Legalization

Immigrants are an integral part of our communities. They will contribute to and participate more fully in our society if they are afforded a path toward permanent lawful status and citizenship.

✔ Provides Registered Provisional Immigrant Status (RPI) and a viable path to citizenship for millions of individuals who have committed their lives to this country and were in the country as of December 31, 2011.

✔ Offers fast tracks to citizenship for agricultural workers and, with generous DREAM Act provisions, immigrants who came to the U.S. as children. DREAMers who have received deferred action will have their applications streamlined and be exempted from fines.

✘ Delays permanent status; the majority of immigrants must wait up to 10 years to apply for green cards, and three additional years to apply for citizenship.

✘ Prohibits access to public benefits, including affordable healthcare, until individuals become citizens.

✘ Restricts eligibility for citizenship for those who are unemployed for more than 60 days while in RPI status and who did not maintain an average yearly income 25% above the national poverty line. Some of the hardest working and most deserving yet underprivileged members of our communities will likely be excluded.

✘ Renders the availability of RPI status dependent on certain “triggers,” including increased border security.

Family-Based Immigration

Families, including LGBT families, should not be torn apart.

✔ Reunites families by clearing decades-long backlogs for green cards.

✔ Increases the number of family-based visas and includes spouses and children of lawful permanent residents in the immediate relative category.

✘ Fails to recognize LGBT families in any part of the bill. Same-sex partners should be considered in family-based petitions and be viewed as qualifying relatives in hardship analyses.

✘ Does not repeal or allow increased waivers for the permanent bar for unlawful presence as applied to many immigrants, which means that families will continue to be separated merely because of a family member’s unlawful entries into the United States.
Repeals the ability of U.S. citizens to petition for siblings 18 months after the enactment of the bill.

Repeals the ability of U.S. citizens to petition for married children older than 31. These individuals will be able to apply through a new merit-based program, but it is unclear how their applications will fare in this new pool.

**Enforcement**

*Our immigration system should not disproportionately penalize people just for migrating.*

- Expands immigration judges’ ability to use their discretion to consider the full circumstances of individuals’ cases during immigration proceedings. DHS has seven days to dispute judges’ assessments.
- Prohibits DHS from deporting individuals who are eligible for RPI status until their applications are adjudicated.
- Improves the safety of our communities by increasing the number of U visas available for survivors or witnesses of violence from 10,000 to 18,000. This encourages immigrants to further contribute to law enforcement efforts.
- Requires DHS to adjudicate individuals’ asylum, U visa, Violence Against Women Act, or other protection-based claims before prosecuting them for illegal entry or reentry.
- Requires DHS to collect data regarding racial profiling, report it to Congress, and issue regulations regarding the use of racial profiling in enforcement.
- Imposes the harshest criminal penalties ever on people who migrate to the United States illegally, including up to a year in prison for a person’s first illegal entry and up to three years for reentering once after being deported or accepting voluntary departure. Immigrants who enter unlawfully and served 15 days in jail for three misdemeanors or a felony could be subject enhanced prison sentences of up to 10 years and fines up to $5,000.
- Militarizes the border with stepped up border security, including possible deployment of the National Guard.
- Increases funding for Operation Streamline, a DHS initiative that criminalizes unauthorized entry, and creates new funding for state and local law enforcement agencies to prosecute crimes.

**Efficiency & Due Process**

*Individuals facing deportation must understand their rights and have the ability to meaningfully present their cases before a judge.*

- Helps alleviate the substantial immigration court backlog by dramatically increasing the number of immigration judges and personnel as well as the number of staff attorneys at the Board of Immigration Appeals (BIA).
- Requires DHS to file a notice to appear (the charging document in immigration proceedings) no later than 72 hours after taking a person into custody.
- Requires DHS to appoint counsel for unaccompanied children and mentally ill individuals who face deportation.
-Requires DHS to give detained immigrants access to information about their rights through legal orientation programs (LOPs) within five days of detention.
Requires immigration judges to conduct in-person hearings before they sign off on stipulated removal orders. Immigrants in detention frequently sign these orders, in which they agree to be deported without seeing a judge or knowing whether they are eligible for relief.

 Allows asylum officers to adjudicate asylum applications for arriving asylum seekers, rather than force these individuals to wait for hearings in the backlogged immigration court system.

 Repeals the one-year filing deadline for asylum, which has denied thousands of bona fide asylum seekers protection based on an arbitrary technicality.

 Improves administrative appellate review by restoring three-judge panels at the BIA and requiring those judges to consider all relevant arguments raised on appeal.

 Fails to provide for an electronic filing system, which would drastically improve court efficiency.

## Detention

The government must discontinue its use of arbitrary and indefinite detention.

 Requires DHS to perform individual assessments of detainees, determine whether they can be placed in alternative forms of custody, and review the decisions on a monthly basis. DHS must favor release on bond or on individuals' own recognizance when that is sufficient.

 Requires an immigration judge to review DHS's custody decision within seven days of when a person is taken into custody. To keep someone detained, DHS must show that detention—and not an alternative form of custody—is the only form of custody that would reasonably assure a person's appearance in court and protect public safety. An immigration judge must review an individual's custody every 90 days thereafter with explanations for the reasons behind the custody decisions.

 Requires DHS to create alternatives to detention that incorporate case management services (similar to parole officers).

 Permits community-based organizations to help screen detainees for alternative custody programs, provide services to detainees, and in some cases operate community-support programs.

 Strengthens oversight of detention facilities and requires annual inspections and reports to Congress. Within 180 days of the bill's enactment, the government must modify its contracts with every facility to require compliance with the most recent version of DHS's immigration detention standards and include financial penalties against jails that do not comply.

 Allows DHS to limit immigration judges' custody review for individuals subject to mandatory custody.

 Lacks independent oversight of facilities and grants DHS sole authority over inspections.

 Fails to address the inhumane use of solitary confinement in the immigration detention system.

 Fails to eliminate legislative language that DHS claims requires it to fill 34,000 detention beds each night. If this bed quota is not repealed in appropriations, the bill's alternatives to detention provisions will not be effective.

This is an abbreviated analysis of S.744. For updates on immigration reform and NIJC’s response, visit immigrantjustice.org/immigrationreform.