

Senator Grassley's questions to witnesses regarding the hearing on "The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744" on April 22, 2013

Questions for Janice Kephart

- 1. At the April 22, 2013 hearing, we heard many perspectives on comprehensive immigration reform. Was there any testimony offered by other witnesses that you found problematic, and how would you respond to it? Do you have any additional comments on issues that were discussed at the hearing?**

My main concern is that there are numerous national security loopholes in the bill that have gone unaddressed. My expertise is not in what nearly all the other witnesses spoke to, so I would like instead to speak to what is problematic in issues I did not hear discussed during the course of the hearing.

The first is a general statement about the basic premise of granting immediate RPI status to millions of individuals whose identities we can not know. Today, USCIS struggles to find fraud and root it out in its current application vetting process. Adding 11 million on to that, or as some estimates state, 33 million potential recipients of RPI status in a timely manners, requires USCIS to either (1) rubber stamp the RPI applications or (2) produce tremendous backlogs that by the very nature of the bill will put current applicants more out of time with current processing.

Former executive-level long-time employees of USCIS tell me that USCIS cannot even handle current applications and problems. The processing problems persist and S. 744 does not solve them. The result is a tremendous fraud and national security vulnerability that takes us back to before 9/11. Even on 9/11, all applicants were receiving vetting and most were interviewed. There are no controls in S. 744 at all. The process is completely blind without identity vetting, and a criminal background check does little in these circumstances to assure security.

Here are some other issues with S. 744, perhaps the most visible and egregious. I do not attempt to capture them all here, but hope this listing provides some insight into substantial issues with S. 744, and recommendations for solving them. Many of these reflect the bipartisan agreements made in the 2007 push for comprehensive immigration reform

Border Security:

- Require *actual fencing* per an update to the specific fencing language in the *Secure Fence Act of 2006*.
- *Remove triggers, high risk sector demarcation*, and require instead "operational control on 100 percent of the border" as defined in the Secure Fence Act. Right now, S. 744 puts forth a metric that can be summed up as follows: "only 1/3 (if that) of the southwest border, not northern or coastal borders, measured only by apprehensions we say are happening, need be 90 percent secure, to trigger the path to citizenship". That's not a measure of border security. That's a permission slip for an open border.
- *Exit* -- strike provision which marginalizes and further confuses current law, and reaffirm that land exits and an eventual biometric (referencing appropriation language on US VISIT from April 2013).

National Security:

- Strike language allowing *absconders and aliens who have already been deported to claim the amnesty* -- these individuals have already been provided due process and removed for reasons that range from violating immigration law to being a national security threat.
- Strike language that enables dangerous felons given temporary status under DACA to be legalized.

Identity Vetting and Document Fraud:

- Require identity documents (passport or government issued ID) presented at time of initial application, and checks via watchlists, criminal data, national security data, immigration data, interviews as an option but required for any watchlist hit (Tsarneav was on watchlist but not interviewed) no matter at time of application or seeking re-admission to US -- to assure against terrorists like Tsarneav from using legalization to then go abroad for terror support/training and return, no questions asked.
- No RPI issuance prior to completion of all the checks listed above.
- Require that five percent (or more) of RPI applicants receive random interviews.
- Require the RPI and all applications be electronic
- Penalize those who knowingly engage in immigration benefit fraud should also be fined and barred/precluded from filing applications and petitions with USCIS for at least five years, and then only after having paid the fine and demonstrating rehabilitation.

Agricultural, W and Day Workers:

- *Biometric exit* required per prior law, pilot projects that were never completed. If biometrics are not required, then this workforce will likely not honor their length of stay, nor will we know who they really are. This is a well vetted idea that was piloted previously, but not well.
- Strike the *new definition of "employer,"* found in the amendment to INA Section 274A(b)(3) on page 402 of the bill exempts any employment that is "casual, sporadic, irregular, or intermittent." The express definition of "employer" excludes anyone that hires someone in any of those situations. Currently, many of the ways in which illegal immigrants obtain labor will thus no longer be unlawful.

Monetary Impact of Low Skill Workers:

- Require *back taxes* per first draft of bill and President's promises -- why do illegals no longer have to pay their debt to America?

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Higher Workers:

- *E-Verify* as is (not the change in the bill that starts E-Verify at ground zero) and mandatory.

- 2. As you know, Department of Homeland Security Secretary Janet Napolitano testified before the Judiciary Committee on April 23, 2013. Much of her testimony focused on the issue of border security and the discretion that the proposed bill gives to the DHS Secretary. Do you agree with Secretary Napolitano's assessment that this legislation should be enacted largely as it is currently written? What do you believe comprehensive immigration reform must include so that it avoids the problems that followed the 1986 reform?**

S. 744 takes America back to pre-9/11 standards, recreating - in much larger volume - many of the immigration vulnerabilities which the 9/11 hijackers and many other terrorists have taken advantage of time and again. This bill does not solve serious bureaucratic problems with legal immigration processing, which should be the core focus of reform alongside of attaining a secure border which can operationally control the flows of illegal aliens, terrorists and contraband through our borders while providing a well, fair, and just processing for those seeking to immigrate legally.

- 3. How meaningful are the triggers contained in the bill?**

The triggers in the bill are meaningless. Beyond that, the triggers will roll back current security by not requiring a truly secure border. As I stated in my answer to Q 1: Right now, S. 744 puts forth a metric that can be summed up as follows: "only 1/3 (if that) of the southwest border, not northern or coastal borders, measured only by apprehensions DHS says are happening, need be 90 percent secure (a measure impossible to measure), to trigger the path to citizenship". Maybe securing 1/3 of the border is not an attempt at securing the border. That's a permission slip for an open border.

- 4. In your opinion, does the bill guarantee that the problems with our current level of border security will be addressed?**

Not at all. See prior answers.

- 5. What are the national security implications of granting legalization without establishing objective standards to measure border security?**

S. 744 enables anyone who applies for RPI to get the status minus identity vetting, national security vetting, as soon as the application is submitted. There is no requirement for vetting first. And no requirement to secure the border before this initial status is granted. That means any terrorist or criminal can use the legalization process to embed and assimilate for as long as necessary to carry out an attack. The facts and circumstances of the April 2013 Boston Marathon Terrorist attacks is a perfect example, as I discuss in my written testimony.

- 6. Do you believe that the bill strengthens our national security and makes our homeland safer? Why or why not?**

Absolutely not, for all the reasons stated here and in my testimony.

- 7. In your opinion, does the bill strengthen or weaken our current immigration laws?**

I'm not sure whether S. 744 strengthens or weakens current immigration law. I would say it usurps most immigration law, including the need for enforcement in many instances.