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S. 744 AND THE IMMIGRATION REFORM AND CONTROL ACT OF 1986: LESSONS LEARNED OR MISTAKES REPEATED?

HEARING

BEFORE THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRTEENTH CONGRESS

FIRST SESSION

ON

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CONTENTS

MAY 22, 2013

Page

OPENING STATEMENTS

The Honorable Bob Goodlatte, a Representative in Congress from the State of Virginia, and Chairman, Committee on the Judiciary 1
The Honorable John Conyers, Jr., a Representative in Congress from the State of Michigan, and Ranking Member, Committee on the Judiciary 3

WITNESSES

Julie Myers Wood, President, Compliance, Federal Practice and Software Solutions, Guidepost Solutions
Oral Testimony 6
Prepared Statement 8
Chris Crane, President, National Immigration and Customs Enforcement Council 118, American Federation of Government Employees
Oral Testimony 26
Prepared Statement 28
David V. Aguilar, Partner, Global Security and Intelligence Strategies (GSIS)
Oral Testimony 40
Prepared Statement 42

LETTERS, STATEMENTS, ETC., SUBMITTED FOR THE HEARING

Prepared Statement of the Honorable George Holding, a Representative in Congress from the State of North Carolina, and Member, Committee on the Judiciary 4
Material submitted by the Honorable Bob Goodlatte, a Representative in Congress from the State of Virginia, and Chairman, Committee on the Judiciary 53
Material submitted by the Honorable Sheila Jackson Lee, a Representative in Congress from the State of Texas, and Member, Committee on the Judiciary 91
Material submitted by the Honorable Pedro R. Pierluisi, a Representative in Congress from Puerto Rico, and Member, Committee on the Judiciary 97
Material submitted by the Honorable Suzan DelBene, a Representative in Congress from the State of Washington, and Member, Committee on the Judiciary 116
Material submitted by the Honorable Hakeem Jeffries, a Representative in Congress from the State of New York, and Member, Committee on the Judiciary 127

OFFICIAL HEARING RECORD

MATERIAL SUBMITTED FOR THE HEARING RECORD BUT NOT REPRINTED

S. 744, the "Border Security, Economic Opportunity, and Immigration Modernization Act" is not reprinted in this hearing record but is on file with the Committee and can be accessed at:

http://www.gpo.gov/fdsys/pkg/BILLS-113s744is/pdf/BILLS-113s744is.pdf

S. 744 AND THE IMMIGRATION REFORM AND CONTROL ACT OF 1986: LESSONS LEARNED OR MISTAKES REPEATED?

WEDNESDAY, MAY 22, 2013

HOUSE OF REPRESENTATIVES
COMMITTEE ON THE JUDICIARY
Washington, DC.

The Committee met, pursuant to call, at 2:26 p.m., in room 2141, Rayburn House Office Building, the Honorable Bob Goodlatte (Chairman of the Committee) presiding.

Present: Representatives Goodlatte, Sensenbrenner, Smith, Chabot, Bachus, King, Franks, Gohmert, Jordan, Poe, Chaffetz, Marino, Gowdy, Amodei, Labrador, Farenthold, Holding, Collins, DeSantis, Conyers, Nadler, Scott, Watt, Lofgren, Jackson Lee, Johnson, Pierluisi, Chu, Deutch, Gutierrez, DelBene, Garcia, and Jeffries.

Staff Present: (Majority) Shelley Husband, Chief of Staff & General Counsel; Branden Ritchie, Deputy Chief of Staff & Chief Counsel; Allison Halataei, Parliamentarian & General Counsel; Andrea Loving, Counsel; Dimple Shah, Counsel; Kelsey Deterding, Clerk; (Minority) Perry Apelbaum, Staff Director & Chief Counsel; Danielle Brown, Parliamentarian; and Tom Jawetz, Counsel.

Mr. GOODLATTE. Good afternoon. The House Committee on the Judiciary will come to order. Without objection, the Chair is authorized to declare recesses of the Committee at any time. We welcome everyone to this afternoon's hearing on "S. 744 and the Immigration Reform and Control Act of 1986: Lessons Learned or Mistakes Repeated?"

I'd like to start off by commending all of my colleagues in both the House and Senate who have worked together in a bipartisan manner to address the difficult but crucial issue of immigration reform. As I expect that immigration reform legislation will follow regular order, it is important that this Committee carefully examine the proposals that have been offered. Thus we will today turn to S. 744,* the omnibus immigration reform being considered by the Senate.

The drafters of S. 744 promise to ensure that this is a successful permanent reform to our immigration system that will not need to

*S. 744, the "Border Security, Economic Opportunity, and Immigration Modernization Act." *http://www.gpo.gov/fdsys/pkg/BILLS-113s744is/pdf/BILLS-113s744is.pdf*

be revisited. The drafters seek an end to the problem of illegal immigration for once and for all. While this is a laudable and necessary goal, their bill falls far short of achieving it. In order to effectively deal with the problem of illegal immigration and ensure that future generations do not have to deal with legalizing millions more people, we need to take a look at our past mistakes. We need to ensure that we do not repeat them.

President Reagan signed the Immigration Reform and Control Act, or IRCA, into law on November 6, 1986. The bill provided for three main reforms: legalizing the millions of immigrants already in the country, increasing border enforcement, and instituting penalties for employers who hired unauthorized workers, in order to stop the flow of new unlawful immigrants. These reforms were based on the realization that if Congress simply passed a legalization program we would simply be encouraging future illegal immigration. The Select Commission on Immigration had warned just a few years earlier that without more effective enforcement, legalization could serve as a stimulus to further illegal entry.

Unfortunately, IRCA's enforcement measures never materialized, and the Commission's fears were realized. Border security barely improved. Employer penalties were not enforced. Now, 26 years later, all of us who want to fix our broken immigration system are haunted by the legacy of IRCA's failure, and we have serious concerns that S. 744 repeats some of IRCA's mistakes.

Many advocacy groups who are ardent supporters of S. 744 are on record stating that they do not want legalization to be dependent on border security and enforcement triggers. Indeed, whether or not it contains triggers, the Senate bill is unlikely to secure the border. It requires DHS to simply submit a border security plan to initiate the legalization of 11 million unlawful immigrants. Without securing the border, and with a simple submission of a plan, unlawful immigrants become eligible for registered provisional immigrant status.

The legalization of unlawful immigrants continues to advance with just a certification that the border security strategy is substantially deployed and substantially operational in the sole discretion of the Secretary. Note that the strategy does not have to be complete or be even more than a fantasy.

In addition, S. 744 ostensibly mandates employer use of E-Verify. Now, this is a necessary element of any real immigration reform if we want to end the jobs magnet for future illegal immigration. However, S. 744 doesn't fully implement E-Verify for up to 7 years. In addition, it actually forces employers to employ, pay, and train unlawful immigrants for years should they pursue never-ending baseless appeals of their E-Verify nonverifications.

Further, whatever enforcement provisions are in S. 744 are subject to implementation by the current Administration, which fails to enforce the laws already on the books. The Department of Homeland Security is releasing thousands of illegal and criminal immigrant detainees while providing ever-changing numbers to Congress regarding the same. The Department of Homeland Security is forbidding ICE officers from enforcing the laws they are bound to uphold. A Federal judge has already ruled DHS' actions likely in violation of Federal law. DHS is placing whole classes of unlaw-

ful immigrants in enforcement-free zones. DHS claims to be removing more aliens than any other Administration, but has to generate bogus numbers in order to do so.

Ultimately, the American people have little trust, where the Administration has not enforced the law in the past, it will do so in the future. That is why real immigration reform needs to have mechanisms to ensure that the president cannot simply turn off the switch, any president turn off the switch on immigration enforcement. And let me add that I do not single out the current Administration because previous Administrations of both parties have had similar failings. The Senate bill contains no such mechanisms.

The last time Congress passed a major immigration reform bill, its goal was to start with a clean slate and then stop the flow of illegal migrants across the border. But in the years after the bill passed illegal immigration surged. So the question remains: Are we learning lessons from the past or repeating the same mistakes?

While I commend the Senate for their continuing efforts to tackle the extremely difficult task of reforming our broken system, I must observe that S. 744 repeats many of the mistakes of the past.

I look forward to continuing to work in the House to find solutions to reform our broken immigration system, including establishing effective mechanisms to make certain that our laws are indeed enforced going forward. And I again applaud those Members of the House, including several Members of this Committee, on both sides of the aisle, who are working in a constructive way to try to address this very important issue.

And at this time it is my pleasure to recognize the Ranking Member of the Committee, the gentleman from Michigan, Mr. Conyers, for his opening statement.

Mr. CONYERS. Thank you, Chairman Goodlatte.

I appreciate the fact that the ball is now in our court here in the House. And we want to look carefully at the 1986 law and its legalization provision. Some say the bill granted undocumented immigrants amnesty in the law signed by President Reagan.

Most undocumented immigrants who qualified for legalization received temporary status. Those temporary residents were allowed to apply for a green card after just 1 year, and agricultural workers were allowed to apply for a green card immediately, without any period of temporary status. And so the law in 1986 imposed neither a penalty nor a fine. And so I think an overly critical examination of the 1986 law would be hard pressed to say that the Senate bill provides amnesty. It doesn't. And that's the difference. That's one huge difference.

Under the Senate bill, undocumented immigrants who register must pay a $1,000 fine and are placed into a provisional status for a full 10 years. Throughout that period, they of course must remain employed, satisfy the requirements of good citizenship, make sure they have no tax liabilities to remain eligible for provisional status. But the one thing it does is it takes them out of the shadows and gives them an opportunity to earn permanent status.

Remember, too, that in 1986 they were protecting the borders with flashlights and outdated equipment. We now have a much more effective system. And we ought to, we're spending about $18 billion a year on it. And we've talked to ICE and Immigration peo-

ple repeatedly about whether we're getting our money's worth in that circumstance.

Another criticism of the 1986 law is that while the legalization program went forward, the promised enforcement never followed. There may be truth to this, and I am not sure. But even if enforcement didn't increase much in the years immediately following, it's certainly picked up now. And this Committee I think has done a good job in trying to make sure that it's doing a much better point in making certain that we get enforcement.

Now, according to the analysis of the Immigration Policy Center, the Federal Government has spent a total of $186.6 dollars on immigration enforcement. Each year, we detain and remove record numbers of people, spend more money on immigration than on all other Federal law enforcement efforts combined.

And still the Senate responds to some of that criticism by preventing undocumented immigrants from registering for provisional status until the Department of Homeland Security has begun to implement two new strategies: the strategy to gain effective control of the southwest border and a southwest border fencing strategy. And provisional immigrants cannot get a green card unless and until the border strategies are substantially operational or completed, and that the E-Verify, a new technique that we think is going to be pretty effective, is mandatory for all employers, and that the Department of Homeland Security has an electronic exit system at air and sea ports to identify visa overstays.

And maybe the most important way that the Senate bill differs from the 1986 law is that it sets out to actually fix our broken immigration system. The bill aims to prevent future illegal immigration by facilitating legal immigration. And in many ways the biggest failure of the 1986 legislation was that it didn't leave us with an immigration system capable of meeting the future immigration needs of the country, no way to satisfy our agricultural needs and our non-agricultural needs as well. And so as a result, we need to make sure that we fix the system, and this discussion with our distinguished witnesses is one way to move this forward.

I think that we can do it. I think we've got something to build on. I applaud the other body for reporting this work finally at last. But nothing is perfect, and perhaps we may be the ones that help improve it. Thank you very, very much, Mr. Chairman.

Mr. GOODLATTE. I thank the gentleman for a fine opening statement.

And without objection all other Members' opening statements will be made a part of the record.

[The prepared statement of Mr. Holding follows:]

Prepared Statement of the Honorable George Holding, a Representative in Congress from the State of North Carolina, and Member, Committee on the Judiciary

Thank you, Mr. Chairman.

Our immigration system is certainly broken and in desperate need of repair. I applaud the Senate's efforts to create a bipartisan immigration bill. I appreciate the amount of time, energy, and cooperation that went into forming this bill.

However, I have some concerns about the Senate's proposal. In 1986, the nation was facing an immigration problem similar to what we are dealing with today. There were millions of undocumented aliens living in America, and the situation

was made worse by the fact that many employers were hiring these illegal workers off the books and paying them less than U.S. workers. As a result, Congress passed the Immigration Reform and Control Act (IRCA). This legalized millions of immigrants and established laws restricting the employment of undocumented persons.

However, due to lax enforcement and insufficient internal controls, IRCA has not been effective in regulating illegal immigration, and now we are back in the same situation we were in nearly thirty years ago. Problematically, the current Senate bill does adequately address the enforcement failures of these immigration laws. In fact, it goes so far as to weaken some of the enforcement laws already in existence.

For example, since 1996, the Department of Homeland Security has operated a biometric entry-and-exit system at land, air, and sea ports to authenticate visas of people going in and out of the U.S. The Senate bill rolls back this requirement to require an "electronic" exit system at air and sea ports only. A biometric system will only be required at ten U.S. airports. This increases the possibility that illegal immigration will go unnoticed or that temporary visitors will overstay their visas.

The enforcement of existing immigration laws is one of the most important aspects of any forthcoming immigration legislation this Congress. If the Senate bill proceeds as currently drafted, we will be taking a big step backward instead of moving forward. I believe we need to take a second look at these provisions and make sure we do immigration reform right this time.

Mr. GOODLATTE. We welcome our distinguished panel today. And if you would all rise, we'll begin by swearing you in.

[Witnesses sworn.]

Mr. GOODLATTE. Thank you. And let the record reflect that all the witnesses responded in the affirmative.

We have a very distinguished panel of witnesses joining us today, and I'll begin by introducing all of them. Our first witness is Julie Myers Wood, the president of Compliance, Federal Practice and Software Solutions at Guidepost Solutions LLC, an immigration investigation and compliance firm. Ms. Wood served as the Assistant Secretary of DHS at Immigration and Customs Enforcement, or ICE, for nearly 3 years. Under her leadership, the agency set new enforcement records with respect to immigration enforcement, export enforcement, and intellectual property rights. Ms. Wood earned a bachelor's degree at Baylor University and graduated *cum laude* from Cornell Law School.

Our second witness today is Mr. Chris Crane, who currently serves as the president of the National Immigration and Customs Enforcement Council, American Federation of Government Employees. He has worked as an immigration enforcement agent for U.S. Immigration and Customs Enforcement at the U.S. Department of Homeland Security since 2003. Prior to his service at ICE, Mr. Crane served for 11 years in the United States Marine Corps.

Chris, we thank you for your service and being with us here today.

Our final witness Mr. David Aguilar, the former Deputy Commissioner of the U.S. Customs And Border Patrol. Prior to this appointment, he was the Chief Patrol Agent of the Tucson Sector, United States Border Patrol. In that position, Mr. Aguilar was responsible for all operational and administrative functions of the sector. Previously, Mr. Aguilar served in various locations as a Border Patrol officer. He received an associate's degree from Laredo Community College and is a graduate of the John F. Kennedy School of Government, Harvard Senior Executive Fellows.

Thank you all for joining us. And we will begin with Ms. Wood. Each of the witnesses' written statements will be entered into the record in its entirety. I ask that each witness summarize his or her testimony in 5 minutes or less. To help you stay within that time, there is a timing light on your table. When the light switches from green to yellow, you will have 1 minute to conclude your testimony; when the light turns red, it signals that the witness' 5 minutes have expired.

Ms. Wood, welcome back.

TESTIMONY OF JULIE MYERS WOOD, PRESIDENT, COMPLIANCE, FEDERAL PRACTICE AND SOFTWARE SOLUTIONS, GUIDEPOST SOLUTIONS

Ms. WOOD. Thank you so much. Thank you, Chairman Goodlatte, Ranking Member Conyers, and Members of the Committee.

In my view, it's very encouraging to see the progress in the Senate with the passage yesterday of S. 744 out of the Judiciary Committee. And as the Chairman has indicated, this Committee has also spent a lot of time looking and thinking about how we can improve our immigration system. And I was honored to be asked to testify today in my personal capacity because as a supporter of immigration reform, I want to help ensure that we don't repeat the mistakes of prior legislation.

As such, I think it's critical that we bring some perspective to potential provisions in S. 744 that could be problematic before the bill is enacted while these issues could still be addressed. Of course, now any bill is not going to be perfect, either from an enforcement perspective or from an advocacy perspective. If we wait for perfect legislation, we're never going to have a bill, all apologies to the distinguished Members of the Committee.

At the same time, I do think we have an obligation to the American public to seek immigration reform that would improve our system and not just pass our unresolved problems down to the next generation. Today I wanted to highlight four areas where I think improvements can be made to ensure successful reform.

First, I think successful reform needs to protect and assist interior enforcement efforts. In this regard, I think one of the most critical things, when reading the bill—I think that the bill has a lot of safety valves that really have discretion in an immigrant's favor. And a lot of those waivers are needed, a lot of that discretion is needed to protect the rights of immigrants.

What the bill is missing, in my view, is the same sorts of safety valves in terms of enforcement equities and enforcement exceptions. For example, in section 2101, DHS is required to provide all aliens apprehended before or during the application period a reasonable opportunity to apply for provisional status, and they may not remove an individual until a final administrative determination is made. There's no exception, none, for public safety or national security situations. There should be a public safety exception, a safety valve in favor of enforcement equities. I see the same sort of thing in the general scope of the waiver provision in section 2313. So I think we need to look at the bill and see, are there places where there need to be waivers in favor of enforcement equities.

Interviews, I think, should also be required before granting legalization. Even IRCA required interviews. If you combine this with the lack of electronic filing—and I know it's tough, I know that's tough for USCIS—we're in a place where we're credentialing people who we don't know and of whose backgrounds we're unsure.

In my view, to avoid fraud, the confidentiality provisions should be further limited in scope. Sections 2104 and 2212 in my view have overbroad confidentiality provisions. One of the most widespread problems back in 1986 was the confidential red sheet and the fraud it festered. While it's understandable that we want to encourage individuals to apply for provisional status, it's important that there be some consequences for not telling the truth. Under the current legislative framework, there are no consequences. Combine that with the failure to mandate the interview, and I think we're starting to see some significant vulnerabilities in this area.

I think the issue of really tailoring the confidentiality provisions is particularly important given the litigation that occurred after IRCA. We've got to remember there's going to be litigation here and the Secretary has to have the discretion to provide this information when it's needed.

Next, successful reform must improve the overall immigration court and removal process. We've got to think about this holistically. And I do think S. 744 provides some improvements in this area, particularly including the provision mandating counsel for certain vulnerable populations and increasing the legal orientation program.

However, there are certain areas that are undermined, where current law is undermined. And one of those areas is I think the bill effectively repeals the ability to utilize stipulated removals. Under S. 744, stipulated removals have to be in person. That effectively defeats the stipulated removal process, a process that over 20,000 individuals have used over the past few years.

Third, I think successful reform must fully address the third border, create an exit system that is biometric, and doesn't just include air, but also includes land, that's a comprehensive exit system.

And finally, successful reform must provide effective tools to reduce unlawful employment. And thinking about the magnet and how we can reduce it, I think there are two provisions in S. 744 that are very problematic. The first one is that legislation appears to prohibit employers from using tools to combat identity theft. And that is something that I think is very troubling to employers. The second thing is I think the extraneous appellate processes, those are going to bog down the employment system and make a system really not work.

As a former enforcement chief and veteran of the last debate, I know these are tough issues. I hope that Congress will consider looking at these issues and improving S. 744 to address some of those law enforcement concerns.

Thank you.

Mr. GOODLATTE. Thank you very much.

[The prepared statement of Ms. Wood follows:]

Julie Myers Wood

President – Compliance, Federal Practice and Software Solutions,
Guidepost Solutions
Former Assistant Secretary,
Immigration and Customs Enforcement (ICE)

May 22, 2013

Hearing on "S. 744 and the Immigration Reform and Control Act of 1986: Lessons Learned or Mistakes Repeated?"

Before the House Judiciary Committee

Hearing on "S. 744 and Immigration Reform and Control Act:

Lessons Learned or Mistakes Repeated?"

Statement of Julie Myers Wood

Former Assistant Secretary, Immigration and Customs Enforcement (ICE)

Before the House Judiciary Committee

May 22, 2013

Chairman Goodlatte, Ranking Member Conyers, Members of the Subcommittee, I appreciate the opportunity to testify before you about current efforts to reform immigration law and avoid past mistakes.

My name is Julie Myers Wood, and I am President of Guidepost Solutions, an investigative and compliance firm. In that position, I work with companies on their internal compliance programs, create web-based solutions to assist businesses with export and immigration compliance challenges, and consult with companies that work with the government. I also serve as an Advisory Committee member of the American Bar Association's Commission on Immigration and as a Member of the Constitution Project's Committee on Immigration. I am testifying today solely in my personal capacity and not as a representative of any group or organization.

Before joining the private sector, I most recently served as the Assistant Secretary of Immigration and Customs Enforcement (ICE) for nearly three years. I also served in a variety of government positions, including Assistant Secretary for Export Enforcement at the Department of Commerce, Chief of Staff for the Criminal Division at the Department of Justice and Deputy Assistant Secretary (Enforcement – Money Laundering and Financial Crimes) at the Department of Treasury.

It is encouraging to see the progress in the Senate and House towards improving our immigration system. But, as an avid supporter of comprehensive immigration reform, I find myself concerned that we're setting ourselves up for failure to truly address one of our nation's greatest challenges. In 1986, we were promised that the Immigration

Reform Control Act (IRCA) would end the limbo status of millions in the country unlawfully and impose sanctions on employers who "knowingly hire" unlawful immigrants. IRCA's two-pronged approach would stop the increasing number of undocumented individuals hiding in the shadows and hold employers accountable for the first time. Unfortunately, these changes in immigration policy and enforcement did not stop the tide of an unlawful workforce or decrease the acts of egregious employers taking advantage of immigrant workers. The failure of IRCA and its implementation is why Congress finds itself struggling to overhaul our immigration laws all over again. Yet without significant amendments, the Senate Bill S. 744 will surely put us in the same situation we are today within a matter of just a few years.

While well intentioned, S. 744:

- Limits, and in some cases, undermines, critical immigration enforcement abilities;
- Weakens existing immigration removal procedures;
- Fails to robustly address the Exit system; and
- Pushes further deputized enforcement onto employers in an inconsistent manner.[1]

As those who seek to reform our system, it is critical that we bring some perspective to potential provisions in S. 744 that could be problematic before the Bill is enacted, at a time when these issues could be addressed. Of course, any bill will not be perfect – either from an enforcement perspective, or an advocacy perspective. If we wait for perfect legislation, we would never have a bill. At the same time, we have an obligation to the American public to seek immigration reform that would improve our system, not just pass our unresolved problems down to the next generation.

[1] My testimony today will not address the "triggers" in S. 744, but rather focus on how the Bill would work if enacted from a law enforcement perspective.

I. Successful Reform Must Support, Not Undermine, Interior Enforcement Efforts, Including National Security Enforcement.

Successful reform efforts must recognize the critical nature of interior enforcement. While direct border efforts are essential, interior enforcement activities are also critical to address those that have gotten through layered enforcement or overstayed their visas.

One issue with IRCA was the failure to fully support and fund our enforcement agencies tasked with ensuring full compliance of our immigration laws going forward. For the last several decades, immigration agencies have been woefully understaffed, given their significant mission. ICE has only 6,500 agents, for example, far less than several city police departments, but the agency has a nationwide mission to combat all immigration and customs violations (including everything from export enforcement, to anti-money laundering, to identifying and prosecuting international child predators). Adding to the agency's normal workload, many individuals will also attempt to fraudulently seek benefits under S.744 or other reform legislation. Congress must consider the necessary enforcement footprint that will be required following reform to avoid the failures of the past.

Beyond funding, strategy issues must be considered. After 9/11 exposed significant security vulnerabilities in the visa and immigration system post-IRCA, ICE moved to a national security strategy that included an emphasis on "routine" enforcement. As part of a layered enforcement strategy, the goal was to ensure that illegal immigrants were mindful of law enforcement vigilance on a constant basis, in order to deter additional illegal entries and make unlawful presence in the United States a less hospitable option.

S. 744 (and the current Administration) have explicitly moved away from this layered approach to focus almost exclusively on enforcing immigration laws against "convicted criminals." The idea that routine immigration, documentation violations, or even just less than three misdemeanor convictions, should be ignored, or considered

insignificant poses a potentially serious threat to our country. It sends a message to those that seek to cause harm, or profit from petty or less obtrusive crime: if they can come in the United States illegally, but not immediately commit any additional crimes, they are likely to be left alone. Left alone to plan, take steps, cause harm. This explicit movement away from the New York policing model of addressing small and large violations – where even the turnstile jumpers were held accountable – should be closely watched as it may have broad implications for the ability of law enforcement to effectively prevent serious abuses in the immigration system.

With the focus only on "convicted criminals," the Bill regrettably lacks some common-sense requirements, even for those individuals who are adjusting their status. This could affect ICE's ability to satisfy its public safety and national security mission. In particular, there are several areas that should be addressed before S. 744 becomes final:

- **Interviews are not required before granting legalization.** S. 744 does not require interviews or even robust background checks. Even IRCA required interviews. In person interviews are necessary to ensure that applicants are who they say they are. Combine this with the lack of electronic filing, and cross-checks against significant lists, etc, and we are simply credentialing people who we don't know and of whose backgrounds we are unsure.

- **Overbroad confidentiality provisions encourage and foster fraud.** Sections 2104 and 2212 have overbroad confidentiality provisions. One of the widespread problems in the 1986 amnesty was widespread knowledge of the confidential "red sheet" and the fraud it festered. While it is understandable that we want to encourage individuals to apply for provisional status, it is important that everyone understand the consequences for not telling the truth. Under current legislative framework, there are no consequences. Combine that with the failure to mandate an interview, and this is a significant vulnerability in the bill.

Addressing this is particularly important given the litigation that occurred after IRCA. The Secretary must have the discretion to release information outside the required disclosures, where it is in the interest of national security or public safety. An example of this would be providing the information to the intelligence community who is examining a potential threat outside of a formal investigation (or determining, with law enforcement, as to whether a formal investigation would be appropriate). It is also necessary to allow the government to review the applications in the context of later applications for naturalization or other adjustment, to ensure that they are consistent and not fraudulent.

- **Range of "permittable" criminal conduct for individuals seeking adjustment is too extensive, potentially undermining public safety.** As drafted, many serious criminals would be eligible for legal status in S. 744 because they have not been convicted of three misdemeanors on separate days or felonies. The focus on "convictions" does not recognize the reality of significant plea bargains and sentence reductions throughout the criminal justice system. For example, many violent felony charges are often pled down or otherwise reduced to misdemeanors. The legislation would also permit individuals with two DUI convictions or three DUI convictions before December 2011 to adjust their status.

- **Gang provision limits ICE's authorities to remove dangerous criminals from the street.** Section 3701(G) relates to the problem of criminal street gangs. ICE has long utilized immigration authorities to remove dangerous gang members from communities across the country. Unfortunately, for all practical purposes section (G) will be unenforceable because it adds substantive requirements that are not often met, and may be hard for ICE to prove. For example, section 3701(G) utilizes a Title 18 interstate commerce requirement for gang activity to serve as a predicate for removability and inadmissibility. This requirement limits the applicability of this provision to certain gangs and adds an additional barrier to ICE enforcement. Also,

section 3701 allows individuals to simply denounce their gang affiliation and potentially become eligible. Although there may be some individuals who change their ways, and for whom relief is appropriate, this simple declaration is not sufficient to ensure law enforcement and public safety equities are protected in this instance.

- **Limitation on "fraud or material misrepresentation" provision protects bad actors and restricts law enforcement.** Section 2314 provides a new, temporal limitation on fraud or misrepresentation provision for a three-year time frame. There is no basis for this limitation in federal law. Oftentimes, fraud or misrepresentation charges or review come up in the context of a broader national security or fraud investigation. Limiting the time period to three years will handcuff law enforcement and provide perverse incentives for individuals to game the system.

- **Bill allows back those who were deported, removed or voluntarily departed without discretion.** S. 744 undermines finality by allowing those individuals to re-enter, get a low-skill blue card, and get their case re-opened automatically. Judges cannot refuse to re-open their case.

- **Bill provides automatic relief to the stateless.** A large number of national security cases historically have involved immigrants from the Palestinian Authority. Under section 3504, they would essentially be given automatic qualifications for relief regardless of the concern, even though in the past ICE has accomplished removals in several of these types of cases. This limitation on law enforcement authorities could be problematic, since in some circumstances the removal of these individuals is a high public safety priority.

