did any of DHS's component agencies notify any other agency (including agency-to-agency within DHS) that Tamerlan was re-entering the United States?
- (f) According to another press account, "An official at the Department of Homeland Security said [Tamerlan] was on the 'radar screen' of agents in Boston from when he returned to the U.S. to the end of autumn."<sup>1</sup> Was this official's statement accurate? If so, what does that mean? Why was Tamerlan on DHS's radar? Why did he remain on DHS's radar in the weeks between when he returned to the United States in mid-July and when he applied for citizenship on September 5, 2012?
- (g) How does an individual get added into TECS such that the system issues alerts when that individual enters or departs the United States?
- (h) What is the process for removing someone from TECS?

#### **Notification of Tsarnaev Departure from United States**

You stated yesterday: "By the way, the bill will help with this because it requires that passports be electronically readable, as opposed to having to be manually input. It really does a good job of getting human error, to the extent it exists, out of the process."

- (a) What country's passport did Tamerlan Tsarnaev use to depart and re-enter the United States?
- (b) If this legislation had been in place, how would it affect individuals traveling with a foreign passport?
- (c) What procedures does the U.S. have in place to verify the integrity of passports issued from other countries?

#### **Dzhokhar Tsarnaev Citizenship**

<sup>[2]</sup> Hillary Chabot and Dave Wedge, "FBI's concern was Qaeda, not Chechens, says Sen.," *Boston Herald* (Apr. 24, 2013), available at

[http://bostonherald.com/news\\_opinion/local\\_coverage/2013/04/fbi\\_s\\_concern\\_was\\_qaeda\\_not\\_chechens\\_says\\_sen](http://bostonherald.com/news_opinion/local_coverage/2013/04/fbi_s_concern_was_qaeda_not_chechens_says_sen).

<sup>1</sup> Philip Sherwell, Nick Allen and Patrick Sawyer, "Boston bomber arrested: Tamerlan Tsarnaev was questioned by FBI in 2011," *The Telegraph* (Apr. 22, 2013), available at

<http://www.telegraph.co.uk/news/worldnews/northamerica/usa/10008004/Boston-bomber-arrested-Tamerlan-Tsarnaev-was-questioned-by-FBI-in-2011.html>.

According to press reports, Dzhokhar Tsarnaev became a U.S. citizen on September 11, 2012.

- (a) When did Dzhokhar submit his application for citizenship?
- (b) Did DHS conduct background checks on Dzhokhar's family members in the course of his citizenship process? If not, why not?
- (c) Did DHS officials conducting the background investigation on Dzhokhar know about Tamerlan's interview by FBI? If so, did they contact the FBI about Dzhokhar applying for citizenship?
- (d) What derogatory information was on file with DHS about Tamerlan while his brother's citizenship application was being considered?
- (e) Why was Dzhokhar Tsarnaev given citizenship given the derogatory information about Tamerlan on file with DHS?

**Tamerlan Tsarnaev Citizenship Application**

- (a) During Tamerlan's citizenship process, what alerted DHS to the fact that he had been interviewed by the FBI?
- (b) What databases were utilized in the background check of Tamerlan?
- (c) During the background check of Tamerlan, what referrals or requests were made to the FBI and what responses, if any, were received?
- (d) When DHS learned that the FBI had interviewed Tamerlan in 2011, did DHS notify the FBI that Tamerlan had applied for citizenship?
- (e) Does DHS have direct access to Terrorist Identities Datamart Environment (TIDE) or Terrorist Screening Database (TSD) in conducting background checks for those applying for United States citizenship?

**Other Individuals in ICE Custody**

The Associated Press reported on April 20 that HSI arrested two individuals in New Bedford, Massachusetts.<sup>2</sup>

- (a) Do the individuals have any connection to either of the Tsarnaev brothers?
- (b) Are the two individuals suspected in any other crimes?
- (c) Are any individuals being deported as a result of the investigation that began with the Boston Marathon bombing?

• **Unregistered Alien Sex Offenders in ICE Custody**

I understand that a large number of unregistered alien sex offenders may be under the supervision of U.S. Immigration and Customs Enforcement (ICE). Typically when a sex offender leaves prison, the Bureau of Prisons sends a letter to their state saying the person should register within three days. However, when the Bureau of Prisons hands over an alien sex offender to your Department, it's up to ICE to make sure that they get registered.

- (a) Does ICE require alien sex offenders to register?
- (b) How many unregistered alien sex offenders are in the custody of ICE?
- (c) How many unregistered alien sex offenders are on parole and under ICE supervision?

<sup>2</sup> "ICE Arrests 2 in Mass. Town Tied to Bombing Case," Associated Press (Apr. 20, 2013), available at <http://bigstory.ap.org/article/ice-arrests-2-mass-town-tied-bombing-case>.

- (d) How frequently is check-in with ICE required for alien sex offenders who are on parole and under ICE supervision?
- (e) Will you commit to address this issue immediately?

**The Senate Judiciary Committee  
Hearing on Comprehensive Immigration Reform Legislation  
Tuesday, April 23, 2013**

**From Senator Orrin Hatch**

**Question to Secretary Napolitano:**

How does the Department of Homeland Security determine whether the resources it is dedicating to border security are effective?

At last week's Homeland Security and Government Affairs Committee hearing, Senator McCain expressed frustration that there was not an established metric to rate the security of our borders.

Have you reconsidered or thought of a better answer to this question than the one you gave Senator McCain last week?

I agree with him, measuring our success is crucial.

Do you believe there is a way to give an accurate depiction of the security of our border?

**Question to Secretary Napolitano:**

Over the years, millions of marijuana plants have been eradicated from federal public lands. Outdoor marijuana cultivation is the chief source of revenue for Mexican drug trafficking organizations. Growing marijuana in the U.S. saves traffickers the risk and expense of smuggling their product across the border and allows gangs to produce their crops closer to local markets.

During the past several years, marijuana growing operations have been a serious problem on Utah's public lands where tens of thousands of plants have been seized.

Law enforcement officials confirm that all of the perpetrators arrested at these marijuana grows were both present in the United States illegally and armed with firearms.

This problem is not unique to Utah. Other states with substantial federal lands – including Colorado, California, Idaho, Nevada, Oregon and Michigan – are also seeing a spike in marijuana cultivation by Mexican drug trafficking organizations.

What are your thoughts on providing tougher penalties for cultivating marijuana on federal lands?

**Question to Secretary Napolitano:**

How can we ensure that those applying for legalization under the Border Security, Economic Opportunity, and Immigration Modernization Act are who they say they are?

I assume there will be facial recognition and fingerprint verifications built into the criminal background checks; but at the end of the day, it seems that as long as an individual hasn't committed a crime here in the United States, he or she could take on another identity.

So, a lot hinges on the veracity of the documents presented when an immigrant applies for provisional status.

What kind of vetting process will be in place to prevent identity theft and fraud?

**Question to Secretary Napolitano:**

What margin of improvement do you expect from universally implementing the E-Verify program?

As an aside, I agree with my colleagues that we should deploy this program immediately.

**Question to Secretary Napolitano:**

The proposed legislation requires that a visa-exit system must be implemented for all international airports and seaports within 10 years.

You mentioned in today's hearing that an entry-exit tracking system would be ready to go within years. Are you referring to a time frame of less than five years or within 10 years as provided by the legislation?

**Question to Secretary Napolitano:**

Let me ask you about the new W visa category for the low-skilled guest worker program. The bill allocates 20,000 visas in the first year with a gradual increase to 75,000 in the fourth year.

Do you have any sense of whether this quota will address our country's needs and deter illegal immigration, or will we repeat the same mistakes made in 1986?

**Questions for the Record**  
**Comprehensive Immigration Reform**  
**Senator Mike Lee**  
**April 23, 2013**

**Secretary Janet Napolitano**

1. During the hearing, I asked you about the discretion granted to you to waive certain inadmissibility requirements for classes of RPI applicants. In response, you referenced the language of the bill, saying, “[T]here would be consideration based on the age of the conviction or the type of the conviction, whether the individual was the primary wage earner for a family, and the record since their prior conviction. . .” However the Bill as written gives you discretion to determine what is or is not in the public interest.
  - Can you help define what you would and would not consider as being in “the public interest” as it would apply to this situation?
  - Also, when defining family unity, do you mean to include only immediate family such as (spouse and children) or do you plan to extend the family unity language further than that?
  - Do you plan on setting forth any standards that will inform the public and Congress of the foundations on which your discretion in this area will be based?
2. You will have discretion to exempt other defined classes of individuals from the fee for adjustment to LPR status.
  - For what classes of individuals will you waive the fee?
  - What information or standards will guide the decision on who receives the waiver?
  - What safeguards will be put in place to ensure that this process is done fairly and impartially?
3. Fees and Penalties associated with the Act may be paid through installment payments. The process for such payments is determined by the Secretary. (p. 108)
  - What process do you plan on creating for collecting fees and penalties?
  - Do people applying for other immigrant visas enjoy the benefit of an installment plan?
4. The Act provides aliens the opportunity to challenge revocation of the alien’s application through administrative appellate review, if that fails, before a U.S. district court, and if that fails, through the U.S. court of appeals, all while maintaining lawful presence. Then, if deportation proceedings begin, the alien can remain in lawful presence through a

second string of proceedings. This process allows for multiple layers of judicial review. (p. 124)

- Why should an illegal alien be permitted to pursue multiple attempts at judicial review for essentially the same determinations to be made, all the while enjoying lawful presence?
  - Do those who apply for other visas at consular offices have access to judicial review?
5. In order to adjust to LPR status from RPI status, an applicant must demonstrate that he or she is at 125 percent of the poverty level. (p. 97)
    - As the family of an applicant may follow on as derivatives (rather than each family member applying individually), will the poverty level threshold be based on the individual or the household as a whole?
  6. RPIs applying for adjustment to LPR status must show that they have been regularly employed or enrolled in school during their period of status as an RPI. Under the age exception, those younger than 21 on the date of RPI renewal are exempt from this requirement. Under this exception, a 24-year-old applying for adjustment is exempt from the requirement to work or be enrolled in school.
    - Do you believe that 24-year-olds should be exempt from the requirement to be employed or in school?
  7. The E-verify language in this bill exempts from the definition of employers any employment that is “casual, sporadic, irregular, or intermittent.” (p. 402)
    - What employers would this exclude from the requirement to use E-verify? I would imagine this is meant to exclude those who hire babysitters? What about day laborers? Construction workers?
  8. This bill directs you to develop a photo “tool” for E-verify, connected to a database of photos kept at USCIS. This tool will enable employers to match the photo an employee’s documents with a photo maintained on the database. (p 414)
    - What measures will you take to ensure that such a tool does not evolve into a national photograph database used for non-E-Verify purposes?

RESPONSES OF HON. JANET NAPOLITANO TO QUESTIONS SUBMITTED  
BY SENATORS GRASSLEY, HATCH, AND LEE—REDACTED

<b>Question#:</b>	1
<b>Topic:</b>	border security 1
<b>Hearing:</b>	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
<b>Primary:</b>	The Honorable Charles E. Grassley
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** You have emphasized that apprehensions at the border are down, and in doing so, praise the Administration's record on border security. However, Customs and Border Protection has just released numbers showing that apprehensions increased 13 percent over the last year. Does the fact that border apprehensions are up mean that the border is becoming less secure?

**Response:** The deployment of resources that this Administration has made, by every traditional measure, has led to unprecedented success. In Fiscal Year (FY) 2012, Border Patrol apprehension activity remained at historic lows with apprehensions in California, Arizona, and New Mexico continuing a downward trend. In FY 2012, the Border Patrol recorded 364,768 apprehensions nationwide, 78 percent below their peak in 2000 and down 50 percent from FY 2008. An increase in apprehensions during FY 2013 was noted in south Texas, specifically of individuals from Central American countries, including El Salvador, Guatemala, and Honduras. However, significant border-wide investments in additional enforcement resources and enhanced operational tactics and strategy have enabled U.S. Customs and Border Protection (CBP) to address the increased activity. Today, there are more than 6,000 agents in South Texas, an increase of more than 93.5 percent since 2004.

The Border Patrol achieves this desired strategic outcome by maximizing the apprehension of detected illegal entrants or, confirming that illegal entrants return to the country from which they entered; and by minimizing the number of persons who evade apprehension and can no longer be pursued.

**Question:** The bill only calls for establishing an entry/exit system for air and sea ports before implementing the path to citizenship. Aside from costs, what impediments are there to instituting the system at land ports?

**Response:** CBP is moving forward with collecting biographic exit data in the land environment already, however, the land border environment is considerably different from that of air and sea. First, the traveler volume at land ports is significantly higher and includes various modes of transportation including vehicles, trains, buses, ferries, bicycles, trucks and pedestrians. There are also major physical infrastructure, logistics and operational hurdles to overcome to actually perform the collection of an individual's biographic/biometric data upon departure at a land border. Land border ports of entry along with the transportation routes were not designed with the intent of processing

<b>Question#:</b>	1
<b>Topic:</b>	border security 1
<b>Hearing:</b>	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
<b>Primary:</b>	The Honorable Charles E. Grassley
<b>Committee:</b>	JUDICIARY (SENATE)

outbound travelers in the same way as CBP processes inbound travelers. There are a limited number of vehicle and pedestrian lanes upon departure and vehicles can depart the United States traveling at 50 miles an hour at some locations.

To address these hurdles, the Department of Homeland Security (DHS) is developing innovative ways to collect biographical exit information at land borders. As part of the Beyond the Border Agreement with Canada, DHS and the Canada Border Services Agency (CBSA) are partnering to create a biographical entry/exit system on the shared land border by exchanging entry information, so that information collected on entry to one country is automatically recorded as an exit from the other. Essentially, each country collects biographical departure information for the other simply using their existing entry collection procedures, and shares this data with the other country.

