ASIAN AMERICAN JUSTICE CENTER | MEMBER OF ASIAN AMERICAN CENTER FOR ADVANCING JUSTICE

WRITTEN TESTIMONY SUBMITTED BY

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ASIAN AMERICAN JUSTICE CENTER

SENATE COMMITTEE ON THE JUDIICARY

HEARING ON

COMPREHENSIVE IMMIGRATION REFORM LEGISLATION

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Chairman Leahy, Senator Grassley and Member of the Senate Judiciary Committee:

On behalf of the Asian American Justice Center (AAJC) and the other affiliate members of the Asian American Center for Advancing Justice (*Advancing Justice*), a non-profit, non-partisan affiliation representing the Asian American and Pacific Islander community on civil and human rights issues, we are pleased to submit this written testimony in relation to the Senate Committee on the Judiciary Hearing: "Comprehensive Immigration Reform Legislation." We thank the Committee for holding this important hearing and we urge you to focus today's hearing on creating an immigration system that is fair, equitable, and embodies American values, including America's immigration tradition of family reunification.

Family-Based Immigration System

The family immigration system is very important to the Asian American community. As a result of past exclusionary immigration laws, approximately 60% of Asian Americans are foreign born, the highest proportion of any racial group nationwide. While Asian Americans are only 6% of the U.S. population, they sponsor more than one-third of all family-based immigrants. Asian Americans are also disproportionately harmed by the family backlogs. Of the almost 4.3 million family members of U.S. citizens and legal permanent residents waiting in the family backlogs, nearly two million are Asian American and Pacific Islander and many are Latino and African.

Protecting and strengthening the current family-based immigration system is economically sound policy for the U.S. Family-based immigration has significant economic benefits, especially for long-term economic growth. Family-based immigrants foster innovation and development of new businesses, particularly small and medium-sized businesses that would not otherwise exist, creating jobs for immigrant, as well as native-born workers. Furthermore, improving our family-based immigration system will make the U.S. even more attractive to high-skilled immigrants, who may want the flexibility to bring loved ones to the U.S. once they are established here. Workers who have the support and encouragement of their family members are more likely to be productive and successful as they strive to integrate into our communities.

For these reasons, *Advancing Justice* commends the proposed changes in the *Border Security, Economic Opportunity, and Immigration Modernization Act of 2013 (S. 744)* for the family immigration system to reunify families and strengthen families. They include provisions to (1) redefine "immediate relatives" to include spouses and minor children of legal permanent residents, allowing an expedited process not subject to numerical caps; (2) eliminate the family backlog over a period of ten years; (3) permit family members awaiting green cards to work and live in the U.S.; and (4) allow other family members to visit the U.S. for up to 60 days per year.

However, *Advancing Justice* is extremely concerned about the proposed changes to the family immigration system, which are a dramatic departure of America's long-standing immigration tradition and value of family unity. In particular, we believe that the following changes will prove harmful to immigrant communities and America as a whole: (1) elimination of the "F4" visa category so that U.S. citizens can no longer sponsor their brothers and sisters; (2) placement

of an age cap on the "F3" visa category so that U.S. citizens can only sponsor their adult married children, who are thirty years or younger; and (3) exclusion of LGBT bi-national couples and families from sponsoring their loved ones for family reunification.

Eliminating family immigration categories or limiting the scope of families will only create greater strain on families, the most basic unit of American society. Americans should not have to choose between living and working in the U.S. with no family support and living in a country that offers little to no opportunities for families. Brothers and sisters, along with children of all ages are an inextricable part of any family. Denying this imposes upon many ethnic groups an unacceptably narrow concept of family, and downplays the contributions made by these family members. Any policy that would permanently keep parents from children of any age and brothers and sisters from each other goes against our identity as a nation, which has always recognized the importance of family unity.

Excluding LGBT couples and families from sponsoring their loved ones for family reunification by not recognizing permanent partners and their families in the definition of family perpetuates discrimination and prevent these families from reuniting with their loved ones. Reform must be inclusive and should not discriminate based on race, gender, or sexual orientation. All families should be given the opportunity to work and live together to achieve the American dream.

We intend to work with the Senate Judiciary Committee to propose changes to the new framework in S. 744 to ensure that this system sufficiently addresses the needs of *all* American immigrant families, specifically one that is fully inclusive of adult siblings and children of all ages. It is important that proposals offered by the Senate and the House provide thoughtful and effective solutions that will keep families together, not divide them. We look forward to working with all Members of Congress on ensuring that the comprehensive immigration reform bill is strengthened and inclusive of all families.