- **Inequitable funding and staffing streams will lead to problematic enforcement.** Several places in the Bill provide for funding for CBP or other resources, without acknowledging the need for ICE (HSI or ERO) or EOIR

resources. For example, Section 1102a proposes an increase of 3500 CBP officers without a parallel increase in ICE investigative, and detention and removal resources. Funding one branch of enforcement without funding parallel branches will cause significant disparity in the overall enforcement of this legislation.

- **Bill is missing waivers in favor of enforcement equities.** Much has been said about the high number of waivers for positive discretion in an immigrant's favor. In my view, even more significant, and what is missing from the Bill is similar waivers for law enforcement exigencies or other emergencies. For example, in section 2101 (new section 245B), DHS is required to provide all aliens apprehended before or during the application period a reasonable opportunity to apply for provisional status and may not remove the individual until a final administrative determination is made. There is **no exception** for national security or public safety situations. This section should provide such an exception and permit the individual to be subject to removal immediately.

II. Successful Reform Must Improve The Overall Immigration Court/Removal Process.

As part of the incomplete enforcement post-IRCA, the number of absconder or fugitive aliens – aliens who were ordered removed but failed to do so – had been steadily going up until 2006. The orders of Immigration Judges were routinely ignored, and immigrants built and created substantial financial and personal equities long after being ordered to return to their home country. To address this, after 9/11, the INS and then ICE created fugitive operation teams to identify and arrest those individuals. The teams made some significant progress, first stabilizing and then reducing the numbers of fugitives still residing in the United States by 2008. In the current Administration, the focus has shifted from arresting fugitives to identifying whether they have equities that would warrant cancellation of removal or other relief. Although this makes sense in many cases

given the long history of lax enforcement, it is compounding the problem and continuing to encourage immigrants to abscond.

To avoid the problems of the 1986 Act and more recent enforcement, we must holistically address pending problems with the immigration court and removal process. S. 744 provides some improvements in this area, including the provision mandating counsel for certain vulnerable populations, including minors and those with a serious mental disability. However, and perhaps because the issues surrounding immigration enforcement and legalization are so complicated and layered, the Bill does not address additional and needed fundamental reforms for the removal process and procedures. This absence is unfortunate, as problems with existing mechanisms may portend future problems with enforcement effectiveness.

First, and most significantly, in some cases, S. 744 undermines certain existing protocols or procedures. These provisions should be amended.

- **Bill improperly shifts burden to government in all instances to justify detention.** There are many individuals who do not need to be detained, and under existing law, section 236(c) classified some individuals as needing mandatory detention when less restrictive means might have been sufficient to ensure their attendance at immigration court proceedings. Section 3717 of S. 744 removes the requirements for mandatory detention in all cases, and shifts the burden to the government to prove the need for detention. While the impulse to simply remove all requirements is understandable, a blanket rule requiring government to prove flight risk is too broad and will consume needless judicial and ICE resources.

  Instead, a more tailored model would be to draft a provision similar to the federal criminal system, which sets up a rebuttable presumption in certain circumstances that detention is appropriate. This model could work here as well – for individuals who by their previous history present a risk of flight, such as a significant criminal history, or factors leading to the lowest chance of adjustment. The burden should remain on the immigrant to demonstrate

that he/she will show up for hearings and not be a danger to the community. In all cases, ICE should have the discretion to consider complete criminal histories including police reports when determining whether or not a person poses a threat to the community.

- **Repeals ability to utilize stipulated removals.** Immigrants who do not have an ability to adjust their status sometimes choose to utilize a stipulated removal – effectively, a plea agreement. This reduces the amount of time these individuals spend in detention, and also reduces court resources. In some years, over 20,000 immigrants per year have chosen this option. Section 3717 effectively guts the stipulated removal program by requiring that the stipulations be made at "in person" proceedings. There is no question that it is important that the stipulated removal process be closely monitored to ensure that individuals are not forced into participating in the program, are fully informed about potential claims for relief, and understand the restrictions they are agreeing to in this process. However, for many individuals without valid claims to adjustment, stipulated removals allow them to resolve their situation promptly.

  Requiring that these stipulated removals only occur "in person" will cause significant delays – and in some cases keep immigrants in detention needlessly – while they are awaiting a transfer to a location with an immigration judge. The gutting of the stipulated removal provision is a good example of how S. 744 is not at all balanced between a realistic and humane approach to address the problem of those who are already in the country, and how to effectively avoid future illegal migration.

- **Overburdens immigration courts with unnecessary bail hearings.** The mandatory requirement in Section 3717 for custody hearings by immigration judges every 90 days, even in the absence of cause, is likely to expend significant resources without substantial benefits. DHS is already required to conduct post-order custody reviews and aliens are also able to request those hearings on their own.

Aside from areas where the Bill undermines existing procedures, the Bill also fails to consider streamlining and simplifying procedures to make them more uniform across the board. While I recognize that a Bill cannot solve all problems, there are several areas that should be a part of a comprehensive reform agenda.

- **Mere continuation of SCAAP funding "as is" allows state and local entities to profit while obstructing ICE efforts.** SCAAP is the funding stream for state and local entities who house unauthorized immigrants. This program has long been dysfunctional. It permits local entities to continue to receive SCAAP funding even though the local entities refuse to cooperate with ICE in terms of enforcement efforts. Particularly in the context of a bill that is addressing our overall immigration system, to allow local entities to continue to flout national enforcement is nonsensical and extremely ill advised. DHS/ICE should have the discretion to determine whether a state or local jurisdiction qualifies for SCAAP funding.

- **Failure to reconcile idiosyncratic treatment of similarly situated individuals.** Various immigration laws provide that individuals from different countries are treated differently. For example, if two individuals – one from Japan and one from Argentina – enter the United States on non-immigrant visas for vacation and overstay those visas, ICE can arrest both individuals. The Japanese individual has already waived his right to review before an immigration judge as part of the visa waiver program (as would have individuals from the 26 other visa waiver countries). The Argentinean's visa issuing process did not contain a waiver of the right to review, and he can tie up the immigration courts for years fighting removal. Anomalies like this should not continue. As part of reform, Congress should normalize the system so that all aliens who come into the United States on these types of non-immigrant visas agree to waive any deportation proceedings as part of the visa-issuing process.

- **Bill provides no incentives to utilize the Institutional Removal Program, expand expedited or voluntary removal or adopt other efficient, smart removal measures.** Particularly because of the importance of the Secure Communities program, ICE should increase use of Institutional Removal Program, which places individuals in immigration proceedings while they are serving time in federal or state institutions. By strategically funding courtrooms, judges, and immigration lawyers (including virtual courtrooms) in federal, state and local institutions with a high population of illegal aliens, the government could reduce excess time that criminal aliens spend in immigration custody after release from criminal custody.

Similarly, failure to mandate potential expansion of expedited removal will consume needless court resources. Expedited removal may be utilized for aliens who lack proper documentation or have committed fraud or willful misrepresentation of facts to gain admission into the United States, unless the aliens indicate either an intention to apply for asylum or a fear of persecution.[2] A reform could smartly expand expedited removal, by, for example, focusing on certain known smuggling routes beyond 100 miles or slightly extending the current time period for eligibility (30 days vs. 14 days, for example). Another alternative would be to apply extended time and range limits for the use of expedited removal for immigrants who are convicted of a crime by state or local law enforcement.

New legislation could expand qualifications and use of the voluntary departure program. A voluntary departure is a mechanism by which eligible immigrants agree to leave the country and avoid many of the bars associated with stipulated removal or formal removal orders.[3] In the 2010 EOIR Statistical Yearbook, DOJ reported that 17% of all removals in the immigration court system are now voluntary departures, up from 10% only

[2] 8 U.S.C. § 1225. Any extension of expedited removal would have to be managed closely to ensure that the existing credible fear process for asylum seekers continues to be strictly followed and appropriate training is provided for DHS officers.
[3] 8 U.S.C. §1229c.

five years prior to that.[4] With support from Congress, ICE could administratively create mechanisms to more uniformly notify individuals of the option of voluntary removal immediately, so that appropriate candidates might consider this option at the very outset of proceedings (rather than waiting for a master calendar hearing, or afterwards).

III. Successful Reform Must Fully Address the Third Border – Create an Exit System.

One of the most significant problems with current immigration enforcement is the inability of the government to address the problem of visa overstays. It is estimated that approximately 40% of individuals who are in the United States without authorization today initially entered the United States legally. When their visas expired, these "overstays" blended into American society with little concern that they would be held accountable by any federal law enforcement.

A significant reason these individuals are able to blend into society is the fact that we do not have an adequate Exit system, despite seventeen years and six statutes requiring an Exit program. The lack of an adequate Exit program was highlighted by the 9/11 Commission, "DHS, 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."

Although historically some technological challenges may have been obstacles to the government from implementing a valid program, improvements to biometric technology mean that this is no longer a valid excuse. Rather than shrinking from the requirements in past bills, any new reform should mandate a robust, biometric Exit program, and give the DHS sufficient resources to implement and enforce this program.

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[4] See Executive Office for Immigration Review, U.S. Department of Justice, FY 2010 Statistical Yearbook, at Q1.

With an effective, biometric Exit program, law enforcement would have the ability to more effectively enforce immigration laws against individuals who overstay their visas. Currently there are approximately 300 dedicated Counter Terrorism Compliance Enforcement Unit agents. They prioritize leads based on threat. Because we do not have an Exit system, many times ICE agents are referred or focus on high priority leads who have already left the country. This is a waste of law enforcement efforts and risks the agency lacking the resources to focus on other high priority targets. Without a biometric component, doing the checking that is involved to guarantee that that individual has actually left (and not an imposter, etc.), many times ICE has to engage and even deploy overseas resources to confirm that the individual has left the country. This is not a simple exercise in paperwork. Often involves agents going out in the field and verifying or validating departure. This waste of resources would be eliminated with mandatory biometric Exit.

An effective biometric Exit program would also be useful to confirm certain types of Voluntary Departures. These departures require the individual to check in with the consulate. Often this is not done, or the individuals do not understand the need to do so. ICE agents are required to investigate and confirm that departures have occurred. This takes ICE and State Department hours. An Exit system would also contribute to US citizenship being granted to those individuals who have truly met the time requirements for physical presence in the United States.

Even more generally, a robust Exit program would provide enhanced value in investigations and criminal cases of all kinds where government is proving travel as part of the conspiracy or in furtherance of the criminal behaviors.

We may need to be realistic about what government can achieve. But ignoring the gap, and simply retreating is not wise, especially given all the technological advances since the first mandate of Exit in 1996.

- **Section 3303 of S. 744 falls short in several respects.** As a threshold matter, the mandatory Exit system prescribed in the Bill is only for air and seaports, not for land departures. Section 3303 does not require the system to be

biometric. Finally, this section does not provide for additional, dedicated law enforcement resources to identity and apprehend visa violators.

IV. Successful Reform Must Provide Effective Tools to Reduce Unlawful Employment.

The 1986 bill failed to provide effective measures to fully address illegal employment. That bill created the Form I-9, but did not add commensurate enforcement resources to enforce the I-9 process. Although the mere requirement of the form caused significant employer cooperation in early years of the requirement, inconsistent enforcement and failure to update tools to address emerging problems of identity theft have caused the requirement to fall short of its goal.

In addressing the problem of unlawful employment, S. 744 does some positive things. For example, it makes electronic employment eligibility for all employers a requirement at some point. It also provides authority for the Secretary to regulate unscrupulous providers in this area. As providers have begun to address to opportunities to automate the compliance requirements, some have provided incomplete or partial systems that have caused their clients to be subject to fines. This Bill acknowledges the new frontier of additional providers and provides a potential regulatory scheme to address this. And, finally, if imperfectly, the Bill recognizes the problem of identity theft and fraud – one of the greatest problems faced by many employers who utilize the E-Verify system.

Despite some positive features, S. 744 misses the mark in terms of effective employer verification:

- **Throws away the imperfect, but very workable E-Verify system and relies on a new, unproven system.**
- **Makes employers subject to greater penalties, but appears to restrict the ability of employers to use tools to prevent identity theft.** One of the most pressing issues for employers is a concern that they will be a subject of government investigation or, worse, penalized, even when acting in good faith.

S. 744 essentially continues the current defense for employers relying on E-Verify confirmations in good faith.

In high-risk industries where there are significant number of individuals who repeatedly try to circumvent the E-Verify system, however, employers face a very real risk that ICE and federal prosecutors will be reluctant to conclude that a company relied in "good faith" on E-Verify confirmations if a number of identity thieves circumvented the employer's E-Verify program. For this reason, many employers do not rely on E-Verify alone, but also use manual and automated tools to try to prevent identity theft. These tools are essential given the current deficiencies in the E-Verify system. Unfortunately, S. 744 appears to prohibit or limit these current anti-identity theft programs, while still making employers subject to significant penalties.

- **Creates "existing employee" loophole with a lengthy lead-in time, causing a large layer of an "uncleared" workforce.** S. 744 provides no mechanism to verify existing employees. Combine that with the 5-year, phase-in timeframe, and this Bill creates a significant "uncleared" underclass of employees. Such an underclass will increase the ability for bad faith actors to take advantage of these employees.

- **Extraneous appellate processes remove finality for employers**. One of the most problematic issues is that an unfavorable system finding doesn't allow the employer to terminate the employee automatically after a final nonconfirmation. Instead, an employee unhappy with the system's determination can file a complaint with an Administrative Law Judge – putting the employer's workforce in limbo and subverting the goal of e-verification ease and finality for employers. If the employee is unhappy with the ALJ determination, he can then appeal to the U.S. Court of Appeals. The employer will need to keep this employee working during what could be very lengthy process, even one that is gaming the system.

S. 744 Will Not Enable More Successful Employer Enforcement.

- **ICE Agents Still Do Not Have Access To Key Information About Egregious Employers.** Section 3102 of the Bill purports to allow DHS access to some information regarding identity theft from the IRS, but the language is extremely restrictive and in some instances, more limiting than current practice (by requiring supervisors to submit requests, for example). The language still does not provide for the Social Security Administration to share information regarding employers in order to target egregious violators or give ICE direct access to the NUMIDENT database. For example, ICE has sought the ability to know the top 50 recipients of Social Security no-match letters, for example, and under this bill that still would not be permitted, absent a specific court order under IRS Code section 6103.

- **Egregious employers, who provide fraudulent records or abuse employee rights, appear to be protected from ICE enforcement.** Section 245E(b) provides protection to employers who provide employment records to individuals who are seeking to adjust to provisional status. The bill provides that information provided by employers to employees for purposes of provisional applicants cannot be used against employers, but states that the protection does not apply if the records are fraudulent. What is not clear is how ICE would ever have access to that information, even as a part of a fraudulent scheme, since the documents would be protected under the confidentiality provisions of 2104, as they would relate in part to a prosecution based on the employee's status. This could encourage rogue employers to take advantage of this legislative inconsistency to avoid prosecution or detection.

  In addition, in some instances the records might show abusive treatment by an employer. These would also be "confidential" under the plain language of the Bill. It is unfortunate that ICE and the Department of Labor would not have access to address clear violations (e.g., payroll records showing pay

stubs of $3.25/hour). The same problems occur with the "blue card" employment protection procedures in Section 2211.

- **Nonsensical "blue card" employer receipt requirement does not seem to serve a purpose and is an additional layer over other employment eligibility processes.**

V. Conclusion

As a former enforcement chief and veteran of the last immigration reform debate, I know that these issues are tough to resolve. I hope that Congress will consider amending S. 744 to address some of these law enforcement concerns. Only by acknowledging and learning from the incomplete enforcement efforts of previous legislation will we be able to avoid a repeat of past problems and ensure a solid immigration system.

Mr. GOODLATTE. Mr. Crane, welcome.

TESTIMONY OF CHRIS CRANE, PRESIDENT, NATIONAL IMMIGRATION AND CUSTOMS ENFORCEMENT COUNCIL 118, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES

Mr. CRANE. Thank you. And good afternoon, Chairman Goodlatte, Ranking Member Conyers, and Members of the Committee.

With my written testimony, I included a letter to Congress outlining general law enforcement concerns with the gang of eight bill on immigration reform.

In this letter the ICE union is joined by the union representing U.S. Citizenship and Immigration Services. Both unions represent approximately 20,000 Federal employees handling the bulk of interior immigration enforcement. Additionally, 113 sheriffs nationwide are represented on the letter, as well as the National Association of Former Border Patrol Officers. Individuals and groups continue to sign the letter to express their concern that Senate bill 744 fails on matters of public safety, border security, and overall enforcement. I sincerely hope that Members of the House will, unlike the gang of eight, include law enforcement in the development of future legislation.

On April 18, 2013, I attended a gang of eight press conference. The room was filled with supporters. There was a lot of joking, a lot of laughing. There was a lot of talk about what a great humanitarian effort this bill represents. I remember thinking how at that very moment ICE agents on our southern border were being overwhelmed by a dramatic increase in illegal aliens crossing the border, most claiming to have entered based on rumors of the new gang of eight amnesty, thousands of these aliens being unaccompanied children, runaways, making the treacherous trip across the border by themselves.

Crossings by illegal aliens seeking amnesty will likely continue for years. Many may die or be victimized. ICE is already offering transfers to permanently move more officers to the border.

There is a reason why many in law enforcement have repeatedly said let's slow this down, let's take the time to do this right, starting by putting enforcement mechanisms in place that will deter illegal entry and stop tragedies like this from happening.

"Enforcement" is not a dirty word. Enforcement saves lives. Our union has been telling America and Congress that ICE and DHS officials are ignoring public safety, the agency's law enforcement mission, and the laws enacted by Congress, carrying out their own personal political agendas. I hope that the targeting of conservative groups by the IRS, as well as other scandals recently in the media, to include ICE and DHS lies uncovered last week regarding hundreds of criminal and convicted felons that ICE recently released into U.S. Communities without warning, will lend credence to what we have been saying for years.

There is no oversight of political appointees and other high-ranking managers within Federal agencies. The heads of DHS and ICE have overridden Congress and determined that certain laws will not be enforced. They came to this conclusion shortly before our Nation's last presidential election. Employees reported that managers at ICE headquarters told employees that amnesty-related

policies had to be implemented in advance of the election. Policies implemented by ICE and DHS managers have become so contrary to law and public safety that ICE agents have been forced to file a lawsuit against the heads of both ICE and DHS.

According to Ken Palinkas, union president of employees, and employee of the U.S. Citizenship and Immigration Services, high-ranking managers within USCIS have implemented similar policies. USCIS employees are being pressured to approve all applications, even when red flags are present. Proper investigation of applications is not being done. USCIS employees are discouraged by managers from denying applications. Palinkas says USCIS has become an approval machine, that officers are discouraged from placing illegal aliens into immigration proceedings and discouraged from contacting ICE agents in cases that should have ICE's involvement.

In closing, as law enforcement officers we have never taken a position on matters such as the numbers or types of visas to be issued or a path to citizenship. We simply seek to assist in creating laws that can and will be enforced and that provide for public safety. In our opinion, the single most significant task that Congress must complete in any immigration reform legislation is that every opportunity to take away or limit the authority and discretion of political appointees and Presidents so that the laws enacted by Congress will be followed and enforced. Thank you. And that concludes my testimony.

Mr. GOODLATTE. Thank you, Mr. Crane.

[The prepared statement of Mr. Crane follows:]

Statement by Chris Crane, President,
National Immigration and Customs Enforcement Council 118
of the
American Federation of Government Employees

Before the
Committee on the Judiciary

May 22, 2013

Chairman Goodlatte, Ranking Member Conyers, and Members of the Committee, I commend you for holding this hearing and for asking for the input of the Immigration and Customs Enforcement (ICE) Council that represents approximately 7,000 officers, agents, and staff responsible for the enforcement of our immigration laws in the interior of the United States.

Not only is the Gang of Eight bill legalization first, but it actually weakens and undermines interior enforcement. Successful reform must move in the opposite direction: providing ICE with the authority, resources and enforcement tools it needs to protect the country—and putting a stop to the administration's abuse of power that blocks ICE officers from enforcing our nation's laws. No reform can succeed that doesn't put a stop to the gross abuses of prosecutorial discretion and administrative priorities that are used to undermine the rule of law. In addition to increased ICE resources, additional manpower, and enhanced arrest authority for immigration enforcement agents, three measures should be implemented immediately: ICE officers should be required to place detainers on every illegal alien they encounter in jails and prisons, since these aliens not only violated immigration laws, but then went on to engage in activities that led to their arrest by police; ICE officers should be required to issue Notices to Appear to all illegal aliens with criminal convictions, DUI convictions, or a gang affiliation; ICE should be working with any state or local drug or gang task force that asks for such assistance.

It is also important to bear in mind that ICE has only 5,000 officers to cover fifty states, Puerto Rico and Guam – a smaller force than many police departments. It is as though ICE has been set up to fail.

Meanwhile, USCIS adjudications officers, who would be deluged with more than 11 million applications filed by illegal aliens seeking legalization, in addition to screening and processing applications for legal admissions, are being prevented from adequately protecting

national security even now. On Monday, Kenneth Palinkas, President of the National Citizenship and Immigration Services Council, the union representing 12,000 United States Citizenship and Immigration Services (USCIS) adjudications officers and staff, released a statement that "USCIS adjudications officers are pressured to rubber stamp applications instead of conducting diligent case review and investigation. The culture at USCIS encourages all applications to be approved, discouraging proper investigation into red flags and discouraging the denial of any applications. USCIS has been turned into an 'approval machine.'"

He went on to say that "the attitude of USCIS management is not that the Agency serves the American public or the laws of the United States, or public safety and national security, but instead that the agency serves illegal aliens and the attorneys which represent them." He concluded that "S. 744 will damage public safety and national security and should be opposed by lawmakers."

This is why the National ICE Council has joined with the USCIS Council, and sheriffs and law enforcement officers and representatives from around the country to voice our concerns in a letter to Congress about S. 744 and its negative impact on national security and public safety. This letter lays out some of the many specific provisions of S. 744 that jeopardize national security and public safety and concludes that the bill "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." I have attached the full text of the letter to my statement.

I submit to you that America will never have an effective immigration system as long as Presidents and their political appointees are permitted to ignore the United States Congress and pick and choose the laws they will enforce, and even enact their own laws, without Congress, through agency policy.

Because Congress has not insisted that the President enforce the laws it has enacted, a group of ICE Officers and Agents, including myself, have filed a lawsuit against Secretary Napolitano and ICE Director Morton because they refuse to enforce the immigration laws enacted by Congress. Most Americans would be shocked to learn that, under this administration, ICE Officers and Agents are not permitted to:

- Arrest individuals for entering the United States illegally or overstaying a visa;
- Enforce laws regarding fraudulent documents and identity theft by illegal aliens;
- Enforce the prohibition against aliens becoming public charges.

ICE Officers and Agents are forced to apply the Deferred Action for Childhood Arrivals (DACA) Directive, not to children in schools, but to adult inmates in jails. If an illegal-alien inmate simply claims eligibility, ICE is forced to release the alien back into the community. This includes serious criminals who have committed felonies, who have assaulted officers, and who prey on children.

ICE deportation numbers have plummeted since 2008—contrary to reports of record numbers by presidential appointees at ICE and DHS. This is clear evidence that interior enforcement has been gutted.

S. 744 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 were not enforced following past "amnesties," and certainly are not being enforced now, what possible reason would the American people have to believe that any new laws passed by Congress will be enforced? Promises of future enforcement, like those in the past, are just

empty promises. But the provisions in S. 744 are actually even worse because they undermine enforcement. For example, S. 744:

- Does nothing to change the current lawless policies of prosecutorial discretion and DACA. Instead, it further weakens current law by giving enormous discretionary authority to the DHS Secretary to waive removals, deportations, ineligibility and inadmissibility for practically any reason;
- Makes dangerous individuals automatically eligible for relief from removal;
- Allows the reentry of those who were previously deported by ICE;
- Radically undermines ICE's ability to detain and remove aliens in the future and creates a massive new bureaucracy that will become a lasting barrier to enforcement;
- Members of street gangs can apply for legalization as long as they simply renounce affiliation with the gang, and even this is not necessary for Gang members under the age of 18;
- Absolves criminal convictions;
- Overlooks felony arrests;
- Absolves document fraud, false statement to authorities and serial immigration violations – creating an impediment to national security;
- Grants legal status to potentially 4 million or more visa overstays.

Americans should understand that this legislation only guarantees legal status for illegal aliens, including serious criminals. 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.

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 when Senators invite illegal aliens to testify before Congress, and groups representing the interests of illegal aliens are brought in to develop our nation's immigration laws, but law enforcement officers working within our nation's broken immigration system are purposefully excluded from the process and prohibited from providing input.

It should come as no surprise, then, that in terms of enforcement and providing for public safety, S. 744 falls short. In terms of legalization and eventual citizenship for 11 million illegal aliens it would undoubtedly succeed—at huge cost to the American people, our public safety, and our national security.

ATTACHMENT

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

May 20, 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,

Organizations

1.	Chris Crane, President	National ICE Council
2.	Zack Taylor, Chairman	National Association of Former Border Patrol Officers (NAFBO)
3.	Beth Appleby, Administrator	Pennsylvania Sheriff's Association representing 67 Sheriffs.
4.	Kenneth Palinkas, President	National Citizenship and Immigration Services Council 119, AFGE, AFL-CIO

Individual Sheriffs

1.	Sheriff Sam Page	Rockingham County NC/Vice Co-Chair National Sheriffs Association Border Security and Immigrations Committee
2.	Sheriff David M. Carpenter	Lincoln County, NC
3.	Sheriff Andy Stokes	Davie County, NC
4.	Sheriff Rick Burris	Stanly County, NC

5.	Sheriff Eddie Cathey	Union County, NC
6.	Sheriff Prentis Benston	Bladen County, NC
7.	Sheriff Darryl Liverman	Tyrrell County, NC
8.	Sheriff Chuck Jenkins	Frederick County, Maryland
9.	Sheriff Vic Davis	Clay County, NC
10.	Sheriff James Ross	Washington County, NC
11.	Sheriff Todd Garrison	Dona Ana County, New Mexico/Chairman Southwest Border Sheriffs Coalition
12.	Sheriff Paul Babeu	Pinal County, Arizona
13.	Sheriff Terry Johnson	Alamance County, NC
14.	Sheriff Matt Murray	Curry County, NM
15.	Sheriff Todd Martin	Monroe County, PA
16.	Sheriff Thomas Hodgson	Bristol County, Massachusetts
17.	Monica L. Shank, Executive Secretary	Guadalupe County Sheriff's Office, NM
18.	Sheriff Carolyn B. Welsh	Chester County, PA
19.	Sheriff Curtis A. Cochran	Swain County, NC
20.	Sheriff Clinton "C.J." Walters	Bradford County, PA
21.	Sheriff Dan Gibbs	Martin County, NC
22.	Sheriff Jeffrey C. Krieg	Elk County, PA
23.	Sheriff Larry Rollins	Harnett Co. N.C.
24.	Sheriff Eric Foy	Venango County, PA
25.	Sheriff Tracy L. Carter	Lee County, NC
26.	Sheriff Kenneth L. Klakamp	Warren County, Pennsylvania
27.	Sheriff Dewey Jones	Person County, NC
28.	Sheriff Oscar O. Cowen, Jr.	Starke County, IN
29.	Sheriff Ronald B. Bruce	Hinsdale County, Colorado
30.	Richard Valdemar, Sgt.	LASD (Ret.), Gang Expert
31.	Sheriff Kenneth W. Matlack	Morrow County, Oregon
32.	Sheriff Clint McDonald	Terrell Co., Texas
33.	Sheriff Carey A. Winders	Wayne County North Carolina
34.	Adam Stubbs	Government LiaisonOffice of Intergovernmental Services Las Vegas Metropolitan Police Department
35.	Sheriff Cliff Harris	Pecos County, TX
36.	Sheriff Mike Marshall	Stokes County NC
37.	Sheriff Asa Buck	Carteret County, North Carolina
38.	Sheriff Brad Riley	Cabarrus County, North Carolina
39	Sheriff Lou Evangilidis	Worcester County, Massachusetts
40.	Chief Roy E. Melnick	Los Lunas City Police Department, New Mexico
41.	Sheriff Bruce Hartman	Gilpin County, Colorado
42.	Sheriff Tony Perry	Camden County, North Carolina
43.	Sheriff Coy Reid	Catawba County, North Carolina
44.	Sheriff Donald Hill	Polk County, North Carolina
45.	Sheriff Saturnino Madero	Hidalgo County, New Mexico
46.	Sheriff Mike Andrews	Durham County, North Carolina

47.	Sheriff Larry Spence	Willacy County, Texas
48.	Sheriff Maynard B. Reid, Jr.	Randolph County, North Carolina
49.	Sheriff Alan Norman	Cleveland County, North Carolina
50.	Sheriff Dempsey Owens, Jr.	Montgomery County, North Carolina
51.	Sheriff BJ Barnes	Guilford County, North Carolina
52.	Sheriff Jerry Monette	Craven County, North Carolina

Mr. GOODLATTE. Mr. Aguilar, welcome.