This program began on June 30, 2013, and already CBP has collected over 2.5 million exit records from Canada, receiving approximately 10,000 to 15,000 per day. The program currently exchanges data only on third country nationals (i.e. non-American or Canadian citizens), but will expand to include citizens in 2014. Using available interfaces which already existed with Canada, this will be developed at virtually no cost. Accordingly, the United States already has an entry/exit system on its northern border today, just as it does in the air and sea environments. While CBP does not have physical structures or officers that facilitate collection of exit data directly from departing passengers, CBP still gets all of the relevant departure information.

On the southern border, CBP is researching additional ways to collect data from departing passengers into Mexico. However, there are significant differences in infrastructure, volume, and data collection procedures between Canada and Mexico. CBP is currently researching data collection methods that will have no impact on the flow of travel for departing travelers or trade between the two countries. These include data exchange programs similar to the northern border, the use of RFID technology for travelers with existing RFID-enabled documents, and several other possibilities. CBP has already begun discussions with the Mexican government regarding data exchange programs, and in 2015, CBP is planning to pilot additional technologies in the outbound pedestrian environment on the southwest border, where there is significant pedestrian traffic.

<b>Question#:</b>	2
<b>Topic:</b>	border security 2
<b>Hearing:</b>	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
<b>Primary:</b>	The Honorable Charles E. Grassley
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** The bill requires your Department to establish a strategy to identify where fencing should be deployed along the southern border. During the hearing, you indicated that the administration believes that sufficient fencing is in place and that you'd prefer not to increase fencing along the southern border. Do you anticipate that your study will call for any additional physical fencing?

**Response:** DHS would prefer flexibility with how funds should be used to fortify border security, as opposed to a mandate that all of the funds dedicated to fencing in the Senate bill go to additional fencing. We believe that increased investments supporting infrastructure, maintenance and repair, and technological assets would be a more efficient use of resources and more effectively provide the situational awareness and operational capabilities that would serve as a force multiplier for the Border Patrol.

<b>Question#:</b>	3
<b>Topic:</b>	border security 3
<b>Hearing:</b>	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
<b>Primary:</b>	The Honorable Charles E. Grassley
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** During the hearing, we discussed the fact that the Northern border was not a part of the trigger and did not need to be secured before green cards are distributed. You said that the Northern border is a different border, but that it's a part of the discussion. Can you elaborate? Can you describe how the northern border is "different?"

**Response:** Although the operational challenges in the Northern and Southern border environments vary greatly, the primary concerns or threats are very similar: the illegal movement of people, goods, and conveyances across the border. In the Northern Border environment, rugged terrain and a corresponding lack of infrastructure hinder our patrol capabilities and equally impede illicit cross border traffic.

To address these threats, the Department of Homeland Security's (DHS) Northern Border approach focuses on bi-national, federal, state, local, and tribal law enforcement partnerships, information sharing agreements, joint integrated operations, and community outreach in order to maximize efforts and resources. DHS employs coordinated inbound and outbound enforcement operations along the Northern Border with other law enforcement entities through Integrated Border Enforcement Teams (IBET), Border Enforcement Security Taskforces (BEST), and Integrated Cross-Border Maritime Law Enforcement Operations (Shiprider). IBETs, which are composed of Border Patrol agents, U.S. Customs and Border Protection officers, Immigration and Customs Enforcement agents, the U.S. Coast Guard, the Royal Canadian Mounted Police, and the Canada Border Services Agency, operate on a daily basis in 23 locations along the border. IBETs collaborate with municipal, provincial, state, federal, and tribal law enforcement agencies, stakeholder agencies, and related governmental departments to identify, investigate, and interdict persons and organizations that threaten the national security of our respective countries or that are involved in organized criminal activity, between the ports of entry. BESTs are multi-agency teams that identify, investigate, disrupt, and dismantle criminal organizations posing significant threats to border security. BESTs, which are ICE-led, utilize co-located and cross-designated investigative assets of federal, state/provincial, local, and tribal law enforcement partners on both sides of the border to investigate transnational crime. Under Shiprider, cross-designated U.S. and Canadian law enforcement officers perform joint patrols in shared maritime areas. The U.S. Coast Guard (USCG) and the Royal Canadian Mounted Police (RCMP) are the primary Shiprider participants.

<b>Question#:</b>	3
<b>Topic:</b>	border security 3
<b>Hearing:</b>	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
<b>Primary:</b>	The Honorable Charles E. Grassley
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** Please provide a list of “Other than Canadians” that have crossed the Northern border illegally in the last ten years, including their country of origin.

**Response:** While U.S. Customs and Border Protection does not maintain a list of aliens “Other than Canadians” that have crossed the Northern Border illegally over the last ten years, the total number of deportable, Non-Canadian apprehended on the Northern Border from Fiscal Year 2004 through Fiscal Year 2013 is 59,430.

<b>Question#:</b>	4
<b>Topic:</b>	border security 4
<b>Hearing:</b>	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
<b>Primary:</b>	The Honorable Charles E. Grassley
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** Section 1102 of S. 744 requires the Secretary to increase the number of CBP officers by 3,500; however, it does not specify how many of those agents will be used to secure the physical border versus customs enforcement and other mission requirements. How do you envision this section being implemented, and how would the department make decisions with regard to determining how many agents are hired to secure the physical borders?

**Response:** The mission of preventing illicit goods and people who would do us harm from entering the United States, while also facilitating the flow of legitimate trade and travel into and out of the United States, is demanding, complex, and constantly evolving, and requires adequate front-line staffing for effective and efficient performance. To meet this challenge, each U.S. Customs and Border Protection (CBP) officer is multi-disciplined and able to perform the full range of inspection, intelligence analysis, examination, and law enforcement activities related to the arrival and departure of persons, conveyances, and merchandise at the ports of entry (POEs). CBP's intent is for every CBP officer to directly contribute to the border security mission at the POEs – new CBP officers are brought on board with this understanding.

CBP has developed the Workload Staffing Model (WSM) to identify CBP officer staffing needs at ports of entry and inform staffing decisions. The WSM is a data-driven model that includes activities for all environments (air, land, and sea) and more than 100 workload elements. Actual deployment decisions are then made by CBP management, using a number of factors including the WSM results, service levels, and operations subject matter expertise; this information is regularly updated to account for changing conditions.

<b>Question#:</b>	5
<b>Topic:</b>	border security 5
<b>Hearing:</b>	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
<b>Primary:</b>	The Honorable Charles E. Grassley
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** Section 1104 provides funding for only the Tucson Sector of the Southwest Border region. Does the administration support only resources to this sector? Are there other sectors that should be included? If so, please provide details.

**Response:** U.S. Customs and Border Protection supports funding for resources throughout the border regions, consistent with the threat and management of risk.

<b>Question#:</b>	6
<b>Topic:</b>	border security 6
<b>Hearing:</b>	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
<b>Primary:</b>	The Honorable Charles E. Grassley
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** Section 1105 relates solely to the State of Arizona. Should this provision be expanded to all of the Southwest Border states?

**Response:** In accordance with the 2006 Memorandum of Understanding between U.S. Customs and Border Protection (CBP), the Department of the Interior (DOI), and the Department of Agriculture (USDA), Border Patrol agents have not been denied access in the case of an emergency or exigent circumstance to exercise their authority. All access issues that have been identified are currently being cooperatively addressed by CBP, DOI, and USDA's U.S. Forest Service. CBP does not believe any additional authority to access federal lands is necessary.

<b>Question#:</b>	7
<b>Topic:</b>	border security 7
<b>Hearing:</b>	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
<b>Primary:</b>	The Honorable Charles E. Grassley
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** Section 1107 provides for a grant program in which individuals who reside or work in the border region and are “at a greater risk of border violence due to lack of cellular service” can apply to purchase phones with access to 911 and equipped with GPS. Does the administration believe that the Southwest Border region is safe and secure, rendering this grant program unnecessary?

**Response:** The Department of Homeland Security (DHS) agrees that access to 911 service through cellular telephone service can improve public safety, and generally supports efforts to improve such access, whether in the Southwest border region or elsewhere. Border security has changed significantly over the past ten years, not only in terms of resources, infrastructure, and operations, but also in how we assess and measure the state of an ever-changing border environment. Over the past four years, the Obama Administration has made historic investments in border security, adding more personnel, technology, and infrastructure; making our ports of entry more efficient to lawful travel and trade; deepening partnerships with federal, state, local, tribal, and territorial law enforcement, and internationally; improving intelligence and information sharing to identify threats sooner; strengthening entry procedures to protect against the use of fraudulent documents and the entry of those who may wish to do us harm and enhancing our exit system to improve tracking and enforcement of overstays. We are proud of these achievements, which reflect the hard work of many DHS agents and officers and our partners, who work long hours and often at great personal risk.

These efforts have contributed to a border that is far stronger today than at any point in our nation’s history, and border communities that are safe and prosperous. Since 2004, we have doubled the number of Border Patrol agents from approximately 10,000 to more than 21,000 today. Along the Southwest border, the number of Border Patrol agents has increased by 94 percent to nearly 18,500. Along the Northern border, we now have more than 2,200 Border Patrol agents. To facilitate the secure flow of people and goods, we have also increased the number of U.S. Customs and Border Protection (CBP) officers ensuring the secure flow of people and goods into our nation from 17,279 customs and immigration inspectors in 2003 to more than 21,000 officers and 2,300 agriculture specialists today. CBP has deployed proven, effective technology to the border tailored to the operational needs of our agents on the ground. We have expanded our unmanned aerial surveillance capabilities and strengthened our air and marine interdiction capabilities. These efforts have contributed to a border that is more secure today than at any point in our nation’s history.

<b>Question#:</b>	7
<b>Topic:</b>	border security 7
<b>Hearing:</b>	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
<b>Primary:</b>	The Honorable Charles E. Grassley
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** Does the administration have any views on Section 1111 on the Use of Force, including the requirement that the department collaborate with the Assistant Attorney General for the Civil Rights Division of the Department of Justice?

**Response:** The Department believes that it is important for DHS to collaborate on Use of Force policies with the Assistant Attorney General for the Civil Rights Division of the Department of Justice. We believe that the language would be strengthened if it recognized the statutory and important role of the DHS Office for Civil Rights and Civil Liberties in such collaboration; CRCL is currently responsible for reviewing DHS programs, policies, etc., to ensure protection of civil rights and civil liberties.

<b>Question#:</b>	8
<b>Topic:</b>	worksite/e-verify
<b>Hearing:</b>	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
<b>Primary:</b>	The Honorable Charles E. Grassley
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** E-Verify has proven to be an effective tool to help employers verify the work eligibility of its workforce. It's web-based and easy to use. The system has been ready for national deployment for years. Yet, this bill doesn't make it mandatory for all employers for five years from the time your Department issues regulations. How long will it take your Department to issue regulations with regard to the E-Verify program?

**Response:** In its current form, the bill requires these regulations to be issued on an interim basis within one year of the date of enactment (sec. 3106). The bill also requires a five-year roll-out in mandatory use of E-Verify based on company size to ensure that the system meets the needs of both employers and workers (sec. 3101). DHS supports the current timeline specified in the bill, and will use the five-year rollout time frame to make additional enhancements and changes as required by the bill and to educate employers and employees nationwide.

<b>Question#:</b>	9
<b>Topic:</b>	layers of review 1
<b>Hearing:</b>	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
<b>Primary:</b>	The Honorable Charles E. Grassley
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** The bill is full of administrative reviews for people here illegally. What is your position on the ability of these people to take a denial or revocation to a U.S. Federal court?

**Response:** Availability of administrative review, and, when appropriate, judicial review, for both lawfully present and undocumented individuals is important aspect of immigration law. DHS supports the Senate bill and we look forward to seeing any proposals from the House of Representatives and working with Congress on these issues.

<b>Question#:</b>	10
<b>Topic:</b>	layers of review 2
<b>Hearing:</b>	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
<b>Primary:</b>	The Honorable Charles E. Grassley
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** The bill would grant Immigration Judges broad new discretion to allow an immigrant that DHS wants to remove to stay in the United States by waiving current bars to admission and removal grounds for numerous crimes such as drug crimes, firearms offenses, domestic violence, fraud, high speed flight at a checkpoint, and crimes involving moral turpitude, if the Immigration Judge finds hardship to a citizen or legal permanent resident or if he thought it was in the public interest. Do you think current immigration laws are too strict against illegal immigrants who engage in this type of criminal conduct?

**Response:** Discretionary waivers of inadmissibility or deportability are an important part of immigration law. DHS supports the Senate bill and we look forward to seeing any proposal from House of Representatives and working with Congress on these issues.

<b>Question#:</b>	11
<b>Topic:</b>	layers of review 3
<b>Hearing:</b>	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
<b>Primary:</b>	The Honorable Charles E. Grassley
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** The bill provides for broad authority for appeals to district courts and circuit courts if your Department denies an alien's application for the legalization program. Thus, if DHS denies an alien's request for legalization, the alien can appeal to federal court and delay his deportation for years. This would include criminal aliens. Do you think federal courts should be able to second guess your decision of whether to deny an application for the bill's legalization program and prevent you from removing aliens including criminal illegal immigrants?

**Response:** The Department supports the judicial review provisions included in the bill.

<b>Question#:</b>	12
<b>Topic:</b>	legal immigration 1
<b>Hearing:</b>	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
<b>Primary:</b>	The Honorable Charles E. Grassley
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** The bill provides for an increase in H-1B visas. It also includes a so-called “market escalator” that allows the cap to move up or down, based on demand. The agency has always had difficulty counting the visas, sometimes exceeding the congressional mandated cap. Some say this bill only complicates the matter. Do you support this approach to the H-1B cap?

**Response:** The Department supports the inclusion of some market-based adjustment criteria in the H-1B cap and the Department believes that it would be able to administer them effectively.

