

Does S.744 reform this country's immigration system?

By Don Crocetti¹

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According to Mr. Webster, the word reform means "*to amend or improve by change of form or removal of faults or abuses*". While S.744 proposes change and improvements, it falls considerably short of removing major faults and abuses. More specifically, on top of an unprecedented amnesty program (under the title *Registered Provisional Immigrant*) that could lead to as many as 11 million undocumented migrants being accorded lawful presence, it also proposes major increases in the number of temporary (nonimmigrant) and permanent (immigrant) visas issued each year, and for the first time in this country's history, favors employment-based immigration over family unification. While I support some of the proposed changes, it's what S.744 doesn't do that causes me the most concern; that being strengthen our ability to enforce the law in the interior U.S. and hold violators accountable.

If we cannot more effectively, efficiently, and responsively detect and remove those who break the law, whether it be for crossing the border illegally, overstaying their period of authorized stay, engaging in unauthorized employment, or committing fraud, we have no control and are, in effect, silently encouraging people to overstay their visas and avoid apprehension and removal by simply not committing serious crimes. If we don't absolutely mandate all employers to comply with E-Verify and transition to a 100% biometrics-based verification system for both employment and travel (entry/exit) purposes, we will never be able to detect and deter violators. This imbalanced approach will ultimately lead to yet another large population of undocumented migrants who remain in this country because the government's limited resources solely focus on the most egregious (harmful) criminals. If our current system is broke now, imagine what it will be like after increasing levels of migration/immigration.

With regard to what I support in S.744, I support modifying the immigrant quota system to allow for the immediate (non-quota) unification of spouses and children of lawful permanent residents, exempting derivative family members of new immigrants from requiring visa numbers, recapturing unused immigrant visa numbers, expanding the definition of stepchildren and adopted children to prevent separation, allowing unlawful presence waivers for those otherwise eligible to immigrate, eliminating the Diversity Visa Lottery Program, increasing the number of H-1B nonimmigrant visas, and creating a STEM category that requires either an individual or national labor certification. I oppose changes to other employment-based laws until we develop a data-driven labor system that accurately and in real time identifies jobs/occupations in short supply and until we've had time to truly understand the impact of these changes and a major amnesty program. I am also opposed to expanding investment-based categories, given the

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complexity in, and abuse of, this program. USCIS adjudicators are not economists or financial experts. This program needs to be simplified, not made more complex.

While I agree significant and unprecedented improvements have been undertaken on the border and that we should complete the fence and ensure the border is adequately staffed, to include support from the military, an electronic, biometrics-based arrival/departure (exit) system is absolutely essential to the integrity of our legal immigration system for the purpose of establishing identity and knowing who entered and departed the U.S. This will make it extremely difficult to enter and remain in the U.S. in violation of the law, thus deter millions from entering and remaining illegally. We must and should work towards this capability.

We must also address major shortcomings in interior enforcement, which has for the most part been ignored for decades. We have prioritized the use of extremely limited interior enforcement resources for so long and have become so complacent that we're about to discard what limited immigration control we have beyond the border. This is not reform.

The following enhancements would "reform" our overall immigration system in a fair and balanced manner. While some will take several years to develop and implement, a statutory mandate and commitment to work towards them will enhance the integrity of our legal immigration system and ultimately result in a better America.

- 1) Require E-Verify transition to an entirely biometrics-based system within ten years, beginning with the collection of biometrics on all persons seeking a new or replacement social security card whose biometrics are not already accessible and verifiable. [This primarily affects native-born U.S. citizens who do not possess a U.S. passport or passport card. This is, however, the most significant area of abuse by undocumented migrants, who beat the E-Verify system by simply claiming to be native born.]
- 2) Require all foreign nationals desirous of working in this country to possess a secure, government-issued employment authorization document that is subject to biometric verification.
- 3) Replace the current antiquated paper-driven and fraud-ridden labor certification process with a centralized electronic one that is data driven. Require DOL, working collaboratively with DHS and individual state Departments of Labor, to develop a *USA Jobs Database* that tracks occupational shortages in real time. Include a mechanism in which employers can post job vacancies and lawfully authorized workers and foreign nationals outside the U.S can seek employment. Design the system so that foreign job seekers can only apply for jobs the system reflects are in short supply. This will not only add integrity to the current labor and immigration-based employment process, it will facilitate job recruitment for employers and job searching for lawful and prospective lawful workers.
- 4) Require the development and implementation of an electronic biometrics-based departure system at all ports of departure (air, land, and sea) within five years, beginning at airports with foreign-departure flights and select sea and land border ports.

- 5) Modify deportation-based laws, policies, and programs to allow for the expeditious removal of unlawful aliens who do not possess a fear of persecution or form of relief under current law without formal, costly, and time-consuming hearings. [The Government simply cannot afford to hire enough judges, nor lease enough space to administer current law to such a large population of unlawful persons.] To ensure due process, develop a DHS Legal Defense Service Program where Government attorneys review the merits of each case to determine legal sufficiency with regard to deportability and to ensure the alien does not appear entitled to any form of statutory relief. Place those who appear to possess such relief in formal removal proceedings before an immigration judge. Build in an appeal mechanism for those who are removed expeditiously, but require said proceeding to take place after removal of the alien, from outside the U.S. If the appeal is upheld, allow for the parole of the alien back into the U.S., possibly at Government expense.
- 6) Regarding the Registration for Provisional Immigrant (RPI) Status Program;
 - a. Require the FBI and Director of National Intelligence, working collaboratively with the Secretaries of DHS and the Department of State, to develop a standard criminal, intelligence, and national security background check that ensures quality and consistency².
 - b. Require applicants to satisfactorily complete a background check before being issued an employment authorization document.
 - c. Require the Secretary of DHS to develop and administer a fraud detection and deterrence plan for ensuring USCIS is proactively detecting, deterring, and combating immigration benefit fraud that includes—
 - (1) The use of systems analytics software to detect and deter immigration benefit fraud;
 - (2) Compliance reviews³ and immigration benefit fraud assessments; and
 - (3) Leveraging public-private partnerships with business entities to assist USCIS in the electronic verification of data critical to determining the eligibility of aliens for RPI status.
 - d. Prohibit aliens and others who engage in immigration benefit fraud from applying for future immigration benefits for at least five years, and then only after paying a fine and the completion of a background check.
 - e. Allow for the expeditious deportation or removal of aliens who engaged in immigration fraud.

In closing, please allow me to emphasize the importance of reforming our current antiquated immigration system. At the end of the day, however, we must be able to examine this legislation and find it will not lead to a repeat of the widespread illegal immigration that led to the passage of the Immigration Reform and Control Act of 1986, and that in great part, is also driving this effort. While S.744 makes considerable improvements, it will not remove the most significant impediments that prevent us from controlling illegal immigration, that being combating fraud in the legal immigration system and enforcing the law in the interior U.S.

² Apply these enhancements to all immigration benefit-seeking applications.

³ While the volume of RPI applicants makes it practically impossible to interview the overwhelming majority of candidates, a small percentage (of at least 1-3%) should be interviewed for the purpose of identifying patterns of fraud and indicators, so that the necessary anti-fraud guidance, programs, and systems can be developed.