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STATEMENT OF
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HEARING ON
THE BORDER SECURITY, ECONOMIC OPPORTUNITY, AND IMMIGRATION MODERNIZATION ACT, S.744

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

APRIL 22, 2013

Chairman Leahy, Ranking Member Grassley, and members of Committee: I am Wade Henderson, President and CEO of The Leadership Conference on Civil and Human Rights. I appreciate the opportunity to present the views of The Leadership Conference for inclusion in the record of today's hearing on S. 744, the "Border Security, Economic Opportunity, and Immigration Modernization Act."

The Leadership Conference on Civil and Human Rights is the nation's oldest and most diverse coalition of civil and human rights organizations. Founded in 1950 by Arnold Aronson, A. Philip Randolph, and Roy Wilkins, The Leadership Conference seeks to further the goal of equality under law through legislative advocacy and public education. The Leadership Conference consists of more than 200 national organizations representing persons of color, women, children, organized labor, persons with disabilities, the elderly, gays and lesbians, and major religious groups. I am privileged to bring the voices of this community to today's hearing.

Comprehensive Immigration Reform, a Matter of Civil and Human Rights

The Leadership Conference is extraordinarily pleased that Congress is making a concerted effort to move forward this year with a full-scale overhaul of our nation's immigration system. While my staff and I are continuing to study the details of S. 744, and while there are likely to be a wide range of opinions about the bill as it moves forward, I would like to begin my statement by setting out what I hope are a few general points of agreement.

First, I believe that everyone in this debate can agree that our nation's immigration system is badly broken. It fails to keep up with economic realities, it fails to provide an orderly way to keep track of who is here, it inhumanely separates families and keeps them apart, it penalizes children for the actions of their parents, and it is so unfair and so burdensome that it fails to give people enough incentives to play by the rules. America's immigration system clearly needs sweeping changes, and it needs them soon.

Second, I think we can also agree that in fixing our immigration system, it is vital that we include more realistic and more humane immigration enforcement. For many reasons, it is undoubtedly important to know who is coming here and under what circumstances, and to protect communities from people who

would do us harm when they have no authorization to be here. Yet as evidenced by record-high numbers of deportations in the past four years, the notion that the laws are not being enforced is simply not true. The real problem, when it comes to enforcement, is that ongoing efforts – particularly since the implementation of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 – too often take a heavy-handed and even cruel approach. Countless numbers of immigrants – regardless of their legal status – are needlessly locked up and removed, even when detention and deportation do not serve the public interest, because immigration judges and other officials no longer have the ability or the incentive to exercise common sense. At the same time, many of the most complicated and sensitive decisions involving immigration law enforcement are being made in many parts of the country by untrained state and local law enforcement officials, or worse, by private for-profit corporations that have a financial incentive to lock up as many people as possible.

As a nation, we can and should take more sensible measures, such as hiring additional inspectors and border patrol agents to work in ports of entry, making better use of technology, and working more closely with Mexico to cut down on problems like human trafficking and the drug trade. At the same time, enforcement efforts must ensure due process and protect the civil rights of all people who are affected.

Third – and while this, of course, has long been the subject of contentious debate – I would hope that we might come to agree on the importance of giving unauthorized immigrants, living and working in our country, a realistic way to come out of the shadows and legalize their status. As a lifelong civil rights advocate, I see this not as an issue of economics but of morality, and I believe it goes directly to our most basic understanding of civil and human rights.

It is easy to focus on the fact that many immigrants have broken the rules in order to get or stay here. We do not condone violations of our immigration laws. But as we do in most other circumstances, we should also look at why these individuals have broken the rules. Motives count. And the overwhelming majority of unauthorized immigrants have broken the rules not to "steal jobs," to live off the government, or to take advantage of anyone else. Instead, most of them have been motivated, to the point where many have even risked their lives to come here, by the desire to escape economic or political hardships that few native-born Americans today could fully understand. At the same time, they are all too often enticed here by employers who are perfectly willing to use and abuse them in the process.

When we consider the motives of most of the unauthorized immigrants who live and work in our country, it is clear to The Leadership Conference – and hopefully to everyone – that our policies should not treat them as fugitives to be hunted down, but as an economic and social reality that must be addressed in a thoughtful manner that best serves our nation and our communities as a whole. For example, unauthorized immigrants should not be so afraid of law enforcement, due to their immigration status, that they refuse to report crimes in their own neighborhoods. When they go to work, they – like all humans – have a right to know they will be treated safely and paid fairly, which protects the interests of native-born workers as well. If they drive on our roads, it is in the interest of everyone to make sure they are doing so safely. Regardless of how they may have initially come here, if they show a willingness to play by the rules and contribute to our economy and our society, we should have policies in place that will reward their hard work. At the very least, I would hope that we can agree that punishing the children of unauthorized immigrants for the actions of their parents is nothing short of insane, and is an affront to our deepest values and constitutional traditions.

Finally, we believe that family unity should be a key foundation of our immigration laws, in the same way that it is a key foundation of our society itself. Sadly, our current immigration system is chronically plagued by administrative backlogs in the family-based visa process, as well as by the woefully inadequate numbers of family-based visas that become legally available each year. As a result, it can often take years or even more than a decade for close relatives of U.S. citizens or permanent residents to obtain immigrant visas, and these delays simply encourage people to overstay temporary visas or find other ways to enter the country in order to be with their loved ones. Other families are kept apart by outright discriminatory federal policies, particularly the wrongly-named Defense of Marriage Act of 1996. Addressing these and numerous other problems in our immigration system is an essential component of the modern civil and human rights agenda.

Immigration Reform and the African-American Workforce

I am mindful that these are challenging times to take up an issue like immigration reform. Our economy is continuing to struggle, leaving far too many of Americans uncertain about their jobs and their economic well-being. Most recently, a horrifying act of terrorism in Boston has caused some to argue – very wrongly, in my opinion – that we should further delay fixing the massive, long-standing problems in our national immigration system. To the contrary, I believe the need for immigration reform remains as strong as ever.

That said, I would like to turn to another important yet complicated issue that affects the immigration reform debate: the impact that immigration has on minority communities, particularly African Americans. Needless to say, this topic has generated a great deal of controversy, particularly in recent years as our economy has struggled, and African Americans have faced much higher unemployment rates than usual.

I certainly share the legitimate concerns about unemployment and underemployment among African Americans. Indeed, advancing policies that would address these concerns has been one of my highest priorities throughout my career. The needs of low-wage workers – a group disproportionately composed of African-American workers – have long been neglected by policymakers, a situation that has needlessly exacerbated tensions between the African-American and immigrant communities. Many African Americans, as a result of the difficult economic conditions they face, understandably fear that the immigrant workforce will worsen their situation as the competition for jobs in our struggling economy reduces the opportunities and the wages of all vulnerable workers. Yet having said this, I do not share the simplistic and divisive view, advanced by some, that immigrants are to blame for "stealing jobs" on any widespread scale from native-born Americans.

The Impact of Immigration on African-American Employment

The situation facing African-American workers is a complicated one, and the impact of immigration on the employment prospects and the wages of African Americans is the subject of much debate among economists. As economists such as Steven Pitts of the Center for Labor Research and Education at the University of California have pointed out, for example, the employment crisis facing African Americans began long before our nation took a more generous approach to immigration policy in 1965. Looking at overall unemployment rates over the last half century, we see that the unemployment rate for African Americans has always been approximately twice as high as for White Americans, and has remained

approximately the same[1] even as the percentage of foreign-born Americans, relative to the population as a whole, has increased in the past several decades:

Year	Black Unemployment	White Unemployment	Black/White Unemployment Ratio
1956	8.3%	3.6%	2.3
1965	8.1%	4.1%	2.0
1975	14.8%	7.8%	1.9
1985	15.1%	6.2%	2.4
1995	10.4%	4.9%	2.1
2005	10.0%	4.4%	2.3

As most economists would explain, this employment crisis has a wide variety of causes that are remarkably difficult to sort out. These causes include both historical and contemporary racial discrimination, not only in the labor market, but also in other sectors of society such as housing markets, educational systems, and consumer finance. The higher rates – and the lasting stigmatic effects – of incarceration of African-American males are also significant.[2] Disparities in health care are both a cause and a consequence of unemployment.[3] In addition, the situation has certainly been compounded by broader changes in the U.S. economy as a whole, including the globalization of the economy and the movement of many types of jobs overseas.

As to the question of whether immigration might play a role in aggravating the long-existing causes of African-American unemployment, economists who have studied the issue have not been able to establish any sort of consensus.[4] Even among experts who do think there is an impact, there is disagreement over its extent. For example, Bernard Anderson, an economist at the University of Pennsylvania's Wharton School, believes that while immigrants have probably taken some jobs previously performed largely by African Americans, there is also evidence that African Americans are less likely to perform low-skill service jobs because they have largely moved on to take better-paying jobs or have retired from the labor force. The displacement that has taken place, Anderson argues, has not had a significant effect on the wages or opportunities of native-born workers.[5] Another study, by the Immigration Policy Center, found that in states and metropolitan areas with high levels of recent immigrants, unemployment among African Americans was actually *lower* than in areas with low levels of recent immigrants.[6] Finally, a study by the

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[1] U.S. Department of Labor, Bureau of Labor Statistics; *also* Council of Economic Advisors, *Changing America: Indicators of Social and Economic Well-Being by Race and Hispanic Origin*, Sept. 1998, at 26.

[2] *See, e.g.*, Jenny Bussey and John Trasviña, *Racial Preferences: The Treatment of White and African American Job Applicants by Temporary Employment Agencies in California*, Discrimination Research Center, Dec. 2003; Devah Pager, *The Mark of a Criminal Record*, AMERICAN JOURNAL OF SOCIOLOGY 108(5): 937–75.

[3] Kristen Suthers, *Evaluating the Economic Causes and Consequences of Racial and Ethnic Health Disparities*, Issue Brief, American Public Health Association, Nov. 2008.

[4] *See, e.g.*, Harry J. Holzer, *Immigration Policy and Less-Skilled Workers in the United States: Reflections on Future Directions for Reform*, Migration Policy Institute, Jan. 2011; Roger Lowenstein, *The Immigration Equation*, THE NEW YORK TIMES, July 9, 2006.

[5] *The Immigration Debate: Its Impact on Workers, Wages and Employers*, KNOWLEDGE@WHARTON, May 17, 2006, *available at* http://knowledge.wharton.upenn.edu/article.cfm?articleid=1482.

[6] *Immigration and Native-Born Unemployment Across Racial/Ethnic Groups: Untying the Knot, Part II of III*, Special Report, Immigration Policy Center, May 2009.

Economic Policy Institute found that any negative effects of new immigration were felt largely by earlier immigrants, the workers who are the most substitutable for new immigrants.[7]

Policies Aimed at Improving Conditions for Low-Income Minority Workers

As explained above, economists simply do not – and perhaps cannot – know with certainty the full extent of the displacement of African-American workers by new immigrants. As such, I reject the sweeping, simplistic, divisive indictments of immigrants that have been offered by some advocates, and I urge this Committee to do the same. At the same time, I do recognize that it is possible that unskilled, native-born workers have been – or could be – displaced by increased immigration. There is certainly anecdotal evidence to that effect, even as the overall body of statistical evidence is far less clear. In any event, the prospect of job displacement caused by immigration has long caused concerns within the African-American community – a fact that has been exploited by some to drive a wedge between African Americans and Latinos.

For these reasons, The Leadership Conference takes the underlying concerns about job displacement very seriously. Because the unemployment crisis facing African Americans has a wide variety of causes, however, we believe that efforts focusing on widespread deportation – or on making immigrants feel so unwelcome that they "self-deport," as some have proposed[8] – miss the mark completely.

There are numerous policy proposals that academics and advocates have advanced to assist low-wage native-born workers. The Leadership Conference is proud to have contributed to these ideas. In early 2007, we organized a summit of leaders from African-American, Latino, and Asian-American communities to discuss how the concerns of low-income workers might best be addressed in the ongoing debate over immigration reform. The organizations and leaders involved in those discussions produced a statement of principles and legislative recommendations that we urged Congress to take up as a part of comprehensive immigration reform. These recommendations call upon Congress to provide for:

- Better enforcement of antidiscrimination laws, through testing and other measures, and enhanced public education efforts to counter stereotypes about immigrants and African Americans;
- More open vacancy notification systems, to overcome the use of informal networks of friends and relations to fill low-wage jobs, which reduces job competition;
- Increased enforcement of workplace standards, including fair wage and overtime requirements, and safety, health and labor laws;
- Making it easier for workers to compete for jobs in other locations through better advertising of unskilled jobs and the allocation of resources to pursue and relocate for them; and
- More job skills, training and adult education opportunities for low-wage workers, including young people and high school dropouts.

During the 2007 debate in the Senate over comprehensive reform legislation, we worked with Sen. Sherrod Brown (D-OH) on an amendment focusing on the second point above, as a starting point. His

[7] Heidi Shierholz, *Immigration and Wages: Methodological Advancements Confirm Modest Gains for Native Workers*, Briefing Paper, Economic Policy Institute, Feb. 2010.
[8] *See, e.g.*, Mark Krikorian, *Not Amnesty but Attrition: The Way to go on Immigration*, National Review, Mar. 22, 2004.

amendment would have required employers who want to hire immigrant workers, under the temporary employment visa provisions of the bill, to show that they have advertised – and to continue to advertise, for one year – all similar job vacancies with the state employment service. The requirement would have been extended to all vacancies that require comparable education, training, or experience as the job to be given to an immigrant worker. It would have helped ensure that native-born workers became aware of, and had the opportunity to apply for, job openings before employers resorted to hiring immigrant workers. Unfortunately, the Senate deliberations over immigration reform collapsed before Sen. Brown was able to offer his amendment. We believe, however, that his proposal could have earned widespread bipartisan support, and it would have been an important and constructive step in addressing the concerns of low-income minority workers.

I would urge Congress to move forward with all of these proposals – and I would note that they can be enacted even in the absence of comprehensive immigration reform legislation. By doing so, our elected officials can provide low-wage African-American workers with much-needed assistance, and can help mitigate tensions between African-American and immigrant workers. I would also urge the Subcommittee to consider a 2009 blueprint for immigration reform that was jointly issued by the two American labor federations, the AFL-CIO and Change to Win, together representing more than 60 different unions and about 16 million American workers. Their proposal, entitled *Framework for Comprehensive Immigration Reform*,[9] meets many of the concerns expressed in the African-American community by providing for the fair and humane treatment of immigrants, on one hand, and preventing immigrant workers from being exploited and used to undercut work standards to the detriment of native-born workers, on the other.

So-called "Black vs. Brown" in the Immigration Debate: Perceptions and Realities

Before I conclude, I would like to say more about the misperceptions about relations among African Americans and Latinos, misperceptions that some immigration reduction advocates have attempted to foster, in recent years, in an effort to pit community against community with the goal of preventing immigration reform. In 2007, for example, a group that called itself the Coalition for the Future American Worker, organized primarily by immigration reduction organizations, deliberately attempted to stir up African-American resentment toward immigrant communities and immigration reform by running full-page newspaper ads that blamed immigrants for taking hundreds of thousands of jobs from African Americans.

As with any controversial issue – and immigration reform is undoubtedly a controversial issue – there inevitably will be a range of individual opinions within any community. But on the whole, the relationship between the African-American community and immigrant communities has long been far too complex to neatly summarize in a newspaper ad.

On one hand, as minority groups in America, African Americans and immigrants share a strong common interest in fairness and equal opportunity. Indeed, because the immigrant community includes many individuals of African and Caribbean descent, including those admitted under the diversity visa program, African Americans do have a direct interest in fair immigration policies. For these reasons, the traditional civil rights movement was instrumental in eliminating discriminatory immigration quota laws in favor of

[9] *Available at* http://www.aflcio.org/content/download/60511/854621/UnityFrameworkAug2009.pdf.

more generous policies in the 1960s, and leading civil rights organizations have continued to speak out on behalf of immigrants' rights since then.

On the other hand, as I have explained above, it is clear that many African Americans, particularly those who struggle the most to make ends meet in today's economy, are concerned about the way their economic well-being is affected by increased immigration. Time and time again, immigration reform opponents focus only on these anxieties while ignoring the common ground that exists. For example, following the August 2008 immigration enforcement raid at Howard Industries in Laurel, Miss., immigration reduction advocates focused on a segment of some African-American workers who apparently celebrated the arrests, as an example of the divide between native-born and immigrant workers, while ignoring the fact that the African-American leadership at Howard Industries' union supported signing up Latino workers and forging solidarity to improve the living standards of all employees.

Contrary to what the propaganda of some groups might suggest, African-American concerns about the effects of immigration do not, on the whole, lead to any widespread resistance to the legalization of unauthorized immigrants or the other elements of comprehensive reform. Our own public opinion research confirms this. Last month, Lake Research Partners conducted telephone polling of 805 African-American likely voters nationwide.

Our most recent polling finds that 75 percent of respondents rate the economy negatively, and 54 percent worry that they or someone in their household will lose a job in the coming year. With respect to immigrants, 45 percent of respondents believe that immigrants take jobs away from Americans, and 51 percent believe that they drive down wages for Americans. Despite these fears, however, we found that 66 percent of respondents supported comprehensive immigration reform that includes increased border security, penalties on employers of illegal workers, and criteria for a path to citizenship, with only 16 percent opposing such reforms. Furthermore, 72 percent of respondents (69 percent in the Deep South) have a favorable impression of immigrants, with 68 percent believing they contribute to our economy and communities. Only 39 percent believe that immigrants drive down wages for African-American workers, a 20 percent decline since we conducted similar polling in 2007. Finally, our research in this and previous years confirms that strong majorities of African Americans believe that they can work together with immigrant communities on common social and economic goals such as expanding access to health care and education, reducing crime, and improving wages, work benefits, and job opportunities.[10]

In short, African Americans generally understand that it is inherently wrong to divide people along the lines of race or ethnicity or national origin, and that creating "us versus them" scenarios does not help anyone in the long run. If Congress did more to protect low-income, native-born workers, as a part of immigration reform or even independently, and consistent with the principles I outlined above, the numbers I have just cited would be even more favorable.

[10] Polling conducted by Lake Research Partners, for The Leadership Conference on Civil Rights & Leadership Conference on Civil Rights Education Fund, March 25-30, 2013, among 805 African-American likely voters. The results are consistent with similar polling conducted for us by Lake Research Partners, December 8-17, 2007, among 700 African-American voters.

Finally, I would like to add that African Americans do tend to take note of how consistently – or inconsistently – immigration advocates show their concern for the well-being of the African-American community across the board. Unfortunately, evidence of that concern is often sorely lacking.

For example, from the 2006 reauthorization through the Supreme Court case that is now awaiting a decision, the Voting Rights Act – the most important civil rights law governing our most important civil right – has been under steady attack by many of the same groups and individuals who claim to be interested in protecting black Americans from the effects of immigration. As the 2008 financial crisis began, many of those same individuals dishonestly blamed the Community Reinvestment Act, a decades-old civil rights law that could have in fact reduced predatory subprime lending if it had been more uniformly applied.[11] More recently, many have supported budget policies that drastically cut spending in areas that are most important to African Americans such as education and health care, in order to protect millionaires or defense contractors from making sacrifices. Finally, some immigration reduction advocates have even gone so far as to propose rewriting the 14th Amendment of our Constitution,[12] striking at a core foundation of our nation's civil rights protections that is deeply cherished by most African Americans. While there are certainly exceptions,[13] it is clear that immigration reduction advocates have rarely gone out of their way to be our friends.

This concludes my remarks. Thank you for the opportunity to have my thoughts included in the record of today's hearing. I would be happy to answer any questions you may have.

[11] Myths about the Community Reinvestment Act (CRA) contributing to the financial crisis have been thoroughly debunked by experts, but nevertheless continue to proliferate. *See, e.g.*, letter from Federal Reserve Chairman Ben Bernanke to Sen. Bob Menendez (D-NJ), Nov. 25, 2008, *available at* http://menendez.senate.gov/pdf/112508ResponsefromBernankeonCRA.pdf (explaining that he found no evidence to support the claim that the CRA was to blame for the mortgage crisis).

[12] *See, e.g.*, H.R. 140/S. 301, the Birthright Citizenship Act of 2013.

[13] I would certainly note, for example, the bipartisan effort that resulted in the enactment of the Fair Sentencing Act of 2010, which will help reduce racial disparities in cocaine sentencing. Its champions in Congress included a number of prominent opponents of comprehensive immigration reform.

Statement for the Record

Senate Judiciary Committee

"The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744"

April 22, 2013

The National Immigration Forum works to uphold America's tradition as a nation of immigrants. The Forum advocates for the value of immigrants and immigration to the nation, building support for public policies that reunite families, recognize the importance of immigration to our economy and our communities, protect refugees, encourage newcomers to become new Americans and promote equal protection under the law.

First and foremost, our hearts and prayers go out to the people of Boston. We are extremely grateful for the fast and successful work of federal and local law enforcement officials in dealing with this atrocious attack that threatened all Bostonians. Any attack against America is an attack against all Americans regardless of their faith or ethnicity.

The National Immigration Forum applauds the Committee for holding this hearing on the matter of "Comprehensive Immigration Reform Legislation" and urges the Committee to take up Senate bill S. 744, the Border Security, Economic Opportunity, and Immigration Modernization Act. We applaud the bipartisan Senate working group for making progress on much-needed reform of our immigration laws.

Over the past two years, an alliance of conservative faith, law enforcement and business leadership has come together to forge a new consensus on immigrants and America: The Bibles, Badges, and Business for Immigration Reform Network, which formally launched in February. Their consensus lies in a common belief that all Americans prosper when our immigration system is humane, prioritizes public safety and empowers the U.S. economy. Since 2011, the National Immigration Forum and hundreds of "Bibles, Badges and Business" leaders have sounded the horn for fixing our immigration process at national summits in the Mountain West, Southeast and Midwest. In December 2012, a year's worth of dialogues led to a National Strategy Session and Federal Lobby Day in Washington, D.C. where over 250 leaders, including three of today's witnesses, Dr. David Fleming, Senior Pastor Champion Forest Baptist Church, Grover Norquist, President, Americans for Tax Reform and Mark Shurtleff, Partner, Troutman Sanders LLP communicated their full support for comprehensive immigration reform – an event which resulted in more than 60 news stories across the

country and 78 Hill meetings (57 with Republican offices). More importantly, faith, law enforcement and business leaders from across the country committed to work together to urge Congress to pass broad immigration reform in 2013.

Why the Bibles, Badges and Business Network Supports Comprehensive Immigration Reform?

- **Faith:**
  National evangelical leaders have been on the front lines of America's broken immigration system. They have seen far too many church members have their families torn apart by a strident immigration system that does not respect the fundamental importance of the family. Parents should not be ripped away from their children, and no child should be forced to grow up without a parent simply because immigration laws are not cognizant of basic Biblical teachings such as welcoming the stranger and honoring your father and mother. The Evangelical Immigration Table was an unprecedented group formed to outline and submit a framework for immigration reform that coincides with Christian teachings.