<b>Question#:</b>	13
<b>Topic:</b>	legal immigration 2
<b>Hearing:</b>	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
<b>Primary:</b>	The Honorable Charles E. Grassley
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** The bill allows the U.S. CIS to “recapture” unused visas. Is there any such thing as an “unused” visa? Please list how many visas have been “unused” each year since 1990 and what category they fall under.

**Response:** DHS defers to the U.S. Department of State, which leads Administration efforts to calculate available immigrant visa numbers.

<b>Question#:</b>	14
<b>Topic:</b>	temporary worker program 1
<b>Hearing:</b>	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
<b>Primary:</b>	The Honorable Charles E. Grassley
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** The new temporary worker program – known as the W visa program – is a brand new concept in which an employer applies independently from the foreign national. It's a two step process, giving instant portability to the worker and very little responsibility for the employer. Do you think this program is properly set up? How would you improve it?

**Response:** The Department supports the W visa program in the bill and looks forward to working with Congress on passage of the legislation.

<b>Question#:</b>	15
<b>Topic:</b>	temporary worker program 2
<b>Hearing:</b>	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
<b>Primary:</b>	The Honorable Charles E. Grassley
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** In 1996, after the 1993 World Trade Center attack, Congress mandated that the immigration service, with cooperation from schools and universities, collect information on foreign students. This system took years to get up and running. In fact, it still wasn't in place on 9/11. While it's operational today, there's still work to be done to make that system effective. Yet, the bill would require the U.S. Citizenship and Immigration Service[s] – the same agency in charge of the legalization program, E-Verify, and every other immigration benefit – to set up and operate a monitoring system for employers who use the new W visa program. The bill clearly lacks instruction on how your Department will establish and maintain this very critical monitoring system, exposing a huge vulnerability. How do you anticipate setting up this system, and when would it be operational?

**Response:** If USCIS is to establish and operate a W monitoring program, it will work with other departments and agencies to build on their expertise implementing similar systems. USCIS will need to 1) hire staff to design and operate the system, 2) educate employers on their obligations and how the system will track them, 3) educate government agencies on the information that will be kept and appropriate uses of that information, 4) establish protocols to notify other government agencies of potential violations of W laws and regulations, and 5) ensure appropriate resources are designated for the creation and maintenance of the system. It also will be necessary to ensure that it has sufficient staff and resources to address W noncompliance, and that DHS, DOS, and other appropriate government entities have access to the system.

<b>Question#:</b>	16
<b>Topic:</b>	temporary worker program 3
<b>Hearing:</b>	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
<b>Primary:</b>	The Honorable Charles E. Grassley
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** The bill creates the Bureau of Immigration and Labor Market Research as an independent statistical agency within the U.S. Citizenship and Immigration Services. The Bureau will devise a methodology to determine the annual change to the cap for W visas. The new Commissioner of this Bureau will designate shortage occupations, in need of workers, so that an employer can petition the Commissioner for a determination of whether a particular occupation in a particular area has been deemed a shortage occupation.

Why is there a need to create this new Labor Market Research agency housed in the U.S. Citizenship and Immigration Services? Why not put it in the Labor Department, which undoubtedly has access to similar information? Particularly when the bill appropriates, not authorizes, but appropriates \$20 million to establish the Bureau. Aren't there more efficient and cost-saving ways to handle this?

The bill permits employers to "lobby" the Commission of the new Bureau for a determination of whether they can fill particular jobs with temporary workers as opposed to U.S. citizens. What kind of message does that send to the public, especially when the bureau is meant to be an "independent statistical agency"?

**Response:** The Bureau of Immigration and Labor Market Research would be tasked with important and significant new responsibilities. To perform these responsibilities, USCIS may request data from the Department of Labor, including the Bureau of Labor Statistics, and Department of Commerce. USCIS already tracks and reports annually on labor statistics related to the H-1B, H-2B, and EB-5 programs. Expanding these duties to encompass the new W visa category is a natural extension of current USCIS responsibilities.

The bill permits employers to petition the Commissioner "for a determination that a particular occupation in a particular metropolitan statistical area is a shortage occupation." However, the bill also requires the Bureau to publish in the Federal Register, subject to an opportunity for public comment, the methodology to designate shortage occupations, to ensure robust public input and transparency.

<b>Question#:</b>	17
<b>Topic:</b>	legalization/RPI status 1
<b>Hearing:</b>	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
<b>Primary:</b>	The Honorable Charles E. Grassley
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** Your testimony stated that the Department has removed a record number of criminals from the United States. But, I'm afraid that some parts of the bill we're considering would undermine the work of your agents, further weakening the confidence of the American people that we're serious about enforcing the laws. The bill states that individuals here illegally who apply for RPI status are not made ineligible even if they've been convicted of numerous misdemeanor offenses. As written, only if someone's been convicted, on different days, of 3 or more offenses are they ineligible for RPI status. So, if someone was convicted of 10 misdemeanor offenses on one day, then that person isn't ineligible?

**Response:** The bill contains several grounds of ineligibility for registered provisional immigrant (RPI) status. Applicants with criminal convictions are ineligible for RPI status if they have been convicted of a felony, an aggravated felony, three or more misdemeanors on different dates, or of an offense that makes the applicant inadmissible under section 212(a)(2) of the Immigration and Nationality Act. Depending on the offense or conviction, a single misdemeanor may render an applicant ineligible. For example, the term "aggravated felony" includes both misdemeanor and felony convictions that fit with the definition of that term. An applicant who has been convicted of a misdemeanor controlled substance offense is inadmissible under section 212(a)(2). Likewise, an applicant who has been convicted of two or more crimes involving moral turpitude is inadmissible under section 212(a)(2) regardless of whether those convictions are misdemeanors or felonies. These grounds of ineligibility capture many individual misdemeanor offenses. Other misdemeanors that are not aggravated felonies, do not relate to controlled substances, and do not involve moral turpitude will still render an applicant ineligible if the applicant has convictions for three or more misdemeanor offenses, and if the alien was convicted on different dates for each of the offenses.

<b>Question#:</b>	18
<b>Topic:</b>	legalization/RPI status 2
<b>Hearing:</b>	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
<b>Primary:</b>	The Honorable Charles E. Grassley
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** In the past, there has been an attempt to impose a time limit for federal agents to complete background checks on aliens who apply for legalization. Will you assure us that, under your leadership, no such time limit would be imposed?

**Response:** The majority of background checks that USCIS performs are resolved in a timely manner with assistance from law enforcement agencies and the intelligence community. When a check returns derogatory information, USCIS will, whenever necessary, coordinate with its law enforcement and or intelligence community partners to de-conflict the returned information prior to adjudicating any benefit. This external coordination and deconfliction may add additional time to the adjudication process, but USCIS considers this a necessary step in its ability to identify fraud and national security concerns. Beyond deconfliction, USCIS will generally withhold adjudication of applications when the applicant is subject to a law enforcement or national security investigation. USCIS will withhold adjudication 1) to ensure that USCIS does not compromise an ongoing investigation by granting or denying a benefit or status, and 2) so that it can best determine eligibility.

<b>Question#:</b>	19
<b>Topic:</b>	legalization/RPI status 3
<b>Hearing:</b>	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
<b>Primary:</b>	The Honorable Charles E. Grassley
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** The bill simply provides authority to the Secretary of Homeland Security to require an applicant for Registered Provisional Immigrant status to appear in person for an interview. Congress said that anyone applying to enter the country from abroad should undergo an in-person interview. Why should this be any different? Under your leadership, would you require those who apply for legal status to undergo an interview with agents? How many times, and under what circumstances, have DACA applicants been interviewed?

**Response:** USCIS employs robust tools to safeguard the integrity of the adjudication process and, given the evidence we see in other benefits streams, believe interviewing all RPI applicants may be unnecessary to achieve accurate adjudications, safeguard security, or mitigate fraud. We support having the authority to conduct interviews of RPI applicants in our discretion. USCIS's ability to determine interview selection criteria is an integral component of the strategy to move adjudication production forward and assures USCIS of another tool it can use to resolve fraud, public safety or other national security and law enforcement concerns. We develop our operational processes carefully and will examine our interview procedures under any new legislation that is signed into law.

<b>Question#:</b>	20
<b>Topic:</b>	legalization/RPI status 4
<b>Hearing:</b>	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
<b>Primary:</b>	The Honorable Charles E. Grassley
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** The bill prohibits the Secretary to detain or remove any person during the application period, with limited exceptions including those whose RPI status has been revoked. What action would the department take against aliens during the application process who are a serious national security, public safety or health risk?

**Response:** The Department of Homeland Security (DHS) will continue to prioritize its civil enforcement efforts on those individuals who pose a risk to public safety, such as those who are convicted of violent crimes and other serious felonies, and recent border crossers. DHS will also continue to pursue criminal investigations consistent with its public safety and national security statutory authorities.

<b>Question#:</b>	21
<b>Topic:</b>	legalization/RPI status 5
<b>Hearing:</b>	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
<b>Primary:</b>	The Honorable Charles E. Grassley
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** One of the requirements under this bill – and previous bills in the last several years – is that those here illegally would have to pay back taxes before they are legalized. The bill lacks detail about how this would actually be carried out. Given that your department will have to process millions of people and determine if they paid all their tax liabilities, how do you envision this working?

**Response:** The Department is confident that working in coordination with the Internal Revenue Service, we can adhere to the requirements of the legislation and process these applicants.

<b>Question#:</b>	22
<b>Topic:</b>	legalization/RPI status 6
<b>Hearing:</b>	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
<b>Primary:</b>	The Honorable Charles E. Grassley
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** If an alien provides information in an application that is law enforcement sensitive or criminal in nature, should that information be used by our government and not be protected under confidentiality provisions – even for law enforcement and national security purposes? b) Does the language, in the department’s opinion, preclude the ability to disclose information related to visa fraud or immigration fraud with law enforcement entities? c) If an applicant provides information in an application that clearly renders him ineligible and commits a serious crime that would warrant his immediate removal, shouldn’t the government be able to use that information to place him in deportation proceedings?

**Response:** Under present law, law enforcement in most cases may use the information provided in official documents for official purposes. Aliens who knowingly provide false information on official documents may also be prosecuted under 18 U.S.C. § 1001. Section 2104 of S.744, the Border Security, Economic Opportunity, and Immigration Modernization Act would generally restrict use of information furnished in an application filed under proposed Immigration and Nationality Act sections 245B, 245C, and 245D to determinations of eligibility under those provisions, but requires that such information be disclosed for national security and certain criminal investigative purposes that do not relate to applicants’ immigration status.

<b>Question#:</b>	23
<b>Topic:</b>	legalization/RPI status 7
<b>Hearing:</b>	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
<b>Primary:</b>	The Honorable Charles E. Grassley
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** The bill doesn't make gang membership an inadmissible or deportable offense. It only renders them so if they commit a felony. Should gang members be allowed to benefit from a legalization program?

**Response:** DHS is committed to prioritizing its civil enforcement resources and ensuring that those individuals who pose a risk to public safety, such as those individuals convicted of violent crimes and felonies, are removed from the U.S. Similarly, consistent with its statutory authorities, DHS conducts criminal investigations of transnational gang activity in furtherance of public safety and security.

<b>Question#:</b>	24
<b>Topic:</b>	legalization/RPI status 8
<b>Hearing:</b>	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
<b>Primary:</b>	The Honorable Charles E. Grassley
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** Does the bill allow those who have current investigations for having filed and been denied applications under another identity to be eligible for legalization/RPI status?

**Response:** Section 212(a)(6)(C) of the Immigration and Nationality Act does not apply to individuals applying for legalization under the bill unless based on the act of unlawfully entering the United States after the date of enactment or misrepresentations related to the application.

<b>Question#:</b>	25
<b>Topic:</b>	legalization/RPI status 9
<b>Hearing:</b>	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
<b>Primary:</b>	The Honorable Charles E. Grassley
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** Should people that have been denied legalization through the program be placed in immigration proceedings and removed?

**Response:** The bill would allow certain noncitizens who are currently unlawfully present and who entered the United States prior to December 31, 2011, to apply for registered provisional immigrant (RPI) status. DHS anticipates that, consistent with the nation's immigration enforcement laws, it would continue to prioritize the removal of aliens who pose a danger to national security or public safety.

<b>Question#:</b>	26
<b>Topic:</b>	legalization/RPI status 10
<b>Hearing:</b>	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
<b>Primary:</b>	The Honorable Charles E. Grassley
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** You responded to questions after the February 13th, 2013, hearing by saying that USCIS plans to hire a total of 1,422 positions to support the DACA workload. How many more positions at USCIS, ICE and CBP will need to be hired to fulfill the requirements under S. 744?

**Response:** The staffing needs of DHS component agencies will depend on the shape of any final bill. When a bill is passed, DHS will be in a better position to estimate hiring needs.

<b>Question#:</b>	27
<b>Topic:</b>	legalization/RPI status 11
<b>Hearing:</b>	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
<b>Primary:</b>	The Honorable Charles E. Grassley
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** Will the department publish guidelines or a broad policy memorandum regarding affidavits that are allowed under the bill? How will fraud and abuse be prevented, and will training be provided to adjudicators on affidavits? Given that the department has accepted various forms of evidence for DACA, including receipts for purchase of internet video games, what has the department learned about affidavits and what will the department change from the DACA guidelines?

**Response:** Immigration law has long permitted the use of affidavits as evidence. DHS regulations at 8 C.F.R. § 103.2(b)(2) provide general guidance for the use of affidavits:

The non-existence or other unavailability of required evidence creates a presumption of ineligibility. If a required document, such as a birth or marriage certificate, does not exist or cannot be obtained, an applicant or petitioner must demonstrate this and submit secondary evidence, such as church or school records, pertinent to the facts at issue. If secondary evidence also does not exist or cannot be obtained, the applicant or petitioner must demonstrate the unavailability of both the required document and relevant secondary evidence, and submit two or more affidavits, sworn to or affirmed by persons who are not parties to the petition who have direct personal knowledge of the event and circumstances. Secondary evidence must overcome the unavailability of primary evidence, and affidavits must overcome the unavailability of both primary and secondary evidence.