Path to Citizenship

I. Roadblocks Should be Eliminated so that There is an Affordable and Accessible Path to Citizenship for All Aspiring Americans.

While Advancing Justice is encouraged by the inclusion of a path to citizenship in S. 744, the proposed 13-year path before an aspiring American can become a citizen contains an arduous set of requirements that would exclude significant numbers of the 11 million undocumented and render it extremely difficult for any aspiring American to eventually naturalize. Approximately 1.3 million of undocumented immigrants in the United States are Asian American.

The triggers upon which adjustment from Registered Provisional Immigrant (RPI) status to legal permanent resident (LPR) status are contingent are both unnecessary and unwarranted. For example, the requirement that the Comprehensive Southern Border Security Strategy and Southern Border Fencing Strategy be substantially operational and completed is unjustified given that the border is more secure than ever before – and will cost $4.5 billion. The problems with a

mandatory E-Verify program, as discussed in the next section of this submission, also call for elimination of E-Verify as a trigger for the path to citizenship.

The proposed path to citizenship should be amended to ensure that all 11 million aspiring Americans can more fairly and realistically attain and maintain Registered Provisional Immigrant (RPI) status, adjust to LPR status, and become citizens of the United States over a shorter and more reasonable time period.

A. The Path to Citizenship Should be Fair and Attainable for Aspiring Americans by Eliminating the Continuous Employment Requirement.

The requirement that - in order to renew RPI status and to adjust from RPI to LPR status - an individual must demonstrate regular employment throughout the RPI period excepting brief periods of not more than 60 days, would prove extremely difficult given the shifting service structure and fluctuations of the U.S. economy and the seasonal, irregular nature of some types of employment. In order for the path to citizenship to be fair, accessible, and realistically attainable for the 11 million aspiring Americans, the continuous employment requirement in Section 2101 and 2102 of S. 744 should be eliminated. Otherwise, potentially significant numbers of individuals will fall off the path to citizenship.

Many aspiring Americans work in contingent jobs such as day labor, construction, domestic work, and other service sectors where the structure of employment consists largely of brief periods of employment with several different employers. It is not uncommon to not have work for periods of time longer than 60 days. Imposing such a requirement would ignore the realities of the modern "workplace" and the struggles of immigrants who have no choice but to seek work that is often seasonal, irregular, and subject to the fluctuations of the U.S. economy.

This requirement would exclude hard-working aspiring Americans who try desperately to find employment and who perform services that are essential to our economy and way of life, but through no fault of their own, are unable to obtain work for a period of 60 or more days during a ten year time period. The alternative that an individual demonstrate average income above 100% or 125% of federal poverty levels similarly would exclude many individuals who work hard but earn low wages and would render them ineligible for RPI renewal or adjustment to LPR status. Seventy percent of day laborers, for example, search for work five or more days a week.[1]

This continuous employment requirement should be eliminated from S. 744.

B. The Path to Citizenship Should be Fair and Attainable for Aspiring Americans by Eliminating the English Language Requirement to Adjust from RPI to LPR Status.

The English language skills requirement to adjust from RPI to LPR status, contained in Section 2102 of the bill, is a departure from existing law and would present a roadblock for many aspiring Americans that should be removed.

[1] Abel Valenzuela Jr. et al., *On the Corner: Day Labor in the United States* at ii (January 2006).

Although there is a basic English language requirement for naturalization, current law does not contain such a requirement to obtain green cards. Thus, the English language requirement for LPR status contained in the bill would impose a higher threshold for those who have RPI status. This is unwarranted, particularly considering that individuals with RPI status would still need to meet the existing English language requirements in order to naturalize under current law.

The English language requirement also would impose a difficult hurdle, preventing many aspiring Americans from achieving their dream of citizenship. Many Asian Americans live in linguistically isolated household in which everyone over the age of 14 is limited English proficient (LEP). Over 23% of Asian American households in California are linguistically isolated, a rate similar to Latinos (24%).[2]

Many poor and low-income immigrants also already have difficulty finding free or low-cost English classes, even in multicultural areas such as Los Angeles. It is likely that such programs are even less available in other parts of the country. A national report by the NALEO Educational Fund found that a majority of ESL classes have a waiting list, and that growing ESL demands and funding losses have reduced the availability and caliber of adult ESL services.[3] There have been too many cuts in ESL programs and immigrant integration grants, reducing the amount of free and low-cost English classes available to the working poor. While S. 744 contemplates some additional funding for such programs, such funding would need to be at a significant enough level to ensure that all aspiring Americans would have access to English language classes. Otherwise, an already fragile infrastructure would be at risk of being pushed past capacity.

