



**National
Immigration and Customs Enforcement Council
of the
American Federation of Government Employees
Affiliated with AFL-CIO**



May 9, 2013

Dear Esteemed Members of Congress:

We write to you today as a diverse group of both law enforcement officers and representatives to express our deep concerns regarding immigration bill S. 744, the “Border Security, Economic Opportunity, and Immigration Modernization Act,” which is currently before the Senate Judiciary Committee. S. 744 will profoundly impact the security of the country, our nation’s communities, and the people we as law enforcement officers are sworn to protect.

Driven by mere speculation that S. 744 may be enacted by Congress, illegal border crossings have spiked dramatically. Thousands of unaccompanied children, runaways, and families now attempt to illegally enter the United States in hopes of receiving legalization. This trend will surely continue after enactment as S. 744 provides no commitment of stronger border enforcement for at least five to ten years following the initial legalization phase. Thousands will be victimized or perish as they attempt the treacherous crossing into the United States in hopes of attaining legal status. Cut-off dates established in S. 744 will mean little to those in other countries who are unfamiliar with the 867-page bill. Without a strategy of border security first, S. 744 will only draw more illegal immigrants into the United States, resulting in unnecessary harm to many.

Border security is also critical to preventing criminal elements and national security threats from entering the United States. Perhaps at no time in our nation’s history is border security more important to maintaining public safety than it is now. Unfortunately, S. 744 provides no guarantee of increased border security. Instead, it relinquishes Congress’ authority to establish border security measures to the Department of Homeland Security (DHS), which will then develop its own unilateral border security plan. DHS is then permitted to measure its own successes and failures after implementing that plan. Clearly recognizing the high probability that this approach will fail and DHS will not develop a successful border security plan, S. 744 establishes a commission to review security at the border five years after the plan has been implemented (if the Secretary decides such a commission is needed). But the powerless commission will have only the authority to make recommendations on how to achieve border security. Those recommendations may very well be ignored by DHS. It is important to note that S. 744 dissolves the commission 30 days after it makes its recommendations to the President, the Secretary of Homeland Security, and Congress. S. 744 also grants the Secretary the authority to unilaterally determine the amount of border fencing that will be constructed, which could result in little or no fencing being built. In summary, S. 744 appears to provide no tangible provisions for increased border security.

S. 744 also does not address current failures of interior enforcement that will render any legislation ineffective, regardless of its provisions. Currently, ICE officers cannot arrest or remove most illegal immigrants they come in contact with, even if officers believe those individuals present a risk to public safety. To avoid offending special interests, ICE officers are also prohibited from making street arrests, and are also prohibited from arresting illegal immigrants who are public charges or who violate laws involving fraudulent documents. ICE officers are under orders to wait until immigration violators commit and are convicted of criminal offenses and placed in jail by state authorities before they can act in their capacity as Federal immigration officers and make an arrest. Even though illegal entry and visa overstay violations account for the majority of the 11 million illegal immigrants currently residing in the United States, DHS and ICE have directed ICE officers not to enforce the laws related to these offenses.

Congress can and must take decisive steps to limit the discretion of political appointees and empower ICE and CBP to perform their respective missions and enforce the laws enacted by Congress. Rather than limiting the power of those political appointees within DHS, S. 744 provides them with nearly unlimited discretion, which will serve only to further cripple the law enforcement missions of these agencies.

Further, S. 744 establishes a biographic (instead of biometric) exit system that has already proven easy to circumvent and not worthy of investment. S. 744 limits the exit system to air and sea ports and does not expand the program to include monitoring of the nation's land borders. This will not provide adequate coverage and security to the nation's ports of entry and will result in identifying only a fraction of the visa violators unlawfully present in the United States. Even if an effective biometric exit system were eventually established, the size of the ICE workforce is too small to effectively utilize it. With only 5,000 ICE immigration officers nationwide—a force smaller than many police departments—ICE lacks the resources to locate and apprehend visa violators identified by the new exit system, rendering the system useless. S. 744 does not provide for any guaranteed increase in the number of ICE immigration officers.

Prior to the completion of any new enforcement mechanisms, S. 744 creates a new legal status for illegal immigrants, known as Registered Provisional Immigrant status (RPI), which forgives previous Federal immigration violations. However, Section 2101 of S. 744 also explicitly opens this legal status to those with long criminal records, gang affiliations, felony arrests, and those with multiple misdemeanor criminal convictions. Furthermore, S. 744 allows criminal aliens to continue to commit and be convicted of criminal offenses after receiving provisional legal status, as long as the individual's convictions remain below the eligibility threshold.