*See also, e.g.,* 8 C.F.R. §§ 101.5(b), 103.5(a)(2), 204.1(g)(2)(ii), 204.2(a)(1)(i)B(5), 208.4(a)(5)(iii)(A), 208.9(b), 210.3(c), 214.2(h)(4)(iv), 214.2(o)(2)(iii), 216.4(a)(5)(v), 245.1(c)(8)(v)(E).

USCIS officers are provided comprehensive training on the adjudication process for all USCIS applications and petitions. The training includes the evaluation of evidentiary records which may include affidavits in support of various aspects of a claim. USCIS officers are prepared to evaluate the totality of the evidence to determine if the requestor satisfies the burden.

<b>Question#:</b>	27
<b>Topic:</b>	legalization/RPI status 11
<b>Hearing:</b>	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
<b>Primary:</b>	The Honorable Charles E. Grassley
<b>Committee:</b>	JUDICIARY (SENATE)

When necessary USCIS officers may conduct interviews or request the assistance of the Fraud Detection and National Security Directorate (FDNS) assets to confirm the veracity of an affidavit.

<b>Question#:</b>	28
<b>Topic:</b>	legalization/RPI status 12
<b>Hearing:</b>	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
<b>Primary:</b>	The Honorable Charles E. Grassley
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** Does this bill, or any other provision of law, penalize people here unlawfully from falsely claiming eligibility for RPI status? Is there concern that aliens could falsely claim eligibility in order to avoid detention and removal?

**Response:** U.S. criminal laws prohibit providing false information when submitting visa application information and other official documents. Section 3709 of the proposed legislation contains a new ground of inadmissibility based on convictions or admissions of committing offenses relating to immigration document fraud under 18 U.S.C. sections 1541, 1545, and 1546. In addition, although providing a revised waiver standard for certain grounds of inadmissibility in the adjudication of applications for registered provisional immigrant status, section 2101 provides that inadmissibility under section 212(a)(6)(C)(i) of the INA may not be waived under the revised standard for “representations relating to an application for registered provisional immigrant status.”

The Department of Homeland Security (DHS) may deny applications containing false information or lacking the information required by statutes and final rules.

As in existing programs, DHS will continue to seek criminal prosecution to the fullest extent of the law to combat immigration fraud. Persons submitting fraudulent applications will be treated as an enforcement priority.

<b>Question#:</b>	29
<b>Topic:</b>	DACA
<b>Hearing:</b>	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
<b>Primary:</b>	The Honorable Charles E. Grassley
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** On April 23rd, the U.S. District Court for the Northern District of Texas concluded that the Plaintiffs in Christopher L. Crane et al v. Janet Napolitano are likely to succeed on the merits of their claim that the DACA directive violates 8 USC 1225(b)(2)(A). This preliminary decision reflects how the administration has overstepped its authority to reinterpret current law. How can the American people trust that you and this administration will faithfully carry out an immigration bill passed by Congress?

**Response:** On July 31, 2013, the U.S. District Court for the North District of Texas dismissed all of the Plaintiffs' claims in Crane v. Napolitano. The court concluded that the Civil Service Reform Act precludes the court from addressing the claims by depriving the court of subject matter jurisdiction. Thus, the court concluded it could not decide the merits of Plaintiffs' claims, and dismissed the case in its entirety. More generally, the Department of Homeland Security has dedicated unprecedented levels of personnel, technology, and resources in support of smart, commonsense enforcement of our immigration laws. That would continue under any new law. The Supreme Court has recognized the role of discretion in enforcing our immigration laws. See, e.g., *Arizona v. United States*, 132 S. Ct. 2492, 2499 (2012) ("A principal feature of the removal system is the broad discretion exercised by immigration officials."); *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483-84 (1999) (instructing that "[a]t each stage the Executive has discretion to abandon the endeavor" of an immigration enforcement action).

<b>Question#:</b>	30
<b>Topic:</b>	stateless
<b>Hearing:</b>	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
<b>Primary:</b>	The Honorable Charles E. Grassley
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** Section 3405 provides for protections for certain “stateless” persons in the United States and allows the Secretary of Homeland Security to designate specific groups of individuals who are considered stateless persons. This provision appears to grant blanket relief to any “stateless” person who is in the United States, even though a date of physical presence is not identified. Does the administration support this provision? Given that this provision has serious implications for national security and delegates unlimited power to you as Secretary, can you describe who would be designated under this section if the bill were to pass as written?

**Response:** DHS supports the Senate bill and we look forward to seeing any proposal from House of Representatives and working with Congress on these issues. DHS believes that robust screening requirements employed in the refugee and asylum programs, including security screening protocols, would inform the structure of such a program.

<b>Question#:</b>	31
<b>Topic:</b>	timelines
<b>Hearing:</b>	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
<b>Primary:</b>	The Honorable Charles E. Grassley
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** Are the timelines provided in the bill, including the requirements for reporting and issuing regulations, appropriate and realistic?

**Response:** DHS is confident it will meet the deadlines specified in the bill.

<b>Question#:</b>	32
<b>Topic:</b>	immigration system
<b>Hearing:</b>	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
<b>Primary:</b>	The Honorable Charles E. Grassley
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** There is concern that terrorists have and will continue to exploit our immigration system to enter and remain in the United States. One witness on April 22 testified that terrorists have used our generous asylum laws to gain status. Can you provide statistics on the number of people in the United States that have sought asylum and were granted asylum in each of the last 10 years? Are there ways to improve the process so that terrorists don't abuse the system?

**Response:**

Affirmative<sup>1</sup> Asylum Applications by Fiscal Year

	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Total new case receipts	58,404	43,339	27,908	24,260	24,288	25,674
Approvals	19,611	12,176	10,278	9,897	10,059	10,191
Ineligible for Asylum	34,263	28,806	21,657	20,646	21,263	26,708
Administratively Closed	32,527	49,736	77,016	85,926	45,322	22,635
Approval Rate	36%	30%	32%	32%	32%	28%
	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Total new case receipts	25,505	24,553	28,444	35,067	41,883	44,446
Approvals	9,796	9,614	9,174	10,700	12,991	10,981
Ineligible for Asylum	21,562	17,283	16,742	18,369	18,870	13,074
Administratively Closed	14,007	5,621	3,563	4,336	5,032	4,294
Approval Rate	31%	36%	35%	37%	41%	46%

USCIS's Asylum Division encounters the world's most vulnerable population—those who have fled persecution—and understands that our nation's time-honored tradition of protecting refugees is strengthened when the integrity of the program is above reproach. For the past two decades, the Asylum Division has implemented a number of safeguards and measures to establish an accountable, reliable, efficient, and effective process for adjudicating asylum claims that simultaneously deters fraud and safeguards our national security.

Current integrity measures include:

<sup>1</sup> These figures do not include defensive asylum application filings and grants of asylum by the Department of Justice's Executive Office for Immigration Review (EOIR).

<b>Question#:</b>	32
<b>Topic:</b>	immigration system
<b>Hearing:</b>	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
<b>Primary:</b>	The Honorable Charles E. Grassley
<b>Committee:</b>	JUDICIARY (SENATE)

- A specially-trained cadre of asylum officers trained in relevant law, interviewing techniques, fraud detection and prevention, national security issues, and country conditions research. Each asylum office is required to devote ten percent of its work week to training to maintain such skills and stay abreast of the latest developments in these areas.
- An in-person, in-depth interview of every principal asylum applicant, which allows the officer to fully explore the asylum claim and any credibility issues. To ensure the accuracy of interpretation and prevent fraud, professional, telephonic interpreters monitor the applicants' interpreters.
- An extensive battery of required security checks to confirm each applicant's identity, uncover criminal or other derogatory information, and identify information, such as travel history, that could impact the decision. Mandatory checks include name checks and fingerprint verification against numerous department and external agency databases, including law enforcement and the intelligence community. Specifically, biographic checks include FBI name checks, Customs and Border Protection TECS, Immigration and Customs Enforcement ENFORCE Alien Removal Module, Department of State (DOS) Consular Consolidated Database (CCD), and National Counterterrorism Center vetting. Biometric checks include screening against the FBI's IAFIS database, the Office of Biometric Identity Management's (OBIM; formerly US-VISIT) IDENT database, and for certain applicants, vetting against the Department of Defense's Automated Biometric Identification System (ABIS) database. Additional integrity measures such as government-funded interpreter monitors, information sharing with other countries, and involvement of specially trained Fraud Detection and National Security Immigration Officers as necessary would also be utilized under the proposed process. The Asylum Division also conducts information sharing with Canada, the United Kingdom, Australia, and New Zealand. When necessary, officers may also request that USCIS offices overseas or U.S Embassies or Consulates abroad verify documents or information that an asylum applicant has submitted in support of an asylum application.
- Supervisory review of certain categories of sensitive cases, including national security-related cases, helps ensure consistency, spot potential fraud patterns, and identify possible national security concerns. Such decisions are also reviewed by the training and quality assurance branch in headquarters, which must concur with the decision before it is issued.
- Special procedures for identifying and handling for cases involving national security concern, which ensure that our officers are working with relevant law enforcement and intelligence community partners to fully understand any

<b>Question#:</b>	32
<b>Topic:</b>	immigration system
<b>Hearing:</b>	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
<b>Primary:</b>	The Honorable Charles E. Grassley
<b>Committee:</b>	JUDICIARY (SENATE)

potential threats posed by applicants, and ensure that asylum decisions are based on all relevant information available.

- Posting a Fraud Detection and National Security Directorate (FDNS) officer at every Asylum Office. FDNS officers are trained to investigate asylum requests involving potential fraud, public safety, or national security concerns, and they work with the asylum adjudicators to ensure that all relevant information is available and considered when adjudicating the request for asylum. This includes liaising with local Joint Terrorism Task Forces regarding these cases.

The Asylum Division has continually sought to enhance its processes by employing strong integrity measures and will continue to explore the availability of new mechanisms in the future.

<b>Question#:</b>	33
<b>Topic:</b>	asylum screening process
<b>Hearing:</b>	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
<b>Primary:</b>	The Honorable Charles E. Grassley
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** During the hearing, Senator Feinstein inquired about a provision that would streamline the asylum screening process by allowing your Department to grant asylum immediately following a screening interview. She expressed fear that your Department would not confer with the State Department, as it does not, to verify the veracity of an asylum applicant's claims. While you responded that your Department has good relationships with the State Department, you failed to answer whether proper checks would be done before granting asylum to anyone who shows up at our ports of entry. Can you please elaborate on this matter and explain how the Department would work with State? How does this not make us more vulnerable to those who will try to take advantage of this expedited process?

**Response:** If the asylum process is modified to allow asylum officers to grant asylum following a credible fear screening interview, those asylum applicants will undergo the same full battery of background identity and security checks currently required for affirmative asylum applicants. This includes biographic and biometric checks. Biographic checks include FBI name checks, Customs and Border Protection TECS, Immigration and Customs Enforcement ENFORCE Alien Removal Module, Department of State (DOS) Consular Consolidated Database (CCD), and National Counterterrorism Center vetting. Biometric checks include screening against the FBI's IAFIS database, the Office of Biometric Identity Management's (OBIM; formerly US-VISIT) IDENT database, and for certain applicants, vetting against the Department of Defense's Automated Biometric Identification System (ABIS) database. Additional integrity measures such as mandatory supervisory review of all asylum decisions, government-funded interpreter monitors, information sharing with other countries, and involvement of specially trained Fraud Detection and National Security Immigration Officers as necessary would also be utilized under the proposed process.

The Asylum Division's officers regularly use DOS country of origin information in adjudicating asylum claims. DOS publishes a variety of reports containing country of origin information. Apart from its annual Human Rights Reports, DOS also releases annual reports on religious freedom, general country background information, fact sheets, and information on visa reciprocity and document availability. DOS releases periodic topical reports and oversees the Humanitarian Information Unit (HIU) that drafts reports, maps, and statistics about humanitarian crises all over the world. This DOS country of origin information provides a context for asking relevant questions during the interview and evaluating the applicant's credibility. Informed questioning may expose

<b>Question#:</b>	33
<b>Topic:</b>	asylum screening process
<b>Hearing:</b>	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
<b>Primary:</b>	The Honorable Charles E. Grassley
<b>Committee:</b>	JUDICIARY (SENATE)

inconsistencies and falsehoods in the applicant's claim, and may also help re-establish credibility when something appears inconsistent or implausible at first impression.

Additionally, since 2004, U.S. Embassies and Consulates capture biometrics on visa applicants. These records are placed into OBIM's IDENT database. Since November 1, 2006, the Asylum Division mandates a check of DOS's CCD for any case in which an OBIM check indicates an existing visa encounter. The information the applicant presented to the DOS Consular Officer when applying for the visa that appears in CCD may support or refute the information the applicant provided to USCIS and must be considered in adjudicating the asylum claim. CCD data regarding a visa application may be valuable to the Asylum Division's officers in providing information about the identity, previous travel history, method of entry into the United States, or background of an asylum applicant. At minimum, a visa application adjudication, especially if it contains biometric data, can establish that the applicant appeared in person at an Embassy or Consulate on the date stated in the visa record. When a visa record is retrieved biometrically in IDENT, the record may reveal an identity, travel history, or other information that was not previously made available to USCIS.