TESTIMONY OF DAVID V. AGUILAR, PARTNER, GLOBAL SECURITY AND INTELLIGENCE STRATEGIES (GSIS)

Mr. AGUILAR. Good afternoon, Chairman Goodlatte, Ranking Member Conyers, and distinguished Members of the Committee. It is truly a pleasure to be here this afternoon to testify on S. 744. I've testified many times before this Committee, before other Committees as chief of the Border Patrol in Tucson Sector, the most active sector in the United States, as national chief of the Border Patrol, as Deputy Commissioner of Customs and Border Protection, and lastly, as Acting Commissioner of CBP.

I believe this is the first time that I testify as a plain citizen, the most important position that any one of us can actually hold. I look forward to testifying today along with my distinguished and fellow members here.

I believe that the subject of today's hearing is of critical importance to the Nation. Our country has been struggling with the issue of immigration reform for many decades. It is a matter that captures our Nation's attention and generates deep, some would say visceral emotions. One thing that the vast number of Americans agree on, and I also agree on this, is that our Nation's immigration system is in fact broken.

I spent 35 years working the borders of our country at many levels within the organizations responsible for the security of those borders. We have made tremendous advances in securing our Nation's borders. Illegal immigration that flows across our borders must be controlled. That is something that we have to do. But we must understand that controlling the illegal flow of persons is but one of the many challenges that the men and women who stand the line face each and every day. Officers and agents also combat the illegal flow of narcotics, criminals, criminal organizations, weapons, bulk currency, and cartel activities into our country. Controlling, mitigating, managing, and addressing each and every one of these flows is critical to the security of our Nation.

But right now, the most taxing and workload-intensive aspect of the job that we do, that I used to do, is the work that goes into controlling the illegal flow of people. A comprehensive and balanced immigration reform plan that guarantees a workable legal flow of immigrants in the future and thereby diminishes the flow of illegal entrants would allow the men and women who secure our borders to focus time and resources on those other threats and would significantly enhance our Nation's security overall.

The best way to do this is to successfully design and implement a comprehensive and balanced immigration reform bill that will finally respond to the demands of the American people and fix our broken immigration system. Despite the advances in border security that we have made over the years, and there have been many, this is a problem that we cannot fix through enforcement alone. We need an immigration system that allows us to meet our Nation's labor needs, further enhances our border security efforts, implements an employment verification system with meaningful employer sanctions for violators, and provides a tough but fair path to legal status for the current unauthorized population.

The importance of providing for future legal flows must be taken into account. I believe this is the most important lesson that we can learn from IRCA 1986. We need to make sure that people who come here to join close family members or to fill needed jobs, American jobs, come in through the ports of entry, are subjected to background checks, and are admitted legally for proper reasons and under appropriate conditions. Based on my current review of the bipartisan Senate immigration reform bill, I believe that it contains the general foundational pieces to set up such a successful system.

Before I speak too much on this, but I need to put this in current context, is allow me to provide that context. During IRCA there was about 3,000 United States Border Patrol agents along the entire southwest border. Today there are 21,380 operating along our Nation's southwest border. We literally operated with technology at the time that consisted of handheld flashlights, Vietnam-era sensors, very little lighting on the border, and certainly none of the outstanding technology that our agents work with today. Fencing infrastructure was nonexistent.

The difference between then and now is stark. We are at a time of opportunity. Our Nation's borders are safer and more secure than they have ever been before. The flows of illegal crossings are at their lowest point in over 40 years. Since its inception, DHS has added a tremendous amount of resources and capabilities to the borders.

Our partnership with Mexico is something that we must speak about. It has come a long way. We work very closely with our partners in Mexico on both sides of the border. There is a resolute effort to bring control to our borders. There is a recognition on the parts of U.S. officers and Mexican officers that we have a joint responsibility to secure our borders.

Reduce crimes along the southwest border by 40 percent. More border fence and infrastructure than ever before, 650 miles of border fence and infrastructure. Largest civilian law enforcement air force in the world, including 10 UAS's. Over 23,000 Customs and Border Protection officers at our ports of entry. An 80 percent reduction of apprehensions along our Nation's southwest border since the peak year in 2000 when we apprehended over 1.6 million and a 40 percent reduction in apprehensions just from 2008. It is against this backdrop of record border enforcement that we must view the bipartisan immigration reform bill that is now moving through the Senate.

A critical component of any comprehensive and balanced immigration reform system includes a strong means to crack down on the draw of jobs magnet. We have discussed already what it's going to take to do that. A key lesson that we should take away from the debacle of IRCA 1986 is that it addressed legalization of the illegal population and implemented what turned out to be a very, very weak employer sanctions program. We must address that.

The Senate bill appears to meet a lot of things that we have spoken about today. And critically important, it provides for continued enforcement resources to be acquired and applied under strategies to be developed by DHS and CBP.

Chairman, Committee, I look forward to any questions that you might have of me.

[The prepared statement of Mr. Aguilar follows:]

May 22, 2013

U.S. House of Representatives

Committee on the Judiciary Hearing:

"S. 744 and the Immigration Reform and Control Act of 1986: Lessons Learned or Mistakes Repeated?"

Testimony of David V. Aguilar

Partner, GSIS

Retired Acting Commissioner US Customs and Border Protection

Chairman Goodlatte, Ranking Member Conyers, and distinguished Members of the Committee, it is an honor to appear before you this afternoon to testify on S.744 and the Immigration Reform and Control Act of 1986: "Lessons Learned or Mistakes Repeated". I have testified many times before Senate and House Committees and Subcommittees as Chief Patrol Agent of the Tucson Sector, overseeing the most active Border Patrol Sector in the nation, as National Chief of the United States Border Patrol during a time of tremendous growth, as Deputy Commissioner of US Customs and Border Protection, and as Acting Commissioner of CBP. But this is the first time that I testify from what I believe to be the most important position for anyone of us, as a citizen of our great country. I look forward to testifying today along with my distinguished and fellow panel members.

I believe that the subject of today's hearing is of critical importance to our nation. Our country has been struggling with the issue of immigration reform for many decades. It is a matter that captures our nation's attention and generates deep, some would say, visceral emotions. One thing that the vast number of Americans agree on is that our nation's immigration system is broken. I agree with this position.

I spent 35 years working the borders of our country at many levels within the organizations responsible for the security of those borders. As I will detail in my testimony, we have made tremendous advances in border security as a nation. Illegal immigration flows across our borders must be controlled. But we must understand that controlling this illegal flow of persons is but one of many challenges that the men and women who "stand the line" face each and every day. Officers and agents also combat the illegal flow of narcotics, criminals, criminal organizations, weapons, bulk currency, and cartel activities into our country.

Controlling, mitigating, managing, and addressing each and every one of these flows is critical to the security of our nation, but right now the most taxing and workload-intensive aspect of the job is the work that goes into controlling the illegal flow of people. A comprehensive and balanced immigration reform plan that guarantees a workable legal flow of immigrants in the future—and thereby diminishes the flow of illegal entrants—would allow the men and women who secure our borders to focus time and resources on these other threats and would significantly enhance our nation's security overall. It would be a tremendous force multiplier if we were able to dramatically reduce the illegal flows of people and redirect our border law enforcement efforts and resources towards the narcotics traffickers, criminals, and criminal organizations that will continue to try to exploit our borders.

The best way to do that is to successfully design and implement a comprehensive and balanced immigration reform bill that will finally respond to the demands of the American people and fix our broken immigration system. Because despite the advances in border security that we have made over the years, this is a problem we cannot fix through enforcement alone. We need an immigration system that allows us to meet our nation's labor needs, further enhances our border security efforts, implements an employment verification system with meaningful employer sanctions for violators, and provides a tough but fair path to legal status for the current unauthorized population.

The importance of providing for future legal flows must be taken into account. I believe this is the most important lesson we can learn from the Immigration Reform and Control Act of 1986 (IRCA). We need to make sure that people who come here to join close family members or fill needed jobs come in through our ports of entry, are subjected to background checks, and are admitted legally for proper reasons and under appropriate conditions. Based on my current

review of S. 744, the bipartisan Senate immigration reform bill, I believe that it contains the foundational pieces to set up such a successful system.

TRANSFORMED BORDERS: Unprecedented Resources at Our Borders

Before I speak about our current level of investment into securing our borders, allow me to provide some context. During the time period when the Immigration Reform and Control Act (IRCA) was being considered and implemented from 1986 to 1990 there were approximately 3,000 Border Patrol Agents in Service throughout the entire southwest border. Technology at that time consisted literally of hand held flashlights, Viet Nam era sensors, very little lighting on the border, and certainly none of the outstanding technology that our agents work with today. Fencing and infrastructure were extremely minimal, nothing to speak about.

The difference between then and now is stark. We are at a time of opportunity. Our nation's borders are safer and more secure than ever before. The flows of illegal crossings are at their lowest point in over 40 years. Since its inception, DHS has dedicated historic levels of personnel, technology, and infrastructure in support of our border security efforts. Resource levels, when considered with other factors, remain essential elements in controlling and assessing the security of our borders. We have resourced our borders at and between the ports with unprecedented levels of enforcement assets.

Our partnership with Mexico is unprecedented. Today, US and Mexican agencies with responsibility for border enforcement coordinate and partner at levels and collaboration never seen before. This has made a dramatic difference in the manner in which our countries cooperate and work together against the criminal organizations that exploit our borders. I have witnessed and experienced a depth and growth of resolve on the part of our Mexican partners to jointly

work the border region that adjoins our two nations. There is a recognition on their part and ours that we have a joint responsibility to secure our borders.

Reduced crime rates along the Southwest border indicate success of our law enforcement efforts. According to 2010 FBI crime reports, violent crimes in Southwest border-states have dropped by an average of 40 percent in the last two decades. More specifically, all crime in the seven counties that comprise the South Texas area is down 10 percent from 2009 to 2011. Between 2000 and 2011, four cities along the Southwest border – San Diego, McAllen, El Paso, and Tucson – experienced population growth, while also seeing significant decreases in violent crime.

These border communities have also seen a dramatic boost to their economies in recent years. In FY 2012, over $176 billion in goods entered through the Laredo and El Paso, Texas ports of entry as compared to $160 billion in FY 2011. Additionally, the import value of goods entering the United States through Texas land ports has increased by 55 percent between FY 2009 and FY 2012. In Laredo alone, imported goods increased in value by 68 percent. Arizona is also a significant source for the flow of trade. In both FY 2011 and FY 2012, $20 billion entered through Arizona ports of entry.

Communities along the Southwest border are among the most desirable places to live in the nation. Forbes ranked Tucson the number one city in its April 2012 "Best Cities to Buy a Home Right Now" and in February, 2012, the Tucson Association of Realtors reported that the total number of home sales was up 16% from the same month the previous year. Tucson also joins Las Cruces, New Mexico on Forbes' list of "25 Best Places to Retire." These Southwest border communities are safe. In fact, Business Insider published a list of the top 25 most dangerous

cities in America, and again, none of them is located along the southwest border. In fact, El Paso was named the second safest large city in America in 2009 and the safest in 2010 and 2011. This is in dramatic contrast to Ciudad Juarez, just across the border, which is often considered one of the most dangerous cities in the Western Hemisphere.

The successes of a secure border are also reflected in key national economic indicators. In 2011, secure international travel resulted in overseas travelers spending $153 billion in the United States – an average of $4,300 each – resulting in a $43 billion travel and tourism trade surplus. In addition, a more secure global supply chain resulted in import values growing by five percent and reaching $2.3 trillion in FY 2012 and is expected to exceed previous records in the air, land, and sea environments this year.

The Border Patrol is now staffed at the highest level in its 88-year history. The number of Border Patrol agents (BPAs) doubled, from approximately 10,000 in 2004 to more than 21,000 agents today. Along the Southwest border, the number of law enforcement assets on the ground have increased from approximately 9,100 BPAs in 2001 to nearly 18,500 today. At our Northern border, the force of 500 agents that we sustained ten years ago has grown to more than 2,200 agents.

Our agents benefit from over 650 miles of border fence and barrier designed by them and applied where required. State of the art technology has been deployed and plans are in place to expand technological capabilities with the support of the Congress.

Law enforcement capabilities at the ports of entry (POEs) have also been reinforced. To support the evolving, more complex border security mission since September 11, 2001, the number of CBP officers (CBPOs) ensuring the secure flow of people and goods into the nation increased

from 17,279 customs and immigration inspectors in 2003, to more than 21,000 CBPOs and 2,400 agriculture specialists today. These frontline employees facilitated $2.3 trillion in trade in Fiscal Year (FY) 2012, and welcomed a record 98 million air travelers, a 12 percent increase since FY 2009, further illustrating the critical role CBP plays not only with border security, but with economic security and continued growth.

Infrastructure and Technology

As a country, we have made unprecedented investments in border security infrastructure and technology. Technology is the primary driver of all land, maritime and air domain awareness—and this will become only more apparent as CBP and our country faces future threats. Technology assets such as integrated fixed towers, mobile surveillance units, and thermal imaging systems act as force multipliers increasing agent awareness, efficiency, and capability to respond to potential threats. As we continue to deploy border surveillance technology, particularly along the Southwest border, these investments allow CBP the flexibility to shift more Border Patrol Agents from detection duties to interdiction and resolution of illegal activities on our borders.

At our POEs, CBP has aggressively deployed Non-Intrusive Inspection (NII) and Radiation Portal Monitor (RPM) technology to help identify contraband and weapons of mass effect. Prior to September 11, 2001, only 64 large-scale NII systems, and not a single RPM, were deployed to our country's borders. Today CBP has 310 NII systems and 1,460 RPMs deployed. The result of this investment in resources is the capacity for CBP to scan 99 percent of all containerized cargo at seaports and 100 percent of passenger and cargo vehicles at land borders for radiological and nuclear materials upon arrival in the United States.

AIR AND MARINE

CBP not only supports security efforts along the nearly 7,000 miles of land borders, but also supplements our efforts on the coastal shoreline. CBP's Office of Air and Marine (OAM) has 269 aircraft, including 10 Unmanned Aircraft Systems (UAS), and 293 patrol and interdiction vessels that provide critical aerial and maritime surveillance and operational assistance to personnel on the ground. The UAS, six of which operate along the Southwest border, flew more than 5,700 hours in 2012, the most in the program's history. Since the formation of OAM within CBP eight years ago, CBP transformed a border air wing composed largely of light observational aircraft into a modern air and maritime fleet capable of a broad range of detection, surveillance and interdiction capabilities. This fleet is extending CBP's detection and interdiction capabilities, extending our border security zones, and offering greater opportunity to stop threats prior to reaching the nation's shores. Further synthesizing the technology, CBP's Air and Marine Operations Center (AMOC) integrates the surveillance capabilities of its federal and international partners to provide domain awareness for the approaches to American borders, at the borders, and within the interior of the United States.

Last year the United States Border Patrol apprehended 356,000 people illegally attempting to cross along our nation's southwest border. This is approximately 80% fewer apprehensions than the peak year of activity in FY 2000 when over 1.5 million apprehensions were made by the US Border Patrol and over a 40% reduction from FY 2008.

It is against this backdrop of record border enforcement that we must view the bipartisan immigration reform bill that is now moving through the Senate. The bill requires the Secretary of Homeland Security to prepare a Comprehensive Southern Border Security Strategy and a

Southern Border Fencing Strategy and it prohibits legalization from beginning until the implementation of each strategy has begun. Unlike IRCA, the bill begins at a point where border security efforts are substantial and conditions the earned legalization program on further border security efforts.

ADDRESSING THE JOBS MAGNET

A critical component of a comprehensive and balanced immigration reform system includes a strong means to crack down on the draw of a jobs magnet. A mandatory E-Verify type system, a tamper proof employment eligibility and identification document system, and an aggressive employer sanctions program for violators that is well-resourced are critical and integral to a successful immigration program. S. 744 appears to contain each of these elements. Perhaps most important, the bill requires that all employers use an electronic employment verification system. Lest anyone fear that the government will not carry out its promise to make E-Verify mandatory, the bill also prevents Registered Provisional Immigrants from obtaining green cards if the mandatory E-Verify system has not been rolled out for use by all employers.

But it is not enough to simply require that employees have work authorization. We also must have a firm commitment to a workable legal flow of immigrants into the future. A commitment that supports the needs of our country. A commitment that adequately and fairly addresses our nation's needs relative to a viable and working immigration system. One that keeps the highest interest of securing our nation at its forefront.

A key lesson that we should take away from the debacle of IRCA is that the same broken system that existed before IRCA was enacted continued to exist after the law was enacted. IRCA addressed legalization of the illegal population and implemented what turned out to be a very

weak employer sanctions program. But it did not address our nation's market economy-driven labor needs. It was that broken system that led to the development of a large population of undocumented immigrants in 1986, and that same broken system led to the development of the population we have today.

The lesson we must heed from IRCA and other attempts to fix only pieces of our broken system over the years is that we must fix and modernize our broken immigration system in a comprehensive manner so that it works for our nation's security, our country's businesses, economy, and our nation's families. We need to design and implement an immigration system that works in a fashion where our citizens, immigrants, and our nation's businesses are encouraged to go through the system, not around it. Such a system will not only support our country's economic engine but, critically important, will ensure that our country's border enforcement resources can stay focused on the very real vulnerabilities, threats and risks posed by criminals, criminal organizations, narcotics, cartels, weapons, and those seeking to do harm to our way of life.

The Senate bill appears to meet all of these requirements. The bill reforms our high-skilled and low-skilled immigration laws to ensure that American businesses have access to the workers they need. Together with the reforms to our agricultural labor system, these changes will help us replace the illegal flow of people who come here in search of work with a legal flow. The bill also makes changes to expedite the reunification of close family members. And critically important it provides for continued border enforcement resources to be acquired and applied under strategies to be developed by DHS and CBP.

Chairman Goodlatte and members of the Committee I thank you for the opportunity to testify before you today and I look forward to answering any questions you may have of me.

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Mr. GOODLATTE. Thank you, Mr. Aguilar.

Mr. GOODLATTE. We'll now proceed with questioning under the 5-minute rule. And before I do so, I would ask unanimous consent to enter into the record four letters expressing concern over Senate bill S. 744. One from Senator Chuck Grassley from the Judicial Conference—I'm sorry. One to Senator Chuck Grassley from the Judicial Conference of the United States, sent on May 7 of this year. Another from the National Association of Former Border Patrol Officers, sent to the so-called Senate gang of eight on May 2. The third item is an open letter from the Coalition Against S. 744, a group of over 150 conservative leaders in the U.S., noting that this will legislation is defective and urging a no vote. The final letter, submitted by Mr. Crane, comes from the National Immigration and Customs Enforcement Council of the American Federation of Government Employees,* a diverse group of law enforcement officers and their representatives, expressing concern regarding S. 744 within the law enforcement community.

Also, without objection, I would ask to enter a press release from the American Federation of Government Employees, dated Monday, May 20, entitled "USCIS Union President; Lawmakers Should Oppose Senate Immigration Bill, Support Immigration Service Officers."

Without objection, they will be made a part of the record.

[The information referred to follows:]

*See letter, page 34.

JUDICIAL CONFERENCE OF THE UNITED STATES

WASHINGTON, D.C. 20544

THE CHIEF JUSTICE
OF THE UNITED STATES
Presiding

HONORABLE THOMAS F. HOGAN
Secretary

May 7, 2013

Honorable Charles E. Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Senator Grassley:

I am writing on behalf of the Judicial Conference of the United States, the policy-making body for the Federal Judiciary, concerning S. 744, the "Border Security, Economic Opportunity, and Immigration Modernization Act." It is clear that the bill, if enacted, would have serious resource implications for the federal courts. This letter addresses only the resource implications for the federal courts and takes no position on the substantive policy issues contained in S. 744. Although the legislation provides an initial federal outlay of $6.5 billion[1] to the executive branch to implement provisions of the legislation, the bill does not address the related funding needs of the Federal Judiciary. Without increased resources, the federal courts cannot sustain the increased workload this legislation would create, particularly at sequestration funding levels. Accordingly, I ask you to ensure that the Judiciary has sufficient resources to meet its obligations created by this bill.

S. 744 will increase the workload on the federal courts in three significant ways: (1) by dramatically increasing personnel, resources, and funding for the Department of Homeland Security (DHS) and the Department of Justice (DOJ); (2) through the judicial review provisions; and (3) by adding several new federal crimes and heightening the penalties for the most frequently charged immigration offenses. These efforts will create more cases for an already over-burdened court system that is struggling with nearly $350 million in sequestration cuts. Judicial resource needs, at a minimum, will include additional judgeships and court staff (including interpreters), probation and pretrial services officers, and federal public defenders, and additional requirements for court security, space and facilities. We therefore respectfully request

[1]Section 6 of the bill creates a Comprehensive Immigration Reform Trust Fund, which provides for initial funding of $6.5 billion transferred from the general fund of the Treasury, and ongoing sources of funding through fees, fines, and penalties deposited in the Fund for future expenditures.

that the legislation be amended to address the resource needs of the Federal Judiciary. These resources should appropriately be funded through the Comprehensive Immigration Reform (CIR) Trust Fund.

Judgeship Needs

Although this legislation provides substantial funding for enforcement of the immigration laws, including significant additional resources for border security, the legislation neglects the demands that will be placed on the federal district courts that must adjudicate these increased enforcement actions.

If left unchanged, this bill will only intensify the stress being experienced by judicial districts already dealing with high caseloads and scarce judicial resources. Since the last comprehensive judgeship legislation was passed in 1990, Article III district courts have experienced a 39 percent growth in caseloads while seeing only a four percent increase in judgeships. This problem has reached critical levels in five district courts, most of which are in states with large numbers of unauthorized immigrants,[2] including the Eastern District of California, the Eastern District of Texas, the Western District of Texas, and the District of Arizona. The severe workload conditions in these districts already require *immediate* attention. In order to address the dire circumstances in these districts, as well as the *additional* burdens that will be imposed by this bill, Congress must authorize new Article III judgeships.

The Judicial Conference also strongly urges the immediate conversion of the eight temporary judgeships identified in our judgeship recommendations already transmitted to Congress. These eight temporary judgeships are set to lapse before the end of fiscal year 2014. Without conversion, these on-board resources will be lost, increasing the pressure that is being felt in these districts now, many of which currently process some of the largest criminal immigration caseloads in the country.

Provisions Increasing Judicial Workload

Increased workload in the courts would result from the enhanced enforcement efforts directed against those who violate the immigration laws, provisions to provide a pathway to citizenship for unauthorized immigrants, and expanded implementation of the E-Verify system and other issues related to employment practices.

Enforcement

The legislation provides funding for the enhancement of border security operations in the Tucson Sector to be provided from the CIR Trust Fund. The legislation also

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[2]Hoefer, Michael, Nancy Rytina and Bryan C. Baker, 2012 "Estimates of Unauthorized Immigrant Population Residing In the United States: January 2011," Office of Immigration Statistics, Policy Directorate, U.S. Department of Homeland Security, http://www.dhs.gov/xlibrary/assets/statistics/publications/ois_ill_pe_2011.pdf.

includes enforcement provisions that will have national implications. Additional resources are needed in all federal courts affected by this bill.

- **Tucson Sector**

In section 1104 of S. 744, the Secretary of DHS is required to increase the number of border crossing prosecutions in the Tucson Sector of the Southwest Border region to up to 210 prosecutions per day by increasing funding for various law enforcement efforts in Tucson. Such funding would cover increases in personnel for court support staff and interpreters in the district court clerk's office in Tucson, as well as pretrial services and the activities of the federal public defenders office in that location.

The legislation would also authorize the chief judge of the United States District Court for the District of Arizona to appoint full-time magistrate judges, who shall have the authority to hear cases and controversies in the judicial district in which the respective judges are appointed. Pursuant to the Federal Magistrates Act, 28 U.S.C. §§ 631-639, magistrate judge positions are authorized by the Judicial Conference and magistrate judges are appointed by majority vote of the judges of the district court. Creation of magistrate judge positions should follow the current statutory regime.

Although the bill provides some funding for the court in Tucson, it does *not* address all the potential resource needs of the district. First, the legislation does not address the additional costs related to space, facilities, and court security that will result from these increased enforcement efforts.

Second, the legislation does not address costs related to court-appointed representation of defendants by Criminal Justice Act (CJA) panel attorneys and their investigative, expert, and other service providers, who provide services in addition to the Federal Public Defender Organization for the District of Arizona. Sequestration has caused significant layoffs and furloughs for federal defenders and their staff. For example, the Federal Public Defender Organization for the District of Arizona has laid off 10 staff members, including four lawyers in the Tucson office. Anticipated budget constraints for fiscal year 2014 will likely result in additional layoffs of attorneys and staff support in federal defender offices nationwide.

Third, the bill does not authorize additional funding for the probation office in Tucson. Under current Operation Streamline procedures, a presentence report is not prepared by the probation office and there is no supervision that follows sentencing. It is not clear, however, that a presentence report would be waived in cases prosecuted after the bill is enacted. The legislation would increase the statutory penalties for illegal entry offenses changing the classification of these offenses from petty offenses to class A misdemeanors. Such offenses would now be covered under the Sentencing Guidelines and judges may begin requiring probation officers to prepare presentence reports. Each judge would decide the type of report required (each of varying complexity), but a conservative estimate of the probation and pretrial services staffing needed to handle the new workload in Tucson would include an increase in 367 new staff, costing over $37 million.

The bill provides for the potential tripling of prosecutions in the Tucson Sector; however there is not sufficient court staff, federal public defenders, CJA panel attorneys, probation and pretrial services officers, or physical infrastructure and space to hear these cases or detain defendants at the proposed rate of prosecutions.

- **Nationwide Enforcement**

In addition to the increased enforcement efforts in the Tucson Sector the proposed legislation has national implications. It would add several new grounds of deportability and inadmissability and also would expand the scope of conduct that can be considered an "aggravated felony." Further, it adds several new federal crimes and heightens the penalty for the most frequently charged immigration offenses which currently make up approximately 30 percent of all federal indictments around the country. These increased penalties and charges will result in a substantial increase in litigation and extend the duration of cases in the system as more defendants will have a right to a jury trial and to have their cases heard before a district court judge. These provisions will have a significant impact on the federal administration of justice and will require substantial additional resources for the Federal Judiciary.

Legalization Programs

Several paths to citizenship are established by the bill, but no one knows how many individuals will apply to legalize their immigration status. Even without firm numbers, the potential docket impact on the federal courts could be significant. Experts often estimate that some 10 to 12 million unauthorized immigrants reside in the United States. Many who qualify will seek to adjust their status, submitting a significant number of new applications that will require administrative review. Even if the administrative process results in a 90-percent approval rate for new applicants, the number of individuals seeking review in the federal courts would be significant. The impact on the Federal Judiciary will be substantial and will affect courts throughout the country over a period of years.[3]

At any stage in the legalization process, should an alien applicant be denied status, or have their status revoked, there are provisions for appellate administrative review and then subsequent judicial review in the federal courts. Specifically, section 2104 of the bill amends 8 U.S.C. § 1252 by adding a new subsection (h)(1) permitting review in federal district court of eligibility determinations for those seeking Registered Provisional Immigrant (RPI) status, those seeking to change status from RPI to lawful permanent resident (LPR) status, and those who

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[3]We understand that it is difficult to predict with accuracy how many of those who qualify for a legalization program will file applications, and the number will depend, among other factors, on the statutory criteria of legalization, but assuming, as noted above, a ten percent denial rate for those seeking to adjust their status, that could result in a substantial number of new cases filed in the federal courts. For purposes of comparison, in fiscal year 2012, the total number of civil filings in the federal district courts was 278,442. An increase of even 100,000 new cases would have a significant impact.

qualify under the Development, Relief, and Education for Alien Minors (DREAM) Act.[4] This route to judicial review is governed by section 706 of title 5, United States Code, (Administrative Procedure Act). As is generally true when judicial review of agency decisions is vested in a district court, final decisions of the district court presumably could be further appealed to the courts of appeals. In addition, the legislation would also create a new subsection (h)(3) which would permit aliens whose legalization applications were denied or revoked at any stage to seek judicial review of the legalization determination in the courts of appeals in conjunction with the judicial review of a removal order.