- **Law Enforcement:**
  Nationwide, law enforcement leaders including current and former state attorneys general, sheriffs and police chiefs are united in demanding smart immigration enforcement that acknowledges the realities of a police officer's community role and the importance of that officer's ability to maintain community trust. Law enforcement officials do NOT want to become immigration officers because it detracts from their ability to prioritize public safety threats. A new national immigration strategy must be intelligent and focus on detecting transnational smugglers and terrorists.

- **Business:**
  Business leaders from coast to coast have been frustrated with an immigration system that relies on unrealistic and inflexible visa quotas for immigrant workers, which force many economic contributors to wait months or years to immigrate. The process should be less cumbersome and more in sync with a market economy that expands and contracts. Immigrant workers are vital for picking crops during seasonal harvest as well as working in our engineering and scientific laboratories. These business opportunities also provide upstream and downstream jobs for other professionals, thus driving the U.S. economy toward success.

NATIONAL IMMIGRATION FORUM

The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744

As the Committee discusses reforming our immigration system, we applaud the work of four of the committee's members, Senators Richard Durbin, Charles Schumer, Lindsey Graham and Jeff Flake, who helped craft the Border Security, Economic Opportunity, and Immigration Modernization Act. The bipartisan legislation is a strong start for the immigration debate this year. People on both sides of the political spectrum have concerns about certain parts of the package. However, that is the nature of compromise: yielding on something we care about to move forward on what all of us care about.

Now that the legislation is introduced, many will work to improve it as it goes through the regular order in the Senate, first in Committee and then to the Senate floor. This process is right and necessary to ensure that the bill has the broadest possible support. This bill is the product of a great deal of discussion and debate and negotiation already. We urge this Committee, and all Senators, as they consider this bill, to continually remember that the whole of the bill, is much more than just the sum of its parts. It strikes a careful balance among its most important pillars: interior enforcement and border security, earned legalization and a path to citizenship, needed reforms to our current immigration system, and efforts to deal with the current backlog of immigration.

A singular focus on immigration enforcement will not result in workable solutions to our overall immigration system, and may, if too expensive or difficult to achieve, unduly delay reform and further politicize border security.

The National Immigration Forum looks forward to continuing this positive discussion on how best to move forward with passing broad immigration reform into law this year. We cannot let the status quo continue any longer. The time is now for immigration reform.

STATEMENT OF

MARGARET HUANG, EXECUTIVE DIRECTOR
RIGHTS WORKING GROUP

FOR THE HEARING ON
THE BORDER SECURITY, ECONOMIC OPPORTUNITY,
AND IMMIGRATION MODERNIZATION ACT, S.744

SENATE JUDICIARY COMMITTEE

APRIL 22, 2013

Chairman Leahy, Ranking Member Grassley, and members of the Committee: I am Margaret Huang, Executive Director of Rights Working Group. Thank you for the opportunity to submit testimony for inclusion in the record of today's hearing.

Rights Working Group (RWG) was formed in the aftermath of September 11th to promote and protect the human rights of all people in the United States. A diverse coalition of more than 350 local, state and national organizations, RWG works collaboratively to advocate for the civil liberties and human rights of everyone regardless of race, ethnicity, religion, national origin, citizenship or immigration status. Currently, RWG leads the *Racial Profiling: Face the Truth* campaign, which seeks to end racial and religious profiling.

RWG welcomes the introduction of the *Border Security, Economic Opportunity, and Immigration Modernization Act of 2013*, and applauds Senators Schumer, McCain, Durbin, Graham, Bennet, Lee, Menendez, and Flake for their tremendous effort in negotiating and drafting a bipartisan immigration reform bill. This legislation is an important step forward in creating an inclusive pathway to citizenship for millions of immigrants, while also promoting key due process protections and border reforms that are needed to uphold human rights for all people in the United States.

RWG is optimistic that the Senate Judiciary Committee will move forward thoughtfully and efficiently as it reviews this important legislation. As this process advances, we urge members of the Committee to preserve crucial civil and human rights provisions already present in the bill, and to strengthen protections in a few key areas that are important to our members throughout the country. Because of our leadership of a national campaign against racial profiling, we deeply appreciate the efforts of the Senate

negotiators to include a provision prohibiting racial profiling in the legislation. This provision is an important first step, but we would like to see the section strengthened during the Committee's consideration. Other top issues of interest include human rights protections in border enforcement; reforms to immigration courts and the expansion of judicial discretion; and worker protections and anti-discrimination provisions within the employment verification system.

Racial Profiling

RWG welcomes the inclusion of Section 3305 on Profiling in the bill. Racial profiling by local, state, and federal law enforcement officials is a pervasive problem throughout the United States, one that is a violation of Constitutional rights, that erodes trust between law enforcement and communities of color, and that wastes law enforcement resources and is counterproductive. It impacts all of the diverse members and communities of the Rights Working Group coalition. Concerns about racial profiling have escalated in recent years as the federal government has invested extraordinary resources in immigration enforcement measures. The "enforcement first" approach has doubled the number of Border Patrol agents since 2005, transferred immigration enforcement duties to local and state police throughout the country, and increased the federal budget expenditures on immigration enforcement to unprecedented levels, all without establishing meaningful protections of human rights and against racial profiling. Diverse immigrant communities and communities of color, including Latino, African American, Asian American, Muslim American, Arab American, and South Asian communities, have protested the negative impact of such policies. Section 3305 offers an important step forward in combating racial profiling, but we hope to see further amendments to the bill to strengthen its provisions.

Section 3305 would, for the first time, codify a prohibition against racial profiling into U.S. Federal law. This would be a groundbreaking step for advocates throughout the country who have worked on many successful state-based campaigns to ban racial profiling and have supported the introduction of the End Racial Profiling Act on the federal level. Unfortunately, the language in Section 3305 of this immigration reform legislation is taken from the 2003 Bush-Ashcroft Department of Justice *Guidance Regarding the Use of Race by Federal Law Enforcement Agencies* (2003 Guidance), a document that RWG and allies have found inadequate due to numerous loopholes that allow racial profiling to continue. The 2003 Guidance does not prohibit profiling on the basis of national origin or religion, and it exempts law enforcement activities related to

national security and border enforcement. These exemptions narrow the prohibition to such a degree that many communities deeply affected by racial profiling would be denied any meaningful protection. This concerns us greatly, especially in light of the vast increase in resources for immigration and border enforcement provided in other sections of this bill.

Complaints about racial profiling abound under current immigration and border enforcement policies. Customs and Border Protection (CBP), the federal agency charged with defending border security, currently patrols a 100-mile jurisdiction on each border, an area where nearly two-thirds of the U.S. population resides, and which includes such major cities as New York City, Detroit, Miami and Los Angeles.[1] This bill's prohibition language which includes an exception for border security could fail to protect racial profiling victims throughout that vast zone. This is particularly troubling given that CBP agents have been known to harass people of color on buses and trains that cross no international border; to respond to 911 calls placed by non-native English speakers; and to interrogate people at churches, hospitals, and other sensitive locations.[2]

Many residents of border communities as well as in other areas of the U.S. are targeted due to their religion and national origin, often under the pretext of national security. For example, at certain U.S. airports, Sikh travelers are stopped and searched 100% of the time.[3] At ports of entry and within the 100-mile jurisdiction along the Northern border, Muslims of all ethnic backgrounds are interrogated and searched with disproportionate frequency, and many have been asked inappropriate questions about their religious beliefs and interpretations of the Koran. The FBI has been known to map and surveil communities based on their specific national origin, without any basis for individualized suspicion.[4] Unless specific language is included to prohibit profiling on the basis of religion or national origin, and unless the national security and border security loopholes

[1] http://www.aclu.org/national-security_technology-and-liberty/are-you-living-constitution-free-zone

[2] http://www.nyclu.org/news/nyclu-senate-immigration-reform-bill-good-first-step-needs-improvement; http://www.nytimes.com/2010/08/30/nyregion/30border.html?pagewanted=all

[3] The Sikh Coalition, "The TSA Report Card: A Quarterly Review of Security Screenings of Sikh Travelers in U.S. Airports," Q2 2009 (Aug. 2009), accessible at https://salsa.wiredforchange.com/o/1607/images/2009%20Q2%20Report%20Card.pdf

[4] American Civil Liberties Union, "ACLU Eye on the FBI: The FBI is Engaged In Unconstitutional Racial Profiling and Racial 'Mapping,'" October 20, 2011, http://www.aclu.org/files/assets/aclu_eye_on_the_fbi_alert_-_fbi_engaged_in_unconstitutional_racial_profiling_and_racial_mapping_0.pdf

are removed from the bill, many communities will remain unprotected from unethical and counterproductive law enforcement practices.

The End Racial Profiling Act of 2011 (ERPA), as introduced in the Senate, defines Racial Profiling as:

> the practice of a law enforcement agent or agency relying, to any degree, on race, ethnicity, national origin, or religion in selecting which individual to subject to routine or spontaneous investigatory activities or in deciding upon the scope and substance of law enforcement activity following the initial investigatory procedure, except when there is trustworthy information, relevant to the locality and timeframe, that links a person of a particular race, ethnicity, national origin, or religion to an identified criminal incident or scheme.

Furthermore, it defines "routine or spontaneous investigatory activities" as:

> interviews; traffic stops; pedestrian stops; frisks and other types of body searches; consensual or nonconsensual searches of the persons, property, or possessions (including vehicles) of individuals using any form of public or private transportation, including motorists and pedestrians; data collection and analysis, assessments, and predicated investigations; inspections and interviews of entrants into the United States that are more extensive than those customarily carried out; immigration-related workplace investigations; and such other types of law enforcement encounters compiled for or by the Federal Bureau of Investigation or the Department of Justice Bureau of Justice Statistics.

This language offers the strong protections needed to eliminate all types of racial profiling. We urge members of the Committee to strengthen the prohibition on profiling contained in Section 3305 of S.744 to make it consistent with the above language and provide enforceable protection from racial profiling for all of our country's diverse communities.

RWG is very pleased to see that Section 3305 creates a data collection requirement that will apply to all Department of Homeland Security (DHS) officers, including CBP, Immigration and Customs Enforcement (ICE), and Transportation Security Administration (TSA) law enforcement agents. Data collection and analysis is essential

to the enforcement of any prohibition on racial profiling. We are optimistic that the data collection and subsequent DHS reports to the relevant Congressional Committees will allow for the adoption of sound regulations to combat racial profiling by federal law enforcement agents.[5]

Data collection provisions as written in Section 3305 are an excellent start. We believe, however, that the data collection and reporting process ought to be further strengthened. First, we urge that data collection investigate profiling based not only on perceived race and ethnicity, but also on perceived religion and national origin. We also believe that data collection and reporting requirements should be continued after the initial report cited in the bill. Otherwise, there will be no mechanism to monitor ongoing compliance with the prohibition.

Lastly, RWG applauds the requirement that new regulations regarding the use of racial profiling by DHS agents be issued within a year and 90 days by the Secretary of Homeland Security. This is an important component, and we look forward to seeing those regulations in place. We urge the Committee to support this piece of the legislation, and to fortify it by ensuring that regulations require mandatory training by all DHS law enforcement agents on the racial profiling prohibition and their obligations. The regulations should also establish an oversight mechanism to hold DHS agents accountable for compliance with the prohibition against all types of profiling.

Border Enforcement

The expansion of border enforcement has been of particular concern to many of our members and their communities who live and work along the United States' borders with Mexico and Canada. In addition to racial profiling incidents described in the section above, federal law enforcement agents along the borders have been known to use excessive force, wounding and even killing individuals in response to minor or no provocation. RWG applauds the inclusion of new human rights protections within border enforcement, including strengthened provisions on excessive use of force, improved training for Border Patrol agents, expansion of the mandate of the CIS Ombudsman to address CBP and ICE issues, and the creation of a Department of Homeland Security Border Oversight Taskforce of community representatives.

[5] For further RWG recommendations regarding data collection, see http://rightsworkinggroup.org/sites/default/files/Data%20Collection%20Recommendations%20for%20DHS.PDF

We are concerned, however, by the bill's proposal to further expand expenditures on border enforcement and militarization at the border. Past expansions have often come with the loss of human rights and civil liberties protections in border communities. We do not support the increased funding for border fencing, surveillance technology, more Border Patrol agents, border crossing prosecutions, Operation Stonegarden, or National Guard deployment. We also urge the Senate to ensure that border "triggers" and the bill's apprehension effectiveness rate requirements will not delay the legalization process and pathway to citizenship.

Court Reform and Judicial Discretion

We welcome language in the bill that restores discretion to immigration judges to assess individual circumstances before determining inadmissibility or deportation. We also welcome the addition of resources to immigration courts, which will help make immigration proceedings more efficient while also ensuring that individual immigrants' rights to due process and a fair trial are upheld.

Employment Verification

RWG welcomes the due process and worker protections included in the legislation's proposal for an employment verification system. We applaud the expansion of the scope of antidiscrimination protections under the Immigration and Nationality Act (INA) with respect to hiring, firing, and verification.

RWG is concerned, however, by threats to privacy implicit in the expansion of employment verification as proposed in this legislation. We are especially troubled by provisions to expand the use of biometric data of individual workers, including the expansion and mandatory use of a photograph database; the aggregation of state drivers' licenses with E-Verify; and the creation of biometric work authorization cards, or biometric green cards, for all non-citizens. We urge the Senate to remove these provisions, to prevent hacking and other privacy breaches, and to avoid the creation of a de facto national ID.

Citizen Gain:
Why a Roadmap to Citizenship is So Important for Immigrants and for the American Economy

Statement of Manuel Pastor
Director
Center for the Study of Immigrant Integration
University of Southern California

Before the Senate Judiciary Committee
Full Commitee
United States Senate
April 22, 2013

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Director
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April 22, 2013

Chairman Leahy, Ranking Member Grassley, and distinguished Members of the Senate Judiciary Committee, thank you for inviting me to present our analysis of the economic benefits of naturalization for immigrants and the economy. I direct the Center for the Study of Immigrant Integration (CSII) at the University of Southern California (USC). Our mission at CSII is to further the understanding of immigrant integration in America. To do so we bring together three emphases: scholarship that draws on academic theory and rigorous research, data that provides information structured to highlight the process of immigrant integration over time, and engagement that seeks to create new dialogues with government, community organizers, business and civic leaders, immigrants and the voting public.

Our center recently released a report entitled "Citizen Gain: The Economic Benefits of Naturalization for Immigrants and the Economy," with support from the John S. and James L. Knight Foundation, and the Carnegie Corporation of New York (Pastor and Scoggins 2012). In it, co-author Justin Scoggins and I provide current estimates of the economic benefits of naturalization for non-citizen immigrants currently residing in the U.S. – both to newly naturalized immigrant workers themselves and to the economy as a whole. That report forms the basis of the testimony presented below.

Introduction and Overview

For a variety of reasons, legalization without a clear and reasonable path to citizenship is wrong for democracy. One set of reasons is grounded in commonly held notions of our national identity: we are, after all, a nation of immigrants, and perhaps as important, creating a permanent set of second-class residents runs directly against the principles of equality and full participation that are so central to the American ethos. However, another rationale of including citizenship in reform is purely economic: for a variety of reasons, citizenship has positive monetary benefits for both immigrants and the economy.

Why does naturalization pay off? There are three key factors at play: citizen immigrants tend to gain more U.S.-specific skills, they have access to a broader range of jobs, and they are

often a better match for employers because their documentation is undisputable. And while one might suspect that the economic gains we and others have found stem primarily from attaining legal status rather than citizenship (after all, only the documented can become citizens), in a set of special tests on California, a state in which we are able to generate estimates of who in the labor force is undocumented, we find an even bigger earnings difference between naturalized and non-citizen, but documented, immigrants.

Our results are largely consistent with previous research, and suggest that naturalization is associated with an 8 to 11 percent gain in annual earnings, on average. Using individual-level data from the 2010 American Community Survey, we were also able to model the length of time it to materialize for the typical newly-naturalized immigrant worker, and found that much of it occurs very soon after naturalization: our estimates suggest that about two-thirds of it is seen in the first two years following naturalization, and the rest of it shows up within about ten years.

The original intent of our work was not to inform the nature of comprehensive immigration reform but rather to encourage civic organizations and Citizenship and Immigration Services to step up their efforts to encourage naturalization. Because of this, we coupled these individual-level estimates with data on the existing pool of eligible-to-naturalize Lawful Permanent Residents (LPRs) from the U.S. Office of Immigration Statistics (OIS), in order to simulate the impact on aggregate earnings of programs aimed at increasing the rate of naturalizations enough to reduce the number of those eligible to naturalize by half over five to ten years. Depending on the program, we put the gain to the American economy over a 10-year period at roughly $21 billion to $45 billion. The key factor distinguishing these lower- and upper-bound estimates is not so much the gain to the individual (8 versus 11 percent) as it is the length of time before higher rates of naturalization are achieved.

The results, while originally developed for another purpose, are directly relevant to the reform package you will be discussing. I understand why the ten year delay in securing a green card is being proposed and I am pleased that the route to citizenship after that would only take three years. On the other hand, I would be even happier with a quicker path to the green card and citizenship: more naturalizations in the short term will mean that the economic gains are sooner realized and so the cumulative long-term gains will be that much larger. Establishing a path to citizenship is clearly in our national economic interest, but the length of that path is important too. Any movement to prolong or complicate that path unnecessarily in the context of immigration reform – under the guise of fairness to those who "played by the rules"– should explain why this is worth causing economic loss to the country as a whole.

Why Would We Expect Economic Benefits from Naturalization?

Citizenship brings many benefits to immigrants, the opportunity to participate more fully in our democracy through the right to vote being primary among them. But beyond the clear

civic gain is an often overlooked economic benefit: for a variety of reasons, naturalized immigrants are likely to see a boost in their family incomes that can benefit their children, their communities and the nation as a whole.

Why might naturalization matter? The two main ways in which obtaining citizenship could lead to better economic outcomes are thoroughly examined in Bratsberg, Ragan, and Nasir (2002). They describe two broad channels: job access and the acquisition of "U.S.-specific human capital" which is incentivized by a decision to remain in the U.S. permanently.

Better access to jobs through attaining citizenship can occur for a variety of reasons, including the fact that many public-sector jobs actually require citizenship – and they tend to pay better (Shierholz 2010). Holding a U.S. passport is also an asset for jobs that require international travel. Beyond the actual job requirements, citizenship can also be a signal to employers that an immigrant has characteristics they are looking for in an employee, such as a basic command of English and possession of "good moral character" – both requirements for naturalization (USCIS 2012) – as well as a commitment to remain in the U.S. (and on the job) for the long term. Finally, some have suggested that citizenship is an assurance of legal status for employers who may be worried about facing sanctions for inadvertently hiring undocumented workers and would thus shy away from non-naturalized immigrants (Mazzolari 2009, 186).

Citizenship is also thought to be associated with the acquisition of U.S.-specific human capital. After all, with planned permanent residency in the U.S. may come a greater incentive to make long-term investments (e.g. obtaining tailored education and/or specific vocational training, starting a U.S.-based business, or social networking with those in the same regional labor market) that might not be made if a person was assuming that s/he might eventually (voluntarily or not) go back home. Unfortunately, because U.S.-specific human capital is not generally measurable in survey data – education just shows up as education rather than a set of courses in a very specific U.S.-based career – it can pose challenges for estimating the economic benefits of naturalization. On the other hand, this also means that finding a difference in income for a naturalized immigrant, once you've controlled for education level, regional labor market, and other factors, could be a signal of this sort of citizenship-induced investment in U.S.-specific human capital.

Research Broadly Agrees that Naturalization Has Economic Benefits

On the whole, naturalized immigrants have better economic outcomes than their non-citizen counterparts – but they also tend to have substantially higher levels of what economists refer to as "human capital" (e.g. experience, education, and English language ability) and vary by other key characteristics as well (recency of arrival, country of origin, etc.). For that reason, the focus of the research has been on whether citizenship matters *per se* for the economic outcome of

immigrants, or whether the differences in outcomes are actually explained by differences in other characteristics.

There are two broad approaches that have been employed in testing whether citizenship matters for immigrant economic outcomes. Both use regression analysis – a statistical technique that attempts to separate impact of citizenship on income from the impacts of other individual characteristics. One approach involves using cross-sectional data (i.e. data for multiple individuals at one point in time) and then modeling income as a function of citizenship and a set of "control variables" thought to affect individual income levels. A second (and far less common) approach tries to track the same individuals over time to see what difference naturalization may have made in their economic trajectory.

Examples abound of studies that have applied the cross-sectional approach, and they broadly concur that naturalization has a positive and statistically significant relationship to income (see, for example, Chiswick 1978, Chiswick and Miller 1992, DeVoretz and Pivnenko 2004, Bevelander and Pendakur 2011, and Shierholz 2010). However, the "over time" or longitudinal studies can be more convincing because they theoretically account for individual characteristics (e.g. personal drive or motivation) that are not captured in survey questions. Moreover, this analytical strategy puts aside the critique that the unauthorized are also non-citizen immigrants and cross-section comparisons can't separate the effect (although we do so, as discussed below): after all, in order to become a citizen, one needs to be authorized first so any gain from citizenship seen over time for the same person is just that.

Unfortunately, such longitudinal studies are a challenge data-wise and hence are few and far between. The only study on immigrants in the U.S. using this method (that we are aware of) is Bratsberg, Ragan, and Nasir (2002). Using data on 332 young male immigrants followed from 1979 through 1991, they found (among other things) that naturalization was associated with a wage gain of around 5.6 percent in their sample; they note that this is not a one shot gain and use an alternative set of specifications to suggest that naturalization leads to a small initial increase followed by wage growth over time that is faster than that of immigrants who did not naturalize but were otherwise similar.

An interesting aspect of the Bratsberg et al. (2002) study is that the authors directly compare the cross-sectional approach and the longitudinal approach *on the same data*. The results for three cross-sectional analyses – all limited to young adult males – suggest that naturalization is associated with a wage increase of between 5 and 6 percent (with all controls in the regression analysis). This figure that is almost exactly what they find when they subject the one of those dataset to the "over-time" analysis described above. This suggests that cross-sectional approaches do yield reliable results – and it also suggests that a cross-section estimate that includes those who have had more time since naturalization might find a larger overall effect.

Our Recent Analysis Suggests Significant Economic Benefits of Naturalization

With the available research suggesting that naturalization has some positive effect on income, we have tried to derive a current estimate of economic benefits of naturalization using the annual earnings of individual immigrant workers in the 2010 American Community Survey (ACS, as processed by IPUMS-USA; see (Ruggles et al. 2010)). To do this, we conducted a multivariate regression analysis in which annual earnings was modeled as a function of as many factors as possible that are important in predicting income ("control variables"), along with a variable indicating if the individual was a naturalized citizen.