In cases where the Asylum Division believes DOS may have information specific to an asylum applicant or the applicant's situation, the Asylum Division routinely reaches out to DOS which often provides written comments on the case. Similarly, DOS routinely reaches out to the Asylum Division on cases that have come to its attention. Additionally, DOS conducts overseas verification of information in certain cases when an Asylum Officer needs to verify information contained in an application or supporting documentation that originated overseas. In such cases, this exchange may extend the adjudication timeline, as DOS comments and/or any verifying information are considered towards the applicant's eligibility for asylum.

Engagement with DOS at various levels will continue even if the asylum process is modified to allow asylum officers to grant asylum following a credible fear screening interview.

<b>Question#:</b>	34
<b>Topic:</b>	Tsarnaev Brothers 1
<b>Hearing:</b>	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
<b>Primary:</b>	The Honorable Charles E. Grassley
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** When did Dzhokhar Tsarnaev first arrive in the United States?

When did Tamerlan Tsarnaev first arrive in the United States?

Please provide a timeline of when the Tsarnaev brothers' parents claimed asylum in the United States.

What was the basis for granting the Tsarnaev brothers Legal Permanent Resident status?

When did DHS officials first have questions about Tamerlan Tsarnaev? Please detail all investigative measures undertaken regarding him.

Was DHS aware at any time in 2011 that the FBI was investigating Tsarnaev? If so:

When and for what?

Did DHS give any consideration at that time to revoking Tsarnaev's Legal Permanent Resident status? If so, why wasn't it ever revoked?

**Response:** Given the sensitive nature of the facts requested relating to specific individuals, DHS will be happy to answer these questions in a briefing upon receipt of a request for such a briefing by the Committee.

<b>Question#:</b>	35
<b>Topic:</b>	Tsarnaev Brothers 2
<b>Hearing:</b>	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
<b>Primary:</b>	The Honorable Charles E. Grassley
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** During yesterday’s hearing, I asked you: “Is it true that his identity document did not match his airline ticket?” You responded: “There was a mismatch there. . . . But even under—even with the misspelling, under our current system, there are redundancies, and so the system did ping when he was leaving the United States.”

On what specific document was Tamerlan’s name misspelled?

**Response:** Given the sensitive nature of the facts requested relating to specific individuals, DHS will be happy to answer these questions in a briefing upon receipt of a request for such a briefing by the Committee.

**Question:** What redundancies were you referring to?

**Response:** Given the sensitive nature of the facts requested relating to specific individuals, DHS will be happy to answer these questions in a briefing upon receipt of a request for such a briefing by the Committee.

**Question:** Did TSA crosscheck Tsarnaev’s passport and Legal Permanent Resident Card with his boarding pass when he left the country?

**Response:** Given the sensitive nature of the facts requested relating to specific individuals, DHS will be happy to answer these questions in a briefing upon receipt of a request for such a briefing by the Committee.

**Question:** What steps should TSA officials take if an individual’s boarding pass does not match their identity documentation when they go through airport security?

**Response:** If a passenger’s name on the boarding pass does not match the name on the identity document, the Transportation Security Administration official must contact the Identity Verification Call Center and request the name on the identity document be checked against the watch list, which is comprised of full Terrorist Screening Database (TSDB) entries containing full name and date of birth (which includes No Fly and Selectee Lists), and the Centers for Disease Control and Prevention (CDC) Do Not Board List. The IVCC contacts the Secure Flight Operations Center (SOC) and provides the name on the boarding pass and the name on the identity document to the SOC. The SOC manually enters the data into the Secure Flight system to perform a manual review

<b>Question#:</b>	35
<b>Topic:</b>	Tsarnaev Brothers 2
<b>Hearing:</b>	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
<b>Primary:</b>	The Honorable Charles E. Grassley
<b>Committee:</b>	JUDICIARY (SENATE)

against the watch list. The data is also matched against the data that was submitted by the airline for the passenger.

**Question:** Did TSA officials take those steps in the case of Tsarnaev in January 2012? If not, why?

**Response:** Given the sensitive nature of the facts requested relating to specific individuals, DHS will be happy to answer these questions in a briefing upon receipt of a request for such a briefing by the Committee.

**Question:** Was Tsarnaev questioned upon his departure about the discrepancy regarding the misspelling to which you referred?

**Response:** Given the sensitive nature of the facts requested relating to specific individuals, DHS will be happy to answer these questions in a briefing upon receipt of a request for such a briefing by the Committee.

<b>Question#:</b>	36
<b>Topic:</b>	Tsarnaev Brothers 3
<b>Hearing:</b>	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
<b>Primary:</b>	The Honorable Charles E. Grassley
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** The Assistant Director of the FBI indicated to Senator Graham that they received no notification when Tamerlan Tsarnaev left the United States in January 2012. However, you stated yesterday: “The system pinged when he was leaving the United States States. By the time he returned, all investigations had been -- the matter had been closed.”

- (a) What “system pinged” when Tsarnaev was leaving the United States?
- (b) What are the positions and agencies of the individuals who received notification of this initial ping?
- (c) What further notifications did DHS make to other agencies, including the FBI, based on this initial ping? Please provide the date and method each further notification was made. By agency and position, what individuals received the further notifications?
- (d) What subsequent steps, if any, were taken with this notification?
- (e) Did any of DHS’s component agencies notify FBI of Tamerlan’s travel to Russia? If so, which agency, on what date, and by what method? If not, why not?
- (a) What was the date of Tamerlan’s departure from the United States in January 2012?
- (b) What was the date of Tamerlan’s return to the United States in July 2012?
- (c) You stated that when Tamerlan returned to the United States, “all investigations had been closed on him.” What investigations were open or opened on Tamerlan in January 2012?
- (d) According to one press account, “many agencies were aware of Tsarnaev’s return” to the United States in mid-July.[2] Did Tamerlan’s return to the United States receive any notice by DHS or any of its components? Was this different from what a U.S. citizens or Legal Permanent Resident would typically receive when re-entering the United States? If so, why?
- (e) Did any of DHS’s component agencies notify any other agency (including agency-to-agency within DHS) that Tamerlan was re-entering the United States?
- (f) According to another press account, “An official at the Department of Homeland Security said [Tamerlan] was on the ‘radar screen’ of agents in Boston from when he returned to the U.S. to the end of autumn.” Was this official’s statement accurate? If so, what does that mean? Why was Tamerlan on DHS’s radar? Why did he remain on DHS’s radar in the weeks between when he returned to the United States in mid-July and when he applied for citizenship on September 5, 2012?
- (g) How does an individual get added into TECS such that the system issues alerts when that individual enters or departs the United States?

<b>Question#:</b>	36
<b>Topic:</b>	Tsarnaev Brothers 3
<b>Hearing:</b>	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
<b>Primary:</b>	The Honorable Charles E. Grassley
<b>Committee:</b>	JUDICIARY (SENATE)

(h) What is the process for removing someone from TECS?

**Response:** Given the sensitive nature of the facts requested relating to specific individuals, DHS will be happy to answer these questions in a briefing upon receipt of a request for such a briefing by the Committee.

<b>Question#:</b>	37
<b>Topic:</b>	Tsarnaev Brothers 4
<b>Hearing:</b>	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
<b>Primary:</b>	The Honorable Charles E. Grassley
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** You stated yesterday: “By the way, the bill will help with this because it requires that passports be electronically readable, as opposed to having to be manually input. It really does a good job of getting human error, to the extent it exists, out of the process.”

What country’s passport did Tamerlan Tsarnaev use to depart and re-enter the United States?

If this legislation had been in place, how would it affect individuals traveling with a foreign passport?

What procedures does the U.S. have in place to verify the integrity of passports issued from other countries?

**Response:** Given the sensitive nature of the facts requested relating to specific individuals, DHS will be happy to answer these questions in a briefing upon receipt of a request for such a briefing by the Committee.

<b>Question#:</b>	38
<b>Topic:</b>	Dzhokhar Tsarnaev
<b>Hearing:</b>	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
<b>Primary:</b>	The Honorable Charles E. Grassley
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** According to press reports, Dzhokhar Tsarnaev became a U.S. citizen on September 11, 2012.

(a) When did Dzhokhar submit his application for citizenship?

**Response:** Given the sensitive nature of the facts requested relating to specific individuals, DHS will be happy to answer these questions in a briefing upon receipt of a request for such a briefing by the Committee.

**Question:** (b) Did DHS conduct background checks on Dzhokhar's family members in the course of his citizenship process? If not, why not?

**Response:** Given the sensitive nature of the facts requested relating to specific individuals, DHS will be happy to answer these questions in a briefing upon receipt of a request for such a briefing by the Committee.

**Question:** (c) Did DHS officials conducting the background investigation on Dzhokhar know about Tamerlan's interview by FBI? If so, did they contact the FBI about Dzhokhar applying for citizenship?

**Response:** Given the sensitive nature of the facts requested relating to specific individuals, DHS will be happy to answer these questions in a briefing upon receipt of a request for such a briefing by the Committee.

**Question:** (d) What derogatory information was on file with DHS about Tamerlan while his brother's citizenship application was being considered?

**Response:** Given the sensitive nature of the facts requested relating to specific individuals, DHS will be happy to answer these questions in a briefing upon receipt of a request for such a briefing by the Committee.

(e) Why was Dzhokhar Tsarnaev given citizenship given the derogatory information about Tamerlan on file with DHS?

**Response:** Given the sensitive nature of the facts requested relating to specific individuals, DHS will be happy to answer these questions in a briefing upon receipt of a request for such a briefing by the Committee.

<b>Question#:</b>	39
<b>Topic:</b>	Tamerlan Tsarnaev
<b>Hearing:</b>	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
<b>Primary:</b>	The Honorable Charles E. Grassley
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:**

(a) During Tamerlan's citizenship process, what alerted DHS to the fact that he had been interviewed by the FBI?

**Response:** Given the sensitive nature of the facts requested relating to specific individuals, DHS will be happy to answer these questions in a briefing upon receipt of a request for such a briefing by the Committee.

**Question:** (b) What databases were utilized in the background check of Tamerlan?

**Response:** Given the sensitive nature of the facts requested relating to specific individuals, DHS will be happy to answer these questions in a briefing upon receipt of a request for such a briefing by the Committee.

**Question:** (c) During the background check of Tamerlan, what referrals or requests were made to the FBI and what responses, if any, were received?

**Response:** Given the sensitive nature of the facts requested relating to specific individuals, DHS will be happy to answer these questions in a briefing upon receipt of a request for such a briefing by the Committee.

**Question:** (d) When DHS learned that the FBI had interviewed Tamerlan in 2011, did DHS notify the FBI that Tamerlan had applied for citizenship?

**Response:** Given the sensitive nature of the facts requested relating to specific individuals, DHS will be happy to answer these questions in a briefing upon receipt of a request for such a briefing by the Committee.

**Question:** (e) Does DHS have direct access to Terrorist Identities Datamart Environment (TIDE) or Terrorist Screening Database (TSD) in conducting background checks for those applying for United States citizenship?

**Response:** Given the sensitive nature of the facts requested relating to specific individuals, DHS will be happy to answer these questions in a briefing upon receipt of a request for such a briefing by the Committee.

<b>Question#:</b>	40
<b>Topic:</b>	ICE custody 1
<b>Hearing:</b>	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
<b>Primary:</b>	The Honorable Charles E. Grassley
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** The Associated Press reported on April 20 that HSI arrested two individuals in New Bedford, Massachusetts. Do the individuals have any connection to either of the Tsarnaev brothers?

**Response:** Given the sensitive nature of the facts requested relating to specific individuals, DHS will be happy to answer these questions in a briefing upon receipt of a request for such a briefing by the Committee.

**Question:** Are the two individuals suspected in any other crimes?

**Response:** Given the sensitive nature of the facts requested relating to specific individuals, DHS will be happy to answer these questions in a briefing upon receipt of a request for such a briefing by the Committee.

**Question:** Are any individuals being deported as a result of the investigation that began with the Boston Marathon bombing?

**Response:** Given the sensitive nature of the facts requested relating to specific individuals, DHS will be happy to answer these questions in a briefing upon receipt of a request for such a briefing by the Committee.

<b>Question#:</b>	41
<b>Topic:</b>	ICE custody 2
<b>Hearing:</b>	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
<b>Primary:</b>	The Honorable Charles E. Grassley
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** I understand that a large number of unregistered alien sex offenders may be under the supervision of U.S. immigration and Customs Enforcement (ICE). Typically when a sex offender leaves prison, the Bureau of Prisons sends a letter to their state saying the person should register within three days. However, when the Bureau of Prisons hands over an alien sex offender to your Department, it's up to ICE to make sure that they get registered.

Does ICE require alien sex offenders to register?

How many unregistered alien sex offenders are in the custody of ICE?

How many unregistered alien sex offenders are on parole and under ICE supervision?

How frequently is check-in with ICE required for alien sex offenders who are on parole and under ICE supervision?

Will you commit to address this issue immediately?

[REDACTED]

[REDACTED]

<b>Question#:</b>	41
<b>Topic:</b>	ICE custody 2
<b>Hearing:</b>	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
<b>Primary:</b>	The Honorable Charles E. Grassley
<b>Committee:</b>	JUDICIARY (SENATE)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

<b>Question#:</b>	41
<b>Topic:</b>	ICE custody 2
<b>Hearing:</b>	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
<b>Primary:</b>	The Honorable Charles E. Grassley
<b>Committee:</b>	JUDICIARY (SENATE)

[REDACTED]

<b>Question#:</b>	42
<b>Topic:</b>	resources
<b>Hearing:</b>	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
<b>Primary:</b>	The Honorable Orrin G. Hatch
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** How does the Department of Homeland Security determine whether the resources it is dedicating to border security are effective?

**Response:** DHS uses a number of indicators and outcomes to evaluate security efforts at our borders, including such factors as resource deployment, crime rates in border communities, and apprehensions. All enforcement statistics and economic indicators point to increased security and an improved quality of life; however, no single metric can conclusively define the state of border security.

