

United States Senate

WASHINGTON, DC 20510

June 4, 2013

Dear Colleagues:

We need to fix our broken immigration system. We must secure our borders, enforce the laws on the books, improve the legal immigration system, and ensure we never again repeat the mistakes of the past. In 1986, the American people were promised that, in exchange for granting legal status to illegal immigrants, *the border would be secured* and the law enforced. Washington broke these promises. Unfortunately, the so-called “Gang of Eight” immigration bill, S. 744, repeats these past mistakes.

During the Senate Judiciary Committee’s consideration of S. 744, common-sense amendments offering real solutions were rejected. The bill’s proponents repeatedly referenced an unalterable “deal” that had been struck beforehand. As a result, the core provisions of the bill remain the same. If passed, S. 744 will leave our borders unsecure and our immigration system deeply dysfunctional.

Moreover, the bill’s already serious flaws were exacerbated by the adoption of several amendments that significantly weaken current law, hamstring law enforcement, and further complicate our legal immigration system. We were thus left with no choice but to oppose the bill. Below are just a few reasons we were compelled to do so.

1) S. 744 provides immediate legalization without securing the border.

The bill offers more of what the American people are used to from Washington: plans, commissions, studies, and gimmicks. For instance, the bill grants legal status for people here illegally as soon as the Secretary of Homeland Security simply devises a “plan” to secure the border – *not when the border is actually secured*. And when the Secretary notifies Congress that she believes her plan has been accomplished, newly legalized immigrants (“Registered Provisional Immigrants” or RPIs) are given a special path to obtain green cards and citizenship. These provisions do not provide border security, only empty promises and unchecked discretion for the Secretary.

Indeed, Secretary Napolitano seems to think that current efforts to secure the border are already adequate, claiming repeatedly that our border is “more secure than it has ever been.” Under S. 744, legalization depends on a finding of satisfactory border security by a single, unelected bureaucrat who has stated publicly she believes the border is already secure. There is therefore no reason to believe any additional border security will result from this bill.

During markup, the Committee voted down every attempt to mandate meaningful control of our borders – including provisions already required by current law, and others included in the failed 2007 immigration bill. For example:

- Grassley 4: Require the Secretary to certify to Congress that she has maintained effective control over the entire southern border for 6 months before legalization begins (rejected);
- Cornyn 1: Require objective metrics for determining border security, real participation by the states in a border commission, and significantly increase border security personnel (rejected);

- Cruz 1: Substantially increase border-patrol manpower and assets, require completion of the fencing and biometric entry-exit system required by current law, and redirect a portion of DHS funding to border states if security is not achieved (rejected);
- Lee 4: Require Congressional approval of the Secretary's border security plan and her assessment of its completion (rejected);
- Sessions 9: Complete the border fence required by current law before legalization begins (rejected).

The bill also substantially *rolls back current law* mandating a biometric entry-exit system at *all* ports of entry (air, land, sea), as required by six different statutes dating back to 1996, and as recommended by the 9/11 Commission. Instead, the bill provides for a non-biometric exit system, which is easily circumvented through fraud, and only at air and sea ports. Amendments to prevent these rollbacks were rejected, including:

- Sessions 4 / Sessions 6: Require the implementation of a biometric exit system at all ports of entry, as required by current law, before legalization begins, or before expanding the Visa Waiver Program (rejected).

But an amendment that perpetuated the roll back was adopted:

- Hatch 6: Require the eventual establishment of a biometric system at a select few airports (rather than all air, sea, and land ports, as currently required by law), but not required before legalization (adopted).

2) S. 744 rewards criminal aliens, absconders, and deportees and undermines law enforcement.

Under this bill, aliens with criminal records are eligible for legalization even if they have committed document fraud, made false statements to authorities, or absconded from court-ordered removal proceedings. *Even some who have been deported and are outside the country are eligible for legalization.* Remarkably, the bill *suspends enforcement* during the two and a half year legalization application period, and prohibits law enforcement from detaining or removing anyone claiming eligibility, without any requirement to prove that they are, in fact, eligible. Law enforcement is even required to inform those here illegally about legalization. The bill also gives the Secretary wide and unreviewable discretion to grant numerous deportation waivers. We offered several amendments to close these dangerous loopholes, but each was rejected, including:

- Grassley 43: Make all members of criminal gangs inadmissible (rejected);
- Grassley 11 / Lee 8: Prohibit those ordered removed, those currently in removal proceedings, and those who have absconded and failed to show up for removal proceedings from applying for or being granted legal status (rejected);
- Cornyn 3: Prohibit spousal abusers, child abusers, drunk drivers, and other serious criminals from obtaining legal status; remove the Secretary's authority to waive criminal convictions in determining admissibility; and remove the loophole allowing immigrants here illegally with multiple criminal convictions to be eligible for legalization (rejected);
- Sessions 32: Improve cooperation between the federal government and state and local law enforcement agencies in the enforcement of federal immigration law (rejected).

At the same time, a number of amendments were accepted that further undermine law enforcement:

- Coons 2: Prohibit Border Patrol from returning illegal border crossers to Mexico during nighttime hours (when crossings generally occur) and require Border Patrol to follow guidelines written by the government of Mexico (adopted);

- Blumenthal 8: Limit enforcement actions at certain locations, including college campuses and hospitals, essentially turning public places into sanctuary shelters (adopted);
- Coons 9: Provide immigration judges more unfettered discretion to halt deportations (adopted).

3) S. 744 contains extremely dangerous national security loopholes.

