



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



May 29, 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, representing approximately 7,000 Immigration and Customs Enforcement officers, agents and employees.
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, representing approximately 12,000 Citizenship and Immigration Services employees.
5.	Tim Mezzacapo, President	AFGE Local 3957, Council of Prison Locals 33, Oakdale, Louisiana, representing 190 members.

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, North Carolina
3.	Sheriff Andy Stokes	Davie County, North Carolina
4.	Sheriff Rick Burris	Stanly County, North Carolina
5.	Sheriff Eddie Cathey	Union County, North Carolina
6.	Sheriff Prentis Benston	Bladen County, North Carolina
7.	Sheriff Darryl Liverman	Tyrrell County, North Carolina
8.	Sheriff Chuck Jenkins	Frederick County, Maryland
9.	Sheriff Vic Davis	Clay County, North Carolina
10.	Sheriff James Ross	Washington County, North Carolina
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, North Carolina
14.	Sheriff Matt Murray	Curry County, New Mexico
15.	Sheriff Todd Martin	Monroe County, Pennsylvania
16.	Sheriff Thomas Hodgson	Bristol County, Massachusetts
17.	Monica L. Shank, Executive Secretary	Guadalupe County Sheriff's Office, New Mexico
18.	Sheriff Carolyn B. Welsh	Chester County, Pennsylvania
19.	Sheriff Curtis A. Cochran	Swain County, North Carolina
20.	Sheriff Clinton "C.J." Walters	Bradford County, Pennsylvania
21.	Sheriff Dan Gibbs, Jr.	Martin County, North Carolina
22.	Sheriff Jeffrey C. Krieg	Elk County, Pennsylvania
23.	Sheriff Larry Rollins	Harnett County, North Carolina
24.	Sheriff Eric Foy	Venango County, Pennsylvania
25.	Sheriff Tracy L. Carter	Lee County, North Carolina
26.	Sheriff Kenneth L. Klakamp	Warren County, Pennsylvania
27.	Sheriff Dewey Jones	Person County, North Carolina
28.	Sheriff Oscar O. Cowen, Jr.	Starke County, Indiana
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.	Sheriff Cliff Harris	Pecos County, Texas
35.	Sheriff Mike Marshall	Stokes County North Carolina
36.	Sheriff Asa Buck	Carteret County, North Carolina
37.	Sheriff Brad Riley	Cabarrus County, North Carolina

38	Sheriff Lou Evangilidis	Worcester County, Massachusetts
39.	Chief Roy E. Melnick	Los Lunas City Police Department, New Mexico
40.	Sheriff Bruce Hartman	Gilpin County, Colorado
41.	Sheriff Tony Perry	Camden County, North Carolina
42.	Sheriff Coy Reid	Catawba County, North Carolina
43.	Sheriff Donald Hill	Polk County, North Carolina
44.	Sheriff Saturnino Madero	Hidalgo County, New Mexico
45.	Sheriff Mike Andrews	Durham County, North Carolina
46.	Sheriff Larry Spence	Willacy County, Texas
47.	Sheriff Maynard B. Reid, Jr.	Randolph County, North Carolina
48.	Sheriff Alan Norman	Cleveland County, North Carolina
49.	Sheriff Dempsey Owens, Jr.	Montgomery County, North Carolina
50.	Sheriff BJ Barnes	Guilford County, North Carolina
51.	Sheriff Jerry Monette	Craven County, North Carolina
52.	Sheriff Michael R. Lucero	Guadalupe County, New Mexico
53.	Sheriff Maury Straub	Ozaukee County, Wisconsin
54.	Sheriff David A. Clarke Jr.	Milwaukee County, Wisconsin
55.	Sheriff Marco V. Lucero	Los Alamos County, New Mexico
56.	Sheriff Eric J. Weaknecht	Berks County, Pennsylvania
57.	Sheriff Greg Christopher	Haywood County, North Carolina
58.	Sheriff Chris Batten	Columbus County, North Carolina
59.	Sheriff Chris Francis	Rutherford County, North Carolina
60.	Sheriff Dudley Greene	McDowell County, North Carolina
61.	Sheriff Alan Cloninger	Gaston County, North Carolina
62.	Sheriff Leon Wilmot	Yuma County, Arizona
63.	Sheriff Robert A. Dekker	Millard County, Utah
64.	Sheriff Bill Schatzman	Forsyth County, North Carolina
65.	Sheriff "J.D." Daughtry	Dare County, North Carolina
66.	Sheriff Jenkins	Nash County, North Carolina
67.	Sheriff Sawyer	Pamlico County, North Carolina
68.	Sheriff James Williams	Ashe County, North Carolina
69.	Sheriff James Clemmons	Richmond County, North Carolina
70.	Sheriff David Edwards	Alleghany County, North Carolina
71.	Sheriff John W. Ingram, V	Brunswick County, North Carolina
72.	Sheriff Chris Francis	Rutherford County, North Carolina
73.	Sheriff David Grice	Davidson County, North Carolina
74.	Sheriff Graham Atkinson	Surry County, North Carolina
75.	Sheriff Randy Cartwright	Pasquotank County, North Carolina
76.	Sheriff Keith Lovin	Cherokee County, North Carolina
77.	Sheriff Donald Street	Mitchell County, North Carolina