<b>Question#:</b>	43
<b>Topic:</b>	metric
<b>Hearing:</b>	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
<b>Primary:</b>	The Honorable Orrin G. Hatch
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** At last week's Homeland Security and Government Affairs Committee hearing, Senator McCain expressed frustration that there was not an established metric to rate the security of our borders.

Have you reconsidered or thought of a better answer to this question than the one you gave Senator McCain last week?

I agree with him, measuring our success is crucial.

Do you believe there is a way to give an accurate depiction of the security of our border?

**Response:** The U.S. Border Patrol's 2004 National Strategy created a focus on building up important personnel, technology and infrastructure resources, measured at that time by miles of operational control. By 2012 the Border Patrol's improved capabilities were called on to address a changed border environment where converging threats to national security required a risk-based approach and strategy. To show progress toward enforcement improvements that promote a low risk border, we developed a new set of performance measures to support the 2012-2016 Border Patrol Strategic Plan.

Our measure set contains performance measures that have already begun to inform our effectiveness. Beginning in Fiscal Year (FY) 2013 we began reporting a strategic measure associated with the Government Performance and Results Act, Modernization Act of 2010 (GPRAMA), called "percent of people apprehended multiple times," commonly known as recidivism. This measure, along with an accompanying management level measure titled "average number of apprehensions for persons with multiple apprehensions," allows us to demonstrate our ability to hold recidivism down by applying systematic and consistent consequences to those who attempt to cross the border illegally. Another strategic GPRAMA measure, the Interdiction Effectiveness Rate, was introduced beginning in FY 2014, and shows our ability to apprehend or turn back would be illegal entrants.

Several other performance measures are in the development stage and will add important context to our operations on the border over time. The first is development of an index that will quantify situational awareness along the border. Also under development is a measure of Border Security Readiness – which will show the readiness status of Border Patrol mission critical elements such as personnel, equipment, infrastructure and training.

<b>Question#:</b>	43
<b>Topic:</b>	metric
<b>Hearing:</b>	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
<b>Primary:</b>	The Honorable Orrin G. Hatch
<b>Committee:</b>	JUDICIARY (SENATE)

Lastly, mobility measures are also being planned for the out years to show the Border Patrol's ability to deploy a highly flexible, scalable, and mobile force to quickly respond to and overwhelm emerging threats. Taken collectively these finalized measures will form a set of measures that gives an accurate depiction of levels of risks along the entirety of our borders as well as specific border areas.

Challenges will always remain, but CBP is dedicated to continuing this progress towards a safer, stronger and more secure border.

<b>Question#:</b>	44
<b>Topic:</b>	marijuana plants
<b>Hearing:</b>	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
<b>Primary:</b>	The Honorable Orrin G. Hatch
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** Over the years, millions of marijuana plants have been eradicated from federal public lands. Outdoor marijuana cultivation is the chief source of revenue for Mexican drug trafficking organizations. Growing marijuana in the U.S. saves traffickers the risk and expense of smuggling their product across the border and allows gangs to produce their crops closer to local markets.

During the past several years, marijuana growing operations have been a serious problem on Utah's public lands where tens of thousands of plants have been seized.

Law enforcement officials confirm that all of the perpetrators arrested at these marijuana grows were both present in the United States illegally and armed with firearms.

This problem is not unique to Utah. Other states with substantial federal lands – including Colorado, California, Idaho, Nevada, Oregon and Michigan – are also seeing a spike in marijuana cultivation by Mexican drug trafficking organizations.

What are your thoughts on providing tougher penalties for cultivating marijuana on federal lands?

**Response:** Since the question relates to the domestic cultivation of this drug, DHS defers to the Department of Justice (DoJ) and the Drug Enforcement Administration.

<b>Question#:</b>	45
<b>Topic:</b>	applying for legalization
<b>Hearing:</b>	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
<b>Primary:</b>	The Honorable Orrin G. Hatch
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** How can we ensure that those applying for legalization under the Border Security, Economic Opportunity, and Immigration Modernization Act are who they say they are?

**Response:** Because the burden will be placed on individuals to demonstrate their eligibility for RPI status and the U.S. Department of Homeland Security (DHS) has extensive anti-fraud measures, we believe we have the tools necessary to detect and deter fraudulent claims to identity. DHS has a stringent process to determine identification based on biometric and law enforcement database background checks, including TECS. If fraud is suspected or identity cannot be satisfactorily established, U.S. Citizenship and Immigration Services (USCIS) will conduct an in person interview and take other appropriate steps to verify an applicant's identity.

USCIS's Fraud Detection and National Security directorate and U.S. Immigration and Customs Enforcement's (ICE) Homeland Security Investigations directorate will be actively engaged whenever fraud is suspected as part of an individual application at all stages of the legalization process. An individual who knowingly makes a misrepresentation, or knowingly fails to disclose facts, in an effort to receive legal status in this new process will be treated as an immigration enforcement priority to the fullest extent permitted by law, subjecting the individual to criminal prosecution and removal from the United States.

<b>Question#:</b>	46
<b>Topic:</b>	identity
<b>Hearing:</b>	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
<b>Primary:</b>	The Honorable Orrin G. Hatch
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** I assume there will be facial recognition and fingerprint verifications built into the criminal background checks; but at the end of the day, it seems that as long as an individual hasn't committed a crime here in the United States, he or she could take on another identity.

So, a lot hinges on the veracity of the documents presented when an immigrant applies for provisional status.

What kind of vetting process will be in place to prevent identity theft and fraud?

**Response:** USCIS has implemented robust fraud protections and processes to accurately determine identification.

USCIS would perform background and security checks for all individuals who apply for Registered Provisional Immigrant status. Applicants aged 14 years and older would be subject to a TECS query, an FBI name check, and an FBI fingerprint check. Through its Application Support Centers (ASC), USCIS would also capture applicant fingerprints, photographs, and signatures for purposes of identity management, background checks, and secure document production.

TECS is a law enforcement communication system that, among other functions, supports the screening of travelers entering the United States and the screening requirements of other federal agencies. USCIS has access to all wants, warrants, and lookouts listed in TECS and certain files within the National Crime Information Center (NCIC) database through TECS, as well as files which include wants/warrants, foreign fugitives, missing persons, registered sex offenders, deported felons, supervised releases, protection orders, known or suspected terrorists, terrorist organization members, and violent gang members.

These checks provide information on individuals who may pose national security or public safety risks as well as indicators of potential fraud. Requestors with positive criminal history results, substantiated findings of fraud, or public safety or national security concerns are handled under the current Notice to Appear (NTA) policy.

USCIS is also implementing its Customer Identity Verification program (CIV), which relies on collected biometrics to confirm that a subject who appears for an interview at a USCIS Field Office is the same person who earlier had their biometric information

<b>Question#:</b>	46
<b>Topic:</b>	identity
<b>Hearing:</b>	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
<b>Primary:</b>	The Honorable Orrin G. Hatch
<b>Committee:</b>	JUDICIARY (SENATE)

collected by an ASC, or otherwise had their information stored in IDENT, typically through collection at a port of entry, during enforcement actions, or through placement on a biometrically-enabled watchlist. Applicants and petitioners will proceed to the interview or be issued their immigration document only after the field office has satisfactorily completed identity verification using both biometrics and government-issued identification.

USCIS also works in collaboration with U.S. Immigration and Customs Enforcement's (ICE) Forensic Laboratory to verify the authenticity of documents provided by the applicant. USCIS also has its own overseas verification process, which relies on personnel in-country to verify the provenance of documents suspected of being fraudulent.

An individual who knowingly makes a misrepresentation, or knowingly fails to disclose facts, in an effort to receive legal status in this new process will be treated as an immigration enforcement priority to the fullest extent permitted by law, subjecting the individual to criminal prosecution and removal from the United States.

<b>Question#:</b>	47
<b>Topic:</b>	E-Verify program
<b>Hearing:</b>	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
<b>Primary:</b>	The Honorable Orrin G. Hatch
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** What margin of improvement do you expect from universally implementing the E-Verify program?

As an aside, I agree with my colleagues that we should deploy this program immediately.

**Response:** DHS has continually reduced the error rate for work authorized employees, and expects the error rate to continue to decline over time, including if the E-Verify program is expanded through legislation.

<b>Question#:</b>	48
<b>Topic:</b>	visa-exit system
<b>Hearing:</b>	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
<b>Primary:</b>	The Honorable Orrin G. Hatch
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** The proposed legislation requires that a visa-exit system must be implemented for all international airports and seaports within 10 years.

You mentioned in today's hearing that an entry-exit tracking system would be ready to go within years. Are you referring to a time frame of less than five years or within 10 years as provided by the legislation?

**Response:** In May 2012, Department of Homeland Security (DHS) provided House and Senate Appropriators a short and long-term plan for recording the departure of aliens from the United States. The long-term plan (through 2012-2020) called for the future research, development, and, if feasible, deployment of a biometric air exit system. In the short term, DHS has enhanced its existing exit system using biographic data. U.S. Customs and Border Protection (CBP) has been working closely with the Department and other components to develop the enhanced biographic exit program scheduled to be completed during 2014. This will be the first part of a comprehensive entry-exit tracking system. Through enhancing biographic entry-exit tracking, the Department will continue to improve its ability to identify and sanction overstays in the years to come.

Paralleling efforts to enhance the existing biographic exit system, DHS continues to pursue an air biometric exit solution through research and testing of available biometric technologies led by the Science and Technology Directorate. Assuming initial testing proves fruitful, DHS plans to test biometric exit at one international airport by 2015. Pending the outcome of an operational test, DHS may submit future budget requests for incremental biometric air exit deployment.

In summary, the enhanced biographic entry-exit system will be completed within the next four years. CBP believes that a biometric entry-exit tracking system in the air environment can be implemented around the 2018-2020 timeframe provided a feasible cost solution is identified and additional funding is appropriated.

<b>Question#:</b>	49
<b>Topic:</b>	new W visa
<b>Hearing:</b>	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
<b>Primary:</b>	The Honorable Orrin G. Hatch
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** Let me ask you about the new W visa category for the low-skilled guest worker program. The bill allocates 20,000 visas in the first year with a gradual increase to 75,000 in the fourth year.

Do you have any sense of whether this quota will address our country's needs and deter illegal immigration, or will we repeat the same mistakes made in 1986?

**Response:** Temporary worker programs are an important part of immigration law. DHS supports the Senate bill and we look forward to seeing any proposals from the House of Representatives and working with Congress on these issues.

<b>Question#:</b>	50
<b>Topic:</b>	RPI applicants
<b>Hearing:</b>	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
<b>Primary:</b>	The Honorable Mike Lee
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** During the hearing, I asked you about the discretion granted to you to waive certain inadmissibility requirements for classes of RPI applicants. In response, you referenced the language of the bill, saying, “[T]here would be consideration based on the age of the conviction or the type of the conviction, whether the individual was the primary wage earner for a family, and the record since their prior conviction. . .” However the Bill as written gives you discretion to determine what is or is not in the public interest.

Can you help define what you would and would not consider as being in “the public interest” as it would apply to this situation?

Also, when defining family unity, do you mean to include only immediate family such as (spouse and children) or do you plan to extend the family unity language further than that?

Do you plan on setting forth any standards that will inform the public and Congress of the foundations on which your discretion in this area will be based?

**Response:** DHS supports the Senate bill and we look forward to seeing any proposals from the House of Representatives and working with Congress on these issues. Once the legislation is enacted, DHS will issue regulations implementing the legislation and provide any necessary definitions and other criteria.

<b>Question#:</b>	51
<b>Topic:</b>	LPR status
<b>Hearing:</b>	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
<b>Primary:</b>	The Honorable Mike Lee
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** You will have discretion to exempt other defined classes of individuals from the fee for adjustment to LPR status.

For what classes of individuals will you waive the fee?

**Response:** U.S. Citizenship and Immigration Services (USCIS) is funded largely by application and petition fees. Recognizing that some applicants cannot pay the filing fees, USCIS established a fee waiver process for certain forms and benefit types. Demonstrated inability to pay is the only reason USCIS will approve a fee waiver. Waiving a fee for one applicant transfers the cost of processing their application to other applicants through higher fees. Therefore, USCIS carefully considers the merits of each fee waiver request before making a decision. Under current guidance, to be eligible for a fee waiver, one of the following must be met:

- the applicant or qualified members of their household are receiving a means-tested benefit. A means-tested benefit is one for which the individuals' income/resources determine eligibility and/or the benefit amount;
- the household is at or below the 150% poverty level at the time of filing; or
- The applicant is experiencing a financial hardship that prevents payment of the filing fee, including unexpected medical bills or emergencies.

The Department would evaluate the need to exercise the Secretary's discretion under this provision and would promulgate a specific policy to implement it, if required.

**Question:** What information or standards will guide the decision on who receives the waiver?

**Response:** Under current guidance, to be eligible for a fee waiver, one of the following must be met:

- The applicant or qualified members of their household are receiving a means-tested benefit. A means-tested benefit is one for which the individuals' income/resources determine eligibility and/or the benefit amount;
- the household is at or below the 150% poverty level at the time of filing; or
- The applicant is experiencing a financial hardship that prevents payment of the filing fee, including unexpected medical bills or emergencies.

<b>Question#:</b>	51
<b>Topic:</b>	LPR status
<b>Hearing:</b>	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
<b>Primary:</b>	The Honorable Mike Lee
<b>Committee:</b>	JUDICIARY (SENATE)

- In addition, the instructions to the Form I-912 offer extensive instructions and explanations of the criteria and USCIS' decision making process for fee waivers.

**Question:** What safeguards will be put in place to ensure that this process is done fairly and impartially?

**Response:** USCIS has established standard operating procedures and policy guidance governing fee waivers to ensure that staff adjudicating fee waivers do so in a fair and objective manner. In addition, USCIS has quality assurance measures in place to ensure accurate and impartial resolution of fee waiver requests.