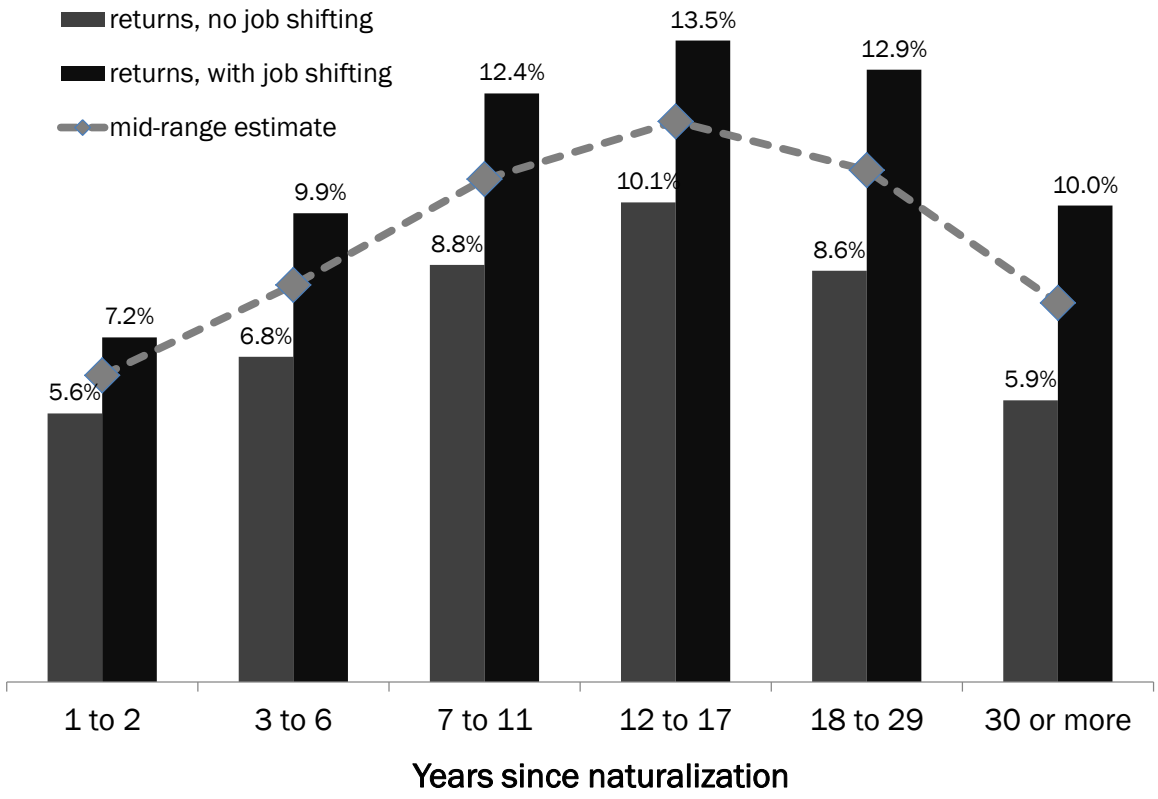
We generated two basic estimates, one that included detailed controls for industry and occupation of employment and that did not. The first estimate is more conservative since some authors stress that one of the paths to higher earnings through naturalization is increased job mobility between occupations and sectors (Bratsberg, Ragan, and Nasir 2002). With these considerations in mind, we suggest that the "true" impact on earnings from attaining citizenship falls somewhere between 8 percent (the estimate we get when including controls for industry and occupation), and 11 percent (the estimate we get without controls for industry and occupation), and treat the two results as lower- and upper-bound estimates, respectively.

In order to test these whether results are biased by the inclusion of the undocumented in the sample, we replicated our models for just Latinos in California – a group for which we are able to estimate who is documented and undocumented using a methodology developed by Enrico Marcelli of San Diego State University. We ran the models once with Latino immigrants, and then again after excluding the undocumented, and compared the results. We found that the impact of naturalization was essentially the same under both specifications, suggesting that citizenship really does make a difference.

Finally, we estimated the time it takes for gains to naturalization to be realized, drawing on information gleaned from a question on year of naturalization included in the 2010 ACS microdata. To do so, we ran the same regression model presented above, but rather than entering the citizenship dummy as a single variable, we split it into a set of dummy variables capturing those who naturalized during different periods of time prior to the survey.

The results of this exercise are summarized in Figure 1. There, we find a boost in earnings of 5.6 percent for those who naturalized one or two years ago, a figure that is fairly close to that found using a comparable specification from Bratsberg et al. (2002). The effect increases with experience since naturalization, reaching between ten and fourteen percent for immigrants who naturalized 12 to 17 years prior to the time of the survey, a rate of growth quite close to that obtained in Steinhardt (2008). In any case, our results do support the notion of a relatively immediate boost in earnings associated with naturalization, with additional gains over subsequent years.

Figure 1: Earned Income Returns to Immigrant Naturalization by Recency of Naturalization



Reform and the Roadmap to Citizenship

In our original paper on this topic, we took these estimated gains over time, applied them to the pool of those eligible to naturalize, and estimated the economic gains to both those immigrants and the country that could be realized by a more aggressive program to promote naturalization. We have subsequently suggested that lowering the fees for naturalization (or shifting the relative fee structure to incentivize the acquisition of English, civics, and citizenship) might have real economic and civic payoffs (Pastor et al. 2013).

But the current discussion of immigration reform raises an important reason to revisit these results. After all, based partly on a provocative article authored by Boston College professor Peter Skerry (2013), some have suggested that we might have a path to legalization that does not include an eventual opportunity for citizenship. Moreover, the various triggers in the current proposal could postpone the granting of green cards and a delay in citizen gains.

Some may think this is a good way of punishing immigrants who didn't follow the rules – but it's really just a way to punish ourselves. A broad legalization program with a clear and rapid path to citizenship will help immigrants to be sure, but it will also help the American economy.

The legislation you are considering is headed in the right direction in this regard. Indeed, I would recommend a shorter period in which the formerly unauthorized would be in the Registered Provision Immigrant status and a more reasonable set of triggers with regard to determining whether border enforcement has improved.

Inevitably, however, you and your colleagues have had to make (and will continue to make) compromises between competing interests and views. As you do so, recognize the civic and economic benefits we will forego if we do not maintain and indeed accelerate the route to citizenship for the unauthorized as well as more strongly promote the naturalization of those who are currently lawful permanent residents (LPRS).

Thank you.

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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 and jurisdictions, 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 many 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 <u>less</u> 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 General 1979-1983
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
Steve Freudenthal	Wyoming Attorney General 1981-1982
David B. Frohnmayer	Oregon Attorney General 1981-1991
Jose Fuentes Agostini	Puerto Rico Attorney General 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 Reichard	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, DOJ

National Association
of Attorneys General

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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.

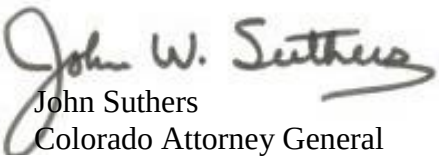
Our immigration system must be flexible enough to address the needs of businesses in the various states, with state input, while protecting the interests of workers. This includes a visa system that is both responsive and effective in meeting the demands of our economy. It should also acknowledge the 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.

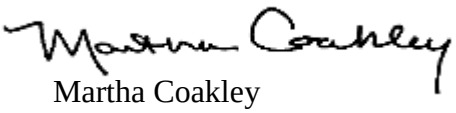
Our immigration policies must provide a sensible means to deal with the immigrants who are currently in the country without legal status but are of good character, pay taxes and are committed to continuing to contribute to our society.

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,

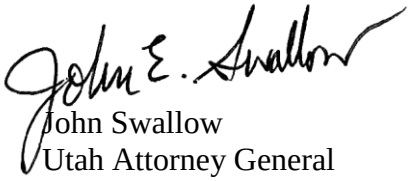


John Suthers
Colorado Attorney General



Martha Coakley
Massachusetts Attorney General

Catherine Cortez Masto
Nevada Attorney General



John Swallow
Utah Attorney General

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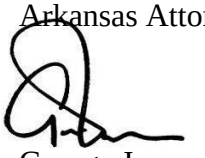
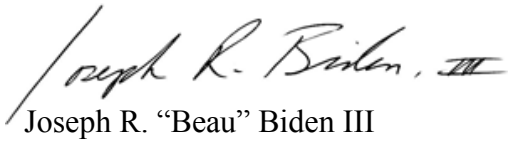
Afoa Leulumoega Lutu
American Samoa Attorney General

Dustin McDaniel
Arkansas Attorney General

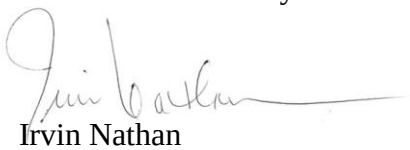
Kamala Harris
California Attorney General



George Jepsen
Connecticut Attorney General



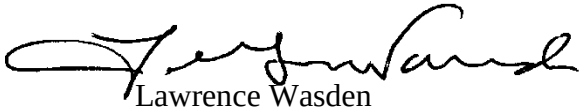
Joseph R. "Beau" Biden III
Delaware Attorney General



Irvin Nathan
District of Columbia Attorney General

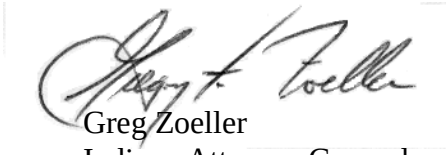
Lenny Rapadas
Guam Attorney General

David Louie
Hawaii Attorney General



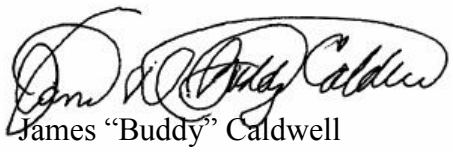
Lawrence Wasden
Idaho Attorney General

Lisa Madigan
Illinois Attorney General



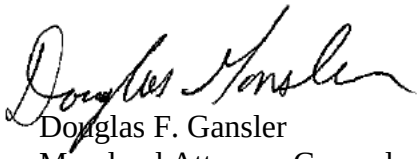
Greg Zoeller
Indiana Attorney General

Tom Miller
Iowa Attorney General



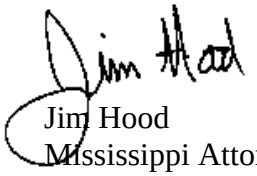
James "Buddy" Caldwell
Louisiana Attorney General

Janet Mills
Maine Attorney General

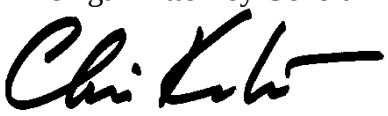


Douglas F. Gansler
Maryland Attorney General

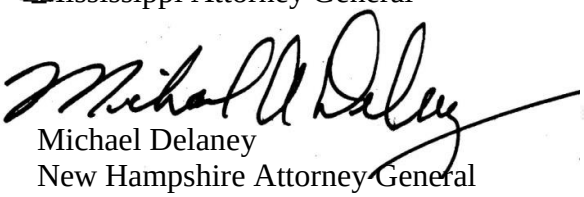
Bill Schuette
Michigan Attorney General



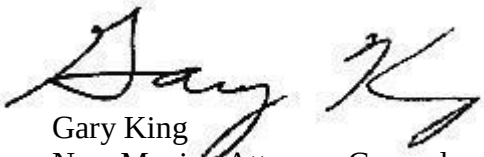
Jim Hood
Mississippi Attorney General



Chris Koster
Missouri Attorney General



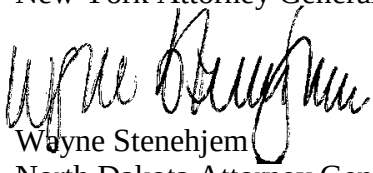
Michael Delaney
New Hampshire Attorney General



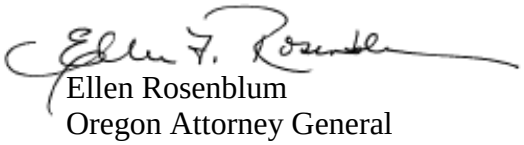
Gary King
New Mexico Attorney General

Eric Schneiderman
New York Attorney General

Roy Cooper
North Carolina Attorney General



Wayne Stenehjem
North Dakota Attorney General

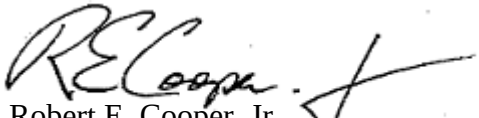


Ellen Rosenblum
Oregon Attorney General

Luis Sánchez Betances
Puerto Rico Attorney General

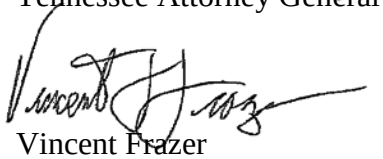
Peter Kilmartin
Rhode Island Attorney General

Marty J. Jackley
South Dakota Attorney General

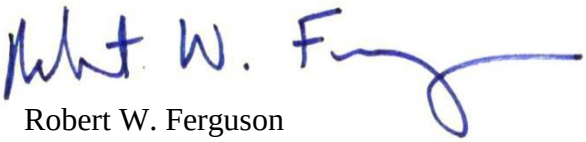


Robert E. Cooper, Jr.
Tennessee Attorney General

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 24, 2013

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

The Honorable Chuck Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Chairman Leahy and Ranking Member Grassley:

The nation's governors and chief state school officers appreciate your work to create a Science, Technology, Engineering, and Math (STEM) education and training fund in the Border Security, Economic Opportunity, and Immigration Modernization Act (S. 744). Currently in S. 744, however, federal STEM funding would support the federal government for federally determined and prescribed priorities. States, not the federal government, fund and manage most of public education in the country.

As the Senate moves forward to design a sustainable pipeline to educate U.S. workers for careers in STEM fields, governors and chief state school officers encourage you to consider the Promoting American Ingenuity Account created by S. 169, the Immigration Innovation Act of 2013, with minor amendments. Governors and chief state school officers support S. 169's framework to expand access to STEM education, collaboration, and innovation as detailed in the attached legislative proposal. Governors and chief state school officers believe incorporating a modified S. 169 STEM framework into S. 744 is necessary to encourage systemic STEM education improvements, accelerate best practices, and spur ongoing state-led innovation by engaging state leaders, businesses, and other state agencies engaged in this critical venture.

The NGA/Chief State School Officers Proposal would ensure that:

- State leaders are empowered to work across and among state agencies to meet student and employer needs;
- States, not the federal government, would retain the authority to design innovative programs that strengthen STEM education; and
- All states and territories would be eligible to receive federal support to expand STEM education.

Governors and chief state school officers are leading the way in STEM education by increasing proficiency and growing the number of students who pursue STEM careers. Federal support, through increased visa fees, to expand state-led STEM reform would fuel economic growth and innovation in states. Inclusion of a robust and flexible STEM education funding stream to states would allow governors and chief state school officers to design STEM policies in a manner best suited to their state's educational and economic needs.

Thank you for your consideration. If you have any questions regarding this matter, please contact Joan Wodiska at jwodiska@nga.org or (202) 624-5361 or Peter Zamora at PeterZ@CCSSO.org or (202) 336-7003.

Sincerely,

Governor Dannel P. Malloy
Chair
Education and Workforce Committee

Governor Terry Branstad
Vice Chair
Education and Workforce Committee

Commissioner Mitchell Chester
President
Council of Chief State School Officers

CC: Members of the Judiciary Committee
Senator Bennet
Senator Flake
Senator McCain
Senator Menendez
Senator Rubio

COMMUNITY COUNCIL of Idaho

317 HAPPY DAY BLVD., SUITE 250
CALDWELL, IDAHO 83607
OFFICE: 208-454-1652
FAX: 208-459-0448

April 19, 2013

Dear Senate Judiciary Committee:

Our organization, Community Council of Idaho, Inc., serves over 16,000 individuals on an annual basis across Idaho. A large percentage of those we serve are farm workers. We submit this statement for inclusion in the record of the April 19, 2013 Senate Judiciary Committee hearing on "Comprehensive Immigration Reform Legislation." We believe that immigration reform is essential to helping farm workers and their families have the opportunity to lead productive and healthy lives. We are therefore grateful to you and your colleagues, who have spent considerable effort to recognize the interests and knowledge of stakeholders in agriculture and to develop legislation to reform our broken immigration system.

We're very pleased that farmworker and grower representatives have come to an agreement on immigration reform for agriculture. This compromise should greatly increase support for comprehensive immigration reform and get us closer to dignity for farm workers. As the Border Security, Economic Opportunity, and Immigration Modernization Act of 2013 (CIR bill) moves through the legislative process, we write to emphasize the importance of labor protections for immigrant farm workers and urge you to ensure that existing worker protections remain in the bill or are strengthened.

The Current Landscape: Greater Protections Needed for Farm workers

The lack of authorized immigration status of so many farm workers contributes to their poor wages and working conditions. Farmworker wages are among the lowest in the country. Many earn at or just above the minimum wage. Poverty among farm workers is more than double that of all wage and salary employees. Few farm workers receive any fringe benefits, such as paid sick leave or paid vacation. Decrepit, overcrowded housing is all too common. Health insurance is rarely provided by employers and few farm workers can afford to purchase it on their own. Yet, agriculture ranks among the most hazardous occupations. Federal laws on overtime pay and collective bargaining exclude farm workers, as do most federal occupational safety standards and many states' workers' compensation systems.

Such marginalized workers fear joining labor unions, seeking improved job terms, or challenging illegal employment practices. Agricultural workers experience rampant violations of employment laws, including minimum wage requirements. Frequently, farm operators hire workers through farm labor contractors, whom they claim are the sole "employers" for purposes of escaping immigration and labor laws. Undocumented workers who challenge illegal

COMMUNITY COUNCIL of Idaho

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employment practices risk losing their job and breaking up their families and other dire consequences of deportation.

Roadmap to Citizenship: the Blue Card

We are very pleased that the CIR bill contains a roadmap to citizenship for current and future farm workers and their families. We strongly support the proposal for a "blue card" program, under which experienced undocumented farm workers and their family members could earn legal immigration status, permanent residency and citizenship within a reasonable period of time and at a reasonable cost given their low incomes. Farm workers and their families are contributing to America; it is only fair that they be given an opportunity earn legal immigration status. An above-board agricultural labor relations system will lead to better working conditions, less employee turnover and higher productivity, all of which will help ensure a prosperous agricultural sector. The entire food system will benefit by responding to consumers' increasing interest in the conditions under which their fruits and vegetables are produced.

The New Nonimmigrant Agricultural Visa Program

The new system would end or weaken certain longstanding H-2A labor protections but also would provide important new rights. We are very pleased that farm workers in the proposed future visa program will be covered by the Migrant and Seasonal Agricultural Worker Protection Act (AWPA), the main federal law that protects farm workers. The program would also maintain the requirement that U.S. workers in corresponding employment receive the same wages and benefits as the visa workers (with unfortunate exceptions of housing for certain workers), and it contains a cap to limit the number of workers that may be brought in on the visa. We hope that portability provisions of the new visa program would offer workers some ability to move from job to job, which should mitigate some of the problems in the current H-2A program associated with workers being tied to their employer by their visa. However, we note that contract workers in the program will have less freedom to change jobs, which could result in labor exploitation. There will need to be protections for contract workers, whose employers violate their labor rights. They should be assisted in transferring to another position.

The 50% job preference rule in the H-2A program that requires employers to hire any ready, willing and qualified U.S. worker up until 50% of the H-2A contract period is not in the current bill. The administration of the program by the U.S. Department of Agriculture instead of the U.S. Department of Labor causes concern. The Department of Labor has significant experience, expertise and infrastructure in operating guest worker programs and protecting workers. If this major change is maintained in the legislation, we support that the bill's provision of a consultative role for the U.S. Department of Labor.

COMMUNITY COUNCIL of Idaho

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We note that other reductions in the requirements for and oversight of recruitment of U.S. workers could result in U.S. workers being displaced by workers on the visa. Thus, the modest protections for U.S. workers that are included in the current compromise language will be essential to protect the jobs of current U.S. workers and future legalizing workers. Further, once the bill is enacted, there will need to be stringent enforcement of the protections in the program and labor laws protecting farm workers.

The Broader Legalization Program and Worker Protections in the CIR Bill

We applaud the bill's broader legalization program. We also strongly support the provisions in the bill that aim to protect immigrant and nonimmigrant workers from retaliation and abuse, including the protections against abuse in international labor recruitment. Workers' experiences during the recruitment process have a substantial impact on their earnings and conditions in the U.S. Many temporary foreign workers are charged high recruitment fees, in violation of federal law, to obtain employment. To afford those fees and transportation costs, workers often borrow money, frequently at high interest rates. Upon arrival in the U.S., these indebted workers, particularly under the H-2A program and potentially in the future, are too fearful of losing their jobs and deportation to challenge unfair or illegal conduct. The recruitment system must be regulated and transparent. Employers that use recruiters for guest workers should disclose to the government the identities of the recruiters, ensure workers do not pay recruitment fees, and be responsible for abuses inflicted on workers when they have used unlicensed recruiters.

In conclusion, we strongly support the proposal's road map to citizenship for undocumented farm workers and their families. We stress that the future nonimmigrant agricultural visa program is the product of a compromise and that its modest labor protections must remain in the bill and be enforced effectively in order for the program to be workable and fair. Thank you again for your efforts to bring farm workers one step closer to gaining legal status and the much-earned recognition for their contributions to the United States.

Regards,

Idaho

Written Testimony of Farmworker Justice
Before the Senate Judiciary Committee on
"Comprehensive Immigration Reform Legislation"

April 22, 2013

Dear Senate Judiciary Committee:

Farmworker Justice submits this statement for inclusion in the record of the April 22, 2013 Senate Judiciary Committee hearing on "the Border Security, Economic Opportunity, and Immigration Modernization Act, S.744." For over thirty years, Farmworker Justice has engaged in policy analysis, education and training, advocacy and litigation to empower farmworkers to improve their wages and working conditions, immigration status, health, occupational safety and access to justice. Since its inception, Farmworker Justice has played an important role in immigration policy discussions, monitored the H-2A agricultural guestworker program throughout the country and helped farmworker organizations participate in policy debates.

We applaud the bipartisan efforts to reach agreement on reforming our broken immigration system that led to the Border Security, Economic Opportunity, and Immigration Modernization Act of 2013 (CIR Bill). We greatly appreciate the considerable time that the sponsors and their colleagues have spent to take into account the interests and knowledge of stakeholders in agriculture. We also commend the United Farm Workers (UFW) for its leadership in reaching a hard-fought compromise with agricultural employer organizations and a bipartisan group of U.S. Senators on immigration legislation regarding farmworkers. This compromise should greatly increase support for comprehensive immigration reform and get us closer to dignity for farm workers.

Farmworker Justice seeks public policies and private conduct that treat the men and women employed on our ranches and farms with dignity. The wages and working conditions of most farmworkers deserve improvement and immigration policy plays an important role in determining farmworkers' ability to win such improvements. Immigration status is not only an important determinant of job terms, but also of the health and safety of farmworkers, their family members and their communities. For these and other reasons, immigration policy has been at the core of the mission of Farmworker Justice for its entire existence.