Additional Increased Resources for the Executive Branch

Although the Judiciary is supportive of efforts to enhance resources at the Executive Office for Immigration Review (EOIR), the legislation does not address the resulting increase in the operational needs of the Judiciary, at a time of severely reduced resources and shortfalls in appropriations for the entire federal court system.

Section 3501 would enhance the administrative adjudication of cases pursuant to 8 U.S.C. § 1229a (removal proceedings) within EOIR by providing substantial additional resources. The number of immigration judges would be increased by at least 75 for three consecutive fiscal years (2014, 2015, 2016), thereby nearly doubling the current number of immigration judges (260) in three years. Moreover, the bill provides for at least one staff attorney/law clerk and one legal assistant for each immigration judge, and increases the number of staff attorneys and support staff in the Board of Immigration Appeals (BIA) by at least 30 in fiscal years 2014-2016. Funding for this increase in personnel is to be appropriated from the CIR Trust Fund.

As more cases move through the immigration courts and the BIA, more appeals will be filed in the federal courts. The rate of appeal of decisions of the BIA to the courts of appeals was 25 percent in 2012. In 2005, during a previous major surge in administrative processing of removal proceedings, the rate of appeal from the BIA to the courts of appeals was 30 percent, and appeals from the BIA reached 13,000 cases. Just based on the anticipated increased decisions from the new immigration judges, if rates of appeal from the immigration judges to the BIA and from the BIA to the appellate courts remain at the current rate, the immigration caseload of the appellate courts could more than double, far-exceeding the impact from the 2005 surge.

No additional resources are provided in this bill to the federal courts to handle this increased caseload. The corresponding needs of the Judiciary should be provided from the trust fund, just as the increased resources for EOIR are.

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[4]The DREAM Act provides for the adjustment of status for certain aliens who entered the United States as children and who meet other requirements under the proposed legislation, such as meeting certain educational requirements or service in the military.

E-Verify Provisions

The expanded E-Verify program not only contains substantial increases in enforcement resources for DHS, it also provides avenues for federal court review. Individuals having their work authorization verified and employers who are charged with violating the verification and other provisions are entitled to judicial review of final administrative decisions. Funding is not, however, provided to meet any of these new demands placed upon the Federal Judiciary.

Section 3301 of S. 744 establishes an "Interior Enforcement Account," and authorizes $1 billion to be appropriated to the account. Among other priorities, the funding is to be used to increase "to a level not less than 5,000" over five years, the number of personnel in the DHS dedicated to administering the electronic employment verification (E-Verify) system. In addition, the funding will be used to monitor and enforce compliance with various sections of the Immigration and Nationality Act including compliance with the requirements of the E-Verify system. These additional resources will also likely result in an increase in the caseload of the federal courts.

Section 3101 would expand the current use of the E-Verify system and, over a period of years, mandate that all employers in the United States participate in the system to verify the work authorization status of those seeking employment. The legislation would permit employers who are facing civil penalties for violations of the employment verification provisions to seek review before an administrative law judge (ALJ) and seek review of the ALJ's final decision in an appropriate court of appeals. Although current law permits employers to seek judicial review of sanctions, the bill increases fines and penalties for employment-related violations, potentially increasing the rate of appeal.

In addition, the legislation would permit individuals who receive a nonconfirmation notice to file an administrative appeal with either the Commissioner of Social Security or the Secretary of DHS. Individuals are further permitted to seek review of a final determination by the Secretary or the Commissioner by filing a complaint with an ALJ. Any person adversely affected by a final order of the ALJ may seek review of such order in an appropriate court of appeals. The legislation also specifies that necessary appropriations are to be provided to establish a "robust process" for employees who wish to appeal contested nonconfirmations to ensure the accuracy and fairness of the E-Verify system.

Other enforcement provisions, such as increased criminal penalties related to the unlawful employment of unauthorized aliens could also increase the workload of the federal district and appellate courts.

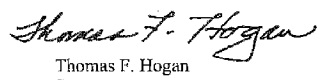
Conclusion

In closing, I cannot express strongly enough the current resource challenges facing the Federal Judiciary under existing caseloads and sequestration. The bill will significantly exacerbate those challenges. While the Judiciary stands ready to meet the obligations imposed

by the legislation, and fulfill all of its constitutionally mandated responsibilities, it cannot do so without Congress providing the necessary resources. We reiterate our request that the legislation be amended to address the Judiciary's resource needs.[5]

The relevant Conference committees have been asked to review the bill in greater detail, and any additional concerns or issues that may be identified will be communicated as soon as their review is complete. If we may be of additional assistance to you, please do not hesitate to contact our Office of Legislative Affairs at (202) 502-1700.

Sincerely,



Thomas F. Hogan
Secretary

cc: Republican Members of the Senate Committee on the Judiciary

Identical letter sent to: Honorable Patrick J. Leahy

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[5]As the bill continues to be refined through the legislative process, we also hope to work with Congress to make appropriate technical and administrative improvements. For example, the Judicial Conference has previously transmitted to Congress a proposal to help eliminate unnecessary federal bail reports. Bail reports are currently required by law even in some situations where release from custody is impossible because of an immigration detention. Elimination of this requirement would improve the administration of justice and save needed resources.

National Association of
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Robert M. Trout

May 2, 2013

To Gang of 8 Senators: Bennett, Durbin, Flake, Graham, McCain, Menendez, Rubio and Schumer

The National Association of Former Border Patrol Officers is writing to ensure that you are fully aware of the fact that certain events in the United States are clear and convincing proof that the failure of the Government to effectively enforce our Immigration Laws as written has already created a level of pervasive lawlessness within the United States that has dramatically reduced National Security and Public Safety and facilitated tragic events and outcomes, such as the 2001Trade Center and 2013 Boston Marathon attacks.

In the light of the current situation within the United States your proposal for Comprehensive Immigration Reform would serve to create unrest and invite further attacks on America. Your plan benefits the illegal alien, transnational criminals within our midst and those elements that intend to do us further harm. There is no practical way to ascertain the true identity, date of border crossing or purpose of entry of the more than eleven million aliens who are within our country in violation of our immigration laws.

How many more innocent American deaths and tragic terroristic attacks will it take before Congress puts the welfare of the American people before their own political interests?

The solution is simple: it is our "Comprehensive Immigration Enforcement Reform" found at www.NAFBPO.org. That proposal is based on the unique cumulative experience of many hundreds of years by officers of the federal government who dedicated their working years to the service of our country and who are most intimately cognizant of the workings and structure of our immigration system. You are cordially invited to visit our website and to access that proposal.

Zack Taylor

Zack Taylor, Chairman
National Association of Former Border Patrol Officers
nafbpo@nafbpo.org

May 2, 2013

Our paramount mission is to contribute to the security and stability of the United States. To that end, we shall propose and be advocates for immigration laws and policies that we believe serve those national interests, and we will oppose those that do not.

The Coalition against S. 744

The Wrong Way to Reform Immigration

An open letter on the Senate immigration bill

We write to express our serious concerns regarding the Gang of Eight's immigration bill, S. 744. We oppose this bill and urge you to vote against it when it comes to the Senate floor. No matter how well-intentioned, the Schumer-Rubio bill suffers from fundamental design flaws that make it unsalvageable. Many of us support various parts of the legislation, but the overall package is so unsatisfactory that the Senate would do better to start over from scratch.

We have a variety of concerns; some of us share only one, others share all. Among these concerns are that the bill:

- Is bloated and unwieldy along the lines of Obamacare or Dodd-Frank;
- Cedes excessive control over immigration law to an administration that has repeatedly proven itself to be untrustworthy, even duplicitous;
- Legalizes millions of illegal immigrants before securing the borders, thus ensuring future illegal immigration;
- Rewards law breakers and punishes law enforcement, undermining the rule of law;
- Hurts American job-seekers, especially those with less education;
- Threatens to bankrupt our already strained entitlement system;
- Expands government by creating new bureaucracies, authorizing new spending, and calling for endless regulations;
- Contains dangerous loopholes that threaten national security;
- Is shot through with earmarks for politically connected interest groups;
- Overwhelms our immigration bureaucracy, guaranteeing widespread fraud.

Reforming our immigration system is an important priority. But S.744 is such a defective measure that it would do more harm than good.

We urge you to vote against it and against any cloture vote to bring up the bill. Only then can a constructive, measured debate take place on how to improve America's immigration policy.

Signed (affiliations are included for identification purposes only),

National Conservative Leaders

Barbara Anderson, Citizens for Limited Taxation

Gary Bauer, Campaign for Working Families

Rev. C.L. Bryant, One Nation Back to God

Howie Carr, New England Talk Radio Host

Ann Corcoran, Refugee Resettlement Watch

Monica Crowley, Ph.D., Nationally Syndicated Radio Host

Glynn Custred, Professor Emeritus CSU East Bay

Jim Eagan, Sumner United for Responsible Government (Tennessee)

Elaine Donnelly, Founder and President, Center for Military Readiness

John Eastman, former Dean Chapman University Law School

Ken Eldred, CEO, Living Stones Foundation

Erick Erickson, Editor of RedState

Maria Espinoza, Houston Eagle Forum, The Remembrance Project

T. Willard Fair, President & CEO, Urban League of Greater Miami, Inc.

John Fonte, Hudson Institute

David Frum, Frum Forum

Brigitte Gabriel, President and Founder, Act for America

Frank Gaffney, President Center for Security Policy

Victor Davis Hanson, Hoover Institution, Stanford University

Donna Hearne, Constitutional Coalition, St. Louis, Missouri

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David Horowitz, David Horowitz Freedom Center

Laura Ingraham, Nationally Syndicated Radio Host

Mickey Kaus, Columnist, *Daily Caller,* author *The End of Equality*

Roger Kimball, Encounter Books and The New Criterion

Cliff Kincaid, President, America's Survival

Mark Krikorian, Center for Immigration Studies

Stanley Kurtz, Senior Fellow, Ethics and Public Policy Center

Kelly Monroe Kullberg, Christians for a Sustainable Economy

Lars Larson, Radio Host, Compass Media Networks

Mark Levin, Author and Radio Host

David Limbaugh, Lawyer and Author

Herb London, President, London Center for Policy Research

Dr. Gina Loudon, Nationally Syndicated Radio Talk Show host and Author

Rich Lowry, Editor, *National Review*

Michelle Malkin, author of *Invasion* and syndicated columnist

Ed Martin, Chairman, Missouri Republican Party

Jenny Beth Martin, Co-Founder and National Coordinator, Tea Party Patriots

Ken Masugi, Senior Fellow, The Claremont Institute

Andy McCarthy, Executive Director, Philadelphia Freedom Center

Eric Metaxas, Author and Speaker

Paul Mirengoff, Powerline.com

Frank L. Morris, Sr., Ph. D.

Mike Needham, CEO, Heritage Action

C. Preston Noell, President Tradition, Family, Property, Inc.

Peter K. Núñez, Former U. S Attorney, Southern District of California; Former Assistant Secretary for Enforcement, Department of the Treasury

Rev. Rick Scarborough, President, Vision America Action

John O'Sullivan, Editor-at-Large, National Review

Daniel Pipes, President, Middle East Forum

Judson Phillips, Founder Tea Party Nation

Andy Ramirez, Law Enforcement Advocate and Journalist

Sandy Rios, Vice-President, Family PAC Federal and Morning Host for AFR Talk

Phyllis Schlafly, President and Founder, Eagle Forum

Dimitri K. Simes, President & CEO, Center for the National Interest

Smart Girl Politics Action

Carol Swain, Professor of Political Science and of Law, Vanderbilt University

Tea Party Nation

Peter Thomas, The Conservative Caucus

Virginia Thomas, Liberty Consulting

Brad Thor, #1 *New York Times* Bestselling Author

Phil Valentine, Nationally Syndicated Conservative Radio Host

Richard Viguerie

Former Congressman Allen West

Tom West, Professor, Hillsdale College

Tim Wildmon, President of the American Family Association and American Family Radio

Activist Leaders throughout the Country

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Alabama Federation of Republican Women

American Grizzlies United (Wisconsin)

Will Anderson, Conservative Radio Host, WBHP-AM, Huntsville, Alabama

Angela Bean, Coordinator South Atlanta Tea Party Patriots (Georgia)

Michael Berry, Conservative Radio Host, KTRH-AM, Houston, Texas (Syndicated)

Blanchard Tea Party (Idaho)

Jack and Joan Billman, Greencastle Defenders of Liberty, Greencastle, Indiana

Michael Brown, Conservative Radio Host, Denver, Colorado

Martha Brewer, Lamar County Tea Party Patriots (Alabama)

Melody Burns, Conservative Radio Host, WGDJ-AM, Albany, New York

Canton T.E.A. Party (Georgia)

Sam Clovis, President Serious Civics for America, Inc. (Iowa)

Common Sense Campaign of South Alabama

Carroll County Tea Party Association (Georgia)

Darin Danielski, Lake County Area Defenders of Liberty, Oconomowoc, Wisconsin

Dyersville Tea Party (Iowa)

Dave Elswick, Conservative Radio Host, KARN-FM, Little Rock, Arkansas

Kay Edmonds, Precinct Delegate, Clinton, MI, l9.12 Forum Steering Committee Member, Lenawee GOP Executive Committee Member, Veteran (Post Korea)

Empower Indiana (Indiana)

Bill & Prudence Fields, Eagle Forum, Virginia

Friends of Idaho

Greg Garrison, Conservative Radio Host, WIBC-FM, Indianapolis, Indiana

Georgia Conservatives in Action

Helen Glover, Conservative Radio Host, WHJJ-AM, Providence, Rhode Island

Kay Godwin and Pat Tippett, Co-Chairs, Georgia Conservatives in Action

Becky Gerritson, President Wetumpka TEA Party, Wetumpka, Alabama

Donna Goeddaeus, Northwoods Patriots Tea Party, Conover, Wisconsin

Green Bay (Brown County) Wisconsin TEA Party

Greencastle Defenders of Liberty (Indiana)

Ron Hei, Tea Party Patriots of Covington County

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Hamilton County Patriots (Indiana)

Mark Herr, The Midsouth Tea Party (Tennessee)

Marcia Hora, Iowa Grassroots Coalition

Dustin Inmman Society, Georgia

Illinois Tea Party

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Dave Kramer, Dyersville Tea Party (Iowa)

Las Vegas Valley Tea Party (Nevada)

Janna Loar, State Leader Ohio Counts

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Montgomery Tea Party (Alabama)

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Patriots of Liberty TEA Party, Auburn, Alabama

Bobbie Patray, President, Eagle Forum of Tennessee

Carol Payne, Eagle Forum, Lubbock, Texas

Pennsylvania Coalition for Responsible Government

Bill Post, Conservative Radio Host, KYKN, Salem, Oregon

John Putnam, Chairman, Jasper County Republican Central Committee (Missouri)

Merre Putnam, State Committeewoman, 32nd Senatorial District

Steve Ramey and David Hancock, Gwinnett Tea Party (Atlanta)

Russell Ramland Park Cities/Preston Hollow Leadership Forum, Dallas, Texas

Jennifer Schubert-Akin, Activist, Steamboat Springs, Colorado

Janet Smith, Local Coordinator, Greenfield Area Tea Party, Greenfield Indiana

Standpoint Tea Party Patriots (Idaho)

Rainy Day Patriots (Alabama)

Rob Schilling, WINA-AM, Charlottesville, Virginia

Jeff Schwilk, San Diegans for Secure Borders Coalition

Kim Simac and Shirley Kufeldt, Northwood Patriots, Eagle River, Wisconsin

Todd Isaac "Ike" Skelton, Lebanon Tea Party (Missouri)

Janet Smith, Greenfield Area Tea Party (Indiana)

Loretta and Ricky Short, Wetumpka TEA Party (Alabama)

Eunie Smith, President, Eagle Forum of Alabama

South West Pennsylvania Eagle Forum

Pam Stout, Idaho State Coordinator, Tea Party Patriots

Barbara Susco, Florida Eagle Forum

Taxed Enough Already Party, Barbour County, Alabama

Taxed Enough Already Party, Quitman County, Georgia

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Joe Thomas, Conservative Radio Host, WCHV-AM, Charlottesville, Virginia

Vanderburgh County Tea Party Patriots (Indiana)

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Lynn Woolley, Lynn Woolley Show, Syndicated, Texas

Don and Skeet Workman, Eagle Forum, Lubbock, Texas

Sally Zelikovsky, Founder of Bay Area Patriots and Coordinator of San Francisco Tea Party

Dennis Zellaha, Tea Party Patriots and Iowa Grassroots Coalition (Iowa)

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES
COUNCIL 119 | AFFILIATED WITH THE AFL-CIO

U.S. Citizenship & Immigration Services

USCIS Union President: Lawmakers Should Oppose Senate Immigration Bill, Support Immigration Service Officers

FOR IMMEDIATE RELEASE
May 20th, 2013
Contact: National Citizenship & Immigration Services Council

WASHINGTON – Kenneth Palinkas, President of the National Citizenship and Immigration Services Council, the union representing 12,000 United States Citizenship and Immigration Services (USCIS) adjudications officers and staff, issued a statement today after adding his name to the letter organized by the National ICE Council detailing concerns over the Gang of Eight immigration Legislation, or S. 744. Mr. Palinkas' statement follows:

"I am pleased to add my name to the nationwide law enforcement letter organized by the National ICE Council. We at USCIS are honored to stand with immigration officers and law enforcement officials across the nation. Dedicated USCIS adjudications officers and staff perform the indispensable work of reviewing millions of applications every single year for those seeking to receive visas, become citizens and permanent residents, or to otherwise adjust their immigration status. The mission of our federal employees is critical to identifying threats and providing for public safety and national security. We are the very backbone of our nation's immigration system and will be at the center of implementing any immigration reform.

Yet, like the ICE Council, the USCIS Council was not consulted in the crafting of the Gang of Eight's legislation. Instead, the legislation was written with special interests—producing a bill that makes the current system worse, not better. S. 744 will damage public safety and national security and should be opposed by lawmakers.

This legislation fails to address some of the most serious concerns the USCIS Council has about the current system which Congress must address, including:

-- USCIS adjudications officers are pressured to rubber stamp applications instead of conducting diligent case review and investigation. The culture at USCIS encourages all applications to be approved, discouraging proper investigation into red flags and discouraging the denial of any applications. USCIS has been turned into an "approval machine."

-- USCIS has created an almost insurmountable bureaucracy which often prevents USCIS adjudications officers from contacting and coordinating with ICE agents and officers in cases that should have their involvement. USCIS officers are pressured to approve visa applications for many individuals ICE agents have determined should be placed into deportation proceedings.

-- USCIS officers who identify illegal aliens that, in accordance with law should be placed into immigration removal proceedings before a federal judge, are prevented from exercising their authority and responsibility to issue Notices To Appear (NTAs). In the rare case that an officer

attempts to issue an NTA, it must first be approved by a secretive panel created under DHS Secretary Janet Napolitano, which often denies the officer's request. Illegal aliens are then permitted to remain in the United States as USCIS officers are not able to take action or contact ICE agents for assistance.

-- The attitude of USCIS management is not that the Agency serves the American public or the laws of the United States, or public safety and national security, but instead that the agency serves illegal aliens and the attorneys which represent them. While we believe in treating all people with respect, we are concerned that this agency tasked with such a vital security mission is too greatly influenced by special interest groups—to the point that it no longer properly performs its mission.

-- Currently, USCIS reports a 99.5% approval rating for all illegal alien applications for legal status filed under the Obama Administration's new deferred action for childhood arrivals (DACA) policies. DHS and USCIS leadership have intentionally established an application process for DACA applicants that bypasses traditional in-person investigatory interviews with trained USCIS adjudications officers. These practices were put in place to stop proper screening and enforcement, and guarantee that applications will be rubber-stamped for approval, a practice that virtually guarantees widespread fraud and places public safety at risk.

-- While illegal aliens applying for legal status under DACA polices are required to pay fees, DHS and USCIS are now exercising their discretion to waive those fees. Undoubtedly these practices will be replicated for millions of illegal aliens if S.744 becomes law.

-- U.S taxpayers are currently tasked with absorbing the cost of over $200 million worth of fee waivers bestowed on applicants for naturalization during the last fiscal year. This is in addition to the strain put on our Social Security system that has been depleted by an onslaught of refugees receiving SSI benefits as soon as their feet touch U.S. soil.

-- Large swaths of the Immigration and Nationality Act (INA) are not effectively enforced for legal immigrants and visa holders, including laws regarding public charges as well as many other provisions, as USCIS lacks the resources to adequately screen and scrutinize legal immigrants and non-immigrants seeking status adjustment. There is also insufficient screening and monitoring of student visas.

-- A new USCIS computer system to screen applications known as "Transformation" has proven to be a disaster as the agency has spent upwards of $2 billion for a system that would eventually allow an alien—now referred to as a "customer" under current USCIS policy—to upload their own information via the internet for adjudication purposes. To date, only one form can be accepted into the program that has been in the making for close to 10 years.

In closing, the legislation will provide legal status to millions of visa overstays while failing to provide for necessary in-person interviews. Legal status is also explicitly granted to millions who have committed serious immigration and criminal offenses, while dramatically boosting future immigration without correcting the flaws in our current legal immigration process. We need immigration reform that works. This legislation, sadly, will not."

Mr. GOODLATTE. My first question I'll address to all three of you. And since I have several other questions I want to ask, and I'm going to try to strictly limit all the Members' time to 5 minutes, because we have a lot of Members interested in this issue, I'd ask you to answer as briefly as possible.

Is there any provision in S. 744 that would prevent the President from simply deciding not to enforce the immigration laws? Ms. Wood?

Ms. WOOD. I'm not aware of any provision that would do that.

Mr. GOODLATTE. Mr. Crane?

Mr. CRANE. I'm not aware of any provision that would do that, sir.

Mr. GOODLATTE. Mr. Aguilar?

Mr. AGUILAR. Not aware, sir. Same here.

Mr. GOODLATTE. My second question is addressed to Mr. Crane. How broad is the executive branch's discretionary authority in this bill? Do you think that S. 744 continues the trend toward our Founding Fathers' fear that there will be an all-powerful executive branch?

Mr. CRANE. That is exactly my feel for this bill, Chairman. It seems to give unlimited authority and discretion to the Secretary of DHS.

Mr. GOODLATTE. My next question is directed to Ms. Wood. Isn't interior enforcement an essential component of immigration policy in order to locate and apprehend illegal immigrants who have successfully evaded U.S. Border Patrol and who have entered legally but who chose not to leave when required to do so? And do you believe that this bill recognizes the critical nature of this interior enforcement with estimates as high as 35 to 40 percent of those not lawfully present in the United States having entered lawfully and therefore the border enforcement issue, while very important, is by no means the total enforcement issue that we need to focus on?

Ms. WOOD. Chairman, I do think that the interior enforcement provisions could be strengthened, that the exit provision in particular could be strengthened, which would really help us to address the problem of overstays more effectively.

And then the funding stream for interior enforcement. The funding provided for U.S. Immigration and Customs Enforcement is not the same as the kind of funding that's provided to CBP over the years, and we have got to make sure that the interior of the country, those agents working there, ERO as well as HSI, have the resources they need to do the job.

The other thing that I would say that I think is very important is that I do think the bill limits a lot of discretion in terms of ICE's ability to use its current authorities to arrest and detain individuals who may have ties to national security or terrorist organizations, but we don't have enough evidence yet to bring criminal charges against them. And so I think that is an area that really needs to be focused on, you know, does the Department have enough discretion to exercise law enforcement equities to hold individuals or to bring certain kinds of immigration charges against them.

Mr. GOODLATTE. Thank you.

And, Mr. Crane, you—I'm sorry, Mr. Aguilar—you mention in your testimony on page 9 that one of the key takeaways from the debacle of the IRCA, the 1986 law, is that the same broken system that existed before IRCA was enacted continued to exist after the law was enacted. Mr. Crane suggests that the current Administration blocks ICE officers from enforcing our Nation's laws, and that is the subject of litigation right now.

What specifically does S. 744 do to ensure that the agents responsible for enforcing our Nation's immigration laws are, in fact, able to do so.

Mr. AGUILAR. As I stated on my testimony, sir, I firmly believe that interior enforcement is a critically important aspect of any immigration reform bill. Carrying out basically, as Mr. Crane put forth a few minutes ago, carrying out the laws that are on the books currently, being allowed to do that, is absolutely important. It has to be allowed.

I also added critically important is resourced at the right levels. That is one of the things that was not done in IRCA of 1986. Interior enforcement was not carried out because investigations was not resourced, beds were not available, and frankly we just didn't have enough people to do the job.

Mr. GOODLATTE. Thank you very much.

And I'm going to get all my questions in under the limit here.

So, Ms. Wood, the last one is for you. And that is, why is it problematic for a State or locality to refuse to cooperate with ICE enforcement officers?

Ms. WOOD. All kind of reasons. But, you know, one of them is that we're paying those State and local authorities to house illegal aliens under the SCAAP program in certain instances. But if it's Federal enforcement and Federal authorities have the responsibility to carry out the job, your State and local entities shouldn't be allowed to go off on their own and create their own law by refusing to enforce ICE detainers or refusing to cooperate with ICE. It's been very problematic in the past, particularly when you think about the jail environment and you think about what ICE has tried to do with Secure Communities. When ICE doesn't have the cooperation from an entity like the difficulties ICE had with Cook County, for example, makes it very, very hard to rid the streets of individuals who not only came here illegally or are now here illegally, but also committed serious crimes.

Mr. GOODLATTE. Thank you very much. Thank you all.

And the Chair now recognizes the gentleman from Michigan, Mr. Conyers, for 5 minutes.

Mr. CONYERS. Thank you, Chairman Goodlatte.

I begin by noting, Members of the Committee, that we have joined as our guests this afternoon the United We Dream, the largest immigrant youth-led organization in the country, made up of 52 affiliate organizations in 25 States that are here to learn about what we're doing and to bear witness to their concern and desire to see that we get the best legislation on immigration that we possibly can. And if I may, I'd like them to just stand up for a moment. All the people in United We Dream.

Okay. Thank you very much. You may sit down.

We have got some big problems here. We have one witness that is a veteran, but unrelentingly opposed to Senate bill 744. We have the former leader of ICE, who has put forward some very important criticisms of 744 in which it might be improved. And we have a third witness who supports S. 744. What concerns me is that sometimes when you're comparing what it was like in 1986 with where we are in 2013, you know, looking back sometimes you always don't get it perfectly right. Nobody's perfect.

But, Ms. Woods, there have been a lot that's gone on in that period of time, and no one would recognize that I think more importantly or accurately than you. Increased resources, agents, aircraft, build fencing, border enforcement, which we all know was a tragedy. And so we're trying to design an immigration system that provides a viable legal way for immigrants to come to this country. We want a path. And at the same time we need to combat the people that would illegally come in, the drug smugglers, the weapons traffickers, and all.

Do you think we're on the right track here and with our discussions today and others that we might be able to come out of this holding our heads up, saying that we took the lessons of 1986 and instead of trying to trash the past and glorify the future, maybe there's something that people can seriously, in a bipartisan way, come forward with something that we'll all be able to acknowledge as a good faith effort.

Ms. WOOD. Yes. I definitely think we are on the right track. I think there are places where important improvements should be made and that we have an obligation to think about those so in 2020 we're not looking back and say, what did we do here, this is not an enforceable thing, we have a problem from a national security perspective. But I think because of the long-term problems we've had with immigration, we've got to look at reforming and changing our system. And so I'm very encouraged that all of Congress is thinking about how can we do that and how can we do that smartly.

Mr. CONYERS. Thank you very much.

I just wanted, Mr. Aguilar, if he can, to add his experience. You've been a career government employee in ICE. Do you think we can get this thing together? Do you see that there is hope to develop a pathway?

Mr. AGUILAR. I do. I support this, with criticism and critiques that I've outlined in my testimony.

Mr. CONYERS. Yes, you have.

Mr. AGUILAR. We need to fix some of the problems that have been articulated here today, because if we don't, we may end up with a situation like IRCA. But the support that I give is specifically to border security. If we can reduce the flow of illegal aliens coming into this country, we can redirect the tremendous resource capability that we have against the other threats, vulnerabilities, and risks that are very much real on today's border.

Mr. GOODLATTE. Thank you, Mr. Aguilar.

Mr. CONYERS. Thank you very much, Mr. Chairman.

Mr. GOODLATTE. Time of the gentleman has expired.

The Chair recognizes the gentleman from Wisconsin, Mr. Sensenbrenner, for 5 minutes.

Mr. SENSENBRENNER. Thank you very much, Mr. Chairman.

I think all of us here, and I certainly subscribe to that, say that our current immigration system is broke. And I think we have to look at both the legal immigration and the illegal immigration part to figure out how to fix it and fix it in the best way possible.

