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## **Testimony of the American Immigration Lawyers Association**

## Submitted to the Committee on the Judiciary of the U.S. House of Representatives

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"S.744 and the Immigration Reform and Control Act of 1986: Lessons Learned or Mistakes Repeated?"

The American Immigration Lawyers Association (AILA) submits this statement to the House Committee on the Judiciary. AILA is the national association of immigration lawyers, with more than 12,000 active members, and was established to promote justice and advocate for fair and reasonable immigration law and policy. Every day, AILA members represent individuals and businesses in every aspect of our immigration system. Our members have seen where and how the system works and where and how it fails the country, our economy, and our families.

What sets apart S.744, the Border Security, Economic Opportunity, and Immigration Modernization Act, is the way that it sets out an immigration structure that addresses vital elements not included in past immigration reform efforts. Critical components of true immigration reform include border and interior enforcement, a path to legality for those here without authorization, a reduction in a legal immigration backlog that has reached absurd proportions, a compassionate and fair asylum process, the promotion of family values, and the ability to meet current and future business needs. S.744 represents a good starting point for a framework for reform. Legislative action in the House of Representatives will provide an excellent opportunity to make additional improvements to a bi-partisan and eventually bicameral reform effort.

One of the important lessons S.744 takes from the Immigration Reform and Control Act (IRCA) is the need to provide for legal channels for future workers to enter the U.S. While IRCA provided legal status for the undocumented, sanctions against employers for hiring workers not authorized to work, and prohibitions against discrimination based on citizenship and nationality, no provisions were made for creating new robust channels of legal immigration, particularly for less-skilled workers. In other words, by not addressing the legal immigration system, IRCA sowed the seeds of future immigration problems.

The undeniable truth is that the economy needs workers in certain geographic areas and industry sectors, even in periods of generally high unemployment. When jobs are there, people willing to do the jobs will find a way to them, and those without work authorization will still be hired by employers who need the jobs to be filled. S.744 begins to address this shortcoming of IRCA in Title IV, Subtitle G, by providing the framework for a realistic approach to future less-skilled immigration.

Since IRCA, only one piece of legislation has dealt at all with the flow of workers into the U.S.: the Immigration Act of 1990 (IMMACT 90). While that measure laid out quotas for higherskilled workers that were nearly adequate for that time, it provided only 10,000 visas for the less-skilled, which 1997's Nicaraguan and Central American Relief Act (NACARA) then reduced to 5,000. Thus, for the past 16 years, and truly for the past 23 years, there has been no effective means of obtaining lawful permanent residence for the very types of workers that the country has needed the most. Even temporary visas have not been available for them. The H-2B visa is so limited in number and scope that few of the types of jobs in question can be filled that way. The H-2A visa for agricultural workers is so cumbersome as to be virtually useless. The result? As with any vibrant economy, the workers and the employers have found their way to one another anyhow.

Another significant component of the Senate bill is its inclusion of a mandatory employment verification program that builds upon the existing voluntary E-Verify system. By providing the framework for a mandatory employment verification system, S.744 will establish far greater accountability and enforcement with respect to the unauthorized employment of workers. Though the bill is far from perfect, no previous immigration legislation has tackled this problem in such a balanced and comprehensive way.

That failure to address legal immigration, compounded by IMMACT 90's failure to acknowledge the need for lesser-skilled workers, further compounded by the fact that the legal immigration structure has now gone unaddressed for a generation, is why we are back today talking about the legalization of millions. The quotas of 1990 proved inadequate for the long term, resulting in a waiting list measurable by years and even decades, and the lack of allowance for less-skilled needs was a problem from the outset.

It is not that the previous legalization was a failure. While not satisfactory because of its overly complicated provisions, it eventually did the job it was meant to do. But it occurred in a vacuum, and legislation that would adequately address future flow never materialized, consigning us as a nation to the repeated cycle of jobs and workers finding one another in spite of the law. S.744 attempts to address that vacuum by making provision for adequate quota numbers and for a nimble system for addressing business' needs for some less-skilled workers. Therein lies the difference, and therein are the lessons learned.