We strongly support the inclusion in S. 744 of a path to lawful permanent residency and citizenship for farmworkers and their families. We are troubled by some aspects of the bill. The new nonimmigrant worker program for W-3 and W-4 visas lacks certain protections and procedures that developed in agricultural guestworker programs to remedy and prevent serious abuses, but it also contains labor protections of significant importance. The bill also creates a modest but critically important effort to reduce serious abuses associated with international labor recruitment on behalf of employers in the United States. We recognize that immigration reform cannot pass Congress without the broad support that comes from difficult concessions to reach compromise.

We encourage members of Congress to adopt a final bill that ensures fair treatment for current and future farmworkers and their families. As the bill moves through the legislative process, we

write to emphasize the importance of granting a road map to citizenship for current and future farmworkers and their family members and including the bill's existing or stronger labor protections to help farmworkers improve their living and working conditions.

The Current Landscape: Greater Protections Needed for Farmworkers

Our nation's broken immigration system, labor laws that discriminate against farmworkers, and the labor practices of many agricultural employers have combined to create an agricultural labor system that is unsustainable and fundamentally unfair to our farmworkers. The resulting turnover in the farm labor force means that now more than one-half of the approximately 2 million seasonal farmworkers lack authorized immigration status. [1] The presence of undocumented workers depresses wages for all farmworkers, including the 700,000 to 1 million U.S. citizens and lawful immigrants in agriculture. But undocumented farmworkers are not leaving and they are needed.

The lack of authorized immigration status of so many farmworkers contributes to their poor wages and working conditions. Farmworker wages are among the lowest in the country. Many earn at or just above the minimum wage. Poverty among farmworkers is more than double that of all wage and salary employees. Few farmworkers receive any fringe benefits, such as paid sick leave or paid vacation. Decrepit, overcrowded housing is all too common. Health insurance is rarely provided by employers and few farmworkers can afford to purchase it on their own. Yet, agriculture ranks among the most hazardous occupations. Federal laws on overtime pay and collective bargaining exclude farmworkers, as do most federal occupational safety standards and many states' workers' compensation systems. The absence of such protections harms farmworkers and imposes a competitive disadvantage on those employers which voluntarily provide farmworkers with the same minimum standards that apply to other occupations.

Such marginalized workers fear joining labor unions, seeking improved job terms, or challenging illegal employment practices. Agricultural workers experience rampant violations of employment laws, including minimum wage requirements. Frequently, farm operators hire workers through farm labor contractors, whom they claim are the sole "employers" for purposes of escaping immigration and labor laws. Undocumented workers who challenge illegal employment practices risk losing their job and breaking up their families and other dire consequences of deportation.

Roadmap to Citizenship: the Blue Card

Farmworker Justice strongly supports the CIR bill's inclusion of a roadmap to citizenship for current and future farmworkers and their families. We support the proposal's "blue card" program, under which experienced undocumented farmworkers and their family members could earn legal immigration status, permanent residency and citizenship within a reasonable period of time and at a reasonable cost. Farmworkers and their families are contributing to America; it is

[1] Findings from the National Agricultural Workers Survey (NAWS) 2001 – 2002: A Demographic and Employment Profile of United States Farm Workers, available at http://www.doleta.gov/agworker/report9/chapter1.cfm#eligibility.

only fair that they be given an opportunity to earn legal immigration status. With a roadmap to citizenship, all farmworkers, including the hundreds of thousands of current U.S. workers and the newly American, will be on a level playing field. An above-board agricultural labor relations system will lead to better working conditions, less employee turnover and higher productivity, all of which will help ensure a prosperous agricultural sector. The entire food system will benefit by responding to consumers' increasing interest in the conditions under which their fruits and vegetables are produced.

The bill imposes a harsh requirement. Despite having to prove that they have been employed in agriculture recently, the applicants must also continue to work in agriculture for three to five more years. The better policy would be to require employers to retain their workforce by improving job terms and provide farm workers with the same labor law rights of other workers. We are also troubled by delaying eligibility for certain public benefits until five years after obtaining a green card, despite existing federal law which would enable eligible workers to qualify for benefits, such as SNAP food stamps, if they have been employed in the U.S. for 40 work quarters. The wages of most farmworkers are so low that access to subsidized nutrition, health and other benefits are important to helping farmworker children develop. Such concessions may be necessary to reach an agreement and the opportunity to obtain lawful permanent residency and citizenship is of critical importance.

Implementation of the legalization program will present many challenges for farmworkers due to geographic, educational, language and other barriers. Applicants must hope that their previous employers – many of whom use fly-by-night labor contractors – will cooperate in documenting their past employment. Although the bill sets forth a reasonable application process, Congress must allocate sufficient resources to ensure that all eligible farmworkers are educated about the program and that government agencies are equipped to handle their applications efficiently and with understanding.

The Current H-2A Temporary Agricultural Guestworker Program

Currently, employers may hire foreign workers on temporary visas through the H-2A temporary foreign agricultural worker program. The H-2A program does not limit the number of visas available to employers each year, but contains important protections that were put in place in 1987 by the Reagan Administration and restored by the Obama Administration in 2010. The protections are intended to protect the jobs, wages and other labor standards of U.S. farmworkers by encouraging employers to hire U.S. workers before turning to the guestworker program and by preventing wage depression and the deterioration of working conditions. They are also aimed at reducing exploitation of foreign citizens of poor countries. These labor protections evolved over several decades and are rooted in the experiences of the Bracero program, which nonetheless became notorious for abuse of Mexican citizens during its twenty-two year history ending in 1964. These labor protections are inadequate to overcome the fundamentally flawed nature of the H-2A program and rampant violations of workers' rights are endemic.

The H-2A program's inherent flaws begin with the recruitment of the workers, who have typically paid illegal recruitment fees for the opportunity to work in the United States. Because the workers arrive indebted, they are desperate to work to repay their debt. The workers are tied to an employer for an entire season, must leave the country when the job ends and hope that the

employer will request a visa for them in a following year. All of these factors make workers extremely vulnerable to abuse. Often employers prefer guestworkers over U.S. workers because they are more vulnerable and less likely to challenge illegal conduct, in addition to other factors: (1) guestworkers will work at the limits of human endurance for low wages because they are tied to the employer and desperate to repay debt. U.S. workers seek more sustainable productivity expectations; (2) the H-2A employer does not pay Social Security or Unemployment Tax on the guestworkers' wages, but must do so on the U.S. workers' wages, saving about 10-13% per worker; (3) H-2A workers are excluded from the principal federal employment law for farmworkers, the Migrant and Seasonal Agricultural Worker Protection Act; and (4) employers are able to handpick their H-2A workers -they are virtually all young men- because anti-discrimination laws aren't enforced in the recruitment process abroad.

The New Nonimmigrant Agricultural Visa Program

The new system of W-3 and W-4 visas that would replace the H-2A program would end or weaken certain longstanding H-2A labor protections but it would also provide important new rights. We are very pleased that farmworkers in the proposed future visa program will be covered by the Migrant and Seasonal Agricultural Worker Protection Act (AWPA), the main federal employment law that protects farmworkers. The exclusion of H-2A guestworkers from AWPA has led to many abuses. The program would also maintain the requirement that a participating employer provide U.S. workers in corresponding employment the same wages and benefits as the visa workers (with unfortunate exceptions of housing). The bill contains a cap to limit the number of W-3 and W-4 visas. We hope that portability provisions of the new visa program, which offer workers some ability to move from job to job, mitigate some of the problems associated with H-2A workers being tied to their employer by their visa. However, we note that W-3 contract workers in the program will have less freedom to change jobs than the W-4 visa holders or U.S. workers, which creates the potential for labor exploitation. The bill contains some protections for contract workers but special attention will need to be paid to remedy and prevent violations of their labor rights. At a minimum, victimized contract workers should be assisted in transferring to another position.

Some of the other provisions give us pause. The 50% job preference rule in the H-2A program that requires employers to hire any ready, willing and qualified U.S. worker up until 50% of the H-2A contract period is not in the current bill. Nonimmigrant agricultural visa workers can remain in the U.S. for as long as 3 years and then renew their visa for another 3 years, but will not be able to bring their spouses and dependent children with them, which will separate families. The administration of the program by the U.S. Department of Agriculture instead of the U.S. Department of Labor causes concern. The Department of Labor has significant experience, expertise and infrastructure in operating guestworker programs and protecting workers. If this major change is maintained in the legislation, we support that the bill's provision of a consultative role for the Department of Labor. We also strongly support the bill's assignment of enforcement of worker protections to the Department of Labor, which will be able to accept worker complaints but also initiate investigations and remedy violations. However, the Department of Labor's limited resources means that the Congress must maintain the bill's provisions covering nonimmigrant workers under the Migrant and Seasonal Agricultural Worker Protection Act and continuing the guestworkers' eligibility for federally-funded legal aid programs' assistance.

We note that other reductions in the requirements for and oversight of recruitment of U.S. workers could result in U.S. workers being displaced by workers on the visa. Thus, the modest protections for U.S. workers that are included in the current compromise language will be essential to protect the jobs of current U.S. workers and future legalizing workers. Further, once the bill is enacted, there will need to be stringent enforcement of the protections in the program and labor laws protecting farmworkers.

We applaud the opportunity for nonimmigrant visa farmworkers to eventually apply for green cards but we are concerned that the waiting period could last many years.

Other Provisions of the CIR Bill

We also strongly support the provisions in the bill that aim to protect immigrant and nonimmigrant workers from retaliation and abuse, including the protections against abuse in international labor recruitment. Workers' experiences during the recruitment process have a substantial impact on their earnings and conditions in the U.S. Many temporary foreign workers – not just agricultural workers – are charged high recruitment fees, in violation of federal law, to obtain employment. To afford those fees and transportation costs, workers often borrow money from the recruiters, frequently at high interest rates. In some cases, recruiters misrepresent the amount and conditions of work that will be available in the U.S. Upon arrival in the U.S., these indebted workers, particularly under the H-2A program and potentially in the future, are too fearful of losing their jobs and deportation to challenge unfair or illegal conduct. It has often been said that many guestworkers "work scared" and therefore are compliant and highly productive at low wages in comparison to workers with freedom in the marketplace. The recruitment system must be regulated and transparent. International labor recruiters should be required to register with the government to aid in monitoring the treatment of migrating workers. Employers that use recruiters for guestworkers should disclose to the government the identities of the recruiters, ensure workers do not pay recruitment fees, and be responsible for abuses inflicted on workers when they have used unlicensed recruiters.

In conclusion, we strongly support the proposal's road map to citizenship for undocumented farmworkers and their families. We stress that the future nonimmigrant agricultural visa program is the product of a compromise and that its modest labor protections must remain in the bill and be enforced effectively in order for the program to be workable and fair. Thank you again for your efforts to bring undocumented farmworkers one step closer to gaining legal status and the much-earned recognition for their contributions to the United States.

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Dear Senate Judiciary Committee:

Our organization, The Farmworker Association of Florida, serves farmworkers. We submit this statement for inclusion in the record of the April 19, 2013 Senate Judiciary Committee hearing on "Comprehensive Immigration Reform Legislation." We believe that immigration reform is of the utmost importance to helping farmworkers and their families have the opportunity to lead productive, healthy lives. We are therefore grateful to you and your colleagues, who have spent considerable effort to take into account the interests and knowledge of stakeholders in agriculture and to develop legislation to reform our broken immigration system.

We're very pleased that farmworker and grower representatives have come to an agreement on immigration reform for agriculture. This compromise should greatly increase support for comprehensive immigration reform and get us closer to dignity for farm workers. As the Border Security, Economic Opportunity, and Immigration Modernization Act of 2013 (CIR bill) moves through the legislative process, we write to emphasize the importance of labor protections for immigrant farmworkers and urge you to ensure that existing worker protections remain in the bill or are strengthened.

The Current Landscape: Greater Protections Needed for Farmworkers

The lack of authorized immigration status of so many farmworkers contributes to their poor wages and working conditions. Farmworker wages are among the lowest in the country. Many earn at or just above the minimum wage. Poverty among farmworkers is more than double that of all wage and salary employees. Few farmworkers receive any fringe benefits, such as paid sick leave or paid vacation. Decrepit, overcrowded housing is all too common. Health insurance is rarely provided by employers and few farmworkers can afford to purchase it on their own. Yet, agriculture ranks among the most hazardous occupations. Federal laws on overtime pay and collective bargaining exclude farmworkers, as do most federal occupational safety standards and many states' workers' compensation systems.

Such marginalized workers fear joining labor unions, seeking improved job terms, or challenging illegal employment practices. Agricultural workers experience rampant violations of employment laws, including minimum wage requirements. Frequently, farm operators hire workers through farm labor contractors, whom they claim are the sole "employers" for purposes of escaping immigration and labor laws. Undocumented workers who challenge illegal employment practices risk losing their job and breaking up their families and other dire consequences of deportation. With a roadmap to citizenship, all

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farmworkers, including the hundreds of thousands of current U.S. workers and the newly American, will be on a level playing field.

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Roadmap to Citizenship: the Blue Card

We are very pleased that the CIR bill contains a roadmap to citizenship for current and future farmworkers and their families. We strongly support the proposal for a "blue card" program, under which experienced undocumented farmworkers and their family members could earn legal immigration status, permanent residency and citizenship within a reasonable period of time and at a reasonable cost given their low incomes. Farmworkers and their families are contributing to America; it is only fair that they be given an opportunity earn legal immigration status. With a roadmap to citizenship, all farmworkers, including the hundreds of thousands of current U.S. workers and the newly American, will be on a level playing field. An above-board agricultural labor relations system will lead to better working conditions, less employee turnover and higher productivity, all of which will help ensure a prosperous agricultural sector. The entire food system and other non-eatable farm products will benefit by responding to consumers' increasing interest in the conditions under which their fruits and vegetables are produced.

The New Nonimmigrant Agricultural Visa Program

The new system would end or weaken certain longstanding H-2A labor protections but also would provide important new rights. We are very pleased that farmworkers in the proposed future visa program will be covered by the Migrant and Seasonal Agricultural Worker Protection Act (AWPA), the main federal law that protects farmworkers. The program would also maintain the requirement that U.S. workers in corresponding employment receive the same wages and benefits as the visa workers (with unfortunate exceptions of housing for certain workers), and it contains a cap to limit the number of workers that may be brought in on the visa. We hope that portability provisions of the new visa program would offer workers some ability to move from job to job, which should mitigate some of the problems in the current H-2A program associated with workers being tied to their employer by their visa. However, we note that contract workers in the program will have less freedom to change jobs, which could result in labor exploitation. There will need to be protections for contract workers, whose employers violate their labor rights. They should be assisted in transferring to another position.

Some of the other provisions give us pause. The 50% job preference rule in the H-2A program that requires employers to hire any ready, willing and qualified U.S. worker up until 50% of the H-2A contract period is not in the current bill. The administration of the program

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by the U.S. Department of Agriculture instead of the U.S. Department of Labor causes concern. The Department of Labor has significant experience, expertise and infrastructure in operating guest worker programs and protecting workers. If this major change is maintained in the legislation, we support that the bill's provision of a consultative role for the Department of Labor. We note that other reductions in the requirements for and oversight of recruitment of U.S. workers could result in U.S. workers being displaced by workers on the visa. Thus, the modest protections for U.S. workers that are included in the current compromise language will be essential to protect the jobs of current U.S. workers and future legalizing workers. Further, once the bill is enacted, there will need to be stringent enforcement of the protections in the program and labor laws protecting farmworkers. We applaud the opportunity for nonimmigrant visa farmworkers to eventually apply for green cards but we are concerned that the waiting period could last many years.

The Broader Legalization Program and Worker Protections in the CIR Bill

We applaud the bill's broader legalization program. We also strongly support the provisions in the bill that aim to protect immigrant and nonimmigrant workers from retaliation and abuse, including the protections against abuse in international labor recruitment. Workers' experiences during the recruitment process have a substantial impact on their earnings and conditions in the U.S. Many temporary foreign workers are charged high recruitment fees, in violation of federal law, to obtain employment. To afford those fees and transportation costs, workers often borrow money, frequently at high interest rates. Upon arrival in the U.S., these indebted workers, particularly under the H-2A program and potentially in the future, are too fearful of losing their jobs and deportation to challenge unfair or illegal conduct. It has often been said that many guestworkers "work scared" and therefore are compliant and highly productive at low wages in comparison to workers with freedom in the marketplace. The recruitment system must be regulated and transparent. Employers that use recruiters for guestworkers should disclose to the government the identities of the recruiters, ensure workers do not pay recruitment fees, and be responsible for abuses inflicted on workers when they have used unlicensed recruiters. In conclusion, we strongly support the proposal's road map to citizenship for undocumented farmworkers and their families. We stress that the future nonimmigrant agricultural visa program is the product of a compromise and that its modest labor protections must remain in the bill and be enforced effectively in order for the program to be workable and fair. Thank you again for your efforts to bring farmworkers one step closer to gaining legal status and the much-earned recognition for their contributions to the United States.

Written Statement of
Chad Griffin
President
Human Rights Campaign

To the

Committee on Judiciary
United States Senate
Room 216
Hart Senate Office Building
April 22, 2013

Mr. Chairman and Members of the Committee:

My name is Chad Griffin, and I am the President of the Human Rights Campaign, America's largest civil rights organization working to achieve lesbian, gay, bisexual and transgender (LGBT) equality. On behalf of our over 1.5 million members and supporters nationwide, I applaud the bipartisan introduction of the Border Security, Economic Opportunity, and Immigration Modernization Act of 2013 (S. 744) and urge the members of this committee to amend S. 744 to provide relief to the lesbian and gay families who, under current immigration law, are often forced to choose between the country they love and the person they love.

John Beddingfield and Erwin de Leon are one such family. They have been together since 1998 and were married in Washington, DC in 2010. John, a North Carolina native, is an Episcopal priest and rector of All Souls Memorial Episcopal Church. Erwin, originally from the Philippines, is a Ph.D. candidate whose student's visa will expire when he completes his degree this year.

If John and Erwin were a straight couple, Erwin would receive a green card as a result of their marriage, making Erwin eligible for permanent residency in the U.S. But because they are gay, and even though they are legally married, they are faced with the prospect of either having to separate or to leave their home, friends, family—and the country they love.

All across our country, same-sex binational couples like John and Erwin are struggling to see a future for their families. There are an estimated 24,700 same-sex binational couples (one native-born U.S. citizen and one noncitizen) in the U.S. today, and it is estimated that these couples are raising over 11,000 children. These couples, these children and these families deserve better than the discriminatory treatment they receive under current laws.

There is no doubt that S. 744 brings us one step closer to the historic immigration reform this country desperately needs. From a pathway to citizenship, to a solution for young DREAMers, to

much-needed reform for asylum-seekers and our immigration detention facilities, this bill will change millions of lives for the better.

The bill will provide a brighter future to the 267,000 undocumented LGBT adult immigrants who are forced into the shadows of society. It will help the LGBT champions of the DREAM Act finally be recognized for who they are – Americans. It will ensure that individuals who flee anti-LGBT violence in their home countries will not be denied asylum because of an arbitrary filing deadline. And, it will protect LGBT immigrants in detention from experiencing abuse and solitary confinement by increasing detention oversight and detention alternatives.

However, as drafted, the bill omits critical language that would end discrimination against the tens of thousands of same-sex binational couples like John and Erwin. Because of the Defense of Marriage Act, U.S. citizens and residents cannot sponsor a same-sex partner for family-based immigration, unlike their heterosexual counterparts. Amending S. 744 to include the Uniting American Families Act (UAFA) would remedy this injustice.

UAFA provides lesbian and gay individuals the same opportunity as opposite-sex married couples to sponsor their partner. Lesbian and gay couples, just like their straight peers, would need to fulfill strict requirements to show proof of their relationship — including affidavits from friends and family or evidence of financial support. And, in line with current immigration law, UAFA would impose harsh penalties for any fraud, including up to five years in prison and as much as $250,000 in fines.

For decades, the family unit has been a cornerstone of immigration law. UAFA not only keeps those families together, but it keeps our country economically secure by recognizing the family as the center of economic stability.

Alessandro (Sandro) Tomassetti and Alon Rosenfeld were married in California and spent 14 years building a life together in Los Angeles. Sandro, a Canadian, was recruited to the U.S. by Disney to work on feature films. Alon, who is Israeli-born, was brought to the U.S. by Microsoft. After 4 years of working in the special effect industry in Los Angeles, Sandro left his job, retrained and opened up a small business with the help of Alon. Alon, meantime, stayed at Microsoft and received his U.S. citizenship.

In 2010, Sandro's visa was set to expire and, because the U.S. does not recognize his marriage to Alon, the couple was forced to close their nationally-recognized small business in order to move their life abroad. Microsoft lost an employee with over a decade of experience. Los Angeles lost a small business that provided jobs for over 30 individuals.

Every year, highly-skilled couples like Sandro and Alon are forced to relocate their lives and livelihoods abroad. When they leave for one of over two dozen countries that offer residency for lesbian and gay partners, we lose their talent and skills to a foreign competitor. We lose the taxes they pay. We lose the small businesses they run. Our communities suffer. Discrimination has a

needlessly high cost. That is why nearly 30 Fortune 500 companies have supported UAFA, declaring that it will allow them to recruit and keep the best talent in America.

As a matter of basic justice, hardworking people who come to the U.S. seeking a better life should be treated fairly regardless of whom they love. At this moment of bipartisan consensus, this committee should seize the chance to do the right thing for couples like John and Erwin, and Sandro and Alon. With one amendment, you have the opportunity to adopt a commonsense policy that is rooted in legal and economic fairness—guaranteeing that immigration reform is truly comprehensive. Please adopt UAFA and send this vital bill to the floor for passage.

KELLY SERVICES

Written Testimony

Of

Carl Camden
CEO
Kelly Services, Inc.

on

S. 74

"The Border Security, Economic Opportunity, and Immigration Modernization Act"

April 25, 2013

Carl Camden
4/25/2013

Mr. Chairman, members of the Senate Judiciary Committee, my name is Carl Camden. I am President and Chief Executive Officer of Kelly Services. I am pleased to submit testimony for the record on "The Border Security, Economic Opportunity, and Immigration Modernization Act, S.74."

I am encouraged that immigration reform is now gaining the attention it richly deserves. Even a year ago, it would have seemed unlikely that a broad based solution to repair and update our broken immigration system would be the subject of hearings such as these.

Common sense, solutions-oriented immigration reform is crucial to the long term competitiveness of the U.S. economy. It is a crucial ingredient in the sustainable and sustained economic growth that is required to effectively address our tax and budget issues. It is crucial to assure proper workplace protections to a group that is too easily exploited by unscrupulous bad actors. It is crucial to restoring a level playing field for those employers who do the right thing.