- For instance, the Secretary of DHS must waive misdemeanor criminal convictions for purposes of determining an illegal immigrant's eligibility for RPI status. In many states, misdemeanor crimes include serious offenses such as assault, assault of a law enforcement officer, vehicular homicide, possession of drug manufacturing equipment, unlawful placing or discharging of an explosive device, DUI, and sex offenses.
- Section 3701 of S. 744 states that illegal immigrants who are members of street gangs—most of which are heavily involved in criminal activity and violent crimes in the

communities and areas we police—simply have to claim that they renounce their gang affiliation in order to obtain a waiver that would make them admissible to the U.S., and potentially eligible for legalization and eventual citizenship. We anticipate, as should Congress, that many gang members will falsely claim to renounce their association with criminal street gangs to obtain legal status and continue engaging in unlawful conduct in the United States.

- Section 2101 of S. 744 states that illegal immigrants who have committed document fraud, made false statements to authorities, and have absconded from court-ordered removal hearings are all eligible to apply for legal status.
- Section 2101 of S. 744 directs DHS to ignore convictions under state laws that mirror federal laws on crimes such as human smuggling, harboring, trafficking, and gang crimes when approving applications for legalization.
- This same section also gives the Secretary of Homeland Security virtually unlimited discretion to waive any manner of crimes that would otherwise make an individual ineligible for legal status—for such expansive reasons as family unity, humanitarian purposes, or what the Secretary believes is in the public interest. At least two of these standards appear undefined by S. 744 or current law, providing political appointees with broad authority to establish their own definitions of these terms and pardon criminal acts under almost any circumstance.
- The bill provides that individuals who have overstayed visas are eligible for RPI and citizenship. As we have learned from the 9/11 Commission, more vigorous policing of visa violators is an essential component of national security. S. 744 provides legal status to an estimated 4.5 million visa overstays, including recent arrivals and document forgers. S. 744 lacks effective security measures for screening existing and future visa violators.
- The bill states that individuals who have previously been deported or otherwise removed from the country are ineligible to apply for legal status. However, the Secretary is given the “sole and unreviewable discretion” to waive that ineligibility for large classes of qualifying aliens.
- Section 2101 of S. 744 prohibits detention and removal of any person claiming eligibility for legalization under S. 744 without requirement to provide proof of eligibility or application.

While business groups, activists, and other special interests were closely involved in the drafting of S. 744, law enforcement personnel were excluded from those meetings. Immigration officers and state and local law enforcement working directly within the nation’s broken immigration system were prohibited from providing input. As a result, the legislation before us may have many satisfactory components for powerful lobbying groups and other special interests, but on the subjects of public safety, border security, and interior enforcement, this legislation fails. It is a dramatic step in the wrong direction.

The degree to which this legislation tolerates both past and future criminal activities ensures legalization and a path to citizenship for many criminal aliens and gang members currently residing in the United States. Additionally, S.744 fails to provide for necessary cooperation between agencies and ignores many of the current problems that are inimical to the proper enforcement of the nation's immigration laws.

For example, ICE officers are currently directed by DHS to allow adult inmates in jails to lie about their "DREAMer" status in order to avoid immigration arrest. As a result, inmates are permitted to simply walk out of jails without being required to provide proof of eligibility for "DREAMer" status and without any investigation by ICE. ICE officers report overhearing inmates coaching one another on how to lie to ICE officers about having "DREAMer" status to avoid arrest, yet ICE officers are still powerless to arrest them. These revelations should alarm every member of Congress, and indeed, every American. If this legislation were enacted tomorrow, ICE officers would continue to be powerless to effectively enforce our nation's laws and provide for public safety as S. 744 does nothing to end these dangerous agency- and department-level directives. DHS will most certainly continue to issue these types of directives which will continue to deteriorate the ability of ICE to provide for public safety and national security.

We therefore conclude that this legislation fails to meet the needs of the law enforcement community and would, in fact, be a significant barrier to the creation of a safe and lawful system of immigration.

We thank you for hearing our concerns and would be eager to answer any questions you may have.

Sincerely,

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