78.	Sheriff Chris Shew	Wilkes County, North Carolina
79.	Sheriff Robin Cole	Pine County, Minneapolis
80.	Sheriff Scott London	Eddy County, New Mexico
81.	Sheriff Glenn Palmer	Grant County, Oregon
82.	Sheriff Michael Neal	Howard County, Missouri
83.	Sheriff Jeff Christopher	Sussex County, Delaware
84.	Sheriff Steven Bluwkall	Shannon County, Missouri
85.	Sheriff Cameron Noel	Beaver County, Utah
86.	Sheriff Tom Lorey	Futton County, New York
87.	Sheriff Perry Russell	Chautauqua County, Kansas
88.	Sheriff Jeff Frazier	Halifax County, North Carolina
89.	Sheriff Susan Johnson	Curratuck County, North Carolina
90.	Sheriff Terry S. Johnson	Alamance County, North Carolina
91.	Sheriff Chris Bowman	Alexander County, North Carolina
92.	Sheriff Tommy W. Allen, Jr.	Anson County, North Carolina
93.	Sheriff Kevin Frye	Avery County, North Carolina
94.	Sheriff John Holley	Bertie County, North Carolina
95.	Sheriff Alan C. Jones	Caldwell County, North Carolina
96.	Sheriff Dwayne L. Goodwin	Chowan County, North Carolina
97.	Sheriff Victor Davis	Clay County, North Carolina
98.	Sheriff Doug Doughtie	Dare County, North Carolina
99.	Sheriff Blake Wallace	Duplin County, North Carolina
100.	Sheriff Worth L. Hill	Durham County, North Carolina
101.	Sheriff William T. Schatzman	Forsyth County, North Carolina
102.	Sheriff Jerry Jones	Franklin County, North Carolina
103.	Sheriff Edward Webb	Gates County, North Carolina
104.	Sheriff Mickey Anderson	Graham County, North Carolina
105.	Sheriff Brindell Wilkins, Jr.	Granville County, North Carolina
106.	Sheriff Bobby Suttles	Haywood County, North Carolina
107.	Sheriff Juan Vaughan, Sr.	Hertford County, North Carolina
108.	Sheriff Tracy Carter	Lee County, North Carolina
109.	Sheriff David Carpenter	Lincoln County, North Carolina
110.	Sheriff Buddy Harwood	Madison County, North Carolina
111.	Sheriff Daniel E. Bailey, Jr.	Mecklenburg County, North Carolina
112.	Sheriff Richard D. Jenkins	Nash County, North Carolina
113.	Sheriff Wardie P. Vincent, Sr.	Northampton County, North Carolina
114.	Sheriff Bill Sawyer, Jr.	Pamlico County, North Carolina
115.	Sheriff Eric V. Tilley	Perquimans County, North Carolina
116.	Sheriff Shepard Jones	Scotland County, North Carolina
117.	Sheriff David Mahoney	Transylvania County, North Carolina
118.	Sheriff Johnny Williams	Warren County, North Carolina
119.	Sheriff Len D. Hagaman, Jr.	Watauga County, North Carolina

120.	Sheriff Calvin Woodard, Jr.	Wilson County, North Carolina
121.	Sheriff Ricky Oliver	Yadkin County, North Carolina
122.	Sheriff Gary Banks	Yancey County, North Carolina
123.	Sheriff Johnny Valdez	Cibola County, New Mexico
124.	Sheriff Dave Brown	Skamania County, Washington State
125.	Sheriff Leland K. Burgess	Kinney County, Texas
126.	Sheriff Richard Haskell	Sweetwater County, Wyoming
127.	Sheriff Mark J. Dannels	Cochise County, Arizona
128.	Sheriff Fred McKee	Delta County, Colorado
129.	Sheriff John Clifton	Bureau County, Illinois
130.	Sheriff Jerry White	Copper County, Missouri
131.	Sheriff Cameron Lorey	Fulton County, New York
132.	Sheriff Mark Kessler	Schoolfield Pennsylvania Police Department
133.	Sheriff Joe Frank Martinez	Val Verde County, Texas
134.	Sheriff Doug Hebert, III	Allen Parish, Louisiana
135.	Sheriff Ric Bradshaw	Palm Beach County, Florida
136.	Sheriff Kevin Auten	Rowan County, North Carolina
137.	Sheriff Kenneth Sealy	Roberson County, North Carolina
138.	Sheriff Ed McMahon	New Hanover County, North Carolina
139.	Sheriff Charles McDonald	Henderson County, North Carolina