Kelly Services brings unique experience and expertise on the employment marketplace and sees, everyday, the impact of immigration policy in undermining US competitiveness. Founded in 1946, Kelly has evolved from a United States-based company concentrating primarily on traditional office staffing into a global workforce solutions leader offering a full breadth of specialty services. Kelly ranks as one of the worlds largest staffing companies across a range of disciplines from science, law, finance and engineering to contact center, and light industrial. As the human capital component of the U.S. and global economies has become more complex, Kelly has developed a suite of solutions to help many of the world's largest companies manage the full range of their talent and workforce supply needs. We connect our workers with work in a way that allows them to choose a work style that meets their current needs and circumstances. We connect our clients with the talent they need to successfully execute strategies in the hyper competitive global economy. We help our clients bring state of the art human capital management practices to their entire workforce, not just their regular employees.

The nature of Kelly's business gives us real time visibility into the talent needs of our nation's top employers - the Fortune 100. Make no mistake; there is a fierce global war for talent going on right now. What we need to recognize is that talent always wins this war. Talent and work will always find each other. They always have; the frequent efforts of governments to the contrary notwithstanding. We must understand that talent now has a wider global array of choices that ever before. We need to do all we can to make the United States the best place in the world for the intersection of talent and opportunity.

Global companies are keenly aware of the increasing talent shortages in key disciplines. This concern repeatedly ranks near the top of the list in multiple surveys of what keeps CEOs awake at night. If the talent cannot come to the work, then global companies will have no choice but to take the work (and the associated capital investment) to the places that welcome and attract the talent.

The Border Security, Economic Opportunity, and Immigration Modernization Act, S.74 recognizes and responds to these new realities in several encouraging ways. The increase in H1-B visas is an important step, and the change to allow the dependents of H1-B visa holders not to count against the numeric limitation is a much needed change that will help make us more attractive to globally mobile talent.

Likewise, the creation in 2015 of a merit based pool of visas taking into account a mix of family ties, work history in the U.S., and strength of work skills, takes us directionally where we want to go. It is in America's enlightened self interest to do so, and importantly, it follows established international trends in immigration laws, as other country's act to address their own talent needs and economic competitiveness.

Perhaps most exciting is the creation of a new start-up visa for foreign entrepreneurs. Immigrants to our country have a rich and consistent history of starting and building successful businesses. Numerous studies document conclusively the positive economic benefits attributable to such immigrants. They create employment opportunities for others and economic growth in our communities. We no longer enjoy the luxury of being the only place in the world such people aspire to. This is another needed and positive step to make the U.S. the destination of choice for people with energy and vision. We need and want these people to pursue their dreams here as so many have done before them.

But the issue is not exclusively about high skill immigrants and high skill jobs. Benefits to our economy are not limited to the arrival of high skill immigrants alone. On the contrary, lower skill workers are needed now, and our demographic (an aging workforce) and educational (generally rising educational achievement) trends make clear that we will continue to need more low-skilled workers than are available in America in the future. Certain enterprises depend on these workers, and therefore, so do the higher skill workers of the same employer. The legislation rightfully addresses the needs of both the employers of low skill workers and their employees.

For those of us who generally favor free markets, the truly innovative feature of the proposed temporary worker program is that workers would not be tied to a single employer. While they would be required to have a job prior to entering the country, they would also be free to change jobs, and accept

work from other employers in the program. This newfound autonomy and mobility is a significant step forward in empowering those workers, and is a practical and effective protection against potential overreach by employers.

All legitimate employers are concerned with competitors who play fast and loose with our immigration system. It hurts our reputation as employers and causes us economic harm. I welcome the strengthened employee verification provisions as a step needed to level the playing field for those businesses that play by the rules.

While I am not an expert on the proper numbers for any of the visa categories covered by the bill, nor the precise capital and employment requirements appropriate for the entrepreneurial visa; it is fair to say that a realistic opportunity for significant immigration reform does not occur often. Therefore, while we have that opportunity, let us make full use of it to build a new system that will serve future, as well as current needs.

I know the path forward is likely difficult and contentious. I commend and pledge my continued support for your efforts. Finally, I urge you in the strongest possible terms to press on despite the obstacles; to continue the hard work necessary to create a common sense system of legal immigration for the 21st century.

Thank you.

NEW YORK
CITY BAR

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April 24, 2013

To the Senate Judiciary Committee:

The New York City Bar Association (the "City Bar") and its Committee on Immigration and Nationality Law (the "Committee") applaud the April 16 introduction of the Senate draft immigration reform bill entitled "Border Security, Economic Opportunity, and Immigration Modernization Act" (S. 744). The City Bar and its Committee have a longstanding commitment to support fair and humane immigration policies and to advancing human rights in the United States and abroad. In particular, the City Bar advocated for reforms to immigration detention, including the right to representation for detained immigrants, in a 2009 report.[1]

Recently, in an April 24, 2013 submission to the Senate Judiciary Committee, the City Bar supported the Senate's efforts to increase access to and representation by counsel, and urged Congress to expand the legislation to include universal representation of indigent non-citizens facing detention or deportation proceedings.

This letter builds upon that submission. Here, the Committee supports the steps that S. 744 takes to reduce Department of Homeland Security ("DHS)" over-detention of non-citizens. Specifically, we support that S. 744:

- Revises mandatory detention into mandatory "detention or custody";
- Encourages alternatives to detention, such as tracking bracelets and community-based supervision;
- Provides important due process protections, such as timely bond hearings; and
- Requires more oversight and transparency over DHS detention facilities.

These are important steps to reduce unnecessary restrictions on liberty and safeguard human rights while reducing costs to taxpayers. However, the Committee urges Congress to take further steps to reduce detention and ensure due process, including:

- Repealing mandatory "detention or custody" entirely, and requiring individualized judge review of each custody decision, with specific, transparent criteria and no artificial minimum bond amount;
- Repealing the "bed quota," which requires 34,000 detainees regardless of flight or public safety risk;
- Providing appointed counsel to all immigrant detainees and requiring lawyers to review DHS custody decisions; and
- Giving American Bar Association ("ABA") Civil Immigration Detention Standards the full force of law.

"Civil" Immigration Detention Should Employ Less Detention With Fewer Criminal Conditions

The U.S. immigration detention system has exploded into America's largest system of incarceration, detaining a record 429,247 individuals in 2011—more than any federal or state prison system.[2] This increased detention of immigrants[3] has been driven in part by 1996 laws requiring mandatory detention pending adjudication of those with prior criminal convictions (even minor or from long ago),[4] the post-9/11 buildup of immigration enforcement,[5] and the recent expansion of enforcement to state and local police[6] through initiatives like Secure Communities. Whereas in 1995, the U.S. detained 7,500 people on any one day, the U.S. now detains 34,000 in over 250 facilities across America.[7] This occurs at great cost to American taxpayers. The U.S. government spends $2 billion a year on immigration detention—$164 per detainee per day—when lesser restrictive alternatives to detention cost $14 per day or less.[8]

Further, this huge detention apparatus, requiring manpower to arrest, process, guard, transport, and house large numbers of people, means that essential personnel are diverted from other enforcement priorities. Certainly, due process has suffered. Immigration courts, unable to keep pace with the expansion, now conduct over 40% of removal hearings by video due to the cost of transporting detainees from remote locations. This raises serious issues for study, which the bipartisan Administrative Conference of the United States has begun to undertake after making recommendations to improve efficiency in immigration removal proceedings.[9]

Moreover, even though immigration violations are legally classified as "civil" proceedings, immigration detention facilities are more akin to criminal confinement.[10] Many immigrants are held in actual jails.[11] Worse, immigration facilities have been repeatedly denounced for substandard conditions, such as the use of excessive force, shackles, solitary confinement, poor food and exercise, fifteen minutes of phone access a day, visitation through Plexiglass, and inadequate law libraries containing English-only books.[12] As Dora Schriro, author of DHS' 2009 report on immigration detention, stated, "in general, criminal inmates fare better than do civil [immigration] detainees."[13] All this occurs without appointed counsel, which renders it nearly impossible for detainees to litigate their deportation cases.[14] Moreover, detainees are routinely transferred to rural facilities far from counsel or family who might assist.[15] And it is estimated that one percent of immigration detainees are U.S. citizens, for whom no justification to detain exists.[16]

DHS and its sub-agency Immigration and Customs Enforcement ("ICE") have engaged in meaningful efforts to make immigration detention "truly civil," as ICE Director John Morton stated.[17] We applaud this bill's extension of those steps. However, if the term "civil" detention means anything, it is that ICE should detain not just better, but less.[18] Our recommendations further that goal.

The City Bar Supports this Bill Because It Takes Steps to Reduce Over-Detention of Immigrants While Facilitating Increased Government Efficiency

First, we applaud the bill's steps to scale back mandatory immigration detention without bail. S. 744 revises mandatory detention into mandatory "detention or custody"—now including electronic tracking ankle bracelets—based on an individualized DHS determination.[19] This may, if DHS allows it, let thousands avoid unnecessary incarceration and remain with families pending their deportation hearing, for which they may more meaningfully prepare and participate.

We urge the Senate to go further and wholly repeal mandatory "detention or custody" so that DHS only detains those who pose a flight or public safety risk. There is no reason why immigration judges cannot determine flight or public safety risk as judges do every day in criminal courts. Yet the bill still excepts mandatory detention or custody from immigration court review.[20] Moreover, the bill *expands* the categories of criminal offenses that may subject one to immigration mandatory detention or custody (already including minor offenses like drug possession or subway turnstile jumping).[21] In addition, the bill retains the unfairness of retroactively subjecting immigrants to detention and custody for criminal offenses that had no immigration consequences when committed. The bill also retains the extremely high burden on those challenging mandatory "detention or custody"—i.e. that the Government only needs any non-frivolous legal rationale to detain.[22] Repealing mandatory "detention or custody" would eliminate these concerns.

Second, we applaud the bill's steps to reduce over-detention by making detention the exception, not the rule, and encouraging alternatives to detention ("ATD"). Importantly, except for mandatory detainees, DHS must now demonstrate to an immigration judge that "no conditions, including... alternatives to detention" will "reasonably assure" appearance at hearings and public safety.[23] The bill further requires DHS to establish alternatives to detention that provide a "continuum of supervision . . . including community support,"[24] and incorporate case management services."[25] DHS is also required to review the level of supervision on a monthly basis.[26] And, positively, the bill may reduce over-restriction as well as over-detention. The bill requires alternatives to detention **not** to be used when bail or simple release would suffice to ensure appearance and public safety,[27] more like criminal court practices.[28]

We also support the bill's requirement that DHS establish "community-based supervision programs" that screen detainees and provide appearance assistance and community-based supervision.[29] These programs have been shown to ensure appearance at hearings without risk to public safety, at a fraction of the cost. While detention costs taxpayers $166/day, alternatives to detention cost $14/day or less.[30] Meanwhile, DHS's pilot programs for alternatives to detention achieved an appearance rate of 94%, far beyond its target rate and that of most criminal release programs.[31]

That said, Congress should repeal the "bed quota," which requires DHS to detain 34,000 immigrants at any one time, regardless of risk. [32] Otherwise, the bill's other reforms encouraging

alternatives to detention will be frustrated, and DHS will continue to unnecessarily detain immigrants who pose little risk at great taxpayer cost.

Also, Congress should repeal the $1,500 minimum amount for individual immigration bond settings, which subjects immigrants to far greater bond settings than criminal pretrial detainees even though immigrants pose less risk.[33] Indeed, 80% of New York criminal arrestees receive bond settings of $1,000 or less.[34] Moreover, Congress should provide clear criteria regarding risk of flight or risk to public safety to DHS officers and immigration court judges, such as the eight delineated factors a New York criminal judge considers when setting bail.[35]

Additionally, Congress should make transparent ICE's new risk assessment tool which will play a key role in individual detention determinations.[36] Risk assessment has promise to reduce over-detention, and provide empirical evidence that detainees pose little risk, thus further supporting reform of detention laws.[37] As of now, however, ICE appears to be making computerized determinations regarding immigrants' liberty based on a secret algorithm with no opportunity for immigrants to change or review information. Human rights advocates previously criticized the tool for being weighted toward over-detention.[38] If this continues, legal reforms to reduce detention may be for naught. Congress should require immediate disclosure of ICE's risk assessment criteria, and require that the risk assessment summary, currently placed in DHS' file on an immigrant (the "A-File"), be reviewed in immigration court.

The City Bar Supports this Bill Because It Takes Steps to Improve Due Process for Immigrant Detainees

Additionally, we applaud the bill's steps to improve due process for immigrant detainees, in line with American values and widespread public support. The bill requires DHS to "immediately" determine whether an immigrant is detained or released, inform the immigrant of his rights to a bond hearing, and serve a copy of the detention decision, with reasons, on the immigrant within 72 hours.[39] The bill then provides for a bond hearing before an immigration judge within 72 hours of service of the custody determination, and no later than one week from arrest.[40] Nine in ten Americans, of party affiliation, agree there should be a "time limit on how long someone can be held in jail for immigration violations before they see a judge."[41]

Although these basic due process protections are welcome and long-overdue, Congress should go further and provide counsel to all immigrant detainees.[42] As we set forth in our companion letter, under fundamental American fairness and due process values, this country provides representation for indigents when liberty and livelihood are at stake.[43] Both are at stake in deportation proceedings involving detention. Immigration judge Paul Grussendorf testified, "It is un-American to detain someone, send them to a remote facility where they have no contact with family, place them in legal proceedings where they are often unable to comprehend, and not to provide counsel for them."[44] Appointed counsel will also increase court efficiency and in turn, reduce unnecessary detention.[45]

Also, Congress should require DHS lawyers, rather than DHS officer non-lawyers, to review and render detention decisions and charging decisions.[46] Non-lawyers should not have the authority to jail immigrants for months or years based on incredibly complex legal determinations.[47]

The City Bar Supports this Bill Because It Takes Steps to Improve Detention Conditions and Oversight

We applaud the bill's steps to provide long-needed oversight and transparency to immigration detention. The bill requires DHS to make all of its contracts with detention facilities contingent on compliance with ICE's detention standards, and requires the imposition of financial penalties on any facility that violates those standards.[48] Also, the bill requires DHS to report to Congress yearly on facility oversight, requires DHS to make all detention contracts, evaluations, and reviews public, and further makes those contracts, evaluations, and reviews subject to Freedom of Information Act requests, even regarding private prison corporations.[49]

That said, Congress should examine detention standards more closely and give them binding force. Congress should thoroughly examine the American Bar Association model Civil Immigration Detention Standards, and consider adopting them into law, rather than the ICE standards which remain modeled after criminal jail standards.[50] Moreover, whichever detention standards Congress adopts should be made binding with full force of law, as are Bureau of Prisons regulations, so as to provide legal relief to immigrant detainees who are mistreated.[51]

Lastly, Congress should require DHS to develop visitation policies for detained clients that are consistent, well-publicized, and less restrictive of access to counsel. Detention facilities have conflicting visitation standards, which make it difficult for representatives to access their clients. Some prohibit visitation unless lawyers submit to a criminal background check days in advance.[52] Congress should direct DHS to standardize its provisions for representatives to visit clients in detention facilities, and ICE should create online registries of representatives, as immigration courts are doing, to ease access.[53] ICE should also publicize policies regarding access to facilities, as immigration courts have done with *pro bono* information in each district.[54]

We thank the Senate Judiciary Committee for its consideration of these comments and recommendations.

Respectfully submitted,

Lenni Benson

Prof. Lenni Benson
Chair

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[1] *See* Association of the Bar of the City of New York, Committee on Immigration & Nationality Law, *Report on the Right to Counsel for Detained Individuals in Removal Proceedings* (August 2009) [hereinafter "City Bar, *Right to Counsel*"], *available at* http://www.nycbar.org/pdf/report/uploads/20071793-ReportontheRighttoCounsel.pdf.

[2] John Simanski and Lesley M. Sapp, Department of Homeland Security, Office of Immigration Statistics, *Immigration Enforcement Actions: 2011* 4 (September 2012), *available at* http://www.dhs.gov/sites/default/files/publications/immigration-statistics/enforcement_ar_2011.pdf; *see also* Dora Schriro, *Improving Conditions of Confinement for Criminal Inmates and Immigrant Detainees* ("Improving Conditions"), 47 Am. Crim. L. Rev. 1441, 1446 (2010).

[3] *See generally* Anil Kalhan, *Rethinking Immigration Detention*, 110 Colum. L. Rev. Sidebar 42, 44-46 (2010).

[4] *See* 8 U.S.C. § 1226(c).

[5] Ted Hesson, *Five Ways Immigration System Changed After 9/11*, ABC News/Univision (Sept. 11, 2012), *available at* http://abcnews.go.com/ABC_Univision/News/ways-immigration-system-changed-911/story?id=17231590#.UXngGLWR9d0.

[6] *See generally* Lenni B. Benson, *As Old as the Hills: Detention and Immigration* ("As Old as the Hills"), 5 Intercultural Hum. Rts. L. Rev. 11, 11-13 (2010).

[7] *The release of criminal detainees by U.S. Immigration and Customs Enforcement: Policy or Politics?, Hearing Before the H. Comm. On the Judiciary*, 113th Cong. (2013) (Statement of John Morton) (2013) ("Morton, *Written Testimony*"), *available at* http://www.dhs.gov/news/2013/03/19/written-testimony-us-immigration-and-customs-enforcement-director-john-morton-house; *see also* Dora Schriro, U.S. Dep't of Homeland Security, *Immigration Detention Overview and Recommendations* 6 (2009) ("Schriro, *Immigration Detention Overview and Recommendations"), available at* http://www.ice.gov/doclib/about/offices/odpp/pdf/ice-detention-rpt.pdf.

[8] National Immigration Forum, *The Math of Immigration Detention* 1 (August 2011), *available at* http://www.immigrationforum.org/images/uploads/MathofImmigrationDetention.pdf; *Building an Immigration System Worthy of American Values, Hearing Before the S. Comm. On the Judiciary*, 113th Cong. 19 (2013) (Statement of Ahilan T. Arulanantham, ACLU) , *available at* http://www.judiciary.senate.gov/pdf/3-20-13ArulananthamTestimony.pdf.

[9] Two of the recommendations adopted at the Administrative Conference of the United States involved video teleconferencing. *See* Administrative Conference of the United States, *Administrative Conference Recommendations 2012-13* 16-17 (June 2012), *available at* http://www.acus.gov/sites/default/files/documents/2012-3.pdf.

[10] Schriro, *Immigration Detention Overview and Recommendations* at 2, 4.

[11] *Id.*

[12] Inter-American Commission on Human Rights, *Report on Immigration in the United States: Detention and Due Process* 117 (2010), *available at* http://www.oas.org/en/iachr/migrants/docs/pdf/Migrants2011.pdf; Amnesty International USA, *Jailed Without Justice-Immigration Detention in the USA* (2009), *available at* http://www.amnestyusa.org/pdfs/JailedWithoutJustice.pdf; *see also* Nat'l Immigration Law Ctr., *A Broken System: Confidential Reports Reveal Failures in U.S. Immigrant Detention Centers* (2009), *available at* www.nilc.org/document.html?id=9; Human Rights First, *Jails and Jumpsuits: Transforming the U.S. Immigration Detention System—A Two-Year Review* (2011), *available at* http://www.humanrightsfirst.org/wp-content/uploads/pdf/HRF-Jails-and-Jumpsuits-report.pdf.

[13] Schriro, *Improving Conditions* at 1445.

[14] City Bar, *Right to Counsel* at 7.

[15] City Bar, *Right to Counsel* at 7; New York Immigrant Representation Study, *Accessing Justice: The Availability and Adequacy of Counsel in Immigration Proceedings*, 33 Cardozo L. Rev. 357, 363 (2011), *available at* http://www.cardozolawreview.com/content/denovo/NYIRS_Report.pdf.

[16] William Finnegan, *The Deportation Machine*, THE NEW YORKER 24 (Apr. 29, 2013); Jacqueline Stevens, *U.S. Government Unlawfully Detaining and Deporting U.S. Citizens as Aliens*, 18 Va. J. Soc. Pol'y & L. 606, 622 (2011).

[17] Nina Bernstein, *U.S. to Reform Policy on Detention for Immigrants*, N.Y. TIMES, Aug. 5, 2009, *available at* http://www.nytimes.com/2009/08/06/us/politics/06detain.html.

[18] *See* Benson, *As Old as the Hills* at 13-17 (2010); Mark Noferi, *New ABA Civil Immigration Detention Standards: Does "Civil" Mean Better Detention Or Less Detention?*, CRIMMIGRATION.COM (Aug. 28, 2012), *available at* http://crimmigration.com/2012/08/28/new-aba-civil-immigration-detention-standards-does-civil-mean-better-detention-or-less-detention.aspx.

[19] Sec. 3715(c), (d), sec. 3717 (a) (creating new INA section 236(f)(5)); *see* Rutgers School of Law-Newark Immigrant Rights Clinic, *Freed but Not Free: A Report Examining the Current Use of Alternatives to Immigration Detention* 24-25 (July 2012) (arguing that INA § 236(c) should be interpreted to allow electronic monitoring), *available at* http://www.law.newark.rutgers.edu/files/FreedbutnotFree.pdf. The new bill excepts suspected terrorists certified by the Attorney General under INA § 236A (8 U.S.C. § 1226A).

[20] Sec. 3717(a) (creating new INA section 236 (f)(5) ("Except for aliens that the immigration judge has determined are deportable as described in section 236A and 236(c), the immigration judge shall review the custody determination de novo.... For aliens detained under 236(c), the immigration judge ***may*** review the custody determination ***if*** the Secretary agrees...")(emphases ours).

[21] *See Crimmigration Provisions of New Immigration Bill*, CRIMMIGRATION.COM (Apr. 18, 2013), http://crimmigration.com/2013/04/18/crimmigration-provisions-of-immigration-bill.aspx.

[22] *See, e.g. Gayle v. Napolitano*, Civ. A. No. 12-2806 (D.N.J. filed May 1, 2012), *available at* http://www.aclu.org/immigrants-rights/gayle-v-napolitano.

[23] Sec. 3717(a), creating new INA section 236 (f)(5).

[24] Sec. 3715(b).

[25] Sec. 3715(a).

[26] Sec. 3715(c); *see also* Rutgers School of Law-Newark, *Freed but Not Free* at 12-14 (inconsistent and conflicting guidance for review of alternatives to detention leads to arbitrary and inconsistent restrictions).

[27] Sec. 3715(c).

[28] NYU School of Law Immigrant Rights Clinic et al., *Insecure Communities, Devastated Families: New Data on Immigrant Detention and Deportation Practices in New York City*, 8-11 (July 23, 2012) (in New York, while 80% of ICE detainees were denied bail, 68% of pretrial criminal defendant were released on recognizance with no bail at all), *available at* http://immigrantdefenseproject.org/wp-content/uploads/2012/07/NYC-FOIA-Report-2012-FINAL.pdf.

[29] Sec. 3715(b); *see also Demore v. Kim*, 538 U.S. 510, 565 (2003) (Souter, J., dissenting).

[30] National Immigration Forum, *The Math of Immigration Detention* 1 (Aug. 2011), *available at* http://www.immigrationforum.org/images/uploads/MathofImmigrationDetention.pdf.