<b>Question#:</b>	52
<b>Topic:</b>	fees and penalties
<b>Hearing:</b>	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
<b>Primary:</b>	The Honorable Mike Lee
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** Fees and Penalties associated with the Act may be paid through installment payments. The process for such payments is determined by the Secretary. (p. 108)

What process do you plan on creating for collecting fees and penalties?

**Response:** In the event that installment payments are included in the final legislation, the Department will develop a plan to modify U.S. Citizenship and Immigration Services' case processing and accounting systems to track the penalty fee installments.

**Question:** Do people applying for other immigrant visas enjoy the benefit of an installment plan?

**Response:** USCIS does not currently allow fees to be paid via installments.

<b>Question#:</b>	53
<b>Topic:</b>	judicial review
<b>Hearing:</b>	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
<b>Primary:</b>	The Honorable Mike Lee
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** The Act provides aliens the opportunity to challenge revocation of the alien's application through administrative appellate review, if that fails, before a U.S. district court, and if that fails, through the U.S. court of appeals, all while maintaining lawful presence. Then, if deportation proceedings begin, the alien can remain in lawful presence through a second string of proceedings. This process allows for multiple layers of judicial review. (p. 124)

Why should an illegal alien be permitted to pursue multiple attempts at judicial review for essentially the same determinations to be made, all the while enjoying lawful presence?

Do those who apply for other visas at consular offices have access to judicial review?

**Response:** Judicial review is available in certain types of cases adjudicated by USCIS or the Executive Office for Immigration Review. DHS supports the Senate bill and we look forward to seeing any proposals from the House of Representatives and working with Congress on these issues.

<b>Question#:</b>	54
<b>Topic:</b>	LPR status from RPI status
<b>Hearing:</b>	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
<b>Primary:</b>	The Honorable Mike Lee
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** In order to adjust to LPR status from RPI status, an applicant must demonstrate that he or she is at 125 percent of the poverty level. (p. 97)

As the family of an applicant may follow on as derivatives (rather than each family member applying individually), will the poverty level threshold be based on the individual or the household as a whole?

**Response:** Under current fee waiver guidance, household income is evaluated at the time of filing. The Department would evaluate the need to exercise the Secretary's discretion under this provision and would promulgate a specific policy to implement it, if required.

<b>Question#:</b>	55
<b>Topic:</b>	RPIs adjustment to LPR status
<b>Hearing:</b>	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
<b>Primary:</b>	The Honorable Mike Lee
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** RPIs applying for adjustment to LPR status must show that they have been regularly employed or enrolled in school during their period of status as an RPI. Under the age exception, those younger than 21 on the date of RPI renewal are exempt from this requirement. Under this exception, a 24-year-old applying for adjustment is exempt from the requirement to work or be enrolled in school.

Do you believe that 24-year-olds should be exempt from the requirement to be employed or in school?

**Response:** DHS supports the Senate bill and we look forward to seeing any proposals from the House of Representatives and working with Congress on these issues.

<b>Question#:</b>	56
<b>Topic:</b>	E-verify language
<b>Hearing:</b>	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
<b>Primary:</b>	The Honorable Mike Lee
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** The E-verify language in this bill exempts from the definition of employers any employment that is “casual, sporadic, irregular, or intermittent.” (p. 402)

What employers would this exclude from the requirement to use E-verify? I would imagine this is meant to exclude those who hire babysitters? What about day laborers? Construction workers?

**Response:** Current DHS regulations exclude from the regulatory definition of employment “casual employment by individuals who provide domestic service in a private home that is sporadic, irregular or intermittent.” 8 CFR 274a.1(h). Under case law, this exception has been determined to apply to work limited to the upkeep and maintenance of a residence and its curtilage. The exception has applied to housekeepers, babysitters, handymen, and gardeners. The exception has not applied to construction workers and day laborers (other than day laborers whose day labor falls within the limited domestic service definition).

The bill’s “casual, sporadic, irregular, or intermittent” exception to the definition of employer does not include any limitation on the type of employment that the exception applies to. If this provision is contained in the enacted legislation, DHS will issue regulations implementing the legislation and provide any necessary definitions and other criteria.

<b>Question#:</b>	57
<b>Topic:</b>	photo tool for E-verify
<b>Hearing:</b>	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
<b>Primary:</b>	The Honorable Mike Lee
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** This bill directs you to develop a photo “tool” for E-verify, connected to a database of photos kept at USCIS. This tool will enable employers to match the photo an employee’s documents with a photo maintained on the database. (p 414)

What measures will you take to ensure that such a tool does not evolve into a national photograph database used for non-E-Verify purposes?

**Response:** The E-Verify program currently uses a photo tool to allow employers to compare the photograph on the document presented for verification by the employee with a photograph accessed from various databases by E-Verify. Currently, the tool is enabled for U.S. passports and passport cards, and certain documents issued by USCIS to work authorized aliens. Note that E-Verify does not maintain a database of photos, but can pull photos from various databases, such as USCIS databases that contain information and photos for Employment Authorization Documents and Permanent Resident Cards or the U.S. Customs and Border Protection TECS system, which contains a copy of the U.S. Department of State Passport data and photos. DHS does not maintain a database of driver’s license photos and at this time E-Verify does not connect to any state’s database of such photos. In implementing this photo matching functionality, the E-Verify program applied and continues to apply Privacy Act and other legally required protections and security protocols, including observing limitations in the current E-Verify statute (found at 8 USC 1324a note Sec. 404(h)) against using information from E-Verify databases for other purposes or creating national identification cards. DHS will continue to observe all legal protections and requirements as it develops its existing photo matching technologies in any new system.

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MISCELLANEOUS SUBMISSION FOR THE RECORD



WRITTEN TESTIMONY SUBMITTED BY

MEE MOUA, PRESIDENT AND EXECUTIVE DIRECTOR

ASIAN AMERICAN JUSTICE CENTER

SENATE COMMITTEE ON THE JUDICIARY

HEARING ON

COMPREHENSIVE IMMIGRATION REFORM LEGISLATION

April 23, 2013



Chairman Leahy, Senator Grassley and Member of the Senate Judiciary Committee:

On behalf of the Asian American Justice Center (AAJC) and the other affiliate members of the Asian American Center for Advancing Justice (*Advancing Justice*), a non-profit, non-partisan affiliation representing the Asian American and Pacific Islander community on civil and human rights issues, we are pleased to submit this written testimony in relation to the Senate Committee on the Judiciary Hearing: “Comprehensive Immigration Reform Legislation.” We thank the Committee for holding this important hearing and we urge you to focus today’s hearing on creating an immigration system that is fair, equitable, and embodies American values, including America’s immigration tradition of family reunification.

#### ***Family-Based Immigration System***

The family immigration system is very important to the Asian American community. As a result of past exclusionary immigration laws, approximately 60% of Asian Americans are foreign born, the highest proportion of any racial group nationwide. While Asian Americans are only 6% of the U.S. population, they sponsor more than one-third of all family-based immigrants. Asian Americans are also disproportionately harmed by the family backlogs. Of the almost 4.3 million family members of U.S. citizens and legal permanent residents waiting in the family backlogs, nearly two million are Asian American and Pacific Islander and many are Latino and African.

Protecting and strengthening the current family-based immigration system is economically sound policy for the U.S. Family-based immigration has significant economic benefits, especially for long-term economic growth. Family-based immigrants foster innovation and development of new businesses, particularly small and medium-sized businesses that would not otherwise exist, creating jobs for immigrant, as well as native-born workers. Furthermore, improving our familybased immigration system will make the U.S. even more attractive to high-skilled immigrants, who may want the flexibility to bring loved ones to the U.S. once they are established here. Workers who have the support and encouragement of their family members are more likely to be productive and successful as they strive to integrate into our communities.

For these reasons, *Advancing Justice* commends the proposed changes in the *Border Security, Economic Opportunity, and Immigration Modernization Act of 2013 (S. 744)* for the family immigration system to reunify families and strengthen families. They include provisions to (1) redefine “immediate relatives” to include spouses and minor children of legal permanent residents, allowing an expedited process not subject to numerical caps; (2) eliminate the family backlog over a period of ten years; (3) permit family members awaiting green cards to work and live in the U.S.; and (4) allow other family members to visit the U.S. for up to 60 days per year.

However, *Advancing Justice* is extremely concerned about the proposed changes to the family immigration system, which are a dramatic departure of America’s long-standing immigration tradition and value of family unity. In particular, we believe that the following changes will prove harmful to immigrant communities and America as a whole: (1) elimination of the “F4”



visa category so that U.S. citizens can no longer sponsor their brothers and sisters; (2) placement of an age cap on the “F3” visa category so that U.S. citizens can only sponsor their adult married children, who are thirty years or younger; and (3) exclusion of LGBT bi-national couples and families from sponsoring their loved ones for family reunification.

Eliminating family immigration categories or limiting the scope of families will only create greater strain on families, the most basic unit of American society. Americans should not have to choose between living and working in the U.S. with no family support and living in a country that offers little to no opportunities for families. Brothers and sisters, along with children of all ages are an inextricable part of any family. Denying this imposes upon many ethnic groups an unacceptably narrow concept of family, and downplays the contributions made by these family members. Any policy that would permanently keep parents from children of any age and brothers and sisters from each other goes against our identity as a nation, which has always recognized the importance of family unity.

Excluding LGBT couples and families from sponsoring their loved ones for family reunification by not recognizing permanent partners and their families in the definition of family perpetuates discrimination and prevent these families from reuniting with their loved ones. Reform must be inclusive and should not discriminate based on race, gender, or sexual orientation. All families should be given the opportunity to work and live together to achieve the American dream.

We intend to work with the Senate Judiciary Committee to propose changes to the new framework in S. 744 to ensure that this system sufficiently addresses the needs of *all* American immigrant families, specifically one that is fully inclusive of adult siblings and children of all ages. It is important that proposals offered by the Senate and the House provide thoughtful and effective solutions that will keep families together, not divide them. We look forward to working with all Members of Congress on ensuring that the comprehensive immigration reform bill is strengthened and inclusive of all families.

### *Path to Citizenship*

#### **I. Roadblocks Should be Eliminated so that There is an Affordable and Accessible Path to Citizenship for All Aspiring Americans.**

While Advancing Justice is encouraged by the inclusion of a path to citizenship in S. 744, the proposed 13-year path before an aspiring American can become a citizen contains an arduous set of requirements that would exclude significant numbers of the 11 million undocumented and render it extremely difficult for any aspiring American to eventually naturalize. Approximately 1.3 million of undocumented immigrants in the United States are Asian American.

The triggers upon which adjustment from Registered Provisional Immigrant (RPI) status to legal permanent resident (LPR) status are contingent are both unnecessary and unwarranted. For example, the requirement that the Comprehensive Southern Border Security Strategy and Southern Border Fencing Strategy be substantially operational and completed is unjustified given



that the border is more secure than ever before – and will cost \$4.5 billion. The problems with a mandatory E-Verify program, as discussed in the next section of this submission, also call for elimination of E-Verify as a trigger for the path to citizenship.

The proposed path to citizenship should be amended to ensure that all 11 million aspiring Americans can more fairly and realistically attain and maintain Registered Provisional Immigrant (RPI) status, adjust to LPR status, and become citizens of the United States over a shorter and more reasonable time period.

A. The Path to Citizenship Should be Fair and Attainable for Aspiring Americans by Eliminating the Continuous Employment Requirement.

The requirement that - in order to renew RPI status and to adjust from RPI to LPR status - an individual must demonstrate regular employment throughout the RPI period excepting brief periods of not more than 60 days, would prove extremely difficult given the shifting service structure and fluctuations of the U.S. economy and the seasonal, irregular nature of some types of employment. In order for the path to citizenship to be fair, accessible, and realistically attainable for the 11 million aspiring Americans, the continuous employment requirement in Section 2101 and 2102 of S. 744 should be eliminated. Otherwise, potentially significant numbers of individuals will fall off the path to citizenship.

Many aspiring Americans work in contingent jobs such as day labor, construction, domestic work, and other service sectors where the structure of employment consists largely of brief periods of employment with several different employers. It is not uncommon to not have work for periods of time longer than 60 days. Imposing such a requirement would ignore the realities of the modern “workplace” and the struggles of immigrants who have no choice but to seek work that is often seasonal, irregular, and subject to the fluctuations of the U.S. economy.

This requirement would exclude hard-working aspiring Americans who try desperately to find employment and who perform services that are essential to our economy and way of life, but through no fault of their own, are unable to obtain work for a period of 60 or more days during a ten year time period. The alternative that an individual demonstrate average income above 100% or 125% of federal poverty levels similarly would exclude many individuals who work hard but earn low wages and would render them ineligible for RPI renewal or adjustment to LPR status. Seventy percent of day laborers, for example, search for work five or more days a week.<sup>1</sup>

This continuous employment requirement should be eliminated from S. 744.

B. The Path to Citizenship Should be Fair and Attainable for Aspiring Americans by Eliminating the English Language Requirement to Adjust from RPI to LPR Status.

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<sup>1</sup> Abel Valenzuela Jr. et al., *On the Corner: Day Labor in the United States* at ii (January 2006).



The English language skills requirement to adjust from RPI to LPR status, contained in Section 2102 of the bill, is a departure from existing law and would present a roadblock for many aspiring Americans that should be removed.

Although there is a basic English language requirement for naturalization, current law does not contain such a requirement to obtain green cards. Thus, the English language requirement for LPR status contained in the bill would impose a higher threshold for those who have RPI status. This is unwarranted, particularly considering that individuals with RPI status would still need to meet the existing English language requirements in order to naturalize under current law.