S. 744 currently contains a discretionary exemption for individuals with RPI status who are 70 years of age or older. This does not take into adequate account, however, the hardships associated with learning a new language at an older age, nor does it take into account the scarcity of free or low-cost English classes.

The English language requirement to adjust from RPI to LPR status should be eliminated. Alternatively, at minimum, there should be an automatic exemption for individuals with RPI status who are 55 years of age or older. For those younger than 55, factors such as those considered in naturalization exams under current law – including age, education, length of residence in the United States, opportunities and efforts made to prepare – should be taken into account in due consideration of whether to grant an English language waiver.[4]

C. The Path to Citizenship Should be Fair and Attainable for Aspiring Americans by Allowing Discretionary Waivers to Consider Applicants' Backgrounds, Including Rehabilitation and Family Ties.

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[2] *A Community of Contrasts: Asian Americans, Native Hawaiians and Pacific Islanders in California*, ASIAN AMERICAN CENTER FOR ADVANCING JUSTICE at 17 (2013).

[3] *The ESL Logjam: Waiting Times for Adult ESL Classes and the Impact on English Learners*, NALEO EDUCATIONAL FUND at 1-2 (2006), available at http://www.naleo.org/downloads/ESLReportLoRes.pdf.

[4] *See* 8 CFR § 312.2(c)(2).

There are several grounds for ineligibility for RPI status set forth in Section 2101 of S. 744, including being convicted of a single felony, an aggravated felony, and three or more misdemeanor offenses. While S. 744 provides for limited waivers to further family unity or the public interest, there should be a mandatory requirement that each individual RPI applicant's background – including family ties, rehabilitation, and evidence that the individual has turned his life around – be considered in adjudicating his application for RPI status.

D. The December 31, 2011, Cut-Off Date Arbitrarily Would Exclude Significant Numbers of Aspiring Americans and Should be Extended to the Date of Enactment of the Legislation.

The requirement in Section 2101 of S. 744 that an individual have been physically present in the United States on or before December 31, 2011, in order to be eligible for RPI status would arbitrarily exclude significant numbers of aspiring Americans who already live, work, go to school, and contribute to the United States. By preventing these individuals from being able to come out of the shadows and legalize, this arbitrary cut-off date would be short-sighted and counterproductive, limiting these aspiring Americans from being able to contribute their full array of talents and fully integrating into U.S. society.

Indeed, as the Senate bipartisan group who authored this legislation stated in their immigration reform principles released in January, they intended to "ensure that this is a successful permanent reform to our immigration system that will not need to be revisited." To arbitrarily exclude potentially thousands of aspiring Americans who already reside in the United States, from legalization undermines this long-term goal enunciated by the authors of S. 744 to fundamentally repair the broken immigration system for the future of the country. Thousands of aspiring Americans would remain in the shadows and subject to further exploitation and constant fear of deportation.

To achieve this bipartisan goal of "successful permanent reform to our immigration system that will not need to be revisited," all of the aspiring Americans residing in the U.S. as of the date of enactment of S. 744 should be deemed to meet the physical presence requirement for RPI eligibility.

E. The One-Year Application Time Period Does Not Provide Sufficient Time for Aspiring Americans to Apply for RPI Status and Should be Extended to a Minimum Five-Year Period from the Date of Enactment.

The one-year period for applying for RPI status, with a possible 18-month extension, contained in Section 2101 of S. 744 does not provide sufficient time for the millions of aspiring Americans who would seek to legalize their status. There should be a minimum five-year period from the time of enactment of the legislation for individuals to apply for RPI status.

Establishing the necessary national infrastructure to inform, educate, and assist millions of potential applicants with the RPI application process will take a considerable amount of time – far longer than the one year contemplated in the legislation. As we learned from

implementation of the Deferred Action for Childhood Arrivals (DACA) policy, where approximately 1 million DREAMers were immediately eligible for DACA[5] compared to the many more millions of aspiring Americans who would be eligible for RPI status, it is not a simple task for applicants who have been living in the shadows to apply.