[31] Arulanantham at 26-27; Ophelia Field and Alice Edwards, UN High Commissioner for Refugees, *Alternatives to Detention of Asylum Seekers and Refugees* POLAS/2006/03 24 (April 2006), *available at* http://www.refworld.org/docid/4472e8b84.html ("In the criminal justice field, compliance figures for felony defendants who are released under non-custodial measures before trial usually range from 40-70%. This study, therefore, assumes that any alternative measure applied to asylum seekers to ensure their appearance that achieves a success rate over 80% can be considered 'effective'.")

[32] Arulanantham at 19.

[33] 8 U.S.C. § 1226(a)(2)(A) ("the Attorney General... may release the alien on... bond of at least $1,500...").

[34] *See* NYU, *Insecure Communities* at 11 (for New York ICE arrestees, 75% of bond settings are $5,000 or more, and 35% are $10,000 or more. 55% of ICE arrestees were unable to pay, and one in five of those have children. Conversely, for New York criminal pretrial detainees, 80% of bond settings are $1,000 and below.).

[35] *See* N.Y. Crim. Proc. Law § 510.30. When making a bond determination, a criminal court "must, on the basis of available information, consider and take into account: (i) The principal's character, reputation, habits and mental condition; (ii) His employment and financial resources; and (iii) His family ties and the length of his residence if any in the community; and (iv) His criminal record if any; and (v) His record of previous adjudication as a juvenile delinquent[]; and (vi) His previous record if any in responding to court appearances when required or with respect to flight to avoid criminal prosecution; and (vii) If he is a defendant, the weight of the evidence against him in the pending criminal action and any other factor indicating probability or improbability of conviction; or, in the case of an application for bail or recognizance pending appeal, the merit or lack of merit of the appeal; and (viii) If he is a defendant, the sentence which may be or has been imposed upon conviction." *See generally* NYU, *Insecure Communities* at 8-9.

[36] On March 19, 2013, ICE Director John Morton confirmed to Congress that ICE had deployed nationwide its new automated "Risk Classification Assessment" tool. Morton, *Written Testimony* (Mar. 19, 2013), *supra* note 7.

[37] *See* Robert Koulish and Mark Noferi, *Unlocking immigrant detention reform*, BALTIMORE SUN, Feb. 20, 2013, *available at* http://www.baltimoresun.com/news/opinion/oped/bs-ed-immigrant-detention-20130220,0,5653483.story.

[38] Lutheran Immigrant Refugee Service, *Unlocking Liberty* 11, 21 (2011), *available at* http://www.lirs.org/wp-content/uploads/2012/05/RPTUNLOCKINGLIBERTY.pdf, *citing* Alice Edwards, UN High Commissioner for Refugees, *Back to Basics: The Right to Liberty and Security of Person and 'Alternatives to Detention' of Refugees, Asylum-Seekers, Stateless Persons and Other Migrants* 81 (2011) ("the US risk assessment tool... appears heavily weighted in favour of detention"), *available at* http://www.refworld.org/cgi-bin/texis/vtx/rwmain?docid=4dc935fd2.

[39] Sec. 3717(a), creating new INA sections 236(f)(2), (7).

[40] Sec. 3717(a), creating new INA sections 236 (f)(3), (4). A bond hearing was not previously required. *See* Mark Noferi, *Cascading Constitutional Deprivation: The Right To Appointed Counsel For Mandatorily Detained Immigrants Pending Removal Proceedings*, 18 Mich. J. Race & L. 63, 83 & n.103 (2012), *citing* 8 C.F.R.

§236.1(g)(1) (immigration official "may" issue an I-286 Notice of Custody determination "at any time... up to the time removal proceedings are completed").

[41] Belden Russonello Strategists LLC, *American attitudes on immigration reform, worker protections, due process, and border enforcement* 3 (April 2013), *available at* http://cambio-us.org/cirpoll2013/.

[42] City Bar, *Right to Counsel*, *supra* note 1; The Constitution Project, *Recommendations for Reforming Our Immigration Detention System and Promoting Access to Counsel in Immigration Proceedings* 8 (2009), *available at* http://www.constitutionproject.org/pdf/359.pdf.

[43] Noferi, *Cascading Constitutional Deprivation*, 18 Mich. J. Race & L. at 71 & n.30, 101-05.

[44] *Building an Immigration System Worthy of American Values, Hearing Before the S. Comm. On the Judiciary*, 113th Cong. 8 (2013) (Statement of Paul Grussendorf), *available at* http://www.judiciary.senate.gov/pdf/3-20-13GrussendorfTestimony.pdf.

[45] Lenni Benson and Russell Wheeler, *Enhancing Quality and Timeliness in Immigration Removal Adjudication* 59, 66-67, 80-82 (2012), *available at* http://www.acus.gov/sites/default/files/Enhancing-Quality-and-Timeliness-in-Immigration-Removal-Adjudication-Final-June-72012.pdf; City Bar, *Right to Counsel* at 7-8.

[46] Currently, non-lawyers are allowed to make such determinations. *See* Benson and Wheeler, *Enhancing Quality and Timeliness in Immigration Removal Adjudication* at 37; Noferi, *Cascading Constitutional Deprivation*, 18 Mich. J. Race & L. at 84; American Bar Association Commission On Immigration, *Reforming The Immigration System, Proposals To Promote Independence, Fairness, Efficiency, And Professionalism In The Adjudication Of Removal Cases* 1-49 (2010), *available at* http://www.americanbar.org/content/dam/aba/migrated/Immigration/PublicDocuments/aba_complete_full_report.authcheckdam.pdf.

[47] These determinations, such as whether a prior conviction is an "aggravated felony" or "crime involving moral turpitude," are based on interlocking state criminal and federal immigration laws. Analysis may involve determining whether the correct statutory test is a "strict" or "modified categorical approach," depending on whether a criminal statute is "divisible" and whether the immigration statute is "generic" or "specific." *See* Noferi, *Cascading Constitutional Deprivation*, 18 Mich. J. Race & L. at 89-95.

[48] *See generally* sec. 3716.

[49] Sec. 3716 (c)(3), (d)(1)(D), (e).

[50] ABA Civil Immigration Detention Standards (2012), *available at* http://www.americanbar.org/content/dam/aba/administrative/immigration/abaimmdetstds.authcheckdam.pdf; *compare* U.S. Immigration and Customs Enforcement, *Performance-Based National Detention Standards 2011* (Feb. 2012), *available at* http://www.ice.gov/detention-standards/2011/.

[51] Schriro, *Improving Conditions*, 47 Am. Crim. L. Rev. at 1446, 1451 ("The ultimate form of enforcement is regulation that also affords opportunity for relief . . . . Failure to comply with regulation is a basis for relief. Failure to comply with elective standards is not.").

[52] We base this information on interviews by our committee members of detention facility staff in the New York and New Jersey area.

[53] *See* Daniel Kowalski, *EOIR Final Rule: Registry for Attorneys and Representatives* (Apr. 1, 2013), *available at* http://www.lexisnexis.com/community/immigration-law/blogs/inside/archive/2013/04/01/eoir-final-rule-registry-for-attorneys-and-representatives.aspx; 78 Fed. Reg. 19400-01 (Apr. 1, 2013), *available at* http://www.gpo.gov/fdsys/pkg/FR-2013-04-01/pdf/2013-07526.pdf.

[54] *See* Department of Justice, *Free Legal Services Providers*, *available at* http://www.justice.gov/eoir/probono/states.htm.

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April 24, 2013

To the Senate Judiciary Committee,

The New York City Bar Association (the "City Bar") and its Committee on Immigration and Nationality Law (the "Committee") applaud the April 16 introduction of the Senate draft immigration reform bill entitled "Border Security, Economic Opportunity, and Immigration Modernization Act" (S. 744). The City Bar and the Committee have a longstanding commitment to support fair and humane immigration policies and to advancing human rights in the United States and abroad. In particular, we have actively advocated for due process in immigration courts, including the right to representation for detained immigrants.[1]

As an initial matter, we believe that this bill is a strong and serious step forward. We are pleased that the bill contemplates the right to free counsel for certain particularly vulnerable groups. However, for the reasons set forth below, **we urge the Senate to adopt provisions to provide free counsel to all indigent individuals in deportation proceedings**, as well as certain other narrow circumstances as outlined below.

The City Bar Supports this Bill Because The Right to Counsel Advances American Due Process Values

S. 744 aligns with fundamental American fairness and due process values that provide representation for indigents when liberty and livelihood are at stake.[2] It is an "obvious truth," as the Supreme Court stated 50 years ago, that "any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him."[3] According to a recent poll, 76 percent of Americans, including 87 percent of Democrats and 67 percent of

Republicans, support ensuring that "immigrants can have legal representation if they face deportation."[4]

The right to counsel at government expense should be guaranteed for any indigent non-citizen facing deportation (also known as "removal"), especially if he or she is jailed in detention during the proceedings. Deportation, although technically "civil," involves much higher stakes than the typical civil proceeding—banishment from family, friends, livelihood, and property, or "all that makes life worth living," as the Supreme Court said.[5] For these reasons, the right to counsel in criminal cases already includes immigration advice, since deportation can be "the most important part" of a criminal conviction to an immigrant.[6]

Indeed, deportation may send long-time immigrants to a "homeland" to which they have no ties and where they may be persecuted.[7] Deportation can also significantly impact other lives in America. Immigrants who own businesses—and seventeen percent of small businesses are immigrant owned[8]— may have to close the business, liquidate assets, and fire workers, resulting in significant economic loss. Families are abandoned, more than economically. In 2011, 5,000 children of deported U.S. parents were in foster care, causing untold human and social cost.[9] When the stakes are this high, it has become common to provide appointed counsel, whether in civil or criminal proceedings. The vast majority of states provide appointed counsel in proceedings to terminate parental rights and in abuse or neglect proceedings.[10]

Moreover, immigration law is incredibly difficult to understand without a lawyer. As Justice Alito stated, "[N]othing is ever simple with immigration law."[11] The Immigration and Nationality Act has sixteen categories for grounds of removal alone, all with parts, subparts, exceptions, and waivers, each with multiple elements.[12] Qualifying for relief is even more complex. Without a lawyer, individuals (who also face language and cultural barriers), are unlikely to even know what facts will help them make their case, let alone argue it in court based on complex statutory analysis.[13]

On top of all this, detention during immigration proceedings exacerbates the stakes and the need for counsel. Detention — being locked up in jail — impinges personal liberties in a manner akin to criminal proceedings.[14] For this reason, the federal government already appoints counsel to everyone else it detains, whether criminally, civilly, or militarily, including convicted sex offenders facing civil commitment, and suspected terrorists facing military detention.[15] The Supreme Court has required appointed counsel for civil juvenile detention and civil psychiatric commitment.[16]

An immigration detainee may be held in a detention facility for 2 to 4 weeks before seeing an immigration judge for the first time.[17] Detainees thus face a Catch-22: they typically cannot escape detention by winning a bond hearing without the assistance of counsel, and they typically cannot find counsel, given the limited access to communication and information, until they escape detention. If a detainee decides to seek relief, he or she may be held for months at a time before receiving an adjudication of his or her immigration status.[18] Transfer to rural detention facilities compounds the problem of inadequate access, making it nearly impossible to collect and present favorable evidence at a deportation hearing.[19]

For these reasons, a New York study led by the Honorable Robert Katzmann, a Second Circuit Court of Appeals Judge, found that a stunning 97 percent of non-represented detainees lost their deportation cases, while 74 percent of non-detained, represented non-citizens ultimately succeeded.[20] As immigration judge Paul Grussendorf testified, "It is un-American to detain someone, send them to a remote facility where they have no contact with family, place them in legal proceedings where they are often unable to comprehend, and not to provide counsel for

them."[21] Congress should, at the very least, provide appointed counsel to detained immigrants in removal proceedings.

Lastly, there is no citizenship test for counsel in America. When the U.S. or its states provide counsel, we provide it to citizens and non-citizens alike — whether in criminal, civil, or military proceedings. Put another way, the familiar words *"You have the right to an attorney. If you cannot afford an attorney, one will be provided for you"* do not include "only if you are a citizen." We provide appointed counsel because procedural safeguards reflect American values of fairness and due process, regardless of the defendant's identity.

The City Bar Supports this Bill Because Providing a Right to Counsel Reduces Government Costs

In addition to creating a system more in step with American values, providing counsel to indigent non-citizens *saves* the government money by 1) preventing unnecessary court proceedings, 2) reducing the amount of time non-citizens spend in detention, and 3) relieving the burden of government support to disrupted families.

First, having parties represented by counsel increases efficiency by preventing unnecessary court proceedings and continuances. For example, existing Legal Orientation Programs ("LOPs") for detainees, in which advice is provided without full representation, has shortened case processing times for detainees by 13 days on average.[22] Applicants learn to better articulate what relief they are entitled to and move through the system more quickly,[23] while judges are relieved of the time and burden required to guide uncounseled respondents.[24] Although we applaud the bill's expansion of this program into the formal establishment of a Legal Access Program (*see* Section 3503), full representation would likely increase efficiency even further. Having lawyers on both sides reduces the length of overall proceedings by allowing negotiations to take place outside of court and reducing the need to grant expensive continuances to provide respondents time to find counsel[25] or complete an application.[26] Two competent, opposing lawyers also better educate the court with the best information available, building a more complete and accurate record and preserving issues for review.[27] Furthermore, counsel, as officers of the court and subject to the professional rules of conduct, can help prevent fraud committed upon non-citizens by unscrupulous notaries peddling dubious legal advice at high cost.[28]

Second, these increased efficiencies lead to reduced costs of detention. With counsel, non-citizens eligible for bond are more likely to gain release and, rather than sitting in tax-supported detention, continue working and supporting their families while awaiting a hearing.[29] Non-citizens represented by counsel are also more likely to appear for their appointed court dates.[30] Others with no hope of relief can be counseled to accept removal rather than stay in detention, reducing the need for expensive court proceedings.[31]

Third, reduced detention and deportation of those with valid claims to lawful status saves significant human and social costs resulting from family disruption. Without counsel, non-citizens are much more likely to be removed, even if entitled to relief because of family ties or humanitarian protection.[32] Such non-citizens often leave behind U.S. citizen children to grow up in foster care at government expense—an expensive and heartbreaking result.[33]

We recommend the creation of an independent immigration defender's office, modeled on the federal public defender office, with direct granting authority that would provide the Executive Office for Immigration Review with an independent stream of income.[34] Independence and direct granting authority would allow money to go directly into the program, thereby providing a more efficient use of federal money.

The City Bar Supports the Right to Counsel Under Section 3502

We applaud the work of the bipartisan committee that drafted S. 744, particularly Sections 3502 and 3503, in expanding access to legal advice for non-citizens facing immigration proceedings. These provisions both advance American ideals of justice and represent practical, cost-effective policy. We also support the bill's authorization of funding for "LOPs" from the Comprehensive Immigration Reform Trust Fund and its mandate that LOPs be made available to all immigration detainees within five days of arrival into custody. The expansion of LOPs is a welcome first step in creating a fairer and more efficient immigration system.

However, LOPs are not a substitute for full legal representation. Counsel is required to make the immigration system more efficient and fair. The Committee therefore urges the Senate to provide **appointed counsel to all indigent non-citizens in removal proceedings** (including expedited removal). Such non-citizens must at a minimum include indigent Lawful Permanent Residents ("LPRs"), those who have been determined to be children (whether unaccompanied or not), persons with serious mental disabilities (as already contemplated by Sec. 3502), and individuals seeking relief under humanitarian provisions such as asylum, the Trafficking Victims Protection Reauthorization Act ("TVPRA") or the Violence Against Women Act ("VAWA").

These objective standards better correspond to American values, are cost-effective and simple to apply (unlike open-ended language for the "particularly vulnerable"), and provide predictable guideposts for budgetary planning. Indeed, we anticipate that a determination of "vulnerability" will be onerous to evaluate, and that an "ad hoc review" will take unnecessary time and resources and potentially clog the courts with litigation."[35] Accordingly, LOPs should screen more broadly for these objective standards and recommend **all** such individuals for appointed counsel. At the very least, LOPs should have the discretion to recommend those indigent individuals for appointed counsel who have a prima facie meritorious case, a particularly complicated matter, or otherwise present special circumstances.

Expedited Removal. We urge appointment of counsel for individuals in expedited removal hearings. A growing number of United States citizens are being erroneously subjected to expedited removal, and there is no readily accessible mechanism to correct the error.[36] The consequences of a wrongful expedited removal are dire — citizens and non-citizens who are erroneously removed face a minimum of a five year bar to reentry after removal,[37] and if the government alleges misrepresentation or fraud as the basis of the expedited removal, removed individuals face a lifetime bar to entry.[38] Therefore, we believe that it is imperative that these individuals are afforded counsel, so as to ensure that they receive a "fair and efficient adjudication," just like the vulnerable classes of individuals afforded the same in Section 3502(c).

Lawful Permanent Residents. All indigent LPRs should have a right to counsel, because they have a deep stake in American society that the government has recognized by granting them LPR status. That stake entitles an LPR to stronger due process protections, including a right to counsel if the individual is indigent and facing removal or detention.[39] Granting LPRs such a right is not only cost-effective, as described above, but critical to the due process values at the heart of American ideals of justice.

Children. We urge that counsel be provided for those who have been determined to be children during the initiation of removal proceedings (i.e., non-citizens under the age of 21), because they are particularly vulnerable, even if they are not unaccompanied.[40] Children are

provided court-appointed advocates in other judicial proceedings related to their well-being and liberty interests such as child welfare[41] and juvenile delinquency[42] matters. Children are in particular need of appointed counsel in the immigration context given their more limited knowledge of the law and avenues for relief, lack of ability to contact and hire counsel for themselves, and greater potential for being victims of trafficking and other forms of abuse and neglect or abandonment.[43] In New York City, children's cases now represent 9-12 percent of the Immigration Court's docket, with many of these children being identified for immigration relief but unrepresented.[44]

Serious Mental Disabilities. Section 3502 appropriately includes the right to appointed counsel for non-citizens with "serious mental disabilities." Procedures for implementing this new policy were recently outlined by the Department of Justice and the Department of Homeland Security.[45] The City Bar supports appointed counsel for this group of particularly vulnerable persons.

Humanitarian Claims. Finally, claimants under humanitarian provisions, such as asylum, trafficking and relief under the Violence Against Women Act, should be given a right to counsel. These individuals are often traumatized and need legal assistance to help articulate their claims and achieve safety and protection.

We are encouraged by the provision in Section 3407 allowing applicants for refugee status to be represented at a refugee interview, albeit at no expense to the Government. We recommend that the phrase "at no expense to the Government" be deleted from this section, as it has proven problematic in other parts of the INA and is being removed by this bill as a result.

We further applaud the change to asylum law proposed in Section 3404 of the bill, which authorizes USCIS Asylum Division officers to conduct non-adversarial interviews of asylum-seekers identified at or near a U.S. border after such individuals have successfully passed a "credible fear" screening interview. Currently, individuals passing credible fear interviews move on to full adversarial hearings in the immigration courts.

We urge, however, that asylum seekers be appointed counsel prior to their credible fear determinations, or at least be provided an LOP presentation, so that they fully understand the international protections provided by the United States and can best prepare their claims. Asylees face particular hardships, including extremely dangerous conditions in the home country from which they have fled, and an erroneous adverse credible fear determination may put them back in danger, potentially of bodily harm.[46] Additionally, pending a credible fear determination, individuals seeking asylum are subject to mandatory detention, which can be psychologically damaging for an already fragile population.[47] Passing a credible fear interview within days of fleeing one's home country and while in detention can be extremely difficult and trying for an asylum seeker. Consequently, detention should not be mandatory for these individuals, and counsel should be appointed to help them seek release on bond. Therefore, we believe that Section 3404 should also include a provision securing the right to counsel for asylum seekers prior to the credible fear determination.

Conclusion

The Committee urges the Senate to provide appointed counsel to all indigent non-citizens in removal proceedings, including expedited removal. Such non-citizens should at a minimum include Lawful Permanent Residents ("LPRs"), children (whether unaccompanied or not),

individuals with" serious mental disabilities" and individuals seeking relief under humanitarian provisions.

Thank you for considering these comments and for producing a draft bill that takes such a positive step towards achieving desperately needed immigration reform in this country.

Respectfully submitted,

Professor Lenni B. Benson

Chair

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[1] *See* Association of the Bar of the City of New York, Committee on Immigration & Nationality Law, *Report on the Right to Counsel for Detained Individuals in Removal Proceedings* (August 2009) ("New York City Bar"), *available at* http://www.nycbar.org/pdf/report/uploads/20071793-ReportontheRighttoCounsel.pdf.

[2] American Immigration Council, *Two Systems of Justice: How the Immigration System Falls Short of American Ideals of Justice* 12 (March 2013)("American Immigration Council"), *available at* http://www.immigrationpolicy.org/sites/default/files/docs/aic_twosystemsofjustice.pdf; Mark Noferi, *Cascading Constitutional Deprivation: The Right To Appointed Counsel For Mandatorily Detained Immigrants Pending Removal Proceedings*, 18 Mich. J. Race & L. 63, 119-20 (2012).

[3] *Gideon v. Wainwright*, 372 U.S. 335, 344 (1963).

[4] Of those polled, 87 percent of Democrats, 67 percent of Republicans, and 73 percent of Independents supported the proposition. Belden Russonello Strategists LLC, *American attitudes on immigration reform, worker protections, due process and border enforcement* 3 (April 2013), *available at* http://cambio-us.org/wp-content/uploads/2013/04/BRS-Poll-for-CAMBIO-APRIL-16-2013-RELEASE.pdf.

[5] *Ng Fung Ho v. White*, 259 U.S. 276, 284 (1922); *see also Padilla v. Kentucky*, 130 S. Ct. 1473, 1486 (2010).

[6] *Padilla*, 130 S. Ct. at 1480.

[7] New York City Bar at 1.

[8] NALEO Education Fund, *Immigration Reform Must Provide the Integrations Services Immigrants and American Communities Need to Thrive Together*, 2 (2013), *available at* http://s143989.gridserver.com/2013_Images/CIR-integration_overview.pdf. Seth Freed Wessler, *Thousands of Kids Lost From Parents In U.S. Deportation System*, COLORLINES, Nov. 2, 2011, *available at* http://colorlines.com/archives/2011/11/thousands_of_kids_lost_in_foster_homes_after_parents_deportation.html.

[9] *Id.*

[10] *See* Laura K. Abel and Max Rettig, *State Statutes Providing for a Right to Counsel in Civil Cases*, 40 Clearinghouse Review 245 (July-Aug. 2006), *available at* http://www.civilrighttocounsel.org/pdfs/abelchart.pdf; *see also* Rosalie R. Young, *The Right To Appointed Counsel In Termination Of Parental Rights Proceedings: The States' Response To Lassiter*, 14 Touro L. Rev. 247, 259-63 (1997).

[11] *Padilla*, 130 S. Ct. at 1490 (Alito, J., concurring).

[12] New York City Bar at 6; Noferi at 89-95.