Unlike the 1986 IRCA and the 2007 immigration bill, S. 744 does not require in-person interviews for a *single applicant* who applies for legal status. Nor does it require implementation of fraud detection and deterrence systems. Just a few of the unsuccessful amendments offered to correct these serious problems include:

- Grassley 56: Remove the provision giving the State Department authority to waive in-person visa interviews for so-called “low risk” applicants (rejected);
- Grassley 68: Delay the provision allowing temporary student visa holders to remain in the U.S. permanently while seeking green cards until a system is in place to track student visa holders (rejected);
- Cornyn 5: Allow increased information sharing among government agencies and with foreign governments about immigrants who have had their status revoked (rejected);
- Sessions 15: Clarify the authority of the Secretary of Homeland Security and the Secretary of State to refuse or revoke visas when in the national interest, as was the case with the Christmas Day bomber (rejected);
- Grassley 52: Delay an expansion of asylum and student visa programs until there has been a coordinated review detailing the intelligence and immigration failures of the Boston Marathon terrorist attack (rejected).

4) S. 744 facilitates fraud in our immigration system.

The bill allows employers to accept either a voter registration card or, for those under 18, an affidavit by an individual over 21 stating the person is who he says he is, as proof of identity for employment eligibility. Several amendments to prevent fraud were rejected, including:

- Grassley 45: Increase penalties for trafficking passports (rejected);
- Grassley 34: Criminalize the use of a social security number when the immigrant knows the number is not his own, but does not specifically know the number belongs to another individual, fixing the holding in the Supreme Court case *Flores-Figueroa* (rejected);
- Grassley 18: Require a person here illegally who applies for legal status to disclose his or her previous identity theft and the social security numbers used, and allow for agencies to notify rightful assignees (rejected);
- Lee 12: Remove “sworn affidavits” from the list of documents that RPIs may use to satisfy the employment requirement for obtaining a green card (rejected).

5) S. 744 creates no real penalties for illegal immigrants and rewards them with entitlements.

Despite contrary claims from this bill’s sponsors, S. 744 hardly penalizes those here illegally, as evidenced by the following amendments:

- Lee 10: Require illegal immigrants to pay back taxes before receiving legal status (rejected);

- Sessions 30: Require a social security number to claim the child tax credit, as is required for the Earned Income Tax Credit (rejected);
- Sessions 31: Provide that only U.S. citizens and legal permanent residents are eligible for the Earned Income Tax Credit, thereby prohibiting those receiving legal status from receiving this direct payment (rejected);
- Cruz 2: Provide that illegal immigrants are ineligible for federal, state, or local means-tested welfare benefits (rejected);

6) S. 744 delays for years the implementation of E-Verify.

This bill delays for years the implementation of an E-Verify system, through which 99.7 percent of all work-eligible employees are confirmed immediately today. Amendments offered to improve the new employment verification system were rejected:

- Grassley 29: Require implementation of the new system within 18 months (rejected);
- Grassley 35: Delay the preemption of all state E-Verify laws until the new system is fully implemented (rejected).

7) S. 744 does not fix our legal immigration system.

Everyone acknowledges that our legal immigration system needs improving. S. 744, however, complicates our legal immigration system by creating even more categories of visas and reducing transparency through a series of exemptions from visa caps. Further, the bill does not make the changes necessary to transform our system into one that is truly merit-based. A rejected amendment could have moved our system in the right direction:

- Cruz 4: Double the annual green card cap from 675,000 to 1.35 million per year, eliminate the diversity visa program and per-country caps, and reduce bureaucracy in the green card system (rejected).

8) S. 744 advanced through a process predicated on a deal struck before markup.

It is clear that a deal was made during months of private negotiations between special interest groups, labor unions, and select business interests, to which only the bill's sponsors were privy. Those agreements were strictly enforced during the public markup of the bill, with proponents citing at least a dozen times a "deal" or "agreement" as their excuse for votes against policies they would otherwise support.

Compromises are part of legislating. But this particular deal made the Judiciary Committee markup little more than a formality, and the markup did not alter any of the core provisions of the bill. While votes were held on more than 100 amendments, in reality, these votes were decided long before the markup, with virtually every significant reform rejected out of hand.

9) S. 744 rewards those who have broken our laws by offering a special path to citizenship.

Congress today could pass with overwhelming bipartisan support measures that ensure border security, help agents enforce the laws, and improve our legal immigration system. But that will not happen because the President and others insist on a special path to citizenship for people who intentionally broke our laws, even before our borders are secured.

Critically, the Committee rejected an amendment (Cruz 3) that would have allowed immigrants here illegally to obtain legal status – to come out of the shadows and work legally – but not to be eligible for citizenship. The bill proponents said that citizenship is essential to reform; indeed, a senior Democrat confessed, “If we don’t have a path to citizenship, there is no reform.”

Rewarding those here illegally with citizenship is not reforming our immigration system. The special path to citizenship in this bill is unfair to millions of legal immigrants who followed the law. Furthermore, combined with weak border and interior enforcement measures, this special path to citizenship only encourages more illegal immigration.

We need immigration reform, but the American people deserve better than a 1,000-page bill that makes our immigration system more complex and less accountable without truly ensuring border security.

Americans expect their government to end the lawlessness, not surrender to it. They deserve immigration reform with actual border security, enforcement of the laws on the books, and a legal immigration system that works. We must welcome and celebrate legal immigrants. But S. 744 fails to deliver anything more than the same empty promises Washington has been making for 30 years. The last thing this country needs right now is another 1,000+ page bill that, like Obamacare, was negotiated behind closed doors with special interests.

We want immigration reform to pass, but only if it actually fixes the broken system, rather than allowing the problems to grow and fester.








