



# The Border Security, Economic Opportunity, and

Economists, business leaders, lawmakers, and American workers agree that the U.S. immigration system must be reformed comprehensively. In examining the status of the Border Security, Economic Opportunity, and Immigration Modernization Act, the most comprehensive immigration reform measure proposed in years, this article will discuss key employment provisions that have been proposed; types of immigration reforms employers may reasonably expect in the near future; and actions employers and employment counsel should take to prepare for what will likely be a significant shift in immigration law in the future.<sup>1</sup>

**BY BRANDON E. DAVIS**

# Immigration Modernization Act

## *An Overview of the Changes Employers May Expect Following Comprehensive Immigration Reform*

**E**mployers commonly agree that “America’s immigration system is broken. Too many employers game the system by hiring undocumented workers, and there are 11 million people living in the shadows. Neither is good for the economy or the country.”<sup>2</sup> Employers that legitimately attempt to follow immigration laws often learn they have fallen short, despite their sincere efforts to comply. Even worse, they must compete with employers who gain unfair advantages by ignoring immigration laws and hiring undocumented workers. The bottom line is employers want an understandable immigration system that can resolve current labor problems, and America’s current immigration system falls short.

### **Brief History and Dynamics That Have Encouraged Comprehensive Immigration Reform**

#### *Historical Overview*

America is historically and fundamentally a sanctuary for immigrants.<sup>3</sup> The founding fathers understood that immigration—whether by choice or by force—was an essential component of the long-term growth and viability of America.<sup>4</sup> Because of this foundational principle of America’s national identity, immigrants have historically migrated to the United States in pursuit of that basic freedom that Thomas Jefferson identified

in the Declaration of Independence when he wrote “We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.”<sup>5</sup>

In recent years, a series of events has culminated in an American immigration crisis: America’s native-born population is exiting the labor force in large numbers<sup>6</sup>; many foreign nationals are entering America illegally in search of employment<sup>7</sup>; some American businesses cannot legally recruit the amount of foreign talent they need to compete<sup>8</sup>; and anti-immigrant sentiments discourage reasonable comprehensive immigration reform initiatives. At the same time, the American Hispanic population has grown significantly, thereby influencing the attention given to comprehensive immigration reform efforts.

#### *Political Forces Have Encouraged Comprehensive Immigration Reform Efforts*

Lawmakers’ attention to comprehensive immigration reform has recently increased, primarily due to the significant Latino participation in the 2012 presidential election,<sup>9</sup> in which an estimated 12.5 million Latinos voted.<sup>10</sup> And nationwide, 71 percent of Latino voters cast ballots for President Barack Obama.<sup>11</sup> That trend was consistent in battleground states as well, with 70 percent of Latinos in Nevada and 75 percent of Latinos in Colorado voting for President Obama.<sup>12</sup> And as we know, President Obama won re-election.

After the 2012 presidential election, lawmakers intently focused on various comprehensive federal immigration reform initiatives. Their attention was likely shaped by the recent election results and generational replacement concerns, which suggests that the eligible Latino electorate will increase to approximately 40 million within 20 years.<sup>13</sup> And, if the turnout rate among Latinos converges with that of Caucasians and African-Americans over time, twice as many Latino voters could cast ballots in 2032 than in 2012.<sup>14</sup>

In 2010, Latinos comprised more than 25 percent of eligible voters in Texas, with 70 percent of them voting for President Obama.<sup>15</sup> Moreover, the Latino electorate comprised 15 to 25 percent of eligible voters in Florida, Nevada, and Arizona.<sup>16</sup> The Latino electorate also comprised 10 to 15 percent of the electorate in Colorado.<sup>17</sup> If these trends continue, then Texas and Florida could conceivably become Democratic states in the next 10 to 15 years. This is why some political leaders and analysts speculate “an electoral bonanza for Democrats” if the nation’s estimated 11 million unauthorized immigrants (75 percent of whom are Hispanics) are eventually granted the right to vote.<sup>18</sup> Indeed, 57 percent of all Hispanic registered voters identify as Democrat, but only 14 percent identify as Republican.<sup>19</sup>

Further, Democratic candidates have garnered a greater share of the Latino vote than Republican candidates in every election over the past 30 years.<sup>20</sup> Hence, the political motivation to overhaul America’s current immigration system is obvious: doing so (effectively) could foster support among a key voting base. Lawmakers have been eager to appeal to this demographic in light of the political benefits that may be obtained.