[13] New York Immigrant Representation Study Report: Part II, *Accessing Justice II: A Model for Providing Counsel to New York Immigrants in Removal Proceedings* 19 (2012) (" New York Immigrant Representation Study Report: Part II"), *available at* http://www.cardozolawreview.com/content/denovo/NYIRS_ReportII.pdf.

[14] *Padilla*, 130 S. Ct. at 1481, 1484 n.11 (deportation is a particularly severe "penalty" akin to "banishment or exile"); *Turner v. Rogers*, 131 S. Ct. 2507, 2511 (2011) (freedom from incarceration lies "at the core of the liberty protected by the Due Process Clause"); *see generally* Noferi at 101-05.

[15] Noferi at 71 & n.30 (Congress has statutorily provided appointed counsel to criminal pretrial detainees, post-conviction sex offender civil commitment hearings, and military preventive detention hearings for Al Qaeda suspects).

[16] Noferi at 102 and n. 273-74.

[17] *See* American Immigration Council.

[18] Donald Kerwin & Serena Yi-Yang Lin, *Immigration Detention: Can ICE Meet Its Legal Imperatives and Case Management Responsibilities?* (Washington, D.C.: Migration Policy Institute 2009), 3-4, *available at* http://www.migrationpolicy.org/pubs/detentionreportSept1009.pdf.

[19] New York City Bar at 7; Noferi at 105-08 (articulating impact of detention on ability to litigate proceedings).

[20] New York Immigrant Representation Study, *Accessing Justice: The Availability and Adequacy of Counsel in Immigration Proceedings*, 33 Cardozo L. Rev. 357, 363-64 (2011), *available at* http://www.cardozolawreview.com/content/denovo/NYIRS_Report.pdf; *see also* New York Immigrant Representation Study Report: Part II (recommending appointed counsel for detainees because detainees face greatest barriers).

[21] *Building an Immigration System Worthy of American Values, Hearing Before the S. Comm. on the Judiciary, 113th Cong.* 8 (2013) (Statement of Paul Grussendorf) ("Grussendorf"), *available at* http://www.judiciary.senate.gov/pdf/3-20-13GrussendorfTestimony.pdf.

[22] Nina Siulc, et al., Vera Institute of Justice, *Legal Orientation Program, Evaluation and Performance and Outcome Measurement Report, Phase II* iv (2008), *available at* http://www.justice.gov/eoir/reports/LOPEvaluation-final.pdf.

[23] *Id.*

[24] Lenni Benson and Russell Wheeler, *Enhancing Quality and Timeliness in Immigration Removal Adjudication* 59 (2012) ("Benson and Wheeler") *available at* http://www.acus.gov/sites/default/files/Enhancing-Quality-and-Timeliness-in-Immigration-Removal-Adjudication-Final-June-72012.pdf; Grussendorf at 8.

[25] Benson and Wheeler at 58; Grussendorf at 8. Each continuance for a detainee costs taxpayers between $8,745 and $10,890. *Building an Immigration System Worthy of American Values, Hearing Before the S. Comm. On the Judiciary*, 113th Cong. 13 (2013) (Statement of Ahilan T. Arulanantham, ACLU) ("just a few continuances in one case cost as much money as a single attorney who could represent dozens of people each year") ("Arulanantham"), *available at* http://www.aclu.org/files/assets/testimony_of_ahilan_arulanantham_for_3_20_13_senate_judiciary_committee_hearing_final_3_22_13.pdf.

[26] Benson and Wheeler at 66-67.

[27] *Id.* at 59.

[28] *See* American Bar Association, *Reforming the Immigration System*, at ES-42 (2010), *available at* http://www.americanbar.org/content/dam/aba/migrated/Immigration/PublicDocuments/aba_complete_full_report.authcheckdam.pdf.

[29] Benson and Wheeler at 58.

[30] Siulc at 4.

[31] Benson and Wheeler at 58.

[32] New York City Bar at 2.

[33] In 2011, more than 5000 children were in foster care as a result of their parents' deportation. Arulanantham, *Written Statement of the American Civil Liberties Union,* at 4. We note that Section 2107(c) of S.744 anticipates this issue by contemplating the care of a "separated child" — one who is in foster care because his or her parent, legal guardian, or primary caregiver has been detained or removed for immigration enforcement purposes.

[34] Ingrid Eagly, *Gideon's Migration*, 122 Yale L.J. 101, 125-26 (2013), *citing*, *e.g.*, David A. Martin, *Reforming Asylum Adjudication*, 138 U. Pa. L. Rev. 1247, 1329-30 (1990).

[35] *Lassiter v. Dep't of Soc. Servs*, 101 S. Ct. 2153, 2172 (1981) (Blackmun, J., dissenting).

[36] *See generally* Jacqueline Stevens, *States Without Nations*, http://stateswithoutnations.blogspot.com (last updated March 26, 2013); *see also* Anna Schoenfelder et al., *Uncovering USBP: Bonus Programs for United States Border Patrol Agents and the Arrest of Lawfully Present Individuals* (Jan. 2013), *available at* http://familiesforfreedom.org/sites/default/files/resources/Uncovering%20USBP-FFF%20Report%202013.pdf.

[37] A five year bar applies to removal under INA § 212(a)(9)(A)(1).

[38] A lifetime bar applies to removal under INA § 212(a)(6)(C).

[39] Kevin R. Johnson, Gideon v. Wainwright *and the Right to Counsel in Immigration Removal Cases: An Immigration* Gideon *for Lawful Permanent Residents?*, __ Yale L.J. __ (forthcoming 2013), *available at* http://ssrn.com/abstract=2186245.

[40] For more information about unaccompanied children facing removal, see U.S. Citizenship and Immigration Services, *USCIS Initiates Procedures for Unaccompanied Children Seeking Asylum* (March 2009) available at http://www.uscis.gov/files/article/tvpra_qa_25mar2009.pdf.

[41] Child Abuse Prevention and Treatment Act, P.L. 93-247 (1974).
(Fed requirement that states must have a guardian ad litem (attorney or non atty) appointed in child welfare cases.)

[42] *In re Gault*, 387 U.S. 1 (1967).

[43] *See, e.g.* Catholic Relief Services, *Human Trafficking: An Overview* (2013), *available at* http://crs.org/public-policy/in_depth.cfm

[44] Sonia Nazario, *Child Migrants, Alone in Court*, N. Y. Times, April 10, 2013, *available at* http://www.nytimes.com/2013/04/11/opinion/give-lawyers-to-immigrant-children.html?pagewanted=all

[45] *See* Press Release, Department of Justice, Executive Office for Immigration Review, *Department of Justice and the Department of Homeland Security Announce Safeguards for Unrepresented Immigration Detainees with Serious Mental Disorders or Conditions* (Apr. 22, 2013), *available at* http://www.justice.gov/eoir/press/2013/SafeguardsUnrepresentedImmigrationDetainees.html.

[46] *See* ABA at 1-15; *see also* United States Comm'n on Int'l Religious Freedom, *Asylum Seekers in Expedited Removal* (2005), *available at* http://www.uscirf.gov/index.php?option=com_content&task=view&id=1892.

[47] *See generally* Human Rights First, *US Detention of Asylum Seekers: Seeking Protection, Finding Prison* (2009), *available at* http://www.humanrightsfirst.org/wp-content/uploads/pdf/090429-RP-hrf-asylum-detention-report.pdf.

April 22, 2013

Dear Senate Judiciary Committee:

Our organization, National Farm Worker Ministry, submits this statement for inclusion in the record of the April 22, 2013 Senate Judiciary Committee hearing on "As the Border Security, Economic Opportunity, and Immigration Modernization Act, S.744." We believe that immigration reform is of the utmost importance to helping farmworkers and their families have the opportunity to lead productive, healthy lives. We are therefore grateful to you and your colleagues, who have spent considerable effort to take into account the interests and knowledge of stakeholders in agriculture and to develop legislation to reform our broken immigration system.

National Farm Worker Ministry (NFWM) has over 90 years of experience in service with farm workers. Based in state ministries which began providing charitable services to farm workers in the 1920's, we became a national organization in 1971 to engage people of faith across the country in support of farm worker efforts to improve their living and working conditions. NFWM is composed of thirty member organizations, which include national denominations, religious orders and regional groups, hundreds of supporting organizations, and thousands of concerned individuals. We believe in the biblical mandate to "welcome the stranger" and to "love our neighbor as ourselves". We believe in the God given dignity of all people, and their right to be treated fairness and respect.

We're very pleased that farmworker and grower representatives have come to an agreement on immigration reform for agriculture. This compromise should greatly increase support for comprehensive immigration reform and get us closer to dignity for farm workers. As the Border Security, Economic Opportunity, and Immigration Modernization Act of 2013 (CIR bill) moves through the legislative process, we write to emphasize the importance of labor protections for immigrant farmworkers and urge you to ensure that existing worker protections remain in the bill or are strengthened.

MEMBER ORGANIZATIONS

Alliance of Baptists
California Church Impact
Catholic Migrant Farmworker Network
Central Conference of American Rabbis
Church of the Brethren
Church Women United in Illinois
Church Women United of S. California & S. Nevada
Cumberland Presbyterian Church
Christian Church (DOC), Disciples Farm Worker Ministry
Dominican Sisters of Peace
Episcopal Church
Evangelical Lutheran Church in America, Division for Church in Society
Franciscan Friars, Province of Santa Barbara
Franciscan Sisters of Little Falls
The Loretto Community
National Federation of Priests' Councils
NFWM Florida Advisory Group
North Carolina Council of Churches Farm Worker Ministry Committee
Orange County Interfaith Committee to Aid Farm Workers
Oregon Farm Worker Ministry
Our Lady of Victory Missionary Sisters
Pinellas Support Committee of The NFWM
Presbyterian Hunger Program PC (USA)
Sarasota-Manatee Farm Worker Support Committee
School Sisters of Notre Dame, Shalom North America
Sisters of Charity, BVM
Sisters of Charity of Nazareth
Sisters of St. Francis of Assisi
Society of the Sacred Heart
Southern California Ecumenical Council
Unitarian Universalist Migrant Ministry
United Church of Christ Justice and Witness Ministries
United Methodist Church General Board Of Church and Society
United Methodist Church General Board of Global Ministries, Mission C & R
United Methodist Church General Board of Global Ministries, Women's Division

The Current Landscape: Greater Protections Needed for Farmworkers

The lack of authorized immigration status of so many farmworkers contributes to their poor wages and working conditions. Farmworker wages are among the lowest in the country. Many earn at or just above the minimum wage. Poverty among farmworkers is more than double that of all wage and salary employees. Few farmworkers receive any fringe benefits, such as paid sick leave or paid vacation. Decrepit, overcrowded housing is all too common. Health insurance is rarely provided by employers and few farmworkers can afford to purchase it on their own. Yet, agriculture ranks among the most hazardous occupations. Federal laws on overtime pay and collective bargaining exclude farmworkers, as do most federal occupational safety standards and many states' workers' compensation systems.

Such marginalized workers fear joining labor unions, seeking improved job terms, or challenging illegal employment practices. Agricultural workers experience rampant violations of employment laws, including minimum wage requirements. Frequently, farm operators hire workers through farm labor contractors, whom they claim are the sole "employers" for purposes of escaping immigration and labor laws. Undocumented workers who challenge illegal employment practices risk losing their job and breaking up their families and other dire consequences of deportation.

National Farm Worker Ministry staff and board members have spent time with farm workers in the fields and labor camps and rural towns of Florida, North Carolina, California, Arizona, Washington, and Oregon and elsewhere. We have met undocumented workers who live in crowded bug infested labor camps, lacking clean sanitary facilities or safe drinking water, but are afraid to ask for better, lest they be fired and deported. We have met undocumented workers cheated out of the minimum wage, afraid to speak up lest they be fired and deported. We have met women who have endured sexual harassment, threatened with firing or deportation if they speak up. We have seen the burns on workers exposed to toxic pesticides beyond any tolerable limit, yet with no ready access to medical care. These are conditions experienced by people who are essential to our agricultural industry. It is an untenable situation for which we all bear responsibility.

We have also spoken to women and men who have lived and worked here on our farms, orchards and dairies for fifteen to twenty years, yet speak tearfully of their fear of deportation and separation from their children. We have met farm workers who came here over five years ago to work simply to be able to provide food and shelter for their families in their home country; they haven't been able to go back since they made their risky trip here, missing birthdays, baptisms, and funerals. We have met families of workers who have died here due to heat stress in the fields, and are only able to return home to be buried. We believe it is a moral travesty to separate families, in order to feed US families.

We are tremendously grateful for the work done by those who provide the food for our tables. We believe that they deserve a path to citizenship in recognition of their tremendous sacrifice and contributions to our economy and society. We welcome this bill which provides, that, and appreciate the work that has gone into its development.

Roadmap to Citizenship: the Blue Card

With a roadmap to citizenship, all farmworkers, including the hundreds of thousands of current U.S. workers and the newly American, will be on a level playing field. We are very pleased that the CIR bill contains a roadmap to citizenship for current and future farmworkers and their families. We strongly support the proposal for a "blue card" program, under which experienced undocumented farmworkers and their family members could earn legal immigration status, permanent residency and citizenship within a reasonable period of time and at a reasonable cost given their low incomes. Farmworkers and their families are contributing to America; it is only fair that they be given an opportunity earn legal immigration status. With a roadmap to citizenship, all farmworkers, including the hundreds of thousands of current U.S. workers and the newly American, will be on a level playing field. An above-board agricultural labor relations system will lead to better working conditions, less employee turnover and higher productivity, all of which will help ensure a prosperous agricultural sector. The entire food system will benefit by responding to consumers' increasing interest in the conditions under which their fruits and vegetables are produced.

The New Nonimmigrant Agricultural Visa Program

The new system would end or weaken certain longstanding H-2A labor protections but also would provide important new rights. We are very pleased that farmworkers in the proposed future visa program will be covered by the Migrant and Seasonal Agricultural Worker Protection Act (AWPA), the main federal law that protects farmworkers. The program would also maintain the requirement that U.S. workers in corresponding employment receive the same wages and benefits as the visa workers (with unfortunate exceptions of housing for certain workers), and it contains a cap to limit the number of workers that may be brought in on the visa. We hope that portability provisions of the new visa program would offer workers some ability to move from job to job, which should mitigate some of the problems in the current H-2A program associated with workers being tied to their employer by their visa. However, we note that contract workers in the program will have less freedom to change jobs, which could result in labor exploitation. There will need to be protections for contract workers, whose employers violate their labor rights. They should be assisted in transferring to another position.

Some of the other provisions give us pause. The 50% job preference rule in the H-2A program that requires employers to hire any ready, willing and qualified U.S. worker up until 50% of the H-2A contract period is not in the current bill. The administration of the program by the U.S. Department of Agriculture instead of the U.S. Department of Labor causes concern. The Department of Labor has significant experience, expertise and infrastructure in operating guestworker programs and protecting workers. If this major change is maintained in the legislation, we support that the bill's provision of a consultative role for the Department of Labor.

We note that other reductions in the requirements for and oversight of recruitment of U.S. workers could result in U.S. workers being displaced by workers on the visa. Thus, the modest protections for U.S. workers that are included in the current compromise language will be essential to protect the jobs of current U.S. workers and future legalizing workers. Further, once the bill is enacted, there will need to be stringent enforcement of the protections in the program and labor laws protecting farmworkers.

We applaud the opportunity for nonimmigrant visa farmworkers to eventually apply for green cards

but we are concerned that the waiting period could last many years.

The Broader Legalization Program and Worker Protections in the CIR Bill

We applaud the bill's broader legalization program. We also strongly support the provisions in the bill that aim to protect immigrant and nonimmigrant workers from retaliation and abuse, including the protections against abuse in international labor recruitment. Workers' experiences during the recruitment process have a substantial impact on their earnings and conditions in the U.S. Many temporary foreign workers are charged high recruitment fees, in violation of federal law, to obtain employment. To afford those fees and transportation costs, workers often borrow money, frequently at high interest rates. Upon arrival in the U.S., these indebted workers, particularly under the H-2A program and potentially in the future, are too fearful of losing their jobs and deportation to challenge unfair or illegal conduct. It has often been said that many guestworkers "work scared" and therefore are compliant and highly productive at low wages in comparison to workers with freedom in the marketplace. The recruitment system must be regulated and transparent. Employers that use recruiters for guestworkers should disclose to the government the identities of the recruiters, ensure workers do not pay recruitment fees, and be responsible for abuses inflicted on workers when they have used unlicensed recruiters.

In conclusion, we strongly support the proposal's road map to citizenship for undocumented farmworkers and their families. We stress that the future nonimmigrant agricultural visa program is the product of a compromise and that its modest labor protections must remain in the bill and be enforced effectively in order for the program to be workable and fair. Thank you again for your efforts to bring farmworkers one step closer to gaining legal status and the much-earned recognition for their contributions to the United States.

<u>LGBT Concerns with the Border Security, Economic Opportunity, and Immigration Modernization Act, S.744</u>

Testimony Submitted to U.S. Senate Committee on the Judiciary

Hearing: "The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744"

Monday April 22, 2013

Statement of Rachel B. Tiven, Esq., Executive Director, Immigration Equality; Bend the Arc Jewish Action; CenterLink: The Community of LGBT Centers; Council for Global Equality; The Episcopal Church; Family Equality Council; Friends Committee on National Legislation; Gay & Lesbian Advocates & Defenders; GetEQUAL; Lambda Legal; Log Cabin Republicans; National Center for Transgender Equality; National Gay & Lesbian Chamber of Commerce;

National Immigrant Justice Center; National Latina Institute for Reproductive Health; Out4Immigration;Queer Undocumented Immigrant Project/United We Dream; and Transgender Law Center;

Immigration Equality is a national organization that works to end discrimination in U.S. immigration law, to reduce the negative impact of that law on the lives of lesbian, gay, bisexual, transgender ("LGBT") and HIV-positive people, and to help obtain asylum for those persecuted in their home country based on their sexual orientation, transgender identity or HIV-status. Immigration Equality was founded in 1994 as the Lesbian and Gay Immigration Rights Task Force. Since then we have grown to be a fully staffed organization with offices in New York and Washington, D.C. We are the only national organization dedicated exclusively to immigration issues for the LGBT and HIV-positive communities. More than 38,000 activists, attorneys, faith leaders, and other constituents subscribe to Immigration Equality's emails and action alerts, and our website has over 380,000 unique visitors per year. The legal staff fields over 3,700 inquiries a year from individuals throughout the entire U.S. and abroad via telephone, email and in-person consultations.

We at Bend the Arc Jewish Action believe that our immigration system is broken and needs repair. The tools essential for this repair are not barbed wire and drones, but rather justice and equality.

CenterLink: The Community of LGBT Centers: LGBT families must be included in all aspects of immigration reform if we truly believe in liberty and justice for all.

Mark Bromley, Chair of the Council for Global Equality: Human rights begin at home, and as America's face to the rest of the world, it's important that our immigration laws reflect the equality and fair treatment that we seek in the world.

The Most Rev. Katharine Jefferts Schori, Presiding Bishop and Primate of The Episcopal Church: We are pleased to see that the Senate bill contains significant streamlining and expediting of the reunification process for citizens and green-card holders. We are gravely disappointed, however, that even as many families will experience the joy of reunification, some families and family members have been excluded from the Senate bill. As the process moves forward, we will strongly urge the inclusion of same-sex partners and spouses in the legislation. Every family deserves to live in unity.

Family Equality Council believes we must pass comprehensive immigration reform that provides for a safe path to citizenship, ends unjust detentions and deportations, abolishes the one-year filing deadline for asylum-seekers, and preserves the current family-based immigration system – which must include bi-national same-sex couples.

Friends Committee on National Legislation: Believing in the presence of the Light in each person, Friends (Quakers) are compelled to uphold the sanctity of the individual. ... Friends seek a society free from discrimination, including on the basis of race, creed, gender, ethnic or national heritage, age, sexual orientation, disability, medical condition, genetic background, and gender identification. Freedom from arbitrary or undue governmental intrusion and the equal treatment of all people by the state are inherent to each individual's realization of her or his potential.

In our daily work, Gay & Lesbian Advocates & Defenders sees the devastating impact of discrimination on LGBT individuals and families, and we know the issues highlighted in this testimony are critical to ending that discrimination.

GetEQUAL is a national LGBT civil rights organization and Comprehensive Immigration Reform is part of our pursue for equality because 267,000 undocumented immigrants identify as LGBT and 40,000 same-sex binational families are at risk of deportation. We will continue fighting for the full inclusion of LGBT people in this bill.

Because Lambda Legal has long endorsed a path to legalization for undocumented LGBT immigrants, and receives hundreds of calls annually from immigrants seeking to stay in the country with spouses or partners and their children, and from LGBT immigrants who have endured horrific persecution based on who they are, we enthusiastically support SB 744 to protect familial bonds and provide a safe home in the United States for those facing persecution.

Gregory T. Angelo, Executive Director, Log Cabin Republicans: Including provisions for LGBT individuals in comprehensive immigration reform isn't just the right thing to do; from a talent recruitment and retention perspective, it's the right thing to do for American business.

The National Center for Transgender Equality is a national social justice organization founded in 2003 and dedicated to advancing the equality of transgender people through advocacy, collaboration and empowerment. Recognizing that transgender immigrants are a highly vulnerable population within the immigration system, NCTE has led transgender organizations across the country in advocating for immigration reform.

National Gay & Lesbian Chamber of Commerce: Exclusion of LGBT people in the immigration bill would prevent a powerful business community (business owners, suppliers, employers and a lucrative consumer market segment) to thrive in the United States. A non-inclusive CIR shrinks the tax base, forces American jobs oversees and creates less jobs for hard-working Americans.

Every week the National Immigrant Justice Center (NIJC) counsels same-sex couples who are in binational families. These clients are often forced to choose between the grim alternatives of living thousands of miles away from their loved ones—frequently in countries where sexual minorities face persecution—or in fear of deportation. This is not a choice that the United States government should force on any family.

The National Latina Institute for Reproductive Health, as part of the National Coalition for Immigrant Women's Rights, believes that *truly inclusive and comprehensive* immigration reform must ensure equality for all immigrants, regardless of sexual orientation and gender identity, protect and promote their civil and human rights, and value the contributions of aspiring Americans to our economy and society by providing them access to quality and affordable health care.

Out4Immigration: Same-sex binational couples must be included in immigration reform and not be excluded by Congress, which is forcing us to choose between our families and our country. By

excluding the more than 40,000 same-sex binational couples, this bill is not inclusive – nor is it comprehensive.

Queer Undocumented Immigrant Project/United We Dream: Protecting the unity of all families in immigration reform is crucial in our communities, including the unity of same-sex bi-national couples, and ensuring a pathway to citizenship is highly important for LGBTQ undocumented people and all undocumented people.

The Transgender Law Center applauds the Senate Judiciary Committee for considering S.744, The Border Security, Economic Opportunity, and Immigration Modernization Act. With the passage of S.744, transgender detainees will be protected from old policies that subject them to prolonged isolation and expose them to higher risk of sexual violence.