It will require extensive and ongoing community education, in the languages spoken by those eligible for RPI status, for the millions of potential applicants to be informed about and understand the application process. It will require further time for the millions of applicants to compile the necessary documents and to seek assistance in filling out their applications, which will be crucial to ensure the quality and sufficiency of their applications.

Moreover, there is limited capacity among nonprofit community organizations and legal service providers to assist potential RPI applicants. Even with federal funding assistance, as proposed in the bill, it will take many months for those resources to flow to these nonprofit organizations, which also will need time to develop their capacity to provide assistance. There already is a justice gap in this country, with estimates that approximately 80% of low-income individuals have no access to a lawyer when they need one.[6]

If insufficient time is provided for potential applicants to apply, this will encourage unscrupulous operators to use the one-year application deadline to lure applicants into paying for questionable services. Potential applicants likely would feel pressured to meet the one-year deadline and - given the limited time for nonprofit community organizations to build the necessary infrastructure to provide assistance to millions of applicants - seek assistance from other channels at risk of being defrauded.

There should be a five-year application period from the date of enactment of S. 744.

Interior Enforcement

Advancing Justice is encouraged that the S. 744 takes steps to address serious due process concerns in the removal process by including the appointment of counsel at government expense for those individuals determined to be incompetent to represent themselves due to a serious mental disability as well as other particularly vulnerable individuals. However, access to counsel is only a first step in ensuring due process for with mental disabilities who cannot advocate on their own behalf and often do not have the resources to hire counsel. In addition to the appointment of counsel, Advancing Justice urges the Senate to legislate alternatives to detention for those with mental disabilities, the availability of mental competency evaluations by qualified mental health professionals in cases where competency is in question, comprehensive screening for mental disabilities and access to stabilizing medication in all ICE and ICE-contracted facilities, training for immigration judges and Immigration and Customs Enforcement agents and attorneys on best practices with regard to individuals with mental disabilities, and judicial

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[5] *See Who and Where the DREAMers Are: A Demographic Profile of Immigrant Who Might Benefit from the Obama Administration's Deferred Action Initiative*, IMMIGRATION POLICY CENTER – AMERICAN IMMIGRATION COUNCIL at 1 (July 2012), http://www.immigrationpolicy.org/sites/default/files/docs/who_and_where_the_dreamers_are_0.pdf.

[6] *Addressing the Justice Gap*,New York Times, (Aug. 23, 2011).

discretion to terminate removal proceedings where individuals are determined to be incompetent and safeguards are insufficient to ensure due process.

However, in the past decade, we have deported more people than in the preceding century.[7] Expenditures on immigration enforcement have also swelled, eclipsing the budgets of all other federal law enforcement agencies combined.[8] The unprecedented rise in deportations has come with a parallel rise in the size of our immigration detention system. Disappointingly, the Senate bill fails to address these systemic problems in our immigration system. Further, the bill increases enforcement provisions and spending. For example, the bill creates a new ground of inadmissibility for everyone who had been identified as having a gang affiliation in a law enforcement database after the age of eighteen.[9] Gang databases have been found to have extremely high misidentification rates.[10] Asian, Latino, and African-American communities are disproportionately misidentified in gang databases.

The bill's dramatic expansion of E-Verify must also be rejected. Mandating E-Verify for all employers will have a destructive impact on workers, employers and our economy. A mandatory system will drive a whole layer of workers who are not eligible for work authorization under the bill further underground where workplace abuses are rampant. This results in a race to the bottom that hurts all workers, disadvantages law abiding employers, and by at least one government estimate, promises to decrease federal tax revenue by more than $17.3 billion over ten years. The billions employers will need to spend to implement E-Verify also unduly and disproportionately falls on small businesses.

The protections outlined in the bill do not erase E-Verify's harms. The bill's due process provisions do not eliminate the productivity, time, and business revenues lost from having to appeal incorrect "non-confirmations." Appeals will also be difficult to navigate for the nearly one-third of AAPIs who face language barriers and are unfamiliar with the government bureaucracy. Furthermore, while important, the proposed protections for workers who file workplace abuse claims provide insufficient assurance for the vast majority of unauthorized workers who will be unwilling to report or fight abuses where the threat of potential or eventual deportation still exists.

