



## S. 744 Provisions on Crimes and National Security

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American businesses, communities, and families are all affected by the shortcomings of our outdated immigration laws. The Senate immigration bill, S. 744, which passed out of committee on May 21, presents the best opportunity in decades to effectuate a lasting solution. As reform moves forward, the American Immigration Lawyers Association (AILA) urges Congress to enact the best possible law that meets our nation's needs.

### S. 744 Establishes Tough Standards for Our 21<sup>st</sup> Century Immigration System

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S. 744 provides a common sense pathway to citizenship for the undocumented with strict provisions on crimes, inadmissibility, deportability, and national security. AILA opposed the inclusion of many of these provisions because they will have harsh consequences and will exclude deserving individuals from legalization or from ever obtaining legal status. Any further tightening of these exclusion grounds would greatly erode due process and undermine the bill's purpose of bringing families and individuals out of the shadows.

#### **S. 744 creates a tough legalization program.**

*Criminal bars to RPI eligibility include:*

- Any felony (other than state or local status-based or immigration offenses);
- An aggravated felony under INA §101(a)(43);
- Three or more misdemeanors (other than minor traffic offenses or state/local status-based or immigration offenses) where conviction occurred on different dates;
- Conviction or participation in a criminal street gang;
- Foreign offenses (except purely political offenses) that would render the person inadmissible or deportable if committed in the U.S., with certain exceptions; and
- Unlawful voting.

*Grounds of inadmissibility for RPI applicants include:*

- Crimes involving moral turpitude;
- Controlled substance violations;
- Two or more criminal convictions;
- Drug trafficking;
- Prostitution and procuring a prostitute
- Criminal activity where the person has asserted immunity;
- Violators of religious freedom;
- Human trafficking;
- Money laundering;
- National security grounds, including espionage
- Terrorists and terrorist activities; Nazis and members of a totalitarian party
- Polygamy;
- Child abductors;
- A misrepresentation relates to RPI application;
- Immigrant smugglers;
- Draft evaders.
- Habitual drunk drivers
- Criminal street gang participants
- Domestic violence;
- Stalking;

- Violating a protection order;
- Child abuse, child neglect or child abandonment;
- Enhanced passport trafficking and immigration document fraud offenses; and
- Failure to comply with a request for biometrics.

*National security-related procedures and requirements for RPI applicants and status-holders include:*

- Mandatory completion of biometric and biographic background checks on every applicant – and every dependent spouse or child – before any application is granted, to determine whether there are any national security or law enforcement factors that would render them ineligible.
- Process involves multiple layers of security screenings – at initial application, upon renewal of RPI status, upon return to the U.S. for RPI holders after travel abroad, and at adjustment of status to permanent residency.

#### **S. 744 adds several new grounds of inadmissibility.**

- Criminal Street Gangs;
- Habitual Drunk Drivers;
- Domestic violence;
- Stalking;
- Violating a protection order;
- Child abuse, child neglect or child abandonment;
- Enhanced passport trafficking and immigration document fraud offenses;
- Failure to comply with a request for biometrics; and
- War crimes, ethnic cleansing and other systematic attacks against civilians.

#### **S. 744 adds several new grounds of deportability.**

- Criminal Street Gangs;
- Habitual Drunk Drivers; and
- Enhanced passport trafficking and passport application fraud offenses.

#### **S.744 adds habitual drunk driving as an “aggravated felony.”**

#### **S.744 enhances national security protocols.**

- Specifies biometric and biographic background checks be conducted on every applicant seeking refugee and asylee status before they are granted such status, including mandatory checks using the applicant’s biometric and biographic data in various databases including those maintained by DHS, DOS, DOJ and other federal national security or law enforcement records or databases deemed necessary by the DHS Secretary. Current practices include:
  - mandatory checks using the applicant’s name, date of birth, and aliases in various databases including those maintained by USCIS, CBP, ICE, DOS and the FBI;
  - mandatory checks using the applicant’s fingerprints and photograph including FBI fingerprint check, US-VISIT, and DOD/ABIS vetting for certain applicants;
  - additional biographical screening by National Counterterrorism Center of all asylum applicants starting in August 2011;
  - mandatory supervisory review of all asylum decisions; and
  - full-time Fraud Detection and National Security officers who conduct in-depth vetting on cases with national security concerns, including liaising with Joint Terrorism Task Forces if necessary and monitor asylum caseload for fraud.
- Requires regulations for new investor and entrepreneur visas to ensure the program is implemented consistent with the protection of national security.

- Provides for termination of conditional permanent residency for certain employment-based immigrants (and their spouses and children) if the Secretary determines that such status is contrary to US national interests based on threats to national security.
- Ensures that consular officers have access to all government terrorism records and databases for conducting security screenings of applicants for admission to the U.S.
- Terminates asylum and refugee status for individuals who return to the country of persecution without good cause.

#### **S. 744 toughens the penalties for criminal immigration violations.**

- Imposes a year prison sentence for illegal entry, instead of 6 months;
- Imposes 3 years in prison for every subsequent illegal entry, instead of 2 years;
- Creates enhancements for illegal entry if the person reenters after being convicted of a crime based upon the nature of the criminal history;
- Imposes a maximum 10 years prison sentence for illegally entering after having been convicted for 3 or more misdemeanors on different dates with time served of 15 days;
- Imposes a maximum 15 years prison sentence for illegally entering after a felony conviction with a sentence of at least 30 months;
- Imposes a maximum 10 years prison sentence for illegal reentry after having been convicted of a wider array of 3 or more misdemeanors on different dates;
- Imposes a maximum 15 year prison sentence for illegal reentry after having been convicted for a felony with a sentence of at least 30 months;
- Imposes a maximum 20 year prison sentence for illegal reentry after having been convicted of a felony with a sentence of at least 60 months or convicted for murder, rape, kidnapping, peonage/slavery, or terrorism;
- Imposes a 10 year prison sentence for anyone who has been deported or denied entry 3 or more times
- Modifies current law to punish trafficking in passports with 20 years in prison;
- Removes the requirement that a person “willingly and knowingly” makes a false statement in a passport or misuses a passport and instead requires only “knowingly;”
- Creates penalties for trafficking in immigration documents including use of official materials and imposes a 20 year sentence;
- Increases the maximum sentence that can be imposed on the chapter from 15 to 20 years imprisonment if committed to facilitate drug trafficking and from 20 to 25 years if committed to facilitate terrorism;
- Criminalizes “illicit spotting,” or the transmission to another person of the location, movement, or activities of law enforcement agents with the intent to further a federal immigration crime;
- Criminalizes the damaging of sensors, fences, barriers or other border or port of entry controls;
- Enhances penalties for using or carrying a firearm in furtherance of smuggling crimes and for participating in fraudulent immigration schemes that involve the death, bodily injury, sexual assault, robbery or extortion, or bribery of U.S. officials; and
- Enhances criminal penalties under the Controlled Substances Act for cultivating marijuana on federal lands and for violations of the CSA that involve poisons or other hazards.