The English language requirement also would impose a difficult hurdle, preventing many aspiring Americans from achieving their dream of citizenship. Many Asian Americans live in linguistically isolated household in which everyone over the age of 14 is limited English proficient (LEP). Over 23% of Asian American households in California are linguistically isolated, a rate similar to Latinos (24%).<sup>2</sup>

Many poor and low-income immigrants also already have difficulty finding free or low-cost English classes, even in multicultural areas such as Los Angeles. It is likely that such programs are even less available in other parts of the country. A national report by the NALEO Educational Fund found that a majority of ESL classes have a waiting list, and that growing ESL demands and funding losses have reduced the availability and caliber of adult ESL services.<sup>3</sup> There have been too many cuts in ESL programs and immigrant integration grants, reducing the amount of free and low-cost English classes available to the working poor. While S. 744 contemplates some additional funding for such programs, such funding would need to be at a significant enough level to ensure that all aspiring Americans would have access to English language classes. Otherwise, an already fragile infrastructure would be at risk of being pushed past capacity.

S. 744 currently contains a discretionary exemption for individuals with RPI status who are 70 years of age or older. This does not take into adequate account, however, the hardships associated with learning a new language at an older age, nor does it take into account the scarcity of free or low-cost English classes.

The English language requirement to adjust from RPI to LPR status should be eliminated. Alternatively, at minimum, there should be an automatic exemption for individuals with RPI status who are 55 years of age or older. For those younger than 55, factors such as those considered in naturalization exams under current law – including age, education, length of residence in the United States, opportunities and efforts made to prepare – should be taken into account in due consideration of whether to grant an English language waiver.<sup>4</sup>

- C. The Path to Citizenship Should be Fair and Attainable for Aspiring Americans by Allowing Discretionary Waivers to Consider Applicants' Backgrounds, Including Rehabilitation and Family Ties.



<sup>2</sup> *A Community of Contrasts: Asian Americans, Native Hawaiians and Pacific Islanders in California*, ASIAN AMERICAN CENTER FOR ADVANCING JUSTICE at 17 (2013).

<sup>3</sup> *The ESL Logjam: Waiting Times for Adult ESL Classes and the Impact on English Learners*, NALEO EDUCATIONAL FUND at 1-2 (2006), available at <http://www.naleo.org/downloads/ESLReportLoRes.pdf>.  
<sup>4</sup> See 8 CFR § 312.2(c)(2).

There are several grounds for ineligibility for RPI status set forth in Section 2101 of S. 744, including being convicted of a single felony, an aggravated felony, and three or more misdemeanor offenses. While S. 744 provides for limited waivers to further family unity or the public interest, there should be a mandatory requirement that each individual RPI applicant's background – including family ties, rehabilitation, and evidence that the individual has turned his life around – be considered in adjudicating his application for RPI status.

D. The December 31, 2011, Cut-Off Date Arbitrarily Would Exclude Significant Numbers of Aspiring Americans and Should be Extended to the Date of Enactment of the Legislation.

The requirement in Section 2101 of S. 744 that an individual have been physically present in the United States on or before December 31, 2011, in order to be eligible for RPI status would arbitrarily exclude significant numbers of aspiring Americans who already live, work, go to school, and contribute to the United States. By preventing these individuals from being able to come out of the shadows and legalize, this arbitrary cut-off date would be short-sighted and counterproductive, limiting these aspiring Americans from being able to contribute their full array of talents and fully integrating into U.S. society.

Indeed, as the Senate bipartisan group who authored this legislation stated in their immigration reform principles released in January, they intended to “ensure that this is a successful permanent reform to our immigration system that will not need to be revisited.” To arbitrarily exclude potentially thousands of aspiring Americans who already reside in the United States, from legalization undermines this long-term goal enunciated by the authors of S. 744 to fundamentally repair the broken immigration system for the future of the country. Thousands of aspiring Americans would remain in the shadows and subject to further exploitation and constant fear of deportation.

To achieve this bipartisan goal of “successful permanent reform to our immigration system that will not need to be revisited,” all of the aspiring Americans residing in the U.S. as of the date of enactment of S. 744 should be deemed to meet the physical presence requirement for RPI eligibility.

E. The One-Year Application Time Period Does Not Provide Sufficient Time for Aspiring Americans to Apply for RPI Status and Should be Extended to a Minimum Five-Year Period from the Date of Enactment.



The one-year period for applying for RPI status, with a possible 18-month extension, contained in Section 2101 of S. 744 does not provide sufficient time for the millions of aspiring Americans who would seek to legalize their status. There should be a minimum five-year period from the time of enactment of the legislation for individuals to apply for RPI status.

Establishing the necessary national infrastructure to inform, educate, and assist millions of potential applicants with the RPI application process will take a considerable amount of time – far longer than the one year contemplated in the legislation. As we learned from implementation of the Deferred Action for Childhood Arrivals (DACA) policy, where approximately 1 million DREAMers were immediately eligible for DACA<sup>5</sup> compared to the many more millions of aspiring Americans who would be eligible for RPI status, it is not a simple task for applicants who have been living in the shadows to apply.

It will require extensive and ongoing community education, in the languages spoken by those eligible for RPI status, for the millions of potential applicants to be informed about and understand the application process. It will require further time for the millions of applicants to compile the necessary documents and to seek assistance in filling out their applications, which will be crucial to ensure the quality and sufficiency of their applications.

Moreover, there is limited capacity among nonprofit community organizations and legal service providers to assist potential RPI applicants. Even with federal funding assistance, as proposed in the bill, it will take many months for those resources to flow to these nonprofit organizations, which also will need time to develop their capacity to provide assistance. There already is a justice gap in this country, with estimates that approximately 80% of low-income individuals have no access to a lawyer when they need one.<sup>6</sup>

If insufficient time is provided for potential applicants to apply, this will encourage unscrupulous operators to use the one-year application deadline to lure applicants into paying for questionable services. Potential applicants likely would feel pressured to meet the one-year deadline and - given the limited time for nonprofit community organizations to build the necessary infrastructure to provide assistance to millions of applicants - seek assistance from other channels at risk of being defrauded.

There should be a five-year application period from the date of enactment of S. 744.

#### ***Interior Enforcement***

Advancing Justice is encouraged that the S. 744 takes steps to address serious due process concerns in the removal process by including the appointment of counsel at government expense for those individuals determined to be incompetent to represent themselves due to a serious mental disability as well as other particularly vulnerable individuals. However, access to counsel is only a first step in ensuring due process for with mental disabilities who cannot advocate on their own behalf and often do not have the resources to hire counsel. In addition to the appointment of counsel, Advancing Justice urges the Senate to legislate alternatives to detention



for those with mental disabilities, the availability of mental competency evaluations by qualified mental health professionals in cases where competency is in question, comprehensive screening for mental disabilities and access to stabilizing medication in all ICE and ICE-contracted facilities, training for immigration judges and Immigration and Customs Enforcement agents and attorneys on best practices with regard to individuals with mental disabilities, and judicial

<sup>2</sup> See *Who and Where the DREAMers Are: A Demographic Profile of Immigrant Who Might Benefit from the Obama Administration's Deferred Action Initiative*, IMMIGRATION POLICY CENTER – AMERICAN IMMIGRATION COUNCIL at 1 (July 2012), [http://www.immigrationpolicy.org/sites/default/files/docs/who\\_and\\_where\\_the\\_dreamers\\_are\\_0.pdf](http://www.immigrationpolicy.org/sites/default/files/docs/who_and_where_the_dreamers_are_0.pdf).

<sup>3</sup> *Addressing the Justice Gap*, New York Times, (Aug. 23, 2011).

discretion to terminate removal proceedings where individuals are determined to be incompetent and safeguards are insufficient to ensure due process.

However, in the past decade, we have deported more people than in the preceding century.<sup>2</sup> Expenditures on immigration enforcement have also swelled, eclipsing the budgets of all other federal law enforcement agencies combined.<sup>3</sup> The unprecedented rise in deportations has come with a parallel rise in the size of our immigration detention system. Disappointingly, the Senate bill fails to address these systemic problems in our immigration system. Further, the bill increases enforcement provisions and spending. For example, the bill creates a new ground of inadmissibility for everyone who had been identified as having a gang affiliation in a law enforcement database after the age of eighteen.<sup>4</sup> Gang databases have been found to have extremely high misidentification rates.<sup>5</sup> Asian, Latino, and African-American communities are disproportionately misidentified in gang databases.

The bill's dramatic expansion of E-Verify must also be rejected. Mandating E-Verify for all employers will have a destructive impact on workers, employers and our economy. A mandatory system will drive a whole layer of workers who are not eligible for work authorization under the bill further underground where workplace abuses are rampant. This results in a race to the bottom that hurts all workers, disadvantages law abiding employers, and by at least one government estimate, promises to decrease federal tax revenue by more than \$17.3 billion over ten years. The billions employers will need to spend to implement E-Verify also unduly and disproportionately falls on small businesses.

The protections outlined in the bill do not erase E-Verify's harms. The bill's due process provisions do not eliminate the productivity, time, and business revenues lost from having to

<sup>2</sup> *A Decade of Rising Immigration Enforcement*, IMMIGRATION POLICY CENTER – AMERICAN IMMIGRATION COUNCIL at n.2 (Jan. 2013), <http://www.immigrationpolicy.org/sites/default/files/docs/enforcementstatsfactsheet.pdf>.

<sup>3</sup> *Immigration Enforcement in the United States*, MIGRATION POLICY INSTITUTE at 12 (Jan. 2013), <http://www.migrationpolicy.org/pubs/pillarsreportinbrief.pdf>.

<sup>4</sup> Border Security, Economic Opportunity, and Immigration Modernization Act § 3701(a).

<sup>5</sup> Julie Barrows, C. Ronald Huff, *Gangs and Public Policy: Constructing and Deconstructing Gang Databases*, 8 *Criminology & Public Policy* 675 (2009).



appeal incorrect “non- confirmations.” Appeals will also be difficult to navigate for the nearly one-third of AAPIs who face language barriers and are unfamiliar with the government bureaucracy. Furthermore, while important, the proposed protections for workers who file workplace abuse claims provide insufficient assurance for the vast majority of unauthorized workers who will be unwilling to report or fight abuses where the threat of potential or eventual deportation still exists.

### ***Integration and Access to Affordable Health Care and Nutrition***

As mentioned above, family-based immigration makes up a large part of the Asian American community. Its value in strengthening the economic and social unit of the family is underscored in the high rates of business ownership in the community and in the creation of jobs for all Americans. Alongside recognizing the positive contributions of immigrants to our country, Advancing Justice also recognizes that individuals and families may not always be able to plan for periods of economic insecurity. Although, on average, 12.6% of the Asian American and Pacific Islander population live below poverty, the rate is much higher for some Asian subpopulations, such as 37.8% for the Hmong, 29.3 % for Cambodians, 18.5% for Laotians, and 16.6% for the Vietnamese.<sup>6</sup>

The prolonged and continued exclusion of aspiring Americans from federal health and nutrition support programs is contrary to the longstanding American values of fairness and equal opportunity for integration. In order to ensure optimal health for all, we should not exclude those contributing to our economic success merely because they require temporary health or nutritional benefits. Excluding individuals with registered provisional status from critical federal meanstested public benefits, such as Medicaid, the Children’s Health Insurance Program (CHIP), and the Supplemental Nutrition Assistance Program (SNAP), is a disinvestment in our families, children, and a healthy workforce. Similarly, the financial security and health of our communities are threatened by the exclusion of working-class and middle-class immigrants in the Patient Protection and Affordable Care Act (ACA) from tax credits and cost-sharing subsidies to assist in the purchase of affordable health insurance through the newly created state Exchanges.

As written in S. 744, many categories of immigrants must wait anywhere from five to 10 or more years before becoming lawful permanent residents, and even longer to become citizens. These are individuals who are coming out of the shadows to obtain registered provisional status, youth and young adults granted Deferred Action for Childhood Arrivals or DREAMers, agricultural Blue Card holders, and family V Visa holders. Moreover, under existing law, most lawfully residing immigrants, including lawful permanent residents (persons with green cards), must wait five years before becoming eligible for federal means-tested public benefits, including Medicaid, CHIP, and SNAP. In times of economic need and poor health, these waiting periods increase

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<sup>6</sup> *Critical Issues Facing Asian Americans and Pacific Islanders: Poverty*, WHITE HOUSE INITIATIVE ON ASIAN AMERICANS AND PACIFIC ISLANDERS, <http://www.whitehouse.gov/administration/eop/aapi/data/critical-issues> (last accessed April 22, 2013).



individual suffering and shift the costs of uncompensated care to our already overburdened safety net providers, states, and localities.

A reform framework for inclusion rather than exclusion must also restore the rights of COFA (Compact of Free Association) migrants to access Medicaid. COFA migrants from the freely associated states of Micronesia, Republic of the Marshall Islands, and Republic of Palau have been excluded from Medicaid since 1996. Largely because of the United States' nuclear testing in the Pacific Islands, ongoing militarization there, and economic abandonment by the United States, COFA migrants suffer from serious health conditions such as high rates of cervical cancer and tuberculosis and need the help of Medicaid to receive adequate health care.

Advancing Justice recommends allowing all aspiring Americans to access our country's health care and nutrition support programs, removing the five-year waiting period for lawfully residing immigrants, and restoring the eligibility of COFA migrants for Medicaid. At this starting point of discussion, we urge Congress to enact forward thinking legislation that is consistent with the rights of being lawfully present in our country. The exclusion of immigrants with legal status from affordable health care and nutrition for five to 10 years or more, who will be working and lawfully residing in our country for the long-term, is short-sighted, unfair, and contrary to sound policy. Modernizing our healthcare system, as is the promise of the ACA, requires that all Americans have access to affordable, quality health coverage.

Thank you again for holding this critical and timely hearing and for the opportunity to express the views of Advancing Justice. We welcome the opportunity for further dialogue and discussion about these important issues. We look forward to working with the Committee as it develops and moves immigration reform legislation through Congress.