We applaud the Senate Judiciary Committee for convening these hearings and we applaud the Senate "Gang of Eight" for introducing The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744 ("S. 744"), a bill which addresses many of the problem areas in our current immigration system, and which includes many provisions which would improve immigration options and due process for LGBT aspiring Americans. This testimony will address provisions of S. 744 which we believe are critical to LGBT non-citizens and their families.

It is estimated that there are 267,000 LGBT people among the 11 million undocumented. Many of the provisions of S.744 could provide relief for some of these aspiring Americans. LGBT immigrants are part of many immigrant sub-communities, from brilliant entrepreneurs, to loving spouses, to youth who have seen themselves as Americans their whole lives, to asylum seekers fleeing desperate situations to stay alive, to undocumented individuals who came to the U.S. for a better life and are now living in the shadows with no means to legalize their status. While we are pleased to see that a pathway exists for some of these aspiring citizens to eventually legalize their status, this bill cannot be truly comprehensive until it includes LGBT families.

S.744 Must Include Recognition of LGBT Family Ties

Every day Immigration Equality hears from American citizens and lawful permanent residents who are struggling to find a means to remain lawfully together with their foreign national partners. Under current U.S. immigration law, there is no way for an American to sponsor her partner for immigration benefits, regardless of how long they have been together, whether they have formalized their relationship, or whether they have children. In fact, studies have shown that among the roughly 36,000 lesbian and gay immigrant families, more than 46% are raising children together. [i]

S.744 provides no path to citizenship for lesbian and gay families. Although some foreign nationals who are present in the United States may be able to qualify for registered provisional immigrant status and may ultimately succeed in obtaining citizenship, that route would, at best, take thirteen years. Different-sex committed couples are able to file immediately for a green card upon solemnizing their relationship, and the foreign national can become a citizen within three years.

Moreover, many lesbian and gay immigrant families would not benefit at all from S.744. Often,

finding no means to remain lawfully together in the United States, couples choose to live in exile, in one of the more than 25 welcoming countries across the globe which provide immigration benefits to same-sex families . For those abroad, the path to citizenship under S.744 does nothing. Likewise, many binational couples maintain long-distance relationships at great financial and emotional expense, taking long vacations to be together and otherwise maintaining contact through daily calls or Skype; these couples also get no relief. And finally, many couples remain together only because the foreign partner is able to juggle visas and maintain lawful status as a student or on a non-immigrant work visa, these couples too will find themselves without a path to legalization.

Every day Immigration Equality hears from lesbian and gay couples who tell us painful tales of trying to maintain their families despite almost impossible odds.

One of the striking features of the statistical analysis performed of the 2000 census is how many same-sex binational couples are raising children together. Almost 16,000 of the couples counted in the census – 46% of all same-sex binational couples – report children in the household.[ii] Among female couples, the figure is even more striking, 58% of female binational households include children. The vast majority of children in these households are U.S. citizens.[iii] Behind each of these statistics is a real family, with real children who have grown up knowing two loving parents. In each of these households, there is daily uncertainty about whether the family can remain together, or whether they will have to move abroad to new schools, new friends, and even a new language.

Every day Immigration Equality hears from lesbian and gay couples who tell us painful tales of trying to maintain their families despite almost impossible odds. For example:

> *Adi Lavy and Tzila Levy are a loving, married couple, living in Brooklyn, New York. Adi is a U.S. citizen and Tzila a citizen of Israel. The couple met in 2010 and recently married in Brooklyn, New York. Adi has suffered from chronic kidney disease since the age of seventeen. Tzila is Adi's primary source of care and emotional support, and she entered the U.S. on a visitor's visa in order to care for her wife while Adi receives life-saving treatment from a respected expert in her illness. Because their marriage is unrecognized by the federal government, no other visa was available to Tzila.*
>
> *Adi's health has continued to deteriorate and she has been placed on the kidney transplant list. Tzila extended her visitor visa to remain at Adi's side, but as the end of Tzila's authorized stay approached, Adi and Tzila were left without a permanent solution for their family. In November 2012, the couple submitted a spousal petition for a green card. In January 2013, the family's request was denied because Adi and Tzila's family ties are not recognized under U.S. immigration law. Adi fears that she and her wife could be torn apart. She fears being left alone to face her chronic health issues without her primary caregiver and emotional support. Without a lasting immigration solution, this family will continue to face a life filled with uncertainty and fear.*[iv]

Adi and Tzila want nothing more or less than any other family; they want to live together, secure in the knowledge that they will not be separated.

The inability to sponsor a partner or spouse is even more devastating to women who are forming families. Many couples delay having children in the hope that the family can first stabilize its immigration status. For those who do have children, the uncertainty and stress of whether their family can remain together is multiplied exponentially.

> *Kelly Costello and Fabiola Morales married in Washington DC in the summer of 2011. Fabiola, a citizen of Peru, has been living in the United States for six years, where she has been earning a degree in nursing. Fabiola also suffers from multiple sclerosis and is receiving experimental treatment at Georgetown University. Kelly is an elementary school teacher. In what should be a joyous time for their family, Kelly is pregnant with twins. But every day the couple must live with the knowledge that when Fabiola's student visa expires later this year, she could have to leave the country and leave her family behind.*[v]

The lack of recognition of same-sex relationships affects not only the individual family, but the larger community as well. In many instances, large companies are unable to retain talented workers who are forced to leave the United States to maintain their relationships. That is why a growing number of businesses have endorsed the Uniting American Families Act. On January 1, 2013, a diverse group of businesses signed onto a letter to the House and Senate supporting passage of UAFA or CIR that includes UAFA stating:

> "We have each worked to help American employees whose families are split apart because they cannot sponsor their committed, permanent partners for immigration benefits. We have lost productivity when those families are separated; we have borne the costs of transferring and retraining talented employees so they may live abroad with their loved ones; and we have missed opportunities to bring the best and the brightest to the United States when their sexual orientation means they cannot bring their family with them."[vi]

The coalition includes over 30 businesses, such as Marriott, American Airlines, Dow Chemicals, Intel,Google, Medtronic, . To these companies it is clear that inclusion of UAFA in CIR is critical to their bottom line, and ability to compete internationally. There are currently at least two dozen countries that allow their citizens to sponsor long-term, same-sex partners for immigration benefits.[vii]

No Comprehensive Immigration Reform can be truly comprehensive if it leaves out thousands of LGBT families. S. 744 must be amended to include lesbian and gay immigrant families.

S. 744's Path to Citizenship and DREAM Act

Immigration Equality applauds S. 744 for providing a pathway to legalization for many of the unauthorized immigrants who have been in the United States for years and become part of their communities. We are particularly pleased to see that S. 744 includes a swift pathway to legalization for unauthorized immigrants who were brought to the United States as children and have attended school or served in the military here. The DREAM Act is crucial to the LGBT community, and LGBT activists have been a strong voice within the fight for immigration rights for these young people. The LGBT community stands with the DREAM activists and applauds S. 744 for the inclusion of the DREAM Act. We are particularly happy to see that there is no age-out provision in S. 744 for DREAM Act eligible applicants. It would be irrational to punish those who were brought to the U.S. as children and have been here for a long period thereafter with an arbitrary age cut-off.

LGBT organizations also believe that it is critical that any immigration reform include a pathway to

citizenship for unauthorized immigrants in the United States. We are pleased that S. 744 would allow unauthorized immigrants to legalize their status relatively quickly and obtain work and travel authorization. We are concerned, however, by the length of time it will take for these individuals to obtain full citizenship – thirteen years minimum. We are also concerned that during this lengthy period of time, those in registered provisional immigrant ("RPI") status will be foreclosed from any means-tested benefits as well as from basic health care. Further, we are worried that the "triggers" to legalization, including certification that the border is secure and the clearing of all current immigration backlogs, could stretch the legalization process out well beyond the thirteen year minimum. We believe strongly that the pathway to citizenship must be clear and achievable within a reasonable, finite timeframe.

S. 744's Family Visa Provisions

Family unity has been at the heart of the U.S. immigration system for decades. While we understand the need to increase employment-based visa numbers to remain economically competitive, this should not be a zero sum game. S. 744 eliminates the sibling category of visas and only allows U.S. citizens to petition for married sons and daughters if they are below the age of 31. We strongly oppose any cuts to the family visa system and believe that family unity must remain the central tenet of U.S. immigration law.

S. 744's Asylum Provisions

We are very happy to see positive changes in the asylum provisions under S. 744. Specifically, we are very pleased to see that S. 744 eliminates the one year filing deadline for asylum applications and allows reasonable mechanisms for individuals denied asylum solely because of the deadline to reapply. The arbitrary and unfair deadline on asylum cases was imposed in 1996 to fight fraud in the asylum system. In fact, by the time the deadline was imposed, other improvements to the asylum system, particularly requiring that cases be heard swiftly, and imposing lifetime bars on receiving immigration benefits for filing a frivolous claim, reduced the incentive to apply for asylum solely to receive work authorization. However, the filing deadline has resulted in harsh consequences for many genuine asylum seekers who simply did not find out about asylum quickly enough or who were unable to focus on legal issues during their first year in this country.

Each year Immigration Equality represents more than 400 LGBT asylum seekers through direct representation and partnerships with pro bono attorneys. These brave individuals literally leave everything behind to seek freedom from persecution, violence, and abuse simply because of who they are and whom they love. While many political dissidents are aware that if they reach the United States they can seek political asylum, there is no way for most LGBT people to know that asylum is potentially available to them based on their sexual orientation or gender identity.[viii] The primary reason that Immigration Equality's attorneys decline otherwise meritorious cases for legal representation is that the asylum seeker has missed the one year filing deadline; S. 744 would remove this unjust deadline.

We are also pleased to see that S. 744 allows asylum officers to conduct full interviews after finding that an arriving alien has a credible fear. Currently, asylum and refugee officers receive regular training on LGBT asylum issues and have a written training module to follow for these types of cases[ix] and immigration judge do not. We therefore support any efforts to expand the categories of cases which are heard by asylum officers.

S. 744 and Detention

We are pleased to see that S. 744 contains provisions which purport to expand the use of alternatives to detention. LGBT individuals are among the most vulnerable people held in immigration detention.[x] Every week, Immigration Equality hears from LGBT individuals who are subjected to verbal and physical abuse while detained. For transgender, as well as lesbian, gay, and bisexual asylum seekers who have suffered trauma in their home country, being housed in prison-like conditions while awaiting an immigration hearing is terrifying. We frequently hear from transgender detainees who are placed in administrative segregation – solitary confinement – purportedly to protect them from potential abusers. There, transgender detainees are isolated from all other detainees, denied access to vital programs, and often denied reasonable access to counsel. If transgender individuals must be detained, they must be detained safely, in housing that protects them from harm without blaming the victim for abuse.

S. 744 would make some important changes to the nation's massive immigration detention system. However, by increasing the use of Operation Streamline, expanding the categories of people subject to mandatory detention, and increasing the penalties on illegal entry, the bill will unnecessarily increase the number of people funneled into the immigration detention system. Mandatory detention is an inhumane and expensive practice, and we should not be expanding it.

We believe that S. 744 should include specific language that recognizes LGBT detainees as "vulnerable" and provides additional protections for them while detained. We also believe that S. 744 should set statutory boundaries on the limited circumstances when solitary confinement should be used and provide oversight protections for those who face solitary confinement.

S. 744 and the Mandatory E-Verify Program and Biometric Identification Card

S. 744 includes a gradual requirement that all employers implement E-verify and requires the Social Security Administration to explore the creation of enhanced cards that will include biometric data. We have some concerns over "false positives" in the current E-Verify system. We are also concerned that any mandatory data tracking system may "out" transgender employees if their gender marker, name, or outward appearance has changed. We therefore believe that these systems should not include unnecessary personal information, such as gender markers, and should include strong privacy protections for all workers.

Conclusion

We applaud the Senate for holding these hearings and for beginning the conversation on these needed reforms. We are hopeful that over the coming weeks, the Senate will amend the bill to provide needed relief to LGBT families, to preserve family unity as the heart of immigration law, and to provide a clearly achievable path to citizenship for those who are here without status. Too many individuals in the United States – lesbian, gay, bisexual, transgender, and straight – cannot fully access the American dream because of our antiquated immigration system. For LGBT families with young children, undocumented youth, and asylum seekers, it is time to pass rational, humane, *comprehensive* immigration reform that fully respects the unique needs and contributions of LGBT immigrants.

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[i] Family, Unvalued: Discrimination, Denial, and the Fate of Binational Same-Sex Couples Under U.S. Law, joint report by Human Rights Watch and Immigration Equality, 2006, at 17, 3 available at

http://www.hrw.org/en/reports/2006/05/01/family-unvalued .

[ii] *Id.*

[iii] *Id*. In female binational households, 87% of the children were U.S. citizens; in male households, 83% were U.S. citizens

[iv] *See* Erica Pearson, "Newlywed lesbians from Brooklyn hope feds decide on green-card bid after Supreme Court weighs in on DOMA," NY Daily News, December 12, 2012 available at http://www.nydailynews.com/new-york/lesbian-couple-waiting-doma-decision-article-1.1218693 .

[v] *See* Pamela Constable, "Federal marriage law may force deportation of many immigrant gay spouses," Washington Post, December 29, 2012, available at http://articles.washingtonpost.com/2012-12-29/local/36071393_1_gay-spouses-binational-gay-couples-doma .

[vi] Available at http://immigrationequalityactionfund.org/images/BusinessCoalition_signonletter.pdf .

[vii] These countries include Australia, Belgium, Brazil, Canada, Denmark, Finland, France, Germany, Iceland, Israel, the Netherlands, New Zealand, Norway, Portugal, South Africa, Spain, Sweden Switzerland, and the United Kingdom. *See* Family, Unvalued.

[viii] See, "The Gay Bar: The Effect of the One-Year Filing Deadline on Lesbian, Gay, Bisexual, Transgender, and HIV-Positive Foreign Nationals Seeking Asylum or Withholding of Removal" by Victoria Neilson & Aaron Morris, 8 New York City Law Review 233 (Summer 2005), discussing the disproportionate impact of the one year filing deadline on LGBT applicants.

[ix] See, "USCIS Guidance for Adjudicating Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) Refugee and Asylum Claims," available at http://www.uscis.gov/USCIS/Humanitarian/Refugees%20&%20Asylum/Asylum/Asylum%20Native%20Documents%20and%20Static%20Files/RAIO-Training-March-2012.pdf

[x] See, National Immigrant Justice Center, "Stop Abuse of Detained LGBT Immigrants," http://www.immigrantjustice.org/stop-abuse-detained-lgbt-immigrants

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Lupe Martinez
President &
Chief Executive Officer

Office of the President

April 22, 2013

Dear Senate Judiciary Committee,

Our organization, United Migrant Opportunity Services/UMOS Inc., serves farmworkers. We submit this statement for inclusion in the record of the April 22, 2013 Senate Judiciary Committee hearing on "the Border Security, Economic Opportunity, and Immigration Modernization Act, S. 744." We believe that immigration reform is of the utmost importance to helping farmworkers and their families have the opportunity to lead productive, healthy lives. We are therefore grateful to you and your colleagues, who have spent considerable effort to take into account the interests and knowledge of stakeholders in agriculture and to develop legislation to reform our broken immigration system.

We're very pleased that farmworker and grower representatives have come to an agreement on immigration reform for agriculture. This compromise should greatly increase support for comprehensive immigration reform and get us closer to dignity for farm workers. As the Border Security, Economic Opportunity, and Immigration Modernization Act of 2013 (CIR bill) moves through the legislative process, we write to emphasize the importance of labor protections for immigrant farmworkers and urge you to ensure that existing worker protections remain in the bill or are strengthened.

The Current Landscape: Greater Protections Needed for Farmworkers

The lack of authorized immigration status of so many farmworkers contributes to their poor wages and working conditions. Farmworker wages are among the lowest in the country. Many earn at or just above the minimum wage. Poverty among farmworkers is more than double that of all wage and salary employees. Few farmworkers receive any fringe benefits, such as paid sick leave or paid vacation. Decrepit, overcrowded housing is all too common. Health insurance is rarely provided by employers and few farmworkers can afford to purchase it on their own. Yet, agriculture ranks among the most hazardous occupations. Federal laws on overtime pay and collective bargaining exclude farmworkers, as do most federal occupational safety standards and many states' workers' compensation systems.

Such marginalized workers fear joining labor unions, seeking improved job terms, or challenging illegal employment practices. Agricultural workers experience rampant violations of employment laws, including minimum wage requirements. Frequently, farm operators hire workers through farm labor contractors, whom they claim are the sole "employers" for purposes of escaping immigration and labor laws. Undocumented workers who challenge illegal employment practices risk losing their job and breaking up their families and other dire consequences of deportation. With a roadmap to

citizenship, all farmworkers, including the hundreds of thousands of current U.S. workers and the newly American, will be on a level playing field.

The Dairy Industry in Wisconsin is heavily dependent on the use of foreign born workers. According to studies by the University of Wisconsin, more than 4,000 foreign born individuals are employed in dairy farming.

The economic impact and significance of this labor source are enormous. The viability of the dairy industry can only be maintained by immediate and appropriate immigration reform.

Roadmap to Citizenship: the Blue Card

We are very pleased that the CIR bill contains a roadmap to citizenship for current and future farmworkers and their families. We strongly support the proposal for a "blue card" program, under which experienced undocumented farmworkers and their family members could earn legal immigration status, permanent residency and citizenship within a reasonable period of time and at a reasonable cost given their low incomes. Farmworkers and their families are contributing to America; it is only fair that they be given an opportunity earn legal immigration status. With a roadmap to citizenship, all farmworkers, including the hundreds of thousands of current U.S. workers and the newly American, will be on a level playing field. An above-board agricultural labor relations system will lead to better working conditions, less employee turnover and higher productivity, all of which will help ensure a prosperous agricultural sector. The entire food system will benefit by responding to consumers' increasing interest in the conditions under which their fruits and vegetables are produced.

The New Nonimmigrant Agricultural Visa Program

The new system would end or weaken certain longstanding H-2A labor protections but also would provide important new rights. We are very pleased that farmworkers in the proposed future visa program will be covered by the Migrant and Seasonal Agricultural Worker Protection Act (AWPA), the main federal law that protects farmworkers. The program would also maintain the requirement that U.S. workers in corresponding employment receive the same wages and benefits as the visa workers (with unfortunate exceptions of housing for certain workers), and it contains a cap to limit the number of workers that may be brought in on the visa. We hope that portability provisions of the new visa program would offer workers some ability to move from job to job, which should mitigate some of the problems in the current H-2A program associated with workers being tied to their employer by their visa. However, we note that contract workers in the program will have less freedom to change jobs, which could result in labor exploitation. There will need to be protections for contract workers, whose employers violate their labor rights. They should be assisted in transferring to another position.

Some of the other provisions give us pause. The 50% job preference rule in the H-2A program that requires employers to hire any ready, willing and qualified U.S. worker up until 50% of the H-2A contract period is not in the current bill. The administration of the program by the U.S. Department of Agriculture instead of the U.S. Department of Labor causes concern. The Department of Labor has significant experience, expertise and infrastructure in operating guestworker programs and protecting workers. If this major change is maintained in the legislation, we support that the bill's provision of a consultative role for the Department of Labor.

We note that other reductions in the requirements for and oversight of recruitment of U.S. workers could result in U.S. workers being displaced by workers on the visa. Thus, the modest protections for

U.S. workers that are included in the current compromise language will be essential to protect the jobs of current U.S. workers and future legalizing workers. Further, once the bill is enacted, there will need to be stringent enforcement of the protections in the program and labor laws protecting farmworkers.

We applaud the opportunity for nonimmigrant visa farmworkers to eventually apply for green cards but we are concerned that the waiting period could last many years.

The Broader Legalization Program and Worker Protections in the CIR Bill

We applaud the bill's broader legalization program. We also strongly support the provisions in the bill that aim to protect immigrant and nonimmigrant workers from retaliation and abuse, including the protections against abuse in international labor recruitment. Workers' experiences during the recruitment process have a substantial impact on their earnings and conditions in the U.S. Many temporary foreign workers are charged high recruitment fees, in violation of federal law, to obtain employment. To afford those fees and transportation costs, workers often borrow money, frequently at high interest rates. Upon arrival in the U.S., these indebted workers, particularly under the H-2A program and potentially in the future, are too fearful of losing their jobs and deportation to challenge unfair or illegal conduct. It has often been said that many guestworkers "work scared" and therefore are compliant and highly productive at low wages in comparison to workers with freedom in the marketplace. The recruitment system must be regulated and transparent. Employers that use recruiters for guestworkers should disclose to the government the identities of the recruiters, ensure workers do not pay recruitment fees, and be responsible for abuses inflicted on workers when they have used unlicensed recruiters.

In conclusion, we strongly support the proposal's road map to citizenship for undocumented farmworkers and their families. We stress that the future nonimmigrant agricultural visa program is the product of a compromise and that its modest labor protections must remain in the bill and be enforced effectively in order for the program to be workable and fair. Thank you again for your efforts to bring farmworkers one step closer to gaining legal status and the much-earned recognition for their contributions to the United States.

Sincerely,

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Microsoft

June 27, 2011

Senator Patrick Leahy
437 Russell Senate Building
United States Senate
Washington, D.C. 20510

Dear Chairman Leahy:

I am writing to express Microsoft Corporation's support for the Uniting American Families Act. As an innovation leader, our most critical asset is the brainpower of the people in our workforce. Our human talent is the key to Microsoft's ability to generate new ideas and new products, and to create new U.S. jobs, and we place top emphasis on attracting and keeping the best and brightest.

Today's immigration laws create a particularly serious barrier to this goal by failing to provide immigration benefits to the same-sex permanent partners of U.S. citizens and lawful permanent residents. This barrier imposes tremendous hardships on a significant number of talented employees and recruits who, along with their foreign national partner or spouse, are forced to choose between: abandoning successful careers and established lives in the U.S. and moving to a country where they may remain together; living indefinitely in separate countries; or, separating permanently. This barrier also imposes an economic burden on Microsoft and other U.S. employers by impacting the productivity of key employees and creating substantial costs as we transfer employees to subsidiaries in other countries, where possible, to mitigate this hardship. More importantly, we are faced with the reality of losing some of our best employees as they deal with this challenge.

The provisions of the Uniting American Families Act would overcome this outdated barrier. Such a law would also bring U.S. immigration policy law into line with the growing number of countries—including economic competitors such as Sweden, Germany, the Netherlands, Canada, the United Kingdom, France, and Australia—that already provide immigration benefits to the same-sex permanent partners of citizens and permanents residents, recognizing that it is both fair and economically smart to do so. Passage of the Uniting American Families Act would permit key employees to keep their families together and remain as contributors to the U.S. economy, and it would allow Microsoft to build and keep the best possible talent within our workforce.

We commend you for your continued leadership on this very important issue.

Sincerely,

Karen F. Jones
Vice President, Deputy General Counsel
HR Legal Group