Integration and Access to Affordable Health Care and Nutrition

As mentioned above, family-based immigration makes up a large part of the Asian American community. Its value in strengthening the economic and social unit of the family is underscored in the high rates of business ownership in the community and in the creation of jobs for all Americans. Alongside recognizing the positive contributions of immigrants to our country, Advancing Justice also recognizes that individuals and families may not always be able to plan for periods of economic insecurity. Although, on average, 12.6% of the Asian American and Pacific Islander population live below poverty, the rate is much higher for some Asian sub-

[7] *A Decade of Rising Immigration Enforcement*, IMMIGRATION POLICY CENTER – AMERICAN IMMIGRATION COUNCIL at n.2 (Jan. 2013), http://www.immigrationpolicy.org/sites/default/files/docs/enforcementstatsfactsheet.pdf.
[8] *Immigration Enforcement in the United States*, MIGRATION POLICY INSTITUTE at 12 (Jan. 2013), http://www.migrationpolicy.org/pubs/pillars-reportinbrief.pdf.
[9] Border Security, Economic Opportunity, and Immigration Modernization Act § 3701(a).
[10] Julie Barrows, C. Ronald Huff, Gangs and Public Policy: Constructing and Deconstructing Gang Databases, 8 *Criminology & Public Policy* 675 (2009).

populations, such as 37.8% for the Hmong, 29.3 % for Cambodians, 18.5% for Laotians, and 16.6% for the Vietnamese. [11]

The prolonged and continued exclusion of aspiring Americans from federal health and nutrition support programs is contrary to the longstanding American values of fairness and equal opportunity for integration. In order to ensure optimal health for all, we should not exclude those contributing to our economic success merely because they require temporary health or nutritional benefits. Excluding individuals with registered provisional status from critical federal means-tested public benefits, such as Medicaid, the Children's Health Insurance Program (CHIP), and the Supplemental Nutrition Assistance Program (SNAP), is a disinvestment in our families, children, and a healthy workforce. Similarly, the financial security and health of our communities are threatened by the exclusion of working-class and middle-class immigrants in the Patient Protection and Affordable Care Act (ACA) from tax credits and cost-sharing subsidies to assist in the purchase of affordable health insurance through the newly created state Exchanges.

As written in S. 744, many categories of immigrants must wait anywhere from five to 10 or more years before becoming lawful permanent residents, and even longer to become citizens. These are individuals who are coming out of the shadows to obtain registered provisional status, youth and young adults granted Deferred Action for Childhood Arrivals or DREAMers, agricultural Blue Card holders, and family V Visa holders. Moreover, under existing law, most lawfully residing immigrants, including lawful permanent residents (persons with green cards), must wait five years before becoming eligible for federal means-tested public benefits, including Medicaid, CHIP, and SNAP. In times of economic need and poor health, these waiting periods increase individual suffering and shift the costs of uncompensated care to our already overburdened safety net providers, states, and localities.

A reform framework for inclusion rather than exclusion must also restore the rights of COFA (Compact of Free Association) migrants to access Medicaid. COFA migrants from the freely associated states of Micronesia, Republic of the Marshall Islands, and Republic of Palau have been excluded from Medicaid since 1996. Largely because of the United States' nuclear testing in the Pacific Islands, ongoing militarization there, and economic abandonment by the United States, COFA migrants suffer from serious health conditions such as high rates of cervical cancer and tuberculosis and need the help of Medicaid to receive adequate health care.

Advancing Justice recommends allowing all aspiring Americans to access our country's health care and nutrition support programs, removing the five-year waiting period for lawfully residing immigrants, and restoring the eligibility of COFA migrants for Medicaid. At this starting point of discussion, we urge Congress to enact forward thinking legislation that is consistent with the rights of being lawfully present in our country. The exclusion of immigrants with legal status from affordable health care and nutrition for five to 10 years or more, who will be working and lawfully residing in our country for the long-term, is short-sighted, unfair, and contrary to sound

[11] *Critical Issues Facing Asian Americans and Pacific Islanders: Poverty*, WHITE HOUSE INITIATIVE ON ASIAN AMERICANS AND PACIFIC ISLANDERS, http://www.whitehouse.gov/administration/eop/aapi/data/critical-issues (last accessed April 22, 2013).

policy. Modernizing our healthcare system, as is the promise of the ACA, requires that all Americans have access to affordable, quality health coverage.

Thank you again for holding this critical and timely hearing and for the opportunity to express the views of Advancing Justice. We welcome the opportunity for further dialogue and discussion about these important issues. We look forward to working with the Committee as it develops and moves immigration reform legislation through Congress.