FAIR

FEDERATION FOR AMERICAN IMMIGRATION REFORM

On May 9, 2013, the Senate Judiciary Committee began amending ("marking up") S. 744, the Senate Gang of Eight comprehensive immigration reform legislation. Three hundred amendments and five hearings later, the Senate Judiciary Committee passed the legislation out of committee by a vote of 13-5 and sent it to the Senate floor. Rather than improving the legislation, the markup only made the bill worse, doing nothing to secure our porous borders and making it even easier for illegal aliens to gain citizenship.

Below are the major amendments offered and accepted in the Senate Judiciary Committee that further weaken U.S. immigration law, threaten public safety, and undermine enforcement efforts and the rule of law.

TITLE I

- **Coons 2**: Prohibits DHS from deporting illegal entrants from an entry or exit point on the Southern border at night. Requires the Department of Homeland Security (DHS) to certify compliance with this requirement within 1 year of enactment and every 180 days thereafter. Requires authorities to return all lawful, nonperishable belongings confiscated from the illegal entrant before repatriation. Also requires DHS to submit a study to Congress within 1 year of enactment on the Alien Transfer Exit Program (ATEP), including: (1) specific locations of lateral repatriations within the past year; (2) CBP performance measures developed to deter recidivism; and (3) rates of violent crime and available infrastructure in Mexico near those locations.

- **Hirono 23**: Requires DHS to inquire "as soon as practicable" whether an apprehended alien is a parent, legal guardian, or primary caregiver of a child, or whether the alien is traveling with a spouse or child. Also requires officers to consider family unity, whether the alien has a child, or any other "humanitarian concern" when determining whether to repatriate or prosecute an illegal alien. Requires border patrol officers to undertake "family unity" and "child best interest" training.

- **Leahy 4:** Hinders the ability to secure the border by requiring if or when the DHS Secretary implements the border fencing strategy, to first consult with the Secretaries of Interior, Agriculture, states, locals, tribes, and property owners to minimize the fence's impact on the "environment, culture, commerce, and quality of life." Also adds a new section stating that the DHS Secretary is not required to install fencing or infrastructure

along the Southern border if the Secretary determines that the use or placement of such resources is not most appropriate method of achieving effective border control, and clarifies that nothing in the bill requires the construction of fencing along Northern border, further weakening border security efforts.

TITLE II

- **Blumenthal 12**: Undermines national security by allowing RPIs who have honorably served in the Armed Services for one year to become U.S. citizens. Under current law (10 U.S.C. 504), only U.S. nationals and Legal Permanent Residents are eligible for the armed services.

- **Coons 10**: Provides that states may not deny illegal aliens with work authorization professional, commercial, or business licenses on the basis of immigration status.

- **Flake 3**: Strikes the requirement that amnestied illegal aliens in blue card status undergo renewed background checks before the Secretary renews their status.

- **Hirono 21**: Puts interests of illegal aliens before legal U.S. students by allowing RPIs who illegally entered the U.S. before the age of 16 and illegal aliens granted blue card status to be eligible for federal student loans and work-study programs.

TITLE III

- **Blumenthal 8:** Severely limits enforcement of federal immigration law by prohibiting enforcement actions, including arrests, surveillance, searches, or interviews by U.S. Immigration and Customs Enforcement (ICE) agents or Customs and Border Protection (CBP) officers in "sensitive locations" (except under exigent circumstances or if prior approval for specific targeted enforcement is obtained from certain ICE or CBP officials). Sensitive locations include hospitals and health clinics; public and private schools of all educational levels including vocational and trade schools; organizations assisting children, pregnant women, victims of crime or abuse, or individuals with mental or physical disabilities; churches, synagogues, mosques, and other places of worship; and such other locations as the DHS Secretary determines.

- **Coons 8**: Grants work authorization to all asylum applicants within 180 days of applying for such status, regardless of whether the application has been approved.

- **Hatch 6**: Weakens current law by requiring by Dec. 31, 2015, the Secretary of DHS establish a mandatory exit data system (no biometric requirement) that collects data from machine-readable visas, passports, and other travel and entry documents for all aliens exiting from *air and sea* (not land) ports of entry. Two years after enactment, the Secretary of DHS must establish a biometric exit system at the *10 busiest airports that support the highest volume of international travel.* Six years after enactment, the Secretary of DHS must establish a mandatory biometric exit system at all the *CORE 30 international airports as designated by the Federal Aviation Administration*, and must submit a plan to Congress from the expansion of the biometric exit system to major sea and land ports of entry.

- **Leahy 3**: Requires the Secretary of DHS to grant work authorization to VAWA self-petitioners, and T and U visa applicants, within 180 days of applying, regardless of whether the application has been approved.

TITLE IV

- **Hatch 10**: Changes the formula that determines how many H-1B workers are admitted annually in order to admit H-1B workers at a faster pace. Originally, S.744 increased the cap from 65,000 to a range of 110,000 - 180,000, with the specific number calculated through a formula based on the number of petitions filed during the previous year and certain unemployment rates. The Hatch amendment changes the range of H-1B workers that may be admitted each year to 115,000 - 180,000, with the specific number determined by how quickly the cap is reached during the year and an increase contingent on certain unemployment data. In addition, the Hatch amendment: allows DHS to grant work authorization to spouses of H-1B workers regardless of whether the worker's home country offers reciprocal treatment; eliminates the requirement placed on all H-1B employers in S.744 that they attest that they have not and will not displace U.S. workers beginning 90 days before to 90 days after the visa petition is filed, requiring attestations by only H-1B dependent employers; and eliminates the requirement placed on all H-1B employers in S.744 that they attest they have offered the job to any U.S. worker who applies and is equally or better qualified, again, requiring such attestations by only H-1B dependent employers.

- **Leahy 2**: Permanently reauthorizes and makes other changes to the fraud-ridden EB-5 Regional Center Program.

- **Schumer 3**: Expands legal immigration by creating new E-6 nonimmigrant work visa for aliens from certain African and Caribbean countries providing the alien: 1) has a high school diploma (or its equivalent); or 2) has two years of work experience in an

occupation that requires 2 years of training or experience. Annual allocation is 10,500 visas.