I certainly salute the people who have been working on this. This is a minefield, and as the person who tried to do this last, in 2005 and 2006 and 2007, let me say that this isn't easy and it probably is the most difficult thing that the Congress will have to face because there are so many conflicting interests involved.

The Chairman in his opening statement referred to the select commission that was appointed by President Carter in 1979 and was headed by Father Theodore Hesburgh, who at that time was the president of Notre Dame University and is being honored here this week, on his 96th birthday. Father Hesburgh was an admitted liberal. He still is and will tell you that. And his commission came up with a recommendation that basically said that we have to control the border and we have to enforce employer sanctions. And, significantly, he said that they should not—or Congress should not have any form of legalization or amnesty until the border control and the employer sanctions were in place, lest that bring about an increase in illegal immigration in the country.

Well, Congress ignored the select committee's recommendations, passed IRCA. Father Hesburgh was right and Ronald Reagan was wrong, because we had about 3.5 million illegal immigrants in the country then and now we have about 11 million illegal immigrants.

The fear that I have is that unless we effectively control illegal immigration now, we will be slowly closing the door to legal immigration, because if one can become a citizen of the United States after breaking our laws quicker than jumping through all of the hoops both before their entry and after they're here to be able to be naturalized as a United States citizen, who's going to bother obeying the laws and filing applications for an immigrant visa at our embassies and consulates overseas. And that will mean that we repeat the mistake of IRCA and probably compound it even more.

I think this is our last best chance to get it right, and we better get it right this time, otherwise we are going to have a system that is even worse and a problem that is even bigger than what we have today.

Now, my question is, looking at Senate bill 744, what three changes do you think are necessary to make sure that the mistake of IRCA is not repeated? And in what order priority would you suggest these changes?

And we'll start with Mrs. Wood.

Ms. WOOD. Thank you. And I certainly agree that we've got to address this now in order to avoid repeating the problems.

I think first I would deal with the employer verification section. Five to 7 years is too long for all employees to have to go through the system. And the inability to verify an existing workforce is going to create an uncleared workforce. And so there's going to be a lot of illegal migration and problems with that workforce. And so I think that needs to be addressed and fixed.

Mr. SENSENBRENNER. Well, it would make the existing workforce effectively indentured servants.

Ms. WOOD. That's exactly right. And unscrupulous employers could take advantage of those individuals, you know, pay them substandard wages or treat them poorly. It's problematic for a whole host of reasons.

Second, I think the government's really got to address the identity theft issue more strongly and more effectively, kind of from day one, to give the employer some tools. And if they're not going to give the employers tools, at least take away the provision in 744 that appears to prohibit employers from using some of the manual and automated tools that they are currently using. I think that's a big problem for companies who are really trying to wrestle with how does a good faith exception apply to us if we repeatedly have people that evade the existing E-Verify system. So I would focus a lot of effort on that.

I think the second thing is resources. Make sure that interior enforcement has enough resources and that the court system has enough resources. If it were me, I'd revamp the whole immigration court system. That may not be realistic. You know, we're biting off an awful lot. But, you know, kind of look at that.

And then third, make sure national security equities are protected.

Mr. SENSENBRENNER. Thank you.

I think my time has expired.

Mr. GOODLATTE. The gentleman's time has expired.

And the gentleman from New York, Mr. Nadler, is recognized for 5 minutes.

Mr. NADLER. Thank you, Mr. Chairman.

Prior to IRCA, we had a largely unenforced border. We had something like 2,100 border enforcement people for the entire border. We made very little attempt to enforce the border crossings. And yet in the 22 years between the end of the Bracero program in 1964 and IRCA in 1986, it's estimated that 28 million people from Mexico entered the U.S. and 23.4 million returned to Mexico, that there was a, in a largely unenforced border and no law preventing U.S. Employers from hiring undocumented individuals, there was a circular migration pattern and very little net migration, illegal migration to the United States.

But this began to change in 1986. And some people have observed that once we started really enforcing the border and people no longer felt free to come and go, people came here, stayed, and brought their family because they were afraid to try to go home and then to try to come back again. And the median stay of undocumented Mexicans before 1986 was 2.6 years; by 1988 it had risen to 6.6 years.

This seems to say that border enforcement spending all that money simply got us a lot more net illegal immigration. Would you comment on that? Ms. Wood, then Mr. Aguilar.

Ms. WOOD. I'm not familiar with that, those particular statistics. But I think, you know, we have to look at are there unintended consequences, like you said, and would this bill create any unintended consequences, kind of we're not happy with. And if we have a workable program where temporary workers can come in, where supply meets demand, then hopefully we won't see those things.

I will say, as head of ICE, we did see seasonal shifts in migration. So there were a lot of people that were, you know, coming in and going back home. So we did see that sort of activity as well——

Mr. NADLER. And less after IRCA or no big change from IRCA or

Ms. WOOD. I wasn't there in 1986, so this was more recent. But maybe——

Mr. NADLER. Mr. Aguilar?

Mr. AGUILAR. I'm a little older than Ms. Wood, so I was there.

What you just described so adequately, Congressman, are the results of a broken immigration system. We added border enforcement. We should have added that. What we didn't add was interior enforcement. What we didn't add was strong employer sanctions. What we didn't add was strong employer verification capabilities. And we didn't add the follow-up capabilities of the illegal population in the country. When you add one piece of what is required, those are the results.

Mr. NADLER. And do you think S. 744, whatever the number is of the Senate bill, does a reasonable job of integrating these different pieces?

Mr. AGUILAR. It does a reasonable job. There are some critiques and criticisms that we have. You've heard some of them already. But this is first time that we actually get a comprehensive piece of legislation that addresses what I believe all of us think are foundational to a good immigration system.

Mr. NADLER. And so you think that with the increased border enforcement that we've been doing and will continue to do, and with the E-Verification system and the verification here, and with trying to match employee needs and employment, that is, needs for employees and available workers, we should have a balanced system where we can in fact enforce the law?

Mr. AGUILAR. Yes. If we do this right, yes, sir.

Mr. NADLER. So this would be very different from IRCA then. The lesson to learn from IRCA is not to do a one-sided enforcement law without also dealing adequately with the employment needs. Is that correct?

Mr. AGUILAR. Yes. It should be comprehensive. It should be holistic to the degree possible, as quickly as possible, in order to go ahead and get this system in place.

Mr. NADLER. Okay.

Now, Ms. Wood, in your testimony you make one caveat that I think is fairly striking. You say in a footnote that you will not address the enforcement triggers in the Senate bill but rather focus on how the bill will work if enacted. But those enforcement triggers are presumably in the bill for a reason and designed to help answer criticisms of the 1986 law.

Don't you think that by including enforcement triggers tied to the registration of the undocumented and the ability of provisional immigrants to obtain green cards, the Senate bill guarantees that certain specific enforcement provisions will in fact take place?

Ms. WOOD. I think that there are some, you know, limitations on the triggers and some qualifications on the triggers. I didn't address those because I think reform needs to happen regardless of those triggers and that we need to look at our system regardless

of those triggers, but, you know, if I were to go through those, I think they could be stronger, that the Secretary should have more requirements, that we shouldn't allow litigation to keep agencies from doing things, et cetera.

Mr. NADLER. Okay. And my last question is, you begin your testimony by saying that IRCA's two-pronged approach of legalization and employer sanctions failed to stop the tide of unauthorized employment. That's obviously true. But the main reason for that, as Mr. Aguilar and I discussed a moment ago, is that IRCA did not include additional necessary prongs. IRCA set up two seasonal guest worker programs that are proving to be problematic and did nothing to reform our laws to provide a viable way for people to come to the country to fill needed nonseasonal, lower-skilled jobs, and did nothing to help families reunify.

So if the reason IRCA failed isn't because its enforcement provisions weren't tough enough, but rather because the immigration system it left behind didn't work any better than the system that existed before the bill was enacted into law, isn't that our main charge today, to design an immigration system that works so well that families, businesses, and people in search of work are encouraged to go through the system rather than around it?

Ms. WOOD. We definitely want to encourage people to go through the system rather than around it. I do think that some of the enforcement provisions in IRCA did fail and I think they weren't strong enough, they weren't resourced enough. So I think it's more than just the demand side. I think it was also the enforcement side where there was good language but there was not a lot of follow-up.

Mr. NADLER. I see my time has expired. Thank you.

Mr. GOODLATTE. I thank the gentleman.

The Chair is now pleased to recognize the gentleman from Texas, Mr. Smith, for 5 minutes.

Mr. SMITH. Thank you, Mr. Chairman.

Let me address my first question to all of our witnesses here today, and it is this. I believe that I have read the relevant provisions of the Senate immigration bill, and in regard to border enforcement, and I cannot find any deadline by which the border is to be secured.

And my question, Mr. Aguilar, we'll start with you, if you will, is there any year by which we can tell the American people that the border will be secured under the terms of the Senate immigration bill?

Mr. AGUILAR. I think the first challenge that we have, Congressman, and I believe you and I have discussed this before, is the definition of "secure." Secure right now holds——

Mr. SMITH. Beyond the definition of "secure," let's just assume that we agree on that. Is there any year by which, under the provisions of the immigration bill, that the border will be secure under any definition?

Mr. AGUILAR. Let me describe what would, I think, get us to a position of acceptance at the border.

Mr. SMITH. No, no, and I understand that. With all respect, I understand what the bill said. But is there any year by which the American people can be assured that the border, in fact, will be——

Mr. AGUILAR. Not within the bill, not right now, no, sir.

Mr. SMITH. Okay. Thank you.

Mr. Crane?

Mr. CRANE. None that I'm aware of, sir.

Mr. SMITH. Okay.

And Ms. Wood?

Ms. WOOD. None that I'm aware of either.

Mr. SMITH. Okay. In that case, why aren't we setting ourselves up for the same problems we had with the 1986 bill if we aren't able to assure the American people that we are going to secure the border by a time certain?

And let me reverse the order. Ms. Wood?

Ms. WOOD. For the hard one, you turned over. I think——

Mr. SMITH. If we don't have a secure border and there is no guarantee that we will ever have it, why are we repeating the same problem we had from 1986?

Ms. WOOD. The reason I believe we need to address immigration and fix it right now is because there is not enough resources. So some of the things I think the bill does address and should address in a different way to get toe security of the border is an exit system. Have a real robust exit system.

Mr. SMITH. I understand that, and I appreciated your answer a few minutes ago.

Mr. Crane?

Mr. CRANE. Yes.

Mr. SMITH. Why are we setting ourselves up for the same problems if we can't have a secure border——

Mr. CRANE. I think that's exactly what we're looking at. I mean, I think that there's a complete lack of interior enforcement in this legislation. I don't think there is any real triggers at the border. I don't think this has been well thought through, and I think that that's exactly where we're headed with this legislation.

Mr. SMITH. Okay. Let me go to another question because Mr. Sensenbrenner started the question. You all did not have a chance to respond, Mr. Crane and Mr. Aguilar. And that is this, and I am paraphrasing him: What provisions do we need in any immigration reform bill in order to avoid the problems of 1986? You all have given some partial responses to that, but if you were to give the top two or three provisions that we need in order the avoid the problems of 1986, what would those provisions be in an immigration reform bill?

Mr. Crane first, and then we'll go to Mr. Aguilar.

Mr. CRANE. Okay. I think that first and foremost, like I said in my original testimony, that we need to take away as much discretion and authority away from political appointees.

Mr. SMITH. And is that because we don't have confidence in Administration officials or in the President to enforce immigration laws?

Mr. CRANE. That's absolutely correct.

Mr. SMITH. What immigration laws has the Administration not enforced to date?

Mr. CRANE. Well, quite a few, but, you know, one, for example, is public charges. Others being right now, illegal entry and visa overstay. You know, basically we have to establish that the person

has been convicted of multiple criminal offenses before we can even make an immigration arrest.

Mr. SMITH. Okay. And, Mr. Aguilar, to go back to the original question, what provisions should we have in any immigration reform bill so that we could avoid the experience we had in 1986?

Mr. AGUILAR. The top three would be continued border enforcement under this Senate bill. It's the southwest border strategy and the fence strategy. Second would be a very, very strong and robust interior enforcement program. And thirdly, to the discretion piece, is to ensure that we're doing everything we can at the border and in the interior to ensure the national security and public safety concerns are being addressed.

Mr. SMITH. Now, as far as interior enforcement goes, isn't it the case that this bill is actually weaker than current law when it comes to interior enforcement? And I'm thinking here of an entry/exit system. The Senate bill only has that kind of an entry/exit system at airports and seaports, not land ports. Current law says land ports, which of course is where most of the illegal entries occur. So why wouldn't this bill be even weaker than current law when it comes to interior enforcement?

Mr. AGUILAR. The current bill, right now, asks for air and sea. Do we need the land exit?

Mr. SMITH. Right.

Mr. AGUILAR. Yes.

Mr. SMITH. Okay. Which is current law.

Mr. AGUILAR. Which is current law.

Mr. SMITH. So this bill is weaker than current law?

Mr. AGUILAR. And as the head of CBP, I can tell you that we went to everything that we could. It is literally impossible at this point in time.

Mr. SMITH. I understand, but the question is, by definition——

Mr. AGUILAR. Yes, I would agree with that. Yes, sir.

Mr. SMITH. Okay. Thank you all for your questions.

Mr. Chairman, yield back.

Mr. GOODLATTE. I thank the gentleman.

The gentleman from Virginia, Mr. Scott, is recognized for 5 minutes.

Mr. SCOTT. Thank you, Mr. Chairman.

Mr. Crane, you talked about lack of enforcement. How do other Administrations compare in enforcement of immigration laws?

Mr. CRANE. I could speak mainly, sir, to the Bush administration.

Mr. SCOTT. Uh-huh.

Mr. CRANE. And we did have some difficulties during the Bush administration, especially during the first 4 years. However, during the last 4 years of that Administration, they did pick up the pace. We did start getting resources, we did start getting more people, and we did have more flexibility to enforce the law, in particular in jails and prisons and things like that.

Once this Administration came on board, there was pretty much an immediate stop to that, and we've kind of been on a roller coaster every day with regard to who we can and cannot enforce. And currently we can't really do a whole lot in terms of interior enforcement.

Mr. SCOTT. What about deportations, how do they compare?

Mr. CRANE. Well, obviously, deportations are higher and have continued to get higher year after year.

Mr. SCOTT. Higher under this Administration?

Mr. CRANE. Well, let me specify on this. First of all, the interior enforcement numbers, I'm going to tell you no, because ICE interior enforcement numbers have actually gone down. They're taking border patrol arrests, turning them over to ICE, and then we're removing them and counting those as ICE enforcement numbers when in the past both agencies were doing their own enforcement and our interior enforcement numbers were much higher.

Now, anecdotally, I can also tell you, the last 4 years our officers are sitting around looking at each other saying we're not able to go out and arrest anybody, what are we doing? We can't even get prisoner transportflights to land in respective cities because we don't have enough people to put them on there. So, yes.

Mr. SCOTT. So resources. What did sequester do to the Administration's ability to enforce the law?

Mr. CRANE. What did sequester do, sir?

Mr. SCOTT. Right.

Mr. CRANE. Well, sequester up to this point for ICE I don't think has had a really big effect.

Mr. SCOTT. Ms. Wood, what is the present law on employment verification and how does S. 744 change that?

Ms. WOOD. Right now, and in fact it was required first under IRCA that employers have to use the form I-9. So anyone that is hired, you have to use a form I-9 for that. There is E-Verify, the former basic pilot system, which is not mandatory except for Federal contractors, and some are also required to use that if they are in a plea agreement or something with ICE.

Under S. 744, it would phase in a mandatory system like E-Verify over a period of 5 to 7 years for all employers, and then it would not allow those employers to use that system on their current workforce to E-Verify essentially existing workers. It would also limit the ability of employers to use anti-fraud tools. So some employers in high-risk workforces use some anti-fraud tools to prevent identity theft. This bill appears to prohibit that while—and those employers are worried that they could be subject to the enhanced criminal penalties under S. 744.

Mr. SCOTT. Comments have been made about the fact that we don't keep track of people when they're in the country, when they're coming and going. How much would an entry/exit software system cost, if you know?

Ms. WOOD. I can't give a precise number. Certainly it would be expensive to do that. Other countries do have regulated entry and exit systems, and it has been a requirement for, I think, 16 or 17 years to have an exit system.

Mr. SCOTT. Does anybody have an estimate on the cost of that? Can anybody make a comment about those who are here without documentation, how many got into the country legally and because they overstayed their visa or are no longer in school, so forth, are not presently legal? How many people got here legally but are now not?

Ms. WOOD. Some of the estimates are between kind of 30 and 40 percent of all individuals who are not currently in the country legally. Initially came legally but then overstayed their visas.

Mr. SCOTT. Is that——

Mr. AGUILAR. That is correct. That's the approximation.

Ms. WOOD. But we don't know. That's the problem. That's part of—yeah, that's part of what we need to address.

Mr. SCOTT. Thank you, Mr. Chairman. I yield back.

Mr. GOODLATTE. I thank the gentleman from Virginia.

And the Chair now recognizes the gentleman from Alabama, Mr. Bachus, for 5 minutes.

Mr. BACHUS. Thank you.

Ms. Wood, you wrote an article on March 28th in the Washington Times.

Ms. WOOD. Yes.

Mr. BACHUS. And let me quote you: "The government's purpose in detaining immigrants is not to punish them, but to ensure that they show up for hearings and comply with removal orders. In many cases, though, detention is not the best way to achieve these goals. Alternatives to detention are both routine and effective. They're employed every day, not just in the immigration system, but in the criminal justice system of all 50 States and the Federal Government."

I also believe in that statement. Can you explain your views on the importance of alternatives to immigration detention and what are some of the examples?

Ms. WOOD. Certainly. And let me say I do believe that there are some individuals that must be detained; otherwise, they won't show up for their hearings or they pose a significant public safety threat.

Mr. BACHUS. Right.

Ms. WOOD. And so it's important that ICE conduct an individualized assessment to see whether or not a particular individual should be detained or whether there are less restrictive means.

For many of the individuals that come through the Secure Communities program, regardless of whether 236(c) was on the books, those would be individuals where detention would be appropriate. But for many others, alternatives, you know, could work very well. And the current alternative to the detention system, and I do assist the company that's currently providing that, has had a lot of successes. And what we have seen is that immigrants who are in the alternative to detention system, they show up for their hearings, their final hearing 99 percent of the time. And they, if they're ordered removed, they comply with that removal order 84 percent of time. If you compare to individuals who are not detained but not on any sort of system, you have about a 13 percent rate of compliance for those.

So, there are really—I think there are a lot of tools that ICE has, everything from release on recognizance, to bonds, to alternatives working with the NGOs, to ICE-led initiatives, to detention, and I think it's important that ICE look at all of those to see how could we be most effective in a cost-effective manner that when somebody is ordered removed, they actually comply with those orders.

Mr. BACHUS. Thank you. You have concerns with the Senate bill, but I believe I also heard you say that the enforcement provisions, and the interior enforcement, particularly, would be stronger than what existed in the 1986 legislation. Is that correct? I mean, I know we've been comparing the Senate bill to the 1986 bill, and I see a lot of differences in those two pieces of legislation.

Ms. WOOD. I mean, certainly there are some portions which are stronger than 1986. For example, the requirement at some point that all employers go through E-Verify, that wasn't around, you know, back in 1986, so that is an area that's strengthened.

I do think that the bill needs a good law enforcement red line, to go through and see are there unintended consequences, are there tweaks where words were added in or added out that might really affect ICE's ability to enforce law enforcement equities when needed.

Mr. BACHUS. So, Mr. Aguilar, the Tucson area of the border, you've made tremendous strides in security there. I think you are up to about 85 percent, or 80, 85 percent enforcement. And I think the problems are more El Paso and other parts of the border. How easily is it to obtain your enforcement level that you obtained along the border in Tucson with those other areas?

Mr. AGUILAR. It is attainable by adding the right type of the requirements and needs that we have. In the case of Tucson, it was additional personnel, infrastructure, accessibility to the border, and technology. We have done that in Tucson and it's worked very well. By the way, we did that in Yuma also, and Yuma is actually in better shape than Tucson.

Mr. BACHUS. That's right. I noticed it, and I want to compliment you because, I mean, you know, we talk about an open border, and certainly I don't think that describes Yuma or Tucson.

Mr. AGUILAR. Correct.

Mr. BACHUS. So I see my time has expired. Let me say, I don't think President Reagan made a mistake when he allowed the 3 million immigrants who were here to obtain legal status. In fact, I think they've been great contributors to our economy, and he said these families came to work, they came to build, they believed in America, and I think they've made America better. And I think the same thing can be true of the vast, vast majority of immigrants today, and I hope we won't lose sight of that and say in any way that Ronald Reagan was mistaken to believe in the value of immigration or the value of these 3 million now Americans that contribute and their families.

Thank you.

Mr. GOODLATTE. Thank you, Mr. Bachus.

The gentleman from North Carolina, Mr. Watt, is recognized for his question.

Mr. WATT. Thank you, Mr. Chairman.

You know, I served as the Ranking Member of the Immigration Subcommittee for one term in this Congress and the one thing I learned more than anything else is that the devil is in the details of this. And so I think the Committee would probably be better served and I would be better served to have the people who have been really working on this issue have the opportunity to ask more

questions. So I'm going to yield my time to Mr. Gutierrez rather than ask questions that other people may have already asked.

Mr. GUTIERREZ. Thank you, Congressman Watt.

I would like to ask a question of Mr. Crane. As part of the solution to our broken immigration system, do you believe that we should give a pathway to legalization to the 11 million undocumented workers that currently exist in the United States, and do you believe that that would help with enforcement issues here in the United States.

Mr. CRANE. Well, sir, first, like I said in my original testimony, that's something we do not weigh in on.

Mr. GUTIERREZ. That you don't weigh in on. I guess a plumber wouldn't weigh in on stopping leaks either. I guess that would be——

Mr. CRANE. I'm sorry?

Mr. GUTIERREZ. So you don't have a——

Mr. CRANE. I'm sorry, I didn't hear——

Mr. GUTIERREZ [continuing]. You don't have a position? You have an enforcement position but you don't have a position on whether or not we can allow 11 million people to legalize in the United States? You don't think that that helps to solve the problem of enforcement?

Mr. CRANE. Well, respectfully, sir, what we're trying to do is let America and let lawmakers craft what type of, you know, system we're going to have in the future, whether legalization——

Mr. GUTIERREZ. Let me ask Ms. Wood that. Do you think——

Mr. CRANE. Sir, could I—okay.

Mr. GUTIERREZ. Do you think that legalizing 11 million people that currently live in the United States would help to secure America?

Ms. WOOD. So long as we do that properly and we go through an appropriate process, yes, I do.

Mr. GUTIERREZ. Thank you.

Mr. Aguilar, do you believe that legalizing would help the Border Patrol that you used to head secure the border, legalizing the 11 million that are currently here, make America a safer place for us?

Mr. AGUILAR. Doing it in the right way and the right 11 million people, yes, sir.

Mr. GUTIERREZ. Great. You know what, I really like the right 11 million people, because I think the vast majority of those that are undocumented in this country need an opportunity and are the right kind of people that America needs and that they are working very, very hard.

I just want to say that, to my colleagues, I've introduced bipartisan, bicameral legislation with then Congressman Flake, now Senator Flake, and Kennedy and McCain, and I assure you, if you go back to that bill, it was about 700 pages, and all I got criticism was about the first 400 pages. They said, oh, Luis, how could you, an advocate of immigrants, ever want an E-Verification system, how could you want more Border Patrol agents, how could you want more entry and exit? Look at the book? It is very much, how could you put triggers that if these things are not accomplished, those that you care most about, the undocumented workers in this country, don't ever achieve American citizenship?

You want to know why? Because I detest the system, the broken immigration system, and I want to work with the other side of the aisle to fix that broken immigration system, because I think—in your former job, I mean, we hear about the sexual exploitation that exists in the armed services of our women. Did you ever come across evidence, as I have, as I've visited the fields in Salinas or I've gone to apple groves in Washington State or citrus farms in California or even Postville where I interviewed many women who talked about the sexual exploitation that they were submitted to day in and day out, did you ever come across that information?

Ms. WOOD. Certainly ICE pursued a number of human trafficking and sex trafficking cases, and, you know, is very concerned about that and supporting appropriate visa program for those individuals.

Mr. GUTIERREZ. And isn't sexual exploitation of undocumented women and our broken immigration system a stain on our society that we are allowing that to continue to happen?

Ms. WOOD. I mean, all kinds of exploitation is a stain on our system. It means that we should move forward in a positive manner.

Mr. GUTIERREZ. Because when we do separate—Ms. Wood, would you agree we do separate American citizen children from their parents, that there are millions of American citizen children whose parents are undocumented, and when they are picked up and deported they leave behind their American citizen children?

Ms. WOOD. Obviously they can make the decision to take those kids with them. But those are all the reasons why the current system——

Mr. GUTIERREZ. I just wanted to make sure that somebody from your position that was invited by the majority, would you just agree that this is what happened? So we agree that there are millions of American citizen children who shouldn't wake up every day to fear an ICE agent knocking on their door and being snatched from their parent's arms, but it happens.

And I just want to conclude by saying, to say that it immediately stopped when this Administration. This Administration has deported 400,000 people a year at a record pace each and every year during the last 4 years. It has a voracious appetite for deportations. And you know what? I want to end that, but I want to end it in a smart, effective way, and we will give you the smart tools of enforcement in order to get that done.

Thank you so much.

Mr. SMITH. [Presiding.] Thank you, Mr. Watt. Thank you, Mr. Gutierrez.

The gentleman from Pennsylvania, Mr. Marino, is recognized for his questions.

Mr. MARINO. Thank you, Chairman.

First of all, I am not going to criticize the authors of these 867 pages, which I have in the past attempted to read and reread. My background is prosecution and law enforcement, but I taught a little bit, and I always told my students, the most difficult thing to do is first draft of whatever you're writing. It's real easy for someone else to edit it after it's written because all the work, the brain power has gone into getting something on paper, so I commend my colleagues.

However, with that being said, I think we need to go back through this document, both sides of the aisle, converse more between the Senate and the House, and I'm sure that we will be able to edit, refine, and address issues that each one of you brought up. I think that's critically important, to address the issues that you brought up.

So if I may ask again, and these questions were asked in different ways, but if each one of you could specifically suggest on what we could do to improve this new legislation but yet at the same time holding those responsible that are here illegally on how to address that. Do you understand my question, Ms. Wood?

Ms. WOOD. I believe so. What would I do to change the bill while holding those responsible?

Mr. MARINO. Yes.

Ms. WOOD. I would require in-person interviews, limit confidentiality, and have consequences for not telling the truth for those who go through the system, and then allow law enforcement to use that information as we look at further legalizations or adjustments. So that would be one thing.

Second thing would be to develop a biometric exit system which would help people—hold them accountable by making sure we know who is going in and out, and have it also affect the land borders, not just sea and water. And third would be really to fix the employment verification.

Mr. MARINO. Mr. Crane, please?

Mr. CRANE. Well, sir, kind of on your first comments, I'd just like to say a lot of our frustration, I think, on the law enforcement end comes into play because of the way this is being handled by the gang of eight, the way it's being shoved through so fast.

You know, this has been going on for a while. We've got a little bit of time. We need to get this right. I think an important part of that is we need to bring law enforcement in, people that actually do this job out in the field, and take a look what's working now and what's not working.

Mr. MARINO. Let me stop you right there. I agree with you 100 percent. In my past life in industry, I brought in the frontline people when we sat down to build a factory, per se, and got not only input from the architects and engineers, but from the people who were going to work that line and produce a product. I agree with you. We absolutely have to bring in the frontline officers. We have to interview as many as we possibly can. We have to get your thoughts down in this process.

Now, I don't know how much that was done, but if it were done at all, I suggest that we do it even more intently and take our time on these documents.

Now, there was an issue, I agree with my colleague on the other side of the aisle concerning what do we do with the children. That's not only a factual issue but an emotional issue that we need to deal with. But would you please explain again, you brought up a little bit in detail on what has been referred to in the media about this Administration cooking the books on those that they've sent back. And my colleague, my friend on the other side said, you know, there were astronomical numbers. Again, would you explain how you perceive those numbers to be inflated?

Mr. CRANE. Basically, the information we have has come from a lawsuit. It's information that we never had before. And those numbers indicate that basically Border Patrol apprehensions, people that initially would have just been turned back, voluntary returns, are being taken into custody, turned over to ICE, then ICE is, you know, moving them down the border and doing a deportation. So previously more and more of those numbers would have been ICE internal arrests and deportations.

Mr. MARINO. Is it correct to say that you could have sent them back across right then and there?