### *Economic Forces Have Encouraged Comprehensive Immigration Reform Efforts*

But political factors are not the sole motivators of comprehensive immigration reform. Economic research suggests this reform (specifically, when it includes citizenship) would also provide significant economic and practical benefits to employees and the U.S. economy.<sup>21</sup> Simply stated, “there is a benefit to American taxpayers with the acquisition of citizenship by immigrants.”<sup>22</sup> As the Executive Office of the President explained:

Reforming our broken immigration system will help to grow the economy. According to the Congressional Budget Office (CBO), commonsense immigration reform will lead to greater economic growth because it will add more high-demand workers to the labor force, increase capital investment and overall productivity, and lead to greater numbers of entrepreneurs starting companies in the U.S. CBO estimates that enacting the bipartisan Senate immigration bill, S. 744, will boost real gross domestic product (GDP) by 3.3 percent in 2023 and by 5.4 percent in 2033—an increase of roughly \$700 billion in 2023 and \$1.4 trillion in 2033 in today’s dollars.<sup>23</sup>

When aliens are allowed to join the workforce legally,

the resulting productivity and wage gains ripple through the economy because immigrants are not just workers—they are also consumers and taxpayers. They will spend their increased earnings on the purchase of food, clothing, housing, cars, and computers. That spending, in turn, will stimulate demand in the economy for more products and services, which creates jobs and expands the economy.<sup>24</sup>

These factors explain the overwhelming support that the American people have given to comprehensive immigration reform, as explained below:

- Seventy-eight percent of Americans have indicated support for a

path to earned citizenship for undocumented immigrants if they meet certain requirements.<sup>25</sup>

- Seventy percent of Republican voters support a path to earned citizenship.<sup>26</sup>
- There is strong support for immigration reform among the Latino community, but there is also strong support for a path to citizenship among other groups, including African-American voters (66 percent) and Asian-American voters (66 percent).<sup>27</sup>

## **The Border Security, Economic Opportunity, and Immigration Modernization Act**

A group of eight U.S. Senators, including four Republicans and four Democrats, proposed the Border Security, Economic Opportunity, and Immigration Modernization Act (S. 744), and Sen. Chuck Schumer (D-N.Y.) introduced it on April 16, 2013.<sup>28</sup> S. 744 is not yet enacted, but some version of it is likely to be, thereby significantly impacting U.S. employers. In general, this comprehensive immigration reform proposal focuses on four major objectives: (1) creating a path to citizenship for the approximately 11 million undocumented aliens currently living in the United States; (2) reforming America’s immigration system to better recognize characteristics that will help build the economy; (3) implementing an effective employment verification system; and (4) establishing an improved process for admitting future workers. The goal is to provide a clear, meaningful process for unauthorized aliens to allow them to earn lawful status and integrate into the American economy.<sup>29</sup>

The bill was referred to the U.S. Senate Committee on the Judiciary, which held hearings and markups from April 19 to 23, 2013. The Senate Judiciary Committee reported S. 744 on May 28, 2013, and amended it during three weeks of floor debate before the Senate voted 68-32 to pass it on June 27, 2013. The House of Representatives has not yet considered the bill, but if passed, S. 744 would make serious and broad changes to existing U.S. immigration and employment law by attempting to make current systems more responsive to economic needs.<sup>30</sup> Notwithstanding, because this bill is the general framework of what will likely become law, it is prudent to examine the changes it proposes. A succinct summary is presented below.

### *Border Security*

Border security is a core element of federal efforts to control unauthorized migration.<sup>31</sup> S. 744 would provide the Department of Homeland Security (DHS) with authority to establish a border-fencing strategy and to begin implementing a comprehensive security strategy approved by Congress.<sup>32</sup> Further, S. 744 would provide DHS with authority to waive certain restrictions on fencing and border infrastructure; