

## **Coburn Amendment 1689 – To Eliminate the Provision of Government-Funded Lawyers To Illegal Aliens and to Eliminate the New DOJ Office of Legal Access Programs and To Close the Loophole Providing Multiple Appeals and Class Action Lawsuits Through Judicial Review To Aliens Who Have Had Their Application for RPI Status Denied or Revoked**

My amendment would simply maintain current immigration law by striking the sections in the bill that provide for taxpayers to pay for lawyers to represent illegal aliens.

It would also strike the creation of the new DOJ Office of Legal Access Programs since there are already multiple new grant programs created in the bill to help illegal aliens navigate the legalization process.

By striking the judicial review provisions of the bill, this amendment also closes the loophole providing multiple appeals and class action lawsuits to illegal aliens who have had their application for Registered Provisional Immigrant (RPI) status denied or revoked.

### **Part 1**

#### **S. 744 would give better representation rights to illegal aliens than are offered to American citizens.**

Section 3502 of the bill provides for taxpayer-funded resources to help illegal aliens through the immigration process.

This includes providing a taxpayer-funded lawyer in certain removal proceedings, which is more than what an American citizen would receive in other types of civil cases.

Current immigration law already allows illegal aliens to hire counsel, ***at their own expense***, in removal hearings, but they are not guaranteed the ***right*** to court-appointed, taxpayer-funded lawyers.

However, this bill would strike the requirement that illegal aliens pay for their own lawyers.

The bill gives the Attorney General the “sole and unreviewable discretion” to “appoint or provide counsel to aliens in” removal proceedings, but that discretion is very broad and appears unlimited.

The bill also specifically mandates the Attorney General provide taxpayer-funded counsel to illegal aliens who are unaccompanied minors, mentally incompetent due to a serious mental disability, or is “particularly vulnerable when compared to other aliens in removal proceedings.”

Current law does not make a specific provision for these types of cases.

**S. 744 would create an expensive new bureaucracy to assist illegal aliens with the new legalization process.**

The bill creates a new Office of Legal Access Programs at the Department of Justice “to develop and administer a system of legal orientation programs to...[educate] aliens regarding administrative procedures and legal rights...and to establish other programs to assist in providing aliens access to legal information.”

The services this office provides must be made available to the detained illegal alien ***within 5 days of arrival into custody.***

There is no limit on what might be appropriated to this office – under the bill “such sums as may be necessary” are made available from the Trust Fund for these purposes.

This is one of many areas of the bill where Congress has decided it is more important to provide illegal aliens with services that we often fail to provide our own citizens.

While citizens are guaranteed the services of a public defender in a criminal case, there is no such guarantee in civil cases.

However, this bill proposes to give taxpayer-funded lawyers to non-citizens in civil immigration cases.

Elsewhere in the bill, illegal aliens are already provided with federal funds to help them navigate the legalization process:

**Section 2106** establishes a new \$50 million grant program to provide federal funds to nonprofits to provide direct assistance to aliens seeking RPI status, green card status and DREAM Act amnesty. The grants can be used to provide legal assistance for those applicants, which could result DHS “providing grants for lawsuits against itself.”<sup>1</sup>

These funds are diverted from the Immigration Trust Fund, which should be used for enforcement.

**Section 2537** creates a new \$100 million grant program for USCIS to provide federal funds to nonprofits to “provide direct assistance” to illegal aliens applying for RPI status, those adjusting to green card status and those with green cards seeking naturalization. The funds merely must be used “within the scope of the authorized practice of immigration law,” which is very broad and would presumably include the provision of lawyers. Furthermore, the bill specifically states the funds can be used to help RPI applicants by providing “any other assistance the Secretary or grantee considers useful to aliens interested in applying for registered provisional immigrant status,” which would include the appeals process should RPI status be denied.

These funds are a separate authorization, yielding the expenditure of **\$100 million** in additional taxpayer funds for 5 years **and such sums as may be necessary** thereafter.

**Section 2212** amends the restrictions on the existing Legal Services Corporation, which is a federally-funded nonprofit that provides legal services to low-income Americans, to allow LSC to provide legal services to those seeking agricultural worker amnesty (blue cards) or for those who have already received blue cards. The latter could presumably be used to fund worker grievance lawsuits against employers.

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<sup>1</sup> Hans A. von Spakovsky and Andrew Kloster, *Handouts to Lawyers and Special Interest Groups Add to Immigration Bill Costs*, <http://report.heritage.org/ib3932> (May 8, 2013).

This amendment would merely sustain current law, ensure illegal aliens are not treated better than American citizens, and reduce duplication by eliminating the unnecessary new Office of Legal Access Programs at the DOJ.

## **Part 2**

### **The Bill Gives Illegal Aliens Two Bites at the Apple to Seek Review of Their Denial or Revocation of RPI Status**

Section 2104 of the bill outlines the procedures an illegal alien may take to challenge the denial of his application for registered provisional immigrant (RPI) status, application for admission under the DREAM Act, or in the case of an agricultural worker, his adjustment to green card status.

The bill gives the illegal alien two bites at the apple by providing two routes of appeal—both administrative and judicial review of the denial of his application.

***This process will create a boon to trial lawyers and overwhelm our already busy federal courts by encouraging and enabling more lawsuits.***

**Administrative Review:** The alien may first challenge his denial or revocation of RPI, DREAM Act or agricultural green card status administratively within DHS, and the bill requires the Secretary to either establish an entirely **new** administrative appellate authority or to designate an authority, such as USCIS, to handle the appeals.

Not only does the alien receive two bites at the apple through both administrative and judicial review of his denial, but the bill provides for multiple administrative processes to occur by allowing appeal *for each decision to deny or revoke an alien's status.*

Thus, for example, if an alien applies for RPI status multiple times after having been denied, he will inevitably utilize the appeals process for each denial, creating a massive burden on both the Executive Branch and Judicial Branch.

In a May 7<sup>th</sup> letter to Senator Grassley, the Judicial Conference stated, “several paths to citizenship are established by the bill, but no one knows how many individuals will apply to legalize their immigration status...Experts often estimate that some 10 to 12 million unauthorized immigrants reside in the United States. Many who qualify will seek to adjust their status, submitting a significant number of new applications that will require administrative review.”<sup>2</sup>

Throughout the administrative review period, the bill explicitly requires aliens “shall not be removed” until a final decision is rendered, and specifically states those aliens shall not be considered “unlawfully present” under current law, which would otherwise subject an alien who was unlawfully present in the U.S. for 180 days or more and is now living outside the U.S. to either a 3 or 10-year bar from future admissibility to the U.S.<sup>3</sup>

***Thus, the bill promotes aliens to break current immigration law and makes it more difficult for ICE to enforce the laws already on the books.***

As a result, DHS, which has already shown it is unable to handle its current responsibilities, will now be required to manage a new administrative review process for millions of illegal aliens

Such a process will require DHS to set up an entirely new administrative review system by either further overwhelming USCIS, or creating an entirely new entity to process the appeals, both of which expand the size, scope and cost of government.

The USCIS union has already stated it cannot even handle its current workload, so why would we give them yet another extensive review process to manage. In a May 20<sup>th</sup> press release, the union stated,

“USCIS adjudications officers are pressured to rubber stamp applications instead of conducting diligent case review

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<sup>2</sup> Letter from the Judicial Conference of the U.S. to Senator Charles Grassley, May 7, 2013.

<sup>3</sup> INA § 212(a)(9)(B) or 8 U.S.C. § 1182(a)(9)(B)

and investigation. The culture at SUCIS encourages all applications to be approved, discouraging proper investigation into red flags and discouraging the denial of any applications. USCIS has been turned into an ‘approval machine.’”<sup>4</sup>

Dual Track Judicial Review: In addition to the creation of a new administrative review process for illegal aliens to challenge the denial or revocation of RPI, DREAM Act status or, in the case of an agricultural worker, his adjustment to green card status, the bill allows the alien a **second bite at the apple** through a dual track judicial system to appeal a DHS administrative decision to deny legal status.

The alien can challenge the administrative decision either 1) directly in the U.S. district court for the district in which the person resides, or 2) in a U.S. court of appeal in conjunction with a separate judicial review of the alien’s order of removal, deportation or exclusion, as long as the denial has not already been upheld in a judicial proceeding.

Once again, while the appeal is pending, the alien does not accrue time under current law that would otherwise deem him unlawfully present, and the court can stay any existing order for exclusion, deportation or removal.

***This creates the potential for illegal aliens already subject to removal to file frivolous lawsuits in order to solely delay their deportation.***

Under current law, aliens who appealed their deportation orders could not go to federal court, as denial of immigration benefits are typically handled by USCIS.

***As a result, the bill provides a new avenue for appealing denial of those benefits and appears to create a dual track for judicial review of denial or revocation of legal status, which***

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<sup>4</sup> USCIS Union Press Release, “USCIS Union President: Lawmakers Should Oppose Senate Immigration Bill, Support Immigration Service Officers,” May 20, 2013.

*could take years and will clog up our already overburdened federal courts.*

### **The Bill Specifically allows Class Action Lawsuits Against DHS.**

Class action lawsuits may be brought for any claim that the amnesty provided under the bill, such as provision of RPI status, or any DHS regulation or policy to implement those sections of the bill violates the Constitution or any other law is exclusively under the jurisdiction of the federal district courts.

However, the bill does not stop there.

It goes further by specifically allowing class action lawsuits by illegal aliens to challenge the validity of the methods by which legalization occurs under the bill, as it relates to their application.

Furthermore, the bill specifically states that any illegal alien bringing a case against DHS does **NOT** have to exhaust administrative remedies before going to federal court.

This is an open invitation to special interest lawsuits that will continue to burden our federal court system.

In a May 7<sup>th</sup> letter to Senator Grassley, the Judicial Conference stated, “Even if the administrative process results in a 90-percent approval rate for new applicants, the number of individuals seeking review in the federal courts would be significant.

The impact on the Federal Judiciary will be substantial and will affect the courts throughout the country over a period of years.”

**Even If An Alien Goes Through These Multiple Appeals and Is Still Denied Legalization, There Is No Enforcement Mechanism To Ensure the Alien is Deported.**

After the massive outlay of funds and personnel to staff these processes, there is still no mandate for the alien who has had his status denied or revoked to be taken into custody and deported immediately.

Although I continue to have concerns regarding how the administrative review process will proceed and how DHS will actually enforce its final denials of legalization, my amendment would simply strike the judicial review provisions, thereby eliminating a second bite at the appellate review process for illegal aliens, including the ability to bring class action lawsuits.

An alien who has been denied or revoked legal status will still have an avenue for appeal through the administrative review process at DHS, but he will not be allowed multiple methods to do so.

By eliminating this dual review process and the ability to bring class action lawsuits in what could be millions of applications for legalization, this amendment will also reduce the increased cost and burden on our federal court system.

I urge adoption of my amendment.