Mr. CRANE. It's correct to say that the Border Patrol——

Mr. MARINO. Border Patrol.

Mr. CRANE [continuing]. Could have sent them back in most, if not all of those cases instead of turning them over to ICE.

Mr. MARINO. Ms. Wood, I see you shaking your head. Do you agree with that?

Ms. WOOD. It is my understanding that that is what occurred.

Mr. MARINO. Okay.

Ms. WOOD. You know, they may have thought there was an enforcement reason. Perhaps in their view it was a deterrent effect to transfer these individuals over into ICE custody. But it was a change in prior practice and it did affect, you know, approximately 20,000 removals a year.

Mr. MARINO. Okay.

Mr. Aguilar, I see my time has expired, but quickly please?

Mr. AGUILAR. All right. As a prosecutor, sir, you know the consequences are absolutely critical for any actions illegally done. What Mr. Crane just described is historically the Border Patrol would in fact apprehend and just turn right back, the so-called revolving door.

Mr. MARINO. Yeah.

Mr. AGUILAR. We implemented a consequence delivery system that basically for every apprehension, because we finally had the capability because of the lower numbers, to take each individual alien apprehended and take a look at what consequence should be applied in order to have an impact, a negative impact on that person crossing back across the country. In the past, we could have turned them back, but placing them through formal deportation, detaining them in front of a judge, sending them back, that process, we found, has a dramatic impact of consequences on those aliens.

Mr. MARINO. Okay. I see my time has expired, but all three of you, do you mind if my office tries to set up a meeting between individually the three of you because I find your testimony to be extraordinary and I am very interested in you educating me further on this.

Mr. CRANE. Yes, sir

Ms. WOOD. Yes.

Mr. MARINO. I yield back. Thank you.

Mr. SMITH. Thank you, Mr. Marino.

The gentlewoman from California, Ms. Lofgren, is recognized for her questions.

Ms. LOFGREN. Well, thank you, Mr. Chairman.

And to all three of our witnesses, thank you for your testimony.

I am mindful that there are lessons to be learned from the 1986 act. Those who criticized the enforcement efforts were right, both in terms of employment-based. I think Mr. Aguilar's testified quite powerfully about, you know, the amount of efforts made, you know, and the kind of equipment they have and the numbers of personnel. But I think there is another element, which is, yes, there were 3 million people legalized, but there was really no effective provision for people to come in very well in the future.

The H-2A and the H-2B program have been very roundly criticized both from employers and labor unions, both sides hate them. I'm mindful that they haven't really worked all that well in some case. And I guess, you know, I'm thinking about a number of years ago when I chaired this Subcommittee and we had Dr. Richard Land from the Southern Baptist Convention as a witness, and I always mention that because I don't want to steal his line, but he said for years and years that we had two signs at the southern border. And Dr. Land said one sign says "no trespassing," and the other sign says "help wanted."

And, you know, when you look at it, we have 5,000 permanent resident visas a year for so-called unskilled. I think of it as non-college-educated employees. And we've got 2 million migrant farm workers. So clearly we did not set up a system to meet America's economic needs.

And also, you know, there is backlogs in some cases of husbands and wives of legal residents being separated for half a decade, you know, and so that may have also—I'm not condoning not living within the law, but you know, families trying to get together. That's a human phenomena.

We've had, since that time, tremendous increases in enforcement. I note that the year I took office, 1995, ICE detained 85,730 people. In the year 2011, they detained 429,247. So I mean, that's a dramatic change.

Here's my question to you, Mr. Aguilar. I've always admired you. I mean, you started on the line and you worked your way up all the way to the top of the agency, so you've seen it from every which way. Here is the question. If you could do only one of these two things today, further increase resources, add agents, aircrafts, fencing, towers, sensors, or design an immigration system that provides a viable legal way for immigrants to come to the country to fill needed jobs or to reunite with their loved ones, which alternative do you think would have the greatest impact in reducing unauthorized entry into the United States?

Mr. AGUILAR. At this point in time——

Ms. LOFGREN. Yes.

Mr. AGUILAR.—I think the latter, and the reason for it is because it would redirect the illegal entry of people looking for jobs through the ports of entry; therefore, relieve the responsibility of Border Patrol agents having to deal with, in the case of last year, 356,000 interdictions. It could then be redirected to the other threats.

Now, we will still deal with criminal aliens, we will still deal with criminal organizations and all of the other things that we spoke about. But I truly believe that by reducing that flow of illegal people into this country, it would be one of the biggest force multipliers that the United States Border Patrol could receive today.

Ms. LOFGREN. Now, luckily we don't have that choice before us because we can do both. We can improve our system so it meets the needs of the American economy and American families, but we also can do more on enforcement, both in the workplace, we've talked about the E-Verify system, also additional steps. I am mindful that just last week the Homeland Security Committee, which has jurisdiction actually over the border, not this Committee, reported a bill, a bipartisan bill, it was authored by Chairman McCaul, and it actually passed by voice vote. I mean, it was a unanimous vote of a Committee I served on for 10 years. Believe me, there were some knock-down, drag-out fights in that Committee, but they were able to agree on that, which I think is quite a credit to them.

So I think that we are moving in a direction to do all of the aspects that we need to do: securing the border, enforcing in the interior, remedying the system. You know, I read the Senate bill twice. It's one of the values of living in California and having a 6-hour flight every few days, put it on my little iPad and read it. I am not saying that this is necessarily everything, you know. But compared to our current situation, it's an honest effort to move forward. And we need to work together, I think, on this side of the building, in the House, to try and do a similar effort. And I thank you very much for your testimony.

I yield back, Mr. Chairman.

Mr. SMITH. Thank you, Ms. Lofgren.

The gentleman from Nevada, Mr. Amodei, is recognized for his questions.

Mr. AMODEI. Thank you, Mr. Chairman.

You know, in studying this I have spoken with folks from around the country and stuff like that, and I'd like you to respond to a theme that I keep hearing. We talk about reform, and I don't think anybody is opposed to it. I mean, you call it a broken system or whatever. So we'll skip all that.

Talking about border security, and the statement is this. It doesn't matter what your interior policies are if you don't have effective operational control over who crosses your border. So when you talk about the order of things in terms of securing the border, not sealing but whatever securing the border means, I'd like you to respond to, what difference does it make what your interior policies are if you have no control over people coming into your country?

Ms. Wood?

Ms. WOOD. Well, because, you know, approximately 40 percent of the people who are now in the country illegally came in legally, it's important to have interior enforcement and a good, robust exit system. If we have the best control of our physical border but we're not paying attention to the third border, those who come in on visas and overstay, we're going to continue to have a significant problem, a potential significant underclass of unauthorized workers.

Mr. AMODEI. Okay.

Mr. Crane?

Mr. CRANE. Sir, I think, you know, Congresswoman Lofgren brought up the story about the help wanted sign down at the bor-

der, and I think we have to take that sign down, and I think the way that we do that is we start with interior enforcement, that we, you know, put laws in effect that, you know, employers say, hey, you know what, there may not be that many ICE agents out there but it's just not worth it to me to take the chance, I'm not going to gamble with this, you know. And we start shutting down and taking down that help wanted sign, and I think it's a critical part to border security.

Mr. AMODEI. Okay.

Mr. Aguilar?

Mr. AGUILAR. Sir, that help wanted sign, that draw of labor, our economy is on the upswing right now as we speak, thankfully. That is going to create a bigger help wanted sign. The resources that we have on the border right now can do so much. If the draw continues to grow, there will come a point where even these resources could be overwhelmed.

Now, overwhelmed on the land border, I feel confident in saying the following: We are pretty strong there, we are very strong there, but we're going to see them coming across the littorals where we are not strong, we haven't gotten there yet.

Mr. AMODEI. Okay.

Mr. AGUILAR. So that draw, that help sign has to go away. That help for illegal labor has to go away.

Mr. AMODEI. Ms. Wood, ATD system, once you're inside, presently is that working, in your experience?

Ms. WOOD. The alternative to detention system?

Mr. AMODEI. Yeah. In terms of tracking people that are——

Ms. WOOD. In terms of tracking people, yes. It tracks people through the system. It makes sure that they show up for their court appearances. And at the end of the day it works with them to get travel documents and help them go home.

Not everybody is appropriate for it. You know, there are some individuals who are better suited for detention or in fact release on recognizance. But again, it is a system, for its population, I think it's working pretty well.

Mr. AMODEI. Do you think in going forward, in trying to craft a new policy, there ought to be a role for that?

Ms. WOOD. I'm sorry, I couldn't quite hear you.

Mr. AMODEI. Do you think in going forward and crafting a new interior policy, that there ought to be a role for that to continue in any new legislation?

Ms. WOOD. You know, absolutely I think should be a role for alternatives. S. 744 talks about alternatives to detention. I think it's very important that there be an ability for all entities to compete for contracts for that. But, yes, there certainly should be a role for alternative to detention, as well as all the other tools ICE has. You know, one thing that ICE could do and hasn't done is look at reforming the bond system or reforming other sorts of systems. You know, a lot has changed since 1986, how can we use new technology to make sure people show up, and if they're ordered remove, that they go home.

Mr. AMODEI. Okay. Thank you.

Mr. Chairman, I'd like to yield the remainder of my time to the gentleman from Idaho, Mr. Labrador.

Mr. LABRADOR. Thank you, Mr. Chairman.

I just want to thank first Ms. Lofgren for acknowledging that we actually have to learn some lessons from 1986. I've been a little bit dumbfounded hearing some of the people on the other side saying that we shouldn't take an overly critically examination of the 1986 law. I think that's the only thing we should be doing here, is taking a critical examination of the 1986 law, because if we repeat the mistakes of 1986, we are going to have 11 million to 20 million illegal people in the United States in the next 20 years.

Now, Ms. Wood, can you explain a little bit? I am a little bit—I am not understanding what the Senate did with E-Verify. It seems like we have been trying to fix E-Verify, make it applicable to all employers, and now my understanding is that the Senate bill actually changes E-Verify completely and it starts a whole new program.

Ms. WOOD. The Senate bill says that it changes E-Verify and it's starting to develop a whole new system. And, in fact, it has a provision that even says it repeals E-Verify in the current system. If you talk to folks up there and you talk to the drafters, they say that's actually a drafting issue. We really aren't going to toss all that out. We're going to actually encourage USCIS and the government to use E-Verify.

Now, if you ask them, does the bill require you to use the existing system or could any Administration decide we don't like that, we're going to create something new, they say, well, they could do that. So I think that the language in S. 744 is modeled on the current system by having individuals attest, similar to section 1 of the I-9, employers attest, similar to section 2 of the I-9, although it includes some documents that are not currently permitted and are problematic, and that includes an employment verification requirement.

Ways that it differs from the current system or what's proposed in House bill 1772 is there's a very long lead-in time to use the system. It's, you know, from 5 to 7 years. That definitely can create an unclear class of workers, people that can be taken advantage of, and you're going to have a lot of problems with fraud in that workforce.

It also really beefs up the special counsel provisions in terms of reducing the ability of employers to take any other steps to prevent problems. So right now there are some employers, like some in the meat packing industry and other industries, that go through E-Verify but still have a big problem with identity theft because E-Verify doesn't solve that. So they use other tools, either manual tools or automated tools to address it. There is some concern that language in the Senate bill that expands the Office of Special Counsel will reduce their ability to do that, and that's critical for them.

Mr. SMITH. The gentleman's time has expired. Thank you, Mr. Amodei. Thank you, Mr. Labrador.

And we will go now to the gentlewoman from Texas, Ms. Jackson Lee.

Ms. JACKSON LEE. Thank you very much, the Chair and Ranking Member of this Committee, for holding an important hearing.

And, Mr. Aguilar, it is good to see you again. Thank you so very much for your service. I think we've worked some long years together and thank you for your service.

Let me just at least put on the record my statement of the existence of a bipartisan border security bill, H.R. 1417.

[The prepared statement of Ms. Jackson Lee follows:]

Prepared Statement of the Honorable Sheila Jackson Lee, a Representative in Congress from the State of Texas, and Member, Subcommittee on Courts, Intellectual Property, and the Internet

Thank you, Chairman McCaul, Ranking Member Thompson, and Chairwoman Miller and distinguished Members of the Committee:

I am pleased that the Committee on Homeland Security is meeting today to mark up H.R. 1417, the "Border Security Results Act of 2013," which is an example on what can be achieved when Members of Congress reach across the aisle to find common ground and commonsense solutions to America's border security challenges.

I believe in the years to come we will look back on today's action as a pivotal moment in the ultimately successful effort to secure America's borders in a manner consistent with our national values.

I am proud to have introduced this bill with my colleague from Texas, Chairman McCaul, Ranking Member Thompson and the Chair of the Border and Maritime Security Subcommittee, Mrs. Miller.

I also want to acknowledge the outstanding work and bipartisan cooperation of our dedicated staff: Alison Northrop, Shashrina Thomas, Paul Anstine and Steven Giaier. Thank you!

As Ranking Member of the Border and Maritime Subcommittee, ensuring that we have the resources, the technology, the personnel—and sound plans and policies—to secure our nation's borders has been one of my major legislative priorities.

That is why I am so please to have worked with all my in a bipartisan manner to craft the measure before us today which enable DHS to develop and implement a sound border security strategy and the metrics to measure its effectiveness.

I am particularly pleased that the measure approved at the subcommittee markup incorporated in the base text several of my proposals and that the ANS before us reflects three amendments I offered during the subcommittee markup, including:

1. An amendment providing that the border security strategy required under the bill include input from State, local, and tribal law enforcement as well as border community stakeholders, including ranchers and local chambers of commerce;
2. An amendment requiring DHS to collaborate with a DHS National Lab and DHS Centers of Excellence in the development of the metrics required under the bill; and
3. An amendment requiring that border security strategy efforts to increase "situational awareness" not infringe or abridge privacy, civil liberties, and civil rights protections.

I also appreciate that the ANS incorporates my suggestion that DHS be required to develop the capability to "forecast" trends in border traffic and movements, which is a more reasonable and attainable standard than requiring it to predict those movements with certainty.

I also look forward to discussing the amendments I will offer later during this markup, including one that I am so proud to have worked on so closely with Mrs. Miller, my subcommittee chair.

Mr. Chairman, the reasons we have put in so much effort in making this legislation the best it can be is because we understand that Americans are entitled to expect that their country has secure and safe borders and that it has operational control over who enters and what they bring with them.

The action the Committee will take today in favorably reporting this bill will lay the foundation for our colleagues in the Senate as it helps to complete the essential task of providing the guidance needed for federal law enforcement officials to achieve their mission and improve their ability to collaborate with state, local, and tribal law enforcement.

The resources made available through this legislation will build upon our successful efforts to protect communities along the Southwest border and across the country.

As I have said many times, those of us who believe that America is the greatest nation on earth because of its cultural diversity have a special obligation to ensure the security of our borders so we can ensure the safety of the persons we welcome to our shores.

As the tragic events occurring in Boston last month remind us, not everyone who seeks entry into the United States is coming to realize the American Dream. Some come to destroy it and are willing to hurt and kill innocent people to do it.

If we wish America to remain the welcoming place it has been for more than two centuries, it is important that we have in place a strategy that will enable us to maintain situational awareness and operational control of our borders.

The bill we markup today is a step in the right direction. So is the bipartisan and cooperative manner that all members of this committee have worked together to produce this constructive legislation, led particularly by Chairman McCaul, Ranking Member Thompson, and Border Security Subcommittee Chair Miller.

So Mr. Chairman, Mr. Thompson and Mrs. Miller, I thank you for your leadership and your commitment to protecting our communities and keeping our nation safe.

Thank you. I yield back my time.

Ms. JACKSON LEE. And it has a number of answers. And I think my friend in the Chair is aware of it, that I think is important for me to make a comment on, and that is that it has—this is on the House side—it has an extensive component, Mr. Aguilar, on operational control. I think that terminology has grown out of a lot of the work that you all have done. And it has moved to having that operational control in place in 5 years and that there will be annual reports, and on the southern border it's a 90 percent operational control.

Putting aside S. 744, and I know they have a border security component, Mr. Aguilar, does that not give you, give us a better framework? This is a bipartisan bill passed out of the Homeland Security Committee getting ready to go to the floor? When you have reports to Congress, when you have measures on operational control and you seek to reach a 90 percent operational control, obviously there are resources to be added, but you have something to be guided by, is that a better construct than what we've had in the past?

Mr. AGUILAR. Working in that direction is certainly a better construct than what we've had in the past. The only caution that I would give is, frankly, I was the one who began the term operational control and defined it. When defined, it was defined as a very tactical term for immediate juridical line border operations. Unfortunately, it was grabbed to describe a more strategic definition. That will not work.

Now, keeping the term but broadening the scope of the definition will work as a benchmark and as a metric, but we need to change the definition.

Ms. JACKSON LEE. It will give you comfort to suggest that is the case. We talk about strategy.

Mr. AGUILAR. Uh-huh.

Ms. JACKSON LEE. And so the strategy comes first before the operational control. So I think your question has been asked and answered in the structure we have put in place. I think one of the good parts about the legislation is that it is a moving document and it responds to what is happening at the border, but it doesn't let the border go without attention in terms of Congress actively involved with homeland security.

So, let me go back to E-Verify, which seems to be a popular issue. And, Ms. Wood, on the Senate bill, even though you said it has a question whether E-Verify is in place, one, this is a two-body process and we get the chance to look constructively at—we just heard Mr. Gutierrez said he's fine with E-Verify—we want to make it right. But one of the things I think is important, doesn't the Senate bill make the documents going to be utilized by individuals far more secure documents?

Ms. WOOD. The Senate bill does talk some about the security of documents, yes, that's correct.

Ms. JACKSON LEE. And so that is at least an advance as to what people were actually showing employers, it's going to be now more secure documents.

Ms. WOOD. If there are those documents, then, yes, that is correct.

Ms. JACKSON LEE. On the IRCA, why we were concerned with that, I just want to put on the record, and you might say "yes" or "no," one of the problems is that you have to be continuously out of status. They only had a small number of special agricultural visas, they had something dealing with Cuban and Haitian visas, and then they had very limited in terms of when you came to the country. It was some time around 1972.

The S. 744 does a little bit more on who can get status. You may have been in status, you may have had a student visa and you are out of status. S. 744 covers that. Is that not correct?

Ms. WOOD. That's right. It's very broad in terms of who would be eligible, assuming you're in the U.S.

Ms. JACKSON LEE. But what it means is that you will have more people that have the opportunity to be static and identified. Is that not correct?

Ms. WOOD. That's right. There's no question there would be more people who have opportunity, yes.

Ms. JACKSON LEE. And so that means that we have a better chance of being able to know who's in this country and who's not in the country?

Ms. WOOD. As long as we have a secure, you know, interview process. I would suggest one that includes a personal interview with the right kind of background checks and then we make sure there's no fraud in the file, yes.

Ms. JACKSON LEE. Mr. Aguilar, with respect to the whole concept of comprehensive immigration reform, which I think the Senate has made great strides, and also the difference with IRCA was that we spend more time on S. 744 in dealing with legal immigration. Would you speak to that, but would you also speak to the point of the issue of family visas and family reunification and whether or not we can see an improvement on what the Senate has done.

First, if you could speak to the fact of how IRCA contrasts with where we are today. We have a much broader plan, I believe, on the S. 744.

Mr. AGUILAR. It is broader in several areas, but as it relates to border security 744 addresses the market—what I believe to be the market-driven labor requirements for visa purposes. It then also allows for accompanying aliens to come into the country once visas are granted, so that will stop the family members that weren't al-

lowed to come into the country before to not have to cross that border illegally, which in the end is going to reduce the negative impact on the Border Patrol dealing with, in the case of last year, 356,000 illegal entrants, magnifies our capacity——

Ms. JACKSON LEE. Many of them families trying to reunite?

Mr. AGUILAR. I'm sorry?

Ms. JACKSON LEE. Many of them families trying to get united?

Mr. AGUILAR. Some of them were, some of them were. Some of them were first-time entrants. It's a whole array.

Mr. SMITH. The is gentlewoman's time has expired.

The gentleman from Idaho, Mr. Labrador, is recognized for his questions.

Mr. LABRADOR. Thank you.

Ms. Wood, let's continue our conversation about E-Verify. I've been told by several people that it's going to take 3 to 5 years to fully implement E-Verify for all employers. Do you agree with that?

Ms. WOOD. Certainly that's what's in S. 744. At least 5 years, plus the time for USCIS to do the implementing regulations.

Mr. LABRADOR. But do you think that's—do we need 5 to 7 years to fully implement E-Verify?

Ms. WOOD. I think we need to do it sooner or find some way to address the pending workforce that's not going to be covered by that system, that's not going to have the more secure documents, that's not going to be kind of eligible for any sort of adjustment.

Mr. LABRADOR. And, do you think that's possible, for us to do it sooner?

Ms. WOOD. I do think it's possible for us to do it sooner. It's going to be a lot of work, but this whole thing is going to be a lot of work, and I think USCIS certainly could work with the system they have to move forward in that direction.

Mr. LABRADOR. A quick follow-up question on what you were discussing with Ms. Jackson Lee. Some of the identification that's required for people that are in this program, it says that an affidavit by any individual over the age of 21 can be used to identify a person under the age of 18. Is that correct?

Ms. WOOD. That's my understanding, and yeah, that's obviously highly problematic. You know, there are always issues with the under-18 individuals if they're trying to use their nursery school application kind of in the past and things. So I think reducing the number of eligible documents, you know, would be a way of reducing fraud.

Mr. LABRADOR. So you think an affidavit that addresses the fraud issue——

Ms. WOOD. No, I do not. I think that permitting that is ill advised.

Mr. LABRADOR. Mr. Crane, I know you've spoken about the need for biometric-based ID to track visa holders and there's a CRS report that indicates that such a system would require really heavy infrastructure cost and reduced trade. And I am a fiscal conservative first. I came here to reduce the cost of government. So I am sensitive to these concerns. However, I am not entirely convinced that such a system would cost as much as the government bureaucrats claim that it's going to cost. Can you address that issue?

Mr. CRANE. Well, only, sir, to the extent that that's my exact feeling for it, that in our offices and out in our processing areas, we are able to put those little boxes out there. We don't have to tear walls down or do anything extensive. They just sit on a preexisting desk. I can't for the life of me see how this thing is projected to cost $8 billion.

Mr. LABRADOR. So can you explain that a little bit? How is it that you do it in your office? You have a little box and what happens?

Mr. CRANE. Well, yeah, I mean, we have some different equipment now, but in the past we had a little box that sat there and the alien put their one finger on that little box and then they put the other one on there and we captured both index fingers. And it's extremely effective, extremely effective. Even just one index finger, it's extremely effective.

Mr. LABRADOR. Okay.

Ms. Wood, I saw you nodding your head. Do you agree with what he's saying.

Ms. WOOD. I do think that we've had some amazing advances in technology and we should not kind of shrink from the past. We should push and push the government to see how can we get an effective biometric exit and do it in a cost-effective manner.

Mr. LABRADOR. What do you think, Mr. Crane, about the amendment that was just made to the Senate bill, that they actually started a pilot project for biometric exit, entry/exit data? Is that helping you feel more comfortable with it or do you think——

Mr. CRANE. I'm sorry, I wasn't aware that they had an amendment.

Mr. LABRADOR. I believe there is amendment. Or what if we just started a pilot program. Let's not worry about what they did over there. But if we just did a pilot program with certain exit areas, you know, the most trafficked exit areas, would that make you feel more comfortable?

Mr. CRANE. Well, my experience at ICE with pilot programs doesn't give me a real warm fuzzy about it continuing after this kicks off. So, I mean, I guess if we had the pilot program ongoing right now and, you know, we could see that it was effective and that we could see some kind of implementation beginning, then yes, but the fact that they tell us that they're going to start a pilot program, not really.

Mr. LABRADOR. Okay.

Mr. Aguilar, you said in your testimony that you believed that a workable legal flow of legal immigration is one of the main components of fixing the illegal immigration——

Mr. AGUILAR. Yes.

Mr. LABRADOR [continuing]. Problem that we have in the United States. Are you familiar with the Senate proposal on nonfarm or non-ag legal immigration and that it starts out at 20,000 visas per year?

Mr. AGUILAR. That is the W visa. That is the low-skilled visa, yes, sir, 20,000, 35-, 55-, and 75-——

Mr. LABRADOR. Do you think that that's sufficient to address——

Mr. AGUILAR. That is one of the critiques that I've got, sir, because it would be way above that. In my experience, I think it'll be way above that.

Mr. LABRADOR. We would have a need that's way above that, don't you think?

Mr. AGUILAR. Yes. That's the reason for the commission, or the commissioner under CIS to make that determination along with the Secretary of Labor.

Mr. LABRADOR. Okay.

Ms. Wood, would you agree with that? It seems to me that's such a low number that we're just going to have the same problem again, that we're going to create a black market where people are going to come and work illegally because there is just not enough visas available for people to come legally.

Ms. WOOD. I think there's a big potential problem with that.

Mr. LABRADOR. Thank you.

Are you familiar with that issue, Mr. Crane?

Mr. CRANE. Not in detail.

Mr. LABRADOR. Thank you very much.

Mr. SMITH. Thank you, Mr. Labrador.

The gentleman from Puerto Rico, Mr. Pierluisi, is recognized.

Mr. PIERLUISI. Thank you, Mr. Chairman.

As a former attorney general of Puerto Rico, I'm pleased to submit two records. So I ask unanimous consent to submit two letters for the record of this Committee. The first letter is signed by 36 current State attorneys general, and it expresses support for immigration reform that, I quote, "improves our immigration system, keeps our communities safe, and protects our borders." Such reform should, I quote again, "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."

The next letter is signed by 76 former State attorneys general and it expresses support for comprehensive immigration reform. The letter highlights the ways in which comprehensive reform will "significantly improve public safety."

Mr. SMITH. Okay. Without objection those letters will be made a part of the record.

[The information referred to follows:]

National Association
of Attorneys General

PRESIDENT
Douglas F. Gansler
Maryland Attorney General

PRESIDENT-ELECT
J.B. Van Hollen
Wisconsin Attorney General

VICE PRESIDENT
Jim Hood
Mississippi Attorney General

PAST PRESIDENT
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North Carolina Attorney General

EXECUTIVE DIRECTOR
James McPherson

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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

Martha Coakley
Massachusetts Attorney General

Catherine Cortez Masto
Nevada Attorney General

John Swallow
Utah Attorney General

Signature Unavailable
Afoa Leulumoega Lutu
American Samoa Attorney General

Dustin McDaniel
Arkansas Attorney General

Kamala Harris
California Attorney General

George Jepsen
Connecticut Attorney General

Joseph R. "Beau" Biden III
Delaware Attorney General

Irvin Nathan
District of Columbia Attorney General

Lenny Rapadas
Guam Attorney General

David Louie
Hawaii Attorney General

Lawrence Wasden
Idaho Attorney General

Lisa Madigan
Illinois Attorney General

Greg Zoeller
Indiana Attorney General

Tom Miller
Iowa Attorney General

James "Buddy" Caldwell
Louisiana Attorney General

Janet Mills
Maine Attorney General

Douglas F. Gansler
Maryland Attorney General

Bill Schuette
Michigan Attorney General

Jim Hood
Mississippi Attorney General

Chris Koster
Missouri Attorney General

Michael Delaney
New Hampshire Attorney General

Gary King
New Mexico Attorney General

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

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, 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 major 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 General1979-1983
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
Dave Freudenthal	Wyoming Attorney General 1981-1982
David B. Frohnmayer	Oregon Attorney General 1981-1991
Jose Fuentes Agostino	Puerto Rico Secretary of Justice 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 Richard	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

Mr. PIERLUISI. Thank you, Mr. Chairman.

I want to begin by expressing my strong support for the passage of comprehensive immigration reform legislation during this session of Congress. We need to fix our broken immigration system so that it works for all Americans, helps our economy, and advances our national interest. I believe S. 744 provides a solid framework for this purpose, and I'm confident that the efforts of my colleagues in the House will also yield results.

Having said this, I must express my concern that Puerto Rico is currently excluded in the definition of "southern border" in S. 744, and therefore in the bill's strong border security provisions. As many of you are aware, in recent years, while the security situation on the U.S. border with Mexico has improved by most, if not all statistics, Puerto Rico has experienced a dramatic increase in the level of drug-related violence on the island that is directly tied to the territory's use as a transshipment point for illegal drugs destined for Stateside markets.

The recent surge in violence, which has been acknowledged by a multitude of top-ranking Federal law enforcement officials, including Mr. Aguilar, has pushed the island's already historically high murder rate to approximately six times above the national average. The cause of the drug-related violence is directly associated with the transit of illegal narcotics into the territory through its undersecured and underresourced maritime borders.

