



## The Good & Bad in S. 744

### *Border Security, Economic Competitiveness, and Immigration Modernization Act of 2013*



#### **Legalization**

*Immigrants are an integral part of our communities. They will contribute to and participate more fully in our society if they are afforded a path toward permanent lawful status and citizenship.*

- ✓ Provides Registered Provisional Immigrant Status (RPI) and a viable path to citizenship for millions of individuals who have committed their lives to this country and were in the country as of December 31, 2011.
- ✓ Offers fast tracks to citizenship for agricultural workers and, with generous DREAM Act provisions, immigrants who came to the U.S. as children. DREAMers who have received deferred action will have their applications streamlined and be exempted from fines.
- ✓ Treats those who have received awards from the Armed Forces of for active combat as having satisfied naturalization requirements.
- ✗ Delays permanent status; the majority of immigrants must wait up to 10 years to apply for green cards, and three additional years to apply for citizenship.
- ✗ Prohibits access to public benefits, including affordable healthcare, until individuals become citizens.
- ✗ Restricts eligibility for citizenship for those who are unemployed for more than 60 days while in RPI status and who did not maintain an average yearly income 25% above the national poverty line. Some of the hardest working and most deserving yet underprivileged members of our communities will likely be excluded.
- ✗ Renders the availability of RPI status dependent on certain “triggers,” including increased border security.



#### **Family Unification**

*Families should not be torn apart.*

- ✓ Reunites families by clearing decades-long backlogs for green cards.
- ✓ Increases the number of family-based visas and includes spouses and children of lawful permanent residents in the immediate relative category.

- ✓ Adds U.S. citizen or permanent resident children to the list of qualifying relatives who may be shown to suffer hardship for the purpose of a noncitizen's waiver.
- ✓ Grants automatic citizenship to adoptive children of U.S. citizens. (*Corker-Hoeven amendment*)
- ✓ Clarifies that asylum seekers may seek work authorization 180 days after they file their applications. (*Coons 8*)
- ✗ Does not repeal or allow increased waivers for the permanent bar for unlawful presence as applied to many immigrants, which means that families will continue to be separated merely because of a family member's unlawful entries into the United States.
- ✗ Repeals the ability of U.S. citizens to petition for siblings 18 months after the enactment of the bill.
- ✗ Repeals the ability of U.S. citizens to petition for married children older than 31. These individuals will be able to apply through a new merit-based program, but it is unclear how their applications will fare in this new pool.
- ✗ Terminates asylum protection for asylees who return to their country of origin, though it includes a "good cause" waiver. (*Graham amendment 1*)



## **Enforcement**

*Our immigration system should not disproportionately penalize people just for migrating.*

### **Interior Enforcement**

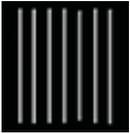
- ✓ Expands immigration judges' ability to use their discretion to consider the full circumstances of individuals' cases during immigration proceedings. DHS has seven days to dispute judges' assessments.
- ✓ Prohibits DHS from deporting individuals who are eligible for RPI status until their applications are adjudicated.
- ✓ Improves the safety of our communities by increasing the number of U visas available for survivors or witnesses of violence from 10,000 to 18,000, extending visa eligibility to survivors of elder abuse (*Klobuchar amendment 2*), expanding access to work permits for survivors of violence and trafficking who apply for protection (*Leahy amendment 3*), and making survivors of domestic violence eligible for certain public and assisted housing (*Franken 9*). These provisions encourage immigrants to further contribute to law enforcement efforts.
- ✓ Requires DHS to adjudicate individuals' asylum, U visa, Violence Against Women Act, or other protection-based claims before prosecuting them for illegal entry or reentry.
- ✓ Requires DHS to collect data regarding racial profiling, report it to Congress, and issue regulations regarding the use of racial profiling in enforcement.
- ✓ Allows detained parents to arrange for childcare and participate in child welfare and family court proceedings. (*Franken amendment 7*)
- ✓ Restricts Immigration and Customs Enforcement and Customs and Border Protection officers from conducting raids in schools, churches, or hospitals. (*Blumenthal amendment 8*)

### ***(Interior Enforcement cont.)***

- ✗ Imposes the harshest criminal penalties ever on people who migrate to the United States illegally, including up to a year in prison for a person's first illegal entry and up to three years for reentering once after being deported or accepting voluntary departure. Immigrants who enter unlawfully and served 15 days in jail for three misdemeanors or a felony could be subject enhanced prison sentences of up to 10 years and fines up to \$5,000.
- ✗ Creates even harsher criminal penalties for people who use or attempt to use fraudulent documents or passports to enter the United States, which would punish asylum seekers who often are forced to use false travel documents to escape persecution in their countries of origin. (*Lee amendments 16 and 17*)
- ✗ Puts federal immigration enforcement responsibilities into the hands of local police by allowing DHS to share information with local law enforcement agencies about individuals who have overstayed their visas. (*Graham amendment 2*)
- ✗ Requires U.S. Citizenship and Immigration Services to create a list of individuals whose employment authorization could not be confirmed through e-verify and report it to DHS for enforcement purposes. (*Grassley 31*)