While there are indications that Federal law enforcement, mostly DHS and its component agencies, has worked to increase the operations in Puerto Rico in recent months, the underlying security dynamics remain the same for the 3.7 million American citizens residing in the territory.

Last year, the CJS bill recognized that efforts by the Federal law enforcement community to reduce drug trafficking and associated violence in the southwest border region have affected trafficking routes and crime rates in the Caribbean.

Stated simply, if we try to plug the U.S. border with Mexico without increasing security in America's Caribbean border, we're just going to displace the criminal activity from one U.S. border to another. Therefore, I believe the U.S. territories in the Caribbean, specifically, Puerto Rico and the U.S. Virgin Islands, must be included in any border security package that is considered by Congress.

Do you agree with me, Mr. Aguilar?

Mr. AGUILAR. Yes, sir. Absolutely. One of the things that we must recognize is that the criminal organizations, we have actually termed their actions displacement and entrenchment, deflection actions, based on our successes. That is why it's so critical that we take a look at the entirety of our enforcement challenge that we have.

By reducing the flow of illegal aliens coming into this country, the 356,000 last year, it gives CBP and DHS greater capability to shift resources where those deflections or those displacements are taking place. In addition to the money that is being appropriated as a part of the user fee, these are the things that will come into play and make the entirety of our southwest border and the littorals safer and more secure.

Mr. PIERLUISI. Does anybody disagree on the panel? Ms. Wood or Mr. Crane, do you disagree with my proposition, which is to include the Caribbean border in the southern border provisions in this bill?

Ms. WOOD. I mean, certainly I think that we should focus on the entire country and we should certainly not exclude Puerto Rico or any other area when we're thinking about how do we prevent illegal migration and how do we prevent transnational organized crime.

Mr. CRANE. Did you want me on comment, sir?

Mr. PIERLUISI. Yes.

Mr. CRANE. No, sir, I do not disagree with you at all.

Mr. PIERLUISI. Thank you. I yield back.

Mr. GOWDY. [Presiding.] I thank the gentleman from Puerto Rico.

The Chair would now recognize the gentleman from Iowa, Mr. King.

Mr. KING. Thank you, Mr. Chairman.

And I thank the witnesses for your testimony here today. And I've had the privilege of hearing from each of you on other occasions as well. So I respect the level of expertise that you bring to this panel.

I think there are a lot of things being discussed here today that really aren't relevant to the big picture. And if you start out with a flawed premise, the smartest people are going to end up with the wrong conclusion. So I want to first concede this point: That except for certain felons or those mysterious combinations of three misdemeanors, those are the exceptions in the bill for those that are unlawfully present in the United States. And the bill essentially automatically says all of you that are here now, with those exceptions and those who came before December 31st of 2011, are hereby legal, as I read the bill.

And then it also says that if you were deported in the past and you're not guilty of a felony or these three mysterious misdemeanors, then it's an invitation to come back, apply to come back to the United States after the bill might be passed. And as far as I can see there's no prospect that people that haven't committed felonies or people that haven't committed these three serious mysterious misdemeanors, there's no prospect that those that came here after December 31st, 2011, or might come here in the future would be either deported.

And so I call this the Always Is, Always Was, and Always Will Be Amnesty Act, in that if you is in America illegally, you get amnesty and you get to stay; if you was in America and were deported, you get to come back; and if you will be in America, there is no prospect you will be deported, and you get to stay. The Always Is, Always Was and Always Will Be Amnesty Act, this is the largest and most expansive amnesty act that ever got any traction in the history of the United States of America. And for me it's breathtaking to see how a Nation could go through a law enforcement whiplash like we have seen since November 6.

And so I was very surprised, after paying great attention to the presidential race, probably longer and harder than anybody else in this room, that somehow some guru woke up on the morning of November 7th and concluded that Mitt Romney would be President-elect on that day if he just hadn't uttered a couple of words, "self-

deport." That was astonishing to me, and even more astonishing was the logical disconnect of many of the people within my own party who seemed to leap to this conclusion that that was the right assumption.

And so I dialed this back in my memory, and, yes, I do remember 1986. And we know that that number started out less than a million. And the lowest number that I can see out there of those that actually were legalized in that amnesty act were about 2.7 million or 2.8 million; many of those numbers go 3 million or 3.5 million. We also see numbers that show that the family reunification that resulted from that was something in the order of at least 5 to 1. So 5 times 3 is 15. That would mean there are something like 15 million people in this country, not discounting deaths and those that might have gone back, that were the beneficiaries of the 1986 amnesty act.

So I'd just pose this question: Does anybody think that Barack Obama would be president today if the 1986 amnesty act had not become law? And I'd turn first to Mr. Aguilar because he had the most confused look on his face.

Mr. AGUILAR. Yes, sir. Frankly, I have to tell you, I'm not quite sure I understand the question.

Mr. KING. Okay. Thanks. Because the clock is ticking, and so I'll just make this point. Because it's more than rhetorical. I will tell you that I don't believe Barack Obama would be president today if Ronald Reagan hadn't made the most colossal mistake of his career in signing the 1986 amnesty act. He let me down that day.

And now I have people that are concluding that if we can just pass an amnesty bill today and send to it a Democrat President's desk, who lectured us in February, said, I'm trying to help you, Republicans, you'll never win another national election if you don't pass some kind of comprehensive immigration reform—which we do concede, I think, is a euphemism for amnesty—and yet the beneficiary of that's Barack Obama. Now, why would we think we would get less of the same if we did more of what we did in 1986?

And I'd point out also, when I hear the discussion about we have to do this because of the labor force that's out there and we need to have more than 50,000 workers in this category or that because we think the market demands that, Milton Friedman said you cannot coexist with an open-borders policy and a cradle-to-grave welfare state. And we are a cradle-to-grave welfare state. It is a wealth transfer. This is a class leveller. This is the kind of thing that's driven by a socialist agenda to take from the people that have and give to the people that have not and transfer this wealth.

A hundred million Americans in this country are not in the workforce. A hundred million. And we're talking about bringing in a number that they're not going to limit this to 11.3 million or any other number like that. The amendment was offered in the Senate at 33 million and rejected. So we know this is bigger than 11 million people.

This is a transformative economic, rule of law, and cultural change. It destroys the rule of law with regard to immigration. You can never again restore immigration law enforcement if you pass anything that looks like this amnesty act. I think it transforms America forever. And I think that people that are advocating for

this have just simply started with completely the wrong premise, it's not supported by any kind of data that's out there and they're not willing to debate that. They want to talk around the edges. I think we need to get to the core of this problem and define how America became great and how we restore the pillars of American exceptionalism.

Thank you, and I yield back.

Mr. GOODLATTE [presiding]. Time of the gentleman has expired.

And the Chair recognizes the gentleman from Florida, Mr. Deutch, for 5 minutes.

Mr. DEUTCH. Thank you, Mr. Chairman.

I would start simply by making the observation that the reason that America became great, the reason that America's economy has thrived in every generation, the reason that we find ourselves in a country that continues to be the envy the world is because of our immigration policy. That is a point that I think is irrefutable. I'm not sure what country we wish to go back to that I hear my colleague talking about, but I think as we approach this whole issue there are a myriad of reasons for immigration reform—economic reasons, humanitarian reasons, we can go down the list—but it is eminently clear that we are a country of immigrants. And those who speak out so forcefully and passionately against any sort of effort to deal with the immigration situation that we have ignore the very fact that we are a country that is a Nation of immigrants.

I'd like to get back to something you spoke about earlier, Ms. Wood, and that is you talked about both—in your testimony you talked about alternative forms of detention. I have in my district something called the Broward Transitional Center, which is a detention facility, it's in Pompano Beach, Florida, houses nonviolent detainees, which include asylum seekers. Most people housed at the facility have committed no crime or only minor nonviolent infractions. They are not violent criminals. And I just wanted to ask you some questions about that.

According to the Department of Homeland Security, in 2011 the United States detained an all-time high of 429,247 individuals in our immigration system in the detention system. We spend $2 billion a year on immigration detention, $164 per detainee per day. Alternative forms of detention can cost, as I think you touched on earlier, anywhere between 30 cents and $14 a day. In fact, at the Broward Transitional Center, which is used to detain 700 people who pose, for the most part, no threat to our national security, and for the most part no threat to the community—these are people, by the way, I would point out, who often are picked up from buses or as a result of traffic violations.

I'd just ask whether the whole approach to mass detention of people who are here, who have come here illegally, whether that mass detention secures our borders. Does that make us more secure when we do that?

Ms. WOOD. Certainly, you know, the purpose of detention is to ensure that people who are ordered removed will go home. And, unfortunately, over time people that were not in detention, they were ordered removed, they wouldn't go home. You know, the OIG said in the last study done on this that only 13 percent of individuals who are not detained, if they were ordered removed, would go

home. And so massive ignoring of immigration court orders I think undermines our immigration system and I do think makes our borders less secure by people flowing in.

But to your point, you know, I think it's important to look at who are we currently detaining and how are we doing that and are there ways we can do that more effectively. And some of the individuals, for example, that might be subject mandatory detention, you know, arriving aliens or others, may not need to be subject to mandatory detention. So having the ability to do an individualized assessment and think about, is this person a public safety threat or do they pose a significant flight risk, I think makes a lot of sense. And then the government can think more appropriately, what's our goal? Our goal is to make sure they comply with removal orders.

Mr. DEUTCH. Are you familiar with and can you speak to the bed quota requiring the detention of 34,000 people per day? Is that a good policy for securing our borders?

Ms. WOOD. I don't think that we should have a fixed number in terms of how many individuals need to be detained. We should focus on how can we be most effective.

I will say that with the focus on Secure Communities, most of the people that ICE is arresting and removing are people that are coming out of Secure Communities as well as kind of arriving aliens. And so for many of those folks that are coming out of the jails, you know, there may be significant public safety concerns and it would make sense that there would be a need to detain them. For others there's not that need. So to have a fixed number, in some years you may need more. I think right now ICE is detaining 37,000 individuals or something to that nature. Other times you may need less. So to give the agency the flexibility to use its spending most effectively I think makes a lot of sense.

Mr. DEUTCH. Why is there a requirement? Where does the 34,000 come from?

Ms. WOOD. I think it comes from the Appropriations Committee. It was put in the report. They didn't have a lot of trust in ICE over the years that ICE would spend the money in the way that they thought appropriate. And so that requirement, before I even came to ICE, was put in there to prompt ICE to act in way that the Committee thought appropriate.

Mr. DEUTCH. I appreciate it. Thank you, Mr. Chairman. I yield back.

Mr. GOODLATTE. I thank the gentleman.

The gentleman from South Carolina, the Chairman of the Immigration and Border Security Subcommittee, is recognized for 5 minutes, Mr. Gowdy.

Mr. GOWDY. Thank you, Mr. Chairman. Mr. Chairman I want to start by apologizing to you and to our witnesses and our colleagues for being in another hearing this morning. Although I'm quite certain everyone is thankful that there's not more than one of me, I really wish I could have been here for the entire hearing and did not have to go to the IRS. So I want to apologize to our witnesses for being in another hearing.

And, Mr. Chairman, I want to thank you for all of the time and effort that you have spent on this issue. For every 1 hour folks see

you in this room there are 10 hours that you're working in another room where nobody sees you. So thank you for devoting as much of your time and energy to this issue as you have.

And with that in mind, to our three witnesses, my constituents in South Carolina want a real remedy and not a political remedy. This debate can be divisive. And they want a remedy that will last a lifetime. So with that in mind, I'm going to bounce from issue to issue and then see if we can come up. But let me start with this.

What in the Senate bill or what can exist in a House bill that ensures subsequent Administrations, whether they be Republican or Democrat, can't fail to enforce whatever we come up with in this Congress? What guarantee would you suggest we include so we don't have this debate 3 years from now, 6 years from now, for purely political expediency? What should we do to make sure this is the last time we have this potentially divisive debate as a Nation? Not all at once.

Mr. AGUILAR. I'll make the following statement. Each one of us has served. Chris is serving today. We execute the policies. The political machines basically develop those policies. I think that question better goes to this group as to what you can put in there so that those that are executing the laws execute the laws as designed. Ms. Wood, myself as Acting Commissioner, as Assistant Schedule, we have bosses, politicals. We have the Hill that we answer to. Policies are put in place. We execute those policies. We don't design them.

Mr. GOWDY. No, I did not mean to suggest that you were the——

Mr. AGUILAR. No, I understand. That's why I answer in the way I do.

Ms. WOOD. I think the most effective tool for ICE historically has been the funding streams, and the things in the House Appropriations conference report that drive certain ICE requirements. And so to the extent that you can use appropriations or funding streams or cut things off, if that's not done, that seems to drive, at least in my experience, the agency more than anything—more than anything else.

Mr. CRANE. Yeah. I think, sir, that the biggest thing that we can do again is we can take the discretion away from the Secretary of DHS whenever possible, and, you know, codify what officers and agents have to do out in the field. I mean, DHS and ICE right now has the authority—you know, the law gives us the authority to make arrests, they can determine whether or not we even have those authorities or not.

This bill is littered—you know, everything at the bottom seems to say at the discretion of the Secretary of DHS. Well, we have nothing as long as one individual or their boss, basically the President of the United States, can determine, you know, whether they're going to exercise that discretion or not. And I understand that there has to be a certain degree of discretion for agencies, but we have to work hard to take away as much of that as possible.

Mr. GOWDY. I want to get to a question about mandatory detention, but your response provokes this question in me. What is the single best way, if you were king or queen for a day and you had to ensure border security as a trigger for anything else that may come subsequently, what is the single best way to convince our fel-

low citizens that the border is adequate—I don't mean hermetically sealed, I mean adequately secured such that it would trigger whatever else comes post-border security, fully recognizing there are two borders, not getting into internal securities. But to the extent that I'm asked about border security more than everything else combined in my district, what's the best way for us to make sure that we're doing the best job we can on that?

Mr. AGUILAR. At this point in time there are strategies, there are solutions, resource solutions already in place designed. This bill talks about the appropriations that will allow for those expansions. That's one.

To continue the interior enforcement is critically important, to address that continuing draw, especially in today's economy. As the economy takes up, those hoses on the other side of the border, not just Mexico, but other countries, are going to open up because that help sign is going to be there.

Mr. GOWDY. I'm out of time, Mr. Chairman. Thank you for your indulgence.

Mr. GOODLATTE. Thank the gentleman.

The gentleman from Georgia, Mr. Johnson, is recognized for 5 minutes.

Mr. JOHNSON. Thank you, Mr. Chairman.

When John Morton, Ms. Wood, when John Morton, the Director of Immigration and Customs Enforcement, appeared before Congress earlier this year, he noted that ICE tries to live within the budget that Congress provided. He also argued in his written testimony before this Committee that these budget constraints are now further compounded by the reductions required by sequestration, which represents a nearly $300 million cut to our budget that we must absorb over the remaining 7 months of this fiscal year.

You point out in your written testimony that one of the failures of previous immigration legislation was fully funding and supporting immigration agencies who have been woefully understaffed for the last several decades. Do you agree, ma'am, that sequestration was a step in the wrong direction on immigration enforcement?

Ms. WOOD. Sequestration didn't help any law enforcement agency.

Mr. JOHNSON. It was a step in the wrong direction.

Ms. WOOD. It's certainly not helpful, absolutely.

Mr. JOHNSON. And it hurts, actually.

Ms. WOOD. Yeah.

Mr. JOHNSON. It hurts immigration enforcement. Would you be able to admit that?

Ms. WOOD. If you don't have the resources, absolutely. Sequestration reduces the resources that ICE has or that any other agency has. Absolutely, it hurts their ability to enforce the law.

Mr. JOHNSON. How about you, Mr. Crane? Would you go so far as to admit that sequestration hurts the efforts of ICE?

Mr. CRANE. Well, again, sir, I mean, I think I would have to, you know, steal Mrs. Wood's comments on that in terms of I don't think there's been a great big impact to ICE at this point. But certainly if you take——

Mr. JOHNSON. Well, that's not my question. Now, that's not my question.

Mr. CRANE. Okay.

Mr. JOHNSON. My question is, can you admit that sequestration is not good for enforcement, for ICE enforcement? Can you admit that or do you deny? Do you admit it?

Mr. CRANE. I mean, yeah, if you take money away from the agency, yes, it's not going to be good, sir.

Mr. JOHNSON. It's not a good thing. I find it interesting that you both would find it difficult to make that admission.

What I'd like to know, Mr. Crane, is does your organization represent about, what, 7,000 of 20,000 ICE agents and professionals?

Mr. CRANE. Actually, they're ICE agents and staff, yes, sir.

Mr. JOHNSON. So you represent 7,000 of the 20,000. So not even half of them.

Mr. CRANE. That's correct.

Mr. JOHNSON. And you're speaking on behalf of the entire organization, though here today, is that correct?

Mr. CRANE. I don't believe so, sir.

Mr. JOHNSON. Well, nothing in your statement indicates otherwise. In fact, your statement indicates that you are speaking on behalf of the organization.

But let me ask you this question. Does your organization get dues that are checked off by the employees in their paychecks? In other words, does your organization benefit from the automatic dues check-offs?

Mr. CRANE. Okay. So the question is, are the dues taken out of the employees' checks?

Mr. JOHNSON. Yes.

Mr. CRANE. Yes, sir.

Mr. JOHNSON. Okay. And taken out of all the employees' checks.

Mr. CRANE. No, sir. No.

Mr. JOHNSON. Just the 7,000.

Mr. CRANE. Membership is optional.

Mr. JOHNSON. I see. Okay. Do you all receive funding from other sources, does your organization receive funding from other sources?

Mr. CRANE. Do other sources donate money to us?

Mr. JOHNSON. Yes, other organizations.

Mr. CRANE. No, sir. I haven't received any donations. No, sir.

Mr. JOHNSON. Corrections Corporation of America.

Mr. CRANE. I'm sorry?

Mr. JOHNSON. Has Corrections Corporation of America contributed money to your organization?

Mr. CRANE. No, sir.

Mr. JOHNSON. Not to you personally, but to your organization?

Mr. CRANE. Neither.

Mr. JOHNSON. All right. What about the American Legislative Exchange Council?

Mr. CRANE. I'm not even familiar with what that is, sir. So, no.

Mr. JOHNSON. Ms. Wood, do you know what that is? ALEC.

Ms. WOOD. I've heard of it, but I'm not able to speak to it, no.

Mr. JOHNSON. All right. Well, now, ma'am, you mentioned in your testimony that—you argue that focusing on criminal immigrants leaves undocumented immigrants alone to "plan, take steps,

cause harm." This is charged rhetoric that implies a whole lot of negative stuff. So I'd ask you to clarify that phrase. Is it your position that all undocumented immigrants are criminals who will plan, take steps, cause harm?

Ms. WOOD. No. It's certainly my position that a broad legalization program could make sense. What I think is that it's important for ICE to have now and in the future a layered enforcement where they focus on a wide variety of immigration violations, including immigration fugitives or those who have committed other laws, not just felonies.

Mr. JOHNSON. Well, what did you mean by that comment, leaving undocumented immigrants alone to plan, take steps, cause harm?

Mr. GOODLATTE. We'll allow Ms. Wood to answer the question. The time for the gentleman has expired.

Mr. JOHNSON. Thank you, Mr. Chairman.

Ms. WOOD. What I meant is that we need to focus and think about layered enforcement, including enforcement of visa overstays. If we only focus on those who have already been convicted of felonies then we would miss some who might come into this country, either legally or illegally, and then cause harm. So in my view we have to look at a range of immigration violations. But I'm certainly supportive, as I said in my testimony, of a program of bringing individuals out of the shadows, putting them through a proper procedure, and then having kind of enforcement on those who violate the law further on.

Mr. JOHNSON. Thank you.

Mr. GOODLATTE. The time of the gentleman has expired.

The Chair recognizes the gentleman from Texas, Mr. Gohmert, for 5 minutes.

Mr. GOHMERT. Thank you, Mr. Chairman. Appreciate the witnesses being here.

Mr. Aguilar, in talking—I'm sure you still talk to folks that work to defend our borders. Have you been hearing from them what we've been reading and hearing anecdotally, that after talk of legalization for people in the United States, that there's been a dramatic uptick in people coming across the border illegally?

Mr. AGUILAR. Yes, sir. And we've experienced that in the past. That is just a part of every time that we talk about some kind of immigration reform, especially when there are still questions out there, there is some kind of increase. Can't give you what that increase is. I don't know.

Mr. GOHMERT. Well, you had mentioned earlier in answer to a previous question that you believe we need to continue the current enforcement. I'm curious, do you know how many border officers or how many officers, agents we have that are protecting our borders currently?

Mr. AGUILAR. Yes, sir: 21,370 is a baseline, 18,500 of those on the southwest border, 2,212 on the northern border.

Mr. GOHMERT. I figured you would know. Thank you.

Because I was reading again recently about the time that we had absolute border security back when Woodrow Wilson was President, and Pancho Villa, depending on your perspective, was a hero or was an enemy. But he did have folks that crossed the border

with him, killed American families, robbed some places in the U.S. And, of course, General Pershing never caught him. But, in the meantime, one article indicated there was many as 158,000 National Guard troops that were sent to make sure that we didn't have people coming across that we did not agree on. And I thought about 158,000; others say there were tens of thousands. Don't say that many. But that was at a time when the United States had 100 million people in the country. Now well over 300 million. And it just seems that it's all about priority.

And I appreciate so much my friend Mr. Johnson from Georgia bringing up the issue, and other friends have brought it up, about how bad the sequestration was. And I am so glad people are finally recognizing what I said after President Obama proposed it, what I said after our leadership got sucked into agreeing to it, that sequestration was a terrible way to govern. And I very much regret that entities as valuable as the Customs and Border Patrol got hit like they did, that our defense got hit like they did. I thought it was a terrible mistake. I tried to convince the Republican leadership they shouldn't have gone along with President Obama's proposal, but they didn't listen to me, so we got what we got.

But there's also been discussion, too, about all of the money that is spent prosecuting people who have been deported and come back into the country, our country, illegally, making it a crime. I was blown away when Ms. Lofgren brought that up this year at a prior hearing. I had no idea we were spending that kind of money and man-hours—woman-hours and man-hours, for those who are genetically—or generically challenged—but I had no idea we were spending that much time going after people that were returning into the country. And it just seems that if we would secure our own border, we're talking hundreds of billions of dollars to spend on other things.

So just keep coming back to this and I don't see how there's an escape from this. Until we secure the border this is going to be an ongoing problem. And a question was asked earlier about is there anything in the new legislation that will force this President to secure the border more securely than he has been in the past, and there's nothing there. And it just seems we're going to be back doing this again, talking about all those who have come into the country undocumented.

I'm still back there. I really think, you know, and I note that our friends that came in and made the appearance when my friend Mr. Conyers recognized them are no longer around—but I really think that if we could secure the border so—not close it, but secure the border so people we want who had legal visas would come in, it seems like, I really believe, we could get an agreement on the folks that are here really quick. And that's what I want. But I just have not heard anything in this hearing that changes my impression that until we secure the border we're jumping the gun on working something out here.

And I appreciate your time, Iappreciate your being here. And I yield back.

Mr. GOODLATTE. The Chair thanks the gentleman.

And recognize the gentlewoman from Washington, Ms. DelBene.

Ms. DELBENE. Thank you, Mr. Chair. Mr. Chair, first I'd like to ask for unanimous consent to submit a letter into the record, a letter from many national, local, and State organizations regarding their feedback on the lessons to be learned from the 1986 law.

Mr. GOODLATTE. Without objection, the letter will be made a part of the record.

[The information referred to follows:]

Submitted to the House Judiciary Committee
Hearing on S.744 and the Immigration Reform and Control Act of 1986:
Lessons Learned or Mistakes Repeated?

May 22, 2013

Dear Chairman Goodlatte, Ranking Member Conyers, and Members of the Committee:

We, the undersigned organizations, urge you to consider an immigration reform bill similar to S.744, which creates a path to citizenship for the undocumented individuals in the United States, thinks about tough, but smart enforcement, *and* reforms the legal immigration system to address our country's future needs.

Opponents of reform argue that our country will see increased future flows of illegal immigration if we legalize the undocumented population without substantially increasing enforcement, citing the reappearance and increase of an undocumented population in the United States after the 1986 Immigration Reform and Control Act (IRCA). As this statement will demonstrate, this argument is flawed and should not be used to obstruct current efforts to reform our immigration system.

Lessons Learned from IRCA

IRCA legalized more than two million undocumented immigrants, required employers to verify their workers' eligibility to work legally, and made it illegal for employers to knowingly hire unauthorized immigrants. But because it failed to provide feasible channels for future legal immigration flows, specifically in employment-based and family-based visa categories, IRCA led to a new flow of illegal immigration.

1. **A rigid visa system will not adequately address our country's future needs**

IRCA created a rigid visa system that essentially locked in the same number of visas without consideration of whether the United States is experiencing economic growth or economic recession. It did nothing to expand opportunities for legal immigration to fill needed non-seasonal jobs. As a result, our country's legal immigration system does not meet our current labor needs, and the majority of people who want to contribute to the economic prosperity of the United States are unable to do so legally.

2. **Untenable waiting periods can spur illegal immigration**

In addition, IRCA failed to address family-based immigration needs. Most family categories have numerical limitations, but the demand is typically higher than the number of available green cards. As a result, our system sees significant backlogs for immigrants from certain countries, and untenable waiting periods of decades or lifetimes spurs some illegal immigration. Moreover, IRCA's strict time limitations excluded millions of undocumented workers from achieving legal status, exacerbating illegal immigration.

S.744 Is Not IRCA

In contrast, S.744, the "Border Security, Economic Opportunity, and Immigration Modernization Act," will decrease future illegal immigration. Specifically, S.744 will expand and create flexible channels for legal migration and eliminate obstacles that lead to the long waiting times.

1. **We must expand and create flexible channels for legal migration**

S.744 would make available 60,000 to 125,000 visas each year for immigrants in high demand occupations and low skilled occupations that require little or no training – a flexible and reasonable approach to ensure our future labor needs are met. S.744 would also raise the cap for employment-based immigrant visas for "other workers" – typically individuals who could fill permanent positions that require limited training – from 28.6% to 40%. Finally, S.744 also creates the W visa, a nonimmigrant visa for lower skilled workers and calls for the creation of the Bureau of Immigration and Labor within the Department of Homeland Security. This Bureau will issue annual recommendations to Congress based on surveys to assess labor shortages and studies of employment-based visa programs.

2. **We must eliminate obstacles that lead to long waiting periods and family separation, which ultimately spur illegal immigration**

S.744 reclassifies spouses and minor children of lawful permanent residents are immediate relatives, excluding these individuals from the annual visa quotas. The bill would also allow spouses and minor children of W visa holders to enter the U.S. for the same period of time with work authorization. This provision will encourage family members of W visa holders to participate in the formal economy. Finally, S.744 would allow a beneficiary of a petition for a visa to become eligible for her own visa through the merit based system if she has been waiting for five years on the initial petition. This provision will give individuals clear expectations and encourage them to wait to enter the country legally.

Conclusion

To truly reform the immigration system and discourage illegal immigration moving forward, this Committee must provide a path to citizenship for currently undocumented individuals, be smart about enforcement, *and* create a legal immigration system that allows workers and families to come to the United States legally.

Should you have any questions, please contact Alexis Perlmutter at the National Immigrant Justice Center at aperlmutter@heartlandalliance.org or at 312.660.1363.

Sincerely,

National Organizations
American Immigration Lawyers Association
Americans for Immigrant Justice, formerly Florida Immigrant Advocacy Center
America's Voice
Arab American Institute
ASISTA Immigration Assistance

Center for Gender & Refugee Studies
Church World Service
First Focus Campaign for Children
Japanese American Citizens League
Lutheran Immigration and Refugee Service
Lutheran Social Services of New England
National Asian Pacific American Women's Forum (NAPAWF)
National Center for Lesbian Rights
National Center for Transgender Equality
National Council of Jewish Women
National Council of La Raza (NCLR)
National Education Association
National Employment Law Center
National Employment Law Project
National Immigrant Justice Center
National Immigration Law Center
Women's Refugee Commission
Young Center for Immigrant Children's Rights at the University of Chicago

State Organizations

Alabama Appleseed Center for Law & Justice, Inc.
Boston University Civil Litigation Program
Dagmar Rick, Immigration Attorney
Georgia Latino Alliance for Human Rights
Illinois Coalition for Immigrant and Refugee Rights
Immigrant Justice Clinic - University of Wisconsin Law School
Immigrant Law Center of Minnesota
Immigration Center for Women and Children
Jesuit Social Research Institute/Loyola University New Orleans
New Sanctuary Coalition
One America
Political Asylum Immigration Representation Project
Safe Passage Project
Texas Civil Rights Project
Vermont Immigration and Asylum Advocates

Local Organizations

Long Island Wins
Maria Baldini-Potermin & Associates, P.C.
Ozment Law
Services, Immigrant Rights and Education Network
The Law Offices of Valencia & Diaz, Ltd.
The Reformed Church of Highland Park

Ms. DELBENE. Thank you.

And I just want to thank all of you for being here for many hours and giving your testimony.

Mr. Aguilar, you talked in your written testimony about the successes of a secure border, how it has economic—the economic successes of a secure border. I'm from a northern border State, Washington, and when we talk about border security it's incredibly important to also realize the trade and economic activity that happens across our borders. And I wondered if you would comment on how you would put together comprehensive immigration reform policy in a way that would optimize and deal with the tension that might exist between having a secure border and also making sure we have trade and economic activity going across.

Mr. AGUILAR. Trade is an absolutely critical part of our national security. $2.3 trillion worth of trade last year that we've dealt with in CBP, Customs and Border Protection. $1.7 trillion worth of exports out of the country. Some of the figures that have been thrown about that relate to immigration enforcement spending are inaccurate. That's the simplest way I could put it. Because when you fund a Border Patrol agent, you fund a CBPO officer, you fund an agricultural inspector, or ICE in the area of IPR, of trade, all this other kind of stuff, you are also funding our country's capability to deal with the trade that's so critically important to our country. So not losing sight of that is absolutely critical.

Border security, 744 has the foundational principles. The problem we find ourselves in now as a country is the following: that we have reduced illegal immigration dramatically. In the last 40 years, the number—we haven't seen these numbers in over 40 years. The point of decision now is do we add funding for additional technology, agents, fences and things of that nature in order to continue securing that border to the degree that at some point is going to be defined? Or do we remove one of the flows, illegal flows that our agents and officers deal with every day by way of a properly instituted immigration reform bill.

By doing that, now we provide our enforcement officers at all levels with, as I said before, with the greatest force multiplier that we have toward security, securing our Nation's borders.

Illegal flow of people right now is the most workload-intensive component of border enforcement. If we apprehend a ton of narcotics, we apprehend a ton of narcotics, we secure it and we hand it off to DEA. There is no securing, there is no jailing, there is no feeding, there is no medical expenses associated with a ton of narcotics.

You apprehend one illegal alien, you have to feed, you have to secure, you have to transport, you have to process, you have to jail, you have to secure, you have to take before an immigration judge, a court, do all of those things. So that is my interest here specific to border security. By removing that illegal flow of people, you increase tremendously and dramatically the capability and the capacities of our border enforcement assets.

Ms. DELBENE. Thank you.

Ms. Wood, in your testimony, you commend the Senate bill for requiring counsel for vulnerable populations, including children and the mentally ill. And I agree with that.

There are organizations like Kids in Need of Defense who provide legal representation to unaccompanied children who enter the U.S. immigration system. And you talked earlier about reform that you think we might need in our immigration court system. And I wondered if you'd elaborate on what types of reforms you'd like to see there that you think would help us protect these vulnerable populations and be more efficient.

Ms. WOOD. Certainly. And I do think providing counsel for unaccompanied kids and those who have a serious mental disability is absolutely critical. ICE attorneys try to do the best they can to analyze these cases and see whether or not someone has a claim for relief. But they are not the advocate of those individuals. And so imagine coming to this country young, by yourself, and there's nobody there to advocate our behalf. And so I was very, very pleased to see this in the bill.

And I think that actually studies show that aliens who have counsel move through the immigration court system more quickly, that they, when they understand whether or not they have a right to a judge, sometimes they may decide to voluntarily depart rather than drag something on for years. So I think it's really critical to think about those who are vulnerable.

Other kinds of reforms that I think we could have include thinking about are there idiosyncrasies in our system. If I'm from a visa-waiver country and I come here and I overstay any visa, I'm treated one way. If I'm from a nonvisa-waiver country and I come here, I'm treated another way when I overstay my visa. There's no reason why there should be a difference. And, you know, so I think looking at where are the idiosyncrasies and how can we resolve them.

And then I also think focusing on how can we smooth the immigration process, how can we make the courts move quickly. It shouldn't take 5 years to determine whether or not someone's in the country illegally. So we should see are there opportunities, frankly, more people to voluntarily depart, you know, enhanced stipulated removal, with protections, of course, and other sorts of things.

Ms. DELBENE. Thank you. My time's expired. Thank you, Mr. Chair.

Mr. GOODLATTE. Thank the gentlewoman.

And the Chair recognizes the gentleman from Texas, Mr. Poe, for 5 minutes.

Mr. POE. Thank you, Mr. Chairman. I want to thank the Chair for—and the Chairman of Subcommittee, Mr. Gowdy, as well—for working through this immigration mess in a methodical way. We have to get it all fixed. There are numerous problems. There's not just one, there are a lot of problems. And as I look at the immigration system in this country, I think there's a problem in every aspect of it, from border security, for people—and people just want to cross over for the day to work.

Mr. Aguilar, you said that you believe that the border is more secure now than it ever has been. Let me ask you this specific question: Do you believe that the border is secure, in your opinion, whatever that means, just yes or no, is it secure or not?

Mr. AGUILAR. No, sir. We've said it constantly before, there is yet more to do.

Mr. POE. And I couldn't agree with you more.

Mr. AGUILAR. Yes, sir.

Mr. POE. And I think it's getting worse. And I think the problem is the drug cartels have long since quit bringing drugs to the country to make money, they have now gotten involved in the scourge of human trafficking, bringing young children in this country to sell them for sexual favors throughout the Nation. Unfortunately, my hometown of Houston is the hub of trafficking in the United States because of its location.

That's a recent phenomenon that's getting worse. And it's getting worse because of the border in some areas is worse. And now we hear the stories of, on the American side, we have American citizens and foreign nationals that are legally here having—being extorted for money, protection, racketeering money to protect their family members in Mexico. We had a couple at my church in Houston whose nephews were kidnapped by the Zeta drug cartels. Last year they were told to pay the ransom of several thousands of dollars and the nephews would be released. They paid the money, the Zetas murdered the nephews.

That's happening in America. It's not happening south of the border. And to me, it's border security. We have to define what it is. That's what the Senate, I think, tried to do. I don't know if I agree that they did it. What we have to do in the House, because that depends on what we do after so-called border security. And I'm not sure I know the definition. I think border security is when I say it's secure. But I don't think get the only vote on that issue.

What do you think about the idea of helping out our border protectors on the border, Federal, State, local, with taking some of the equipment from Iraq and Afghanistan that is necessary, that Americans have already paid for, and rather than just dump it in the ocean or even give it to our allies, bring it home and use it on the border? The recommendations I have heard is we need Humvees, we need night-vision equipment, and we need drones on the border itself. Would that be helpful in your opinion or not?

Mr. AGUILAR. Absolutely. And, in fact, we are already working toward it. Before I left on March 31st, that was one of the areas that we were focusing on. We actually have a program within CBP dedicated to identifying all the tools, all the resources that we can use that are coming out of theater. We are working with the Department of Defense, have identified things like airships, helicopters, fixed-wing aircraft, ELR fleer capabilities that we are in fact putting into use.

Mr. POE. And the records that I have before me show that apprehensions actually for fiscal year 2013 are continuing to increase. Is that correct? 2012, 170,000; 2013, 192,000. Are you familiar with those statistics?

Mr. AGUILAR. Through March 31st, I am, sir. I believe when I left on March 31st we were up by about 14 percent, if I'm not mistaken.

Mr. POE. And that may go back to the reason that my friend Mr. Gohmert pointed out, when anybody in Congress starts talking about immigration reform, foreign nationals try to get here as fast

as they can to get some of that free amnesty, as our border sheriffs call it, on the border.

I did want to make this comment. I think Congress has the obligation and the duty, and I commend the Chair, and the Chairman of the Subcommittee, for working on this issue. We got to fix it. We got to get it right this time. And we have to start with border security. I think we should work next on the temporary guest worker program, have it market driven. We decide as Congress what the number should be. Because that seems to be the focus of many of the other issues. But immediately we've got to deal with those drug cartels and keep them out of the country by what means we can figure out.

And I yield back. Thank you, Mr. Chairman.

Mr. GOODLATTE. I thank the gentleman.

And the Chair now recognize the gentleman from Florida, Mr. Garcia, for 5 minutes.

Mr. GARCIA. Thank you, Mr. Chairman. Likewise, I want to commend the work of the Subcommittee Chair and your work on this. I know how important this is, and it is probably one of the most important pieces of legislation that we're going to try to get through. And I know how much you've worked on it.

Ms. Wood, I want to ask you, how much do you think we're spending right now on boarder enforcement? What's the total cost of this?

Ms. WOOD. I can't give you the total cost.

Mr. GARCIA. Would you have an idea, Mr. Aguilar? So if I used a figure like $18.5 billion, is that about right? Is it too much? Is it too little?

Mr. AGUILAR. I think that figure reflects what the budgets for the organizations having border enforcement responsibility. But we cannot forget that those same organizations have a tremendous amount of responsibility for trade——

Mr. GARCIA. Correct.

Mr. AGUILAR [continuing]. And other things, narcotics interdiction and things of that nature.

Mr. GARCIA. Correct. What percentage, if I asked you, what percentage of the folks that overstay make up the body of undocumented folks?

Ms. WOOD. Well, the estimate is between 30 and 40 percent. But we're not——

Mr. GARCIA. So if we followed Mr. Gohmert's theory, right, that we enforce the border, we could put—and following the judge's concept that we line up after we put CBP personnel, then we put tanks, planes, moats, 30 percent of those people would simply have a document that allowed them to go right through. Correct?

Ms. WOOD. That's exactly right. And then you'd expect ICE to focus on those overstays and look at them. ICE has fewer agents than the New York City Police Department. So ICE has been faced with this really impossible task, given its resources.

Mr. GARCIA. Correct. So, Mr. Crane, you seem to favor a sort of a deportation approach to this. So I want to tell you about my community. In South Florida, where I live, I have a huge number of thousands of Venezuelans, somewhere between 80,000 and 120,000. They came fleeing Hugo Chavez and the Bolivarian Revolution, be-

cause Hugo has long since departed, but fortunately we still have his people in our neighborhoods.

And they're stuck in this complicated process. Right? They've invested money in our community. As the real estate market was completely collapsing across the country, in Doral, or Doralezuela, as it's called, the prices increased. They have either overstayed their visas, someone in the family has gotten their petition approved, others have not. And they've spent this—a huge time bouncing through this process through temporary visas.

But regardless of how many businesses have they started, the millions they've invested in our community, the vital role they play in the economic development of my community, would you still support sending them back to Venezuela, regardless of their individual circumstances, the economic benefit they have given it, or the oppressiveness that they face having their businesses and homes being taken over by the government?

Mr. CRANE. Well, first of all, sir, I mean, I think the assumption was incorrect. We haven't taken any stance on a deportation-only type of enforcement technique. We're asking to be a part of what lawmakers create in legislation so that we can—whatever you develop, that we can bring the proper and appropriate enforcement components to that plan. That's what we're asking for.

Mr. GARCIA. But you mentioned that you'd like us to take away discretion. In fact, part of the problem, I think, and maybe Mr. Aguilar or Ms. Wood would comment, is that we've taken away a lot of discretion. In other words, a lot of these cases before, we could have immigration judges see the case and sort of put them through. Right? Find a category, find a place, put them through. Do you disagree with me or do you think that that's something we should put back in the system, is a little bit more discretion to immigration judges? Ms. Wood?

Ms. WOOD. I think immigration judges should have a fair amount of discretion. And I think the agencies should also have discretion. But as I mentioned before, both to grant things in an immigrant's favor and also for law enforcement equities.

Mr. GARCIA. Okay. Mr. Aguilar?

Mr. AGUILAR. Same thing, sir. On the immigration judges, they, in fact, are the best position to have the discretion to act. On the agency part, I believe that discretion, responsible discretion should be acted upon by the agencies also, yes.

Mr. GARCIA. When you look at what the Senate put forward, how do you feel about that in terms of discretion? Is there anything there that gives you some hope? Is there not enough?

Ms. WOOD. I think in certain places it actually limits the agency's discretion where they might need a law enforcement or national security, public safety exception. I have not analyzed the other, you know, the numerous other waivers that are in the bill in the immigrant's favor. I will tell you, since leaving the government I've seen many instances where people needed a waiver or discretion.

Mr. GARCIA. Mr. Chairman, I'll conclude with this. We introduced the Venezuelan Liberty Act that recognizes the unique contributions of Venezuelans to our community and to our country and the unique political circumstance that they face. I hope that some

of the Members of the Committee will have a chance to look at it as we go through markup and would appreciate their support.

Thank you very much for your testimony.

Thank you very much, Mr. Chairman.

Mr. GOODLATTE. I thank the gentleman. And I want to recognize the other gentleman from Florida, Mr. DeSantis, for 5 minutes.

Mr. DESANTIS. Thanks, Mr. Chairman.

I'd like to pick up with this discretion issue because it seems to me that there's actually a huge amount of discretion that's been delegated, not necessarily to judges or enforcement agents on the ground, but to the bureaucracy, in particular political appointees. I mean, for example, I count 129 instances in which the Secretary shall do something, 102 instances in which the Secretary may do something, and 35 instances in which the provisions, the applicability of those provisions, go on what the Secretary, "determines." So it seems to me that this is actually delegating a huge amount of authority to DHS.

So, Mr. Crane, I just wanted to get your impression. Do you agree with how I've analyzed that in terms of giving discretion to some of the higher-up officials in DHS?

Mr. CRANE. Absolutely agree with that. I mean, currently, right now, we cannot enforce visa overstay and illegal entry into the United States, the two most fundamental aspects of any immigration system in the entire world. So there's nothing in this policy that limits it. And it seems to open it up even further, as you say, for the Secretary of DHS to continue that type of discretion.

Mr. DESANTIS. Because this is just my reading, and correct me if I'm wrong, Mr. Crane, but it seems that the Secretary's been delegated the authority for people who have already been deported to allow them to essentially get legal status under this bill. Correct?

Mr. CRANE. Yes, sir.

Mr. DESANTIS. And the Secretary's determination is really the linchpin for when the border is secured. In other words, it's not objective criteria, although they do say, oh, certain percentage. But, to me, that's going to be hard to calculate. But ultimately she has to certify that. Correct?

Mr. CRANE. Yes, sir.

Mr. DESANTIS. And if the DHS fails to do that, they do create a border security commission, but that is purely advisory in nature, that does not have any binding authority. Am I reading that right?

Mr. CRANE. Yes, sir. That's my interpretation.

Mr. DESANTIS. And then with E-Verify, there was some discussion about it. It seemed to me one of the things they were doing was allow the Secretary defining which employers qualify in the first place, so that there are folks who may have more seasonal employees or may have other folks who are not necessarily traditional, 40 hours a week, 52 weeks a year employees, and that they would completely be out of the E-Verify system. Is that true?

Mr. CRANE. I'm sorry, sir. I'm not as familiar with the E-Verify section.

Mr. DESANTIS. Ms. Wood, do you——

Ms. WOOD. I think until—at the very end, they make it loosened at the very end. But, yes.

Mr. DESANTIS. Okay. And another issue I have is someone had said, you know, legalize the right number of people, or whatever, and we've been talking about background checks and making sure that we do have the right folks. Because I think most people, you know, if you've come here unlawfully and then you've committed additional crimes, you know, that's a hard case to make that somehow you should be given legal status, especially when we have a lot of meritorious people throughout the rest of the world who would like to come.

But as I read it, it seems like, you know, you can still qualify for status even though you've been guilty of document fraud, false statements to authority, and even if you've absconded from previous removal proceedings. Is that accurate, you would still be able to get RPI status? Anyone of you can take that.

Mr. CRANE. Yes, sir.

Mr. DESANTIS. Okay. And then there are certain—the way they deal with State convictions, it directs DHS to essentially ignore some of these convictions that may have happened under State law. Is that accurate?

Mr. CRANE. Yes, sir.

Mr. DESANTIS. Okay. And then, you know, this gang issue. Obviously, if someone's a part of a criminal gang, you know, we don't want to be giving them legal status. But the way they write it, you actually have to have been convicted of the Federal gang statute provision, 18 USC 521. The problem is, is that that's rarely the statute that would be used, because if you're part of a gang, you're engaging in criminal activity, you're just going to be prosecuted under the prevailing general criminal laws. A lot of times those aren't even Federal laws. If there's no interstate commercial nexus, it would just be the basic State laws that are there. So to me that is inadequate.

And then DUIs. It says three or more DUIs would make you ineligible. So, in other words, you could have two convictions for driving under influence and still get status under this law. Is that accurate?

Mr. CRANE. Yes, sir.

Mr. DESANTIS. You also hear people talk about back taxes. You know, hey, people got to get right to the law, pay back taxes. I think a lot of people say, okay, well, yeah, that makes sense, if you've been working unlawfully, you've been earning an income, haven't necessarily been paying taxes. I know some may, if they have a fake Social Security number. But I think most people view that as whatever income you've made that you would then pay taxes on that. But the law actually—that's not what it is. It's just if you happen to have an outstanding IRS assessment, then you have to pay your taxes. But if you've never been assessed anything by the IRS, then there's not going to be a requirement for back taxes. Is that accurate?

Ms. WOOD. That's the way I understand it, yes.

Mr. DESANTIS. And I don't know how that's going to work. I mean, is that back taxes just going to apply to those who have demonstrated evidence of conservatism, the way the IRS treats this stuff? It seems like an open question to me.

So I just, as I look at this, we hear a lot of rhetoric from politicians. Really, once you start looking at things, you've got to square the rhetoric with the reality. And whatever the reality is, whatever bill you're supporting, I just think that you should be honest about that so that the American people can have a better understanding of what it is. You know, as far as I'm concerned, lawful immigration is very beneficial for the country, both in terms of economic growth and in terms of cultural vitality. And I'll yield in 10 seconds.

A lot of folks who come here legally have to work very hard to do it. They really appreciate what this country has to offer. Seeing people who are here who were born into wealth and they criticize the country and all this stuff. So I really appreciate getting that new vitality in the United States. But we got to do it right, we got to do it in a way that's fair for all. Thanks.

Mr. GOWDY [presiding]. Thank the gentleman from Florida.

The Chair would now recognize the gentleman from New York, Mr. Jeffries.

Mr. JEFFRIES. Thank you, Mr. Chair. I ask unanimous consent that an article from the Tucson Citizen entitled "ICE Agent's Union Speaks Out on Director's 'Discretionary Memo'" be entered into the record.

Mr. GOWDY. Without objection.

[The information referred to follows:]

ICE Agent union objects to back door amnesty scheme of agency boss

by Hugh Hofuh on Jun. 24, 2011, under immigration law reform, politics

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Recommend 0 Send

From the Immigration and Customs Enforecement agent union June 23, 2011:

> ICE Agent's Union Speaks Out on Director's "Discretionary Memo"
>
> **Calls on the public to take action**
>
> SALT LAKE CITY, June 23, 2011 /PRNewswire-USNewswire/ — On June 11, 2010, ICE Union leaders around the nation issued a unanimous no confidence vote in ICE Director John Morton on behalf of ICE officers, agents and employees nationwide citing gross mismanagement within the Agency as well as efforts within ICE to create backdoor amnesty through agency policy.
>
> ICE Union leaders say that since the no confidence vote was released problems within the Agency have increased, citing the Director's latest Discretionary Memo as just one example.
>
> "Any American concerned about immigration needs to brace themselves for what's coming," said Chris Crane, President of the National ICE Council which represents approximately 7,000 ICE agents, officers and employees, "this is just one of many new ICE policies in queue aimed at stopping the enforcement of U.S. immigration laws in the United States. Unable to pass its immigration agenda through legislation, the Administration is now implementing it through agency policy."
>
> Crane emphasized that agents, officers, employees and the Union had no input in these policies, "ICE and the Administration have excluded our union and our agents from the entire process of developing policies, it was all kept secret from us, we found out from the newspapers. ICE worked hand-in-hand with immigrants rights groups, but excluded its own officers."
>
> Agents say the policy is a "law enforcement nightmare" developed by the Administration to win votes at the expense of sound and responsible law enforcement policy.
>
> "The desires of foreign nationals illegally in the United States were the framework from

which these policies were developed," Crane said, "the result is a means for every person here illegally to avoid arrest or detention, as officers we will never know who we can or cannot arrest."

The union says just as concerning is the way policies are implemented at ICE. Agents claim that under Director John Morton the agency always presents written policies for public consumption, but then makes "secret changes" to the policies which ICE refuses to put in writing. ICE knows the policy changes will create a political outcry, or could place the public or ICE officers at risk.

"Our officers are already under orders not to make arrests or even talk to foreign nationals in most cases unless another agency has already arrested them; you won't find that written in any public ICE policy."

With regard to the entire idea of prosecutorial discretion, Agents say they will have none.

"Tell any ICE agent he or she will have the final say on making an arrest or holding someone in custody and they'll tell you you're crazy, officers will be ordered not to make arrests and failure to comply will result in the end of the agent or officer's career, that's business as usual at ICE. It's unfortunate but the Administration protects foreign nationals illegally in the U.S. but does nothing for our employees."

The Union also alleges that ICE Field Office Directors (FODs) have confided in the Union that when the FODs raised questions about the effectiveness of the new policies ICE Headquarters responded by telling the FODs to turn in their badges and file for retirement.

"I think the writing is on the wall for every person concerned about good government and effective immigration reforms – the things happening at ICE represent neither, said Crane, we are asking everyone to please email or call your Congressman and Senators immediately and ask them to help stop what's happening at ICE, we desperately need your help."

A copy of the ICE Policy on exercising Prosecutorial Discretion can be found at www.iceunion.org

COMMENT: One cannot doubt that there is political management going on that is contrary to sound law enforement activities.

This entry was posted on Friday, June 24th, 2011 at 1:03 pm and is filed under immigration law reform, politics. Tags for this post: ICE, Immigration and customs enforcement, immigration law reform. You can follow any responses to this entry through the RSS 2.0 feed. Both comments and pings are currently closed.

RSS feed for this post (comments)

Mr. JEFFRIES. Mr. Crane, I believe on June 23 of 2011 your organization issued a press release as it relates to this discretionary memo, as it's been coined. Is that correct?

Mr. CRANE. Honestly, sir, I don't remember. We've put quite an few press releases out there.

Mr. JEFFRIES. That's been clear. Do you recall a statement that you made, "Any American concerned about immigration needs to brace themselves for what's coming"?

Mr. CRANE. I do remember that, sir.

Mr. JEFFRIES. Okay. And you then stated, I believe, in that very same missive, "This is just one of many new ICE policies in queue aimed at stopping the enforcement of U.S. immigration laws in the United States." Do you recall that statement?

Mr. CRANE. Yes, sir.

Mr. JEFFRIES. And do you recall saying, "Unable to pass its immigration agenda through legislation, the Administration is now implementing it through agency policies." Do you recall that statement?

Mr. CRANE. Not so much, sir. But it sounds accurate.

Mr. JEFFRIES. Okay. And that's your position. Correct?

Mr. CRANE. Yes.

Mr. JEFFRIES. Now, in your testimony today, you mentioned and compared your organization and the fact that there are only about 5,000 customs agents, less than the number of officers in many local police departments. Correct? You stated that?

Ms. WOOD. That was my testimony.

Mr. JEFFRIES. That was you? Okay.

Now, well, would you agree that ICE is a paramilitary organization in its construction? That's for Mr. Crane.

Mr. CRANE. Oh. It's a law enforcement organization, sir.

Mr. JEFFRIES. Okay. And as a law enforcement organization—most law enforcement organizations, I don't know of one that's not—but most law enforcement organizations are paramilitary organizations, correct, in their structure?

Mr. CRANE. I don't know, sir. I was in the military. I don't consider it to be very close to the military.

Mr. JEFFRIES. A paramilitary organization.

Mr. CRANE. Yeah. I'm sorry, sir, I don't know if I can answer that.

Mr. JEFFRIES. Okay. But there's a chain of command within ICE. Is that correct?

Mr. CRANE. Yes, sir.

Mr. JEFFRIES. Okay. And as part of that chain of command, there's a Director, John Morton. Correct?

Mr. CRANE. Yes, sir.

Mr. JEFFRIES. And that Director is responsible for policy in the agency as part of the chain of command that exists. Is that correct?

Mr. CRANE. Yes, sir.

Mr. JEFFRIES. But you disagreed with the policies that have been articulated by Director Morton. Correct?

Mr. CRANE. Especially when they appear to be illegal, sir. Yes, sir.

Mr. JEFFRIES. Okay. And you've also disagreed with the policies of Secretary Napolitano, who is the Secretary of Homeland Security. Is that correct?

Mr. CRANE. Yes, sir.

Mr. JEFFRIES. Okay. And she's also, as part of the chain of command, above John Morton. Is that right?

Mr. CRANE. Yes, sir.

Mr. JEFFRIES. Okay. Now, you've also disagreed with the policies of the Obama administration. Correct?

Mr. CRANE. Yes, sir.

Mr. JEFFRIES. Okay.

Mr. CRANE. I think they're kind of one in the same oftentimes.

Mr. JEFFRIES. Right. Okay. And the President of the United States is ultimately at the top of that chain of command, correct, as the United States President?

Mr. CRANE. Yes, sir.

Mr. JEFFRIES. Okay. Now, he's been elected not once, but twice. Correct?

Mr. CRANE. Yes, sir.

Mr. JEFFRIES. And does he have the discretion, is he lawfully permitted to execute, as the President of the executive branch, policies in the immigration and customs space?

Mr. CRANE. Lawfully, yes, sir. But like I've said, we're concerned that some of them are unlawful. And I think a judge may, you know, second that.

Mr. JEFFRIES. Okay. Right. We'll see what the Federal court determines.

Now, in terms of annual removals, in the 1980's, am I correct that annual removals never exceeded 35,000 at any point during that decade?

Mr. CRANE. I'm sorry, sir, I don't know those numbers. But I would trust that you have the correct numbers.

Mr. JEFFRIES. Okay. And in fiscal year 2002 under the Bush administration, if my timing is correct, 2002, the Administration removed approximately 165,000 people. Is that correct?

Mr. CRANE. I don't know that number, sir.

Mr. JEFFRIES. Okay. Now, the Bush administration, I also believe, never removed more than about 360,000 people in a given year. Correct?

Mr. CRANE. I thought it was 370-something thousand. But that might——

Mr. JEFFRIES. Okay. Now, under the Obama administration they have averaged approximately 400,000 removals and deportations. Is that correct?

Mr. CRANE. That's the numbers that they provide.

Mr. JEFFRIES. Okay. Now, you have reason to believe that those numbers are inflated?

Mr. CRANE. I do, sir.

Mr. JEFFRIES. Okay. And you believe those numbers are inflated because they include individuals who are not immediately ejected from the border upon their detention. Is that right?

Mr. CRANE. Well, that's some of it, sir. I mean, we also have a feeling in some offices and some locations that they are double counting statistics. Sometimes statistics are being counted by the

Border Patrol, sometimes they're also then being counted by ICE. We believe, but I want to specify that I don't have, like, documented proof of that.

Mr. JEFFRIES. So you have no real hard number.

Mr. CRANE. No, sir.

Mr. JEFFRIES. This is a theory you have.

Mr. CRANE. It's more than a theory, I believe. But I do have documented proof.

Mr. JEFFRIES. You don't have a specific number at all.

Mr. CRANE. A specific number of?

Mr. JEFFRIES. You claim the numbers were inflated, but you have no specific evidence to back up that claim. Correct?

Mr. CRANE. No, I don't. I know the—I think it was the first year that President Obama came on board, I know they carried 20-some-odd-thousand removals over from the previous year. That seemed pretty clear to us that, you know, that that number—that was cooking the books a little bit for us. But past that, no, I don't know that we have any specific numbers.

Mr. JEFFRIES. Okay. Thank you very much.

Mr. CRANE. Yes, sir.

Mr. GOWDY. Thank the gentleman from New York.

And I want to thank again on behalf of Chairman Goodlatte and all of our colleagues our three witnesses for your expertise, your endurance, and your comity and professionalism with respect to one another and with respect to the Committee.

With that, this concludes today's hearing. Without objection, all Members will have 5 legislative days to submit additional questions for the witnesses or additional materials for the record.

With our appreciation again, this hearing is adjourned.

[Whereupon, at 5:22 p.m., the Committee was adjourned.]

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