### ***Border Security***

- ✗ Mandates the construction of 700 miles of fencing and vastly increases the use of surveillance technology along the border—at a staggering cost of \$46.3 billion. This excessive militarization wastes government resources while failing to address our nation's needs. (*Corker-Hoeven amendment*)
- ✗ Further militarizes border towns by authorizing the deployment of the National Guard and of 38,405 Border Patrol agents by 2021. (*Corker-Hoeven amendment*)
- ✗ Allows a three-fold increase in the number of criminal prosecutions of unauthorized crossings. (*Corker-Hoeven amendment*)
- ✗ Increases funding for Operation Streamline, a DHS initiative that criminalizes unauthorized entry, and creates new funding for state and local law enforcement agencies to prosecute crimes.
- ✓ Requires DHS personnel to be trained on appropriate use of force, individuals' rights, and the identification of vulnerable populations
- ✓ Calls for 1,000 emergency stations where migrant deaths occur most frequently. (*Corker-Hoeven amendment*)
- ✓ Places independent child welfare professionals at border patrol stations to provide basic humanitarian assistance to unaccompanied immigrant children held there, and ensures appropriate screening of children to identify victims of persecution or trafficking. (*Hirono amendment 22, also known as the Child Trafficking Victims Protection Act*)



## Detention

*The government must discontinue its use of arbitrary and indefinite detention.*

- ✓ Requires DHS to perform individual assessments of detainees, determine whether they can be placed in alternative forms of custody, and review the decisions on a monthly basis. DHS must favor release on bond or on individuals' own recognizance when that is sufficient.
- ✓ Requires an immigration judge to review DHS's custody decision within seven days of when a person is taken into custody. To keep someone detained, DHS must show that detention—and not an alternative form of custody—is the only form of custody that would reasonably assure a person's appearance in court and protect public safety. An immigration judge must review an individual's custody every 90 days thereafter with explanations for the reasons behind the custody decisions.
- ✓ Requires DHS to create alternatives to detention that incorporate case management services (similar to parole officers).
- ✓ Permits community-based organizations to help screen detainees for alternative custody programs, provide services to detainees, and in some cases operate community-support programs.
- ✓ Strengthens oversight of detention facilities and requires annual inspections and reports to Congress. Within 180 days of the bill's enactment, the government must modify its contracts with every facility to require compliance with the most recent version of DHS's immigration detention standards and include financial penalties against jails that do not comply.
- ✓ Prohibits the use of solitary confinement in immigration detention for minors and otherwise limits its use to brief periods under the least restrictive means possible, including provisions that would benefit mentally ill individuals and others who may require special protections in custody. *(Blumenthal amendment 2)*
- ✓ Requires DHS and other federal agencies to create a centralized database to maintain records on the people in its custody. These records are to be publicly available without a Freedom of Information Act request. *(Coons amendment 6)*
- ✓ Mandates that DHS transfer unaccompanied minors who will be undergoing immigration proceedings to the custody of the Department of Health and Human Services Office of Refugee Resettlement within 72 hours. Calls for Customs and Border Patrol to hire welfare specialists in seven of its offices which encounter the largest number of unaccompanied minors. *(Hirono amendment 22)*
- ✗ Allows DHS to limit immigration judges' custody review for individuals subject to mandatory custody.
- ✗ Lacks independent oversight of facilities and grants DHS sole authority over inspections.
- ✗ Fails to eliminate legislative language that DHS claims requires it to fill 34,000 detention beds each night. If this bed quota is not repealed in appropriations, the bill's alternatives to detention provisions will not be effective.



## Efficiency & Due Process

*Individuals facing deportation must understand their rights and have the ability to meaningfully present their cases before a judge.*

- ✓ Helps alleviate the substantial immigration court backlog by dramatically increasing the number of immigration judges and personnel as well as the number of staff attorneys at the Board of Immigration Appeals (BIA).
- ✓ Requires DHS to file a notice to appear (the charging document in immigration proceedings) no later than 72 hours after taking a person into custody.
- ✓ Requires DHS to appoint counsel for unaccompanied children and mentally ill individuals who face deportation.
- ✓ Requires DHS to give detained immigrants access to information about their rights through legal orientation programs (LOPs) within five days of detention.
- ✓ Requires immigration judges to conduct in-person hearings before they sign off on stipulated removal orders. Immigrants in detention frequently sign these orders, in which they agree to be deported without seeing a judge or knowing whether they are eligible for relief.
- ✓ Allows asylum officers to adjudicate asylum applications for arriving asylum seekers, rather than force these individuals to wait for hearings in the backlogged immigration court system.
- ✓ Repeals the one-year filing deadline for asylum, which has denied thousands of bona fide asylum seekers protection based on an arbitrary technicality.
- ✓ Improves administrative appellate review by restoring three-judge panels at the BIA and requiring those judges to consider all relevant arguments raised on appeal.
- ✓ Creates a pilot program for child welfare experts to screen unaccompanied immigrant children who come into immigration custody. (*Feinstein amendment 5*)
- ✓ Requires DHS to provide individuals in removal proceedings a copy of their documents at the start of their proceedings. (*Coons amendment 5*)
- ✗ Fails to provide for an electronic filing system, which would drastically improve court efficiency.

***This is an abbreviated analysis of S.744. For updates on immigration reform and NIJC's response, visit [immigrantjustice.org/immigrationreform](https://immigrantjustice.org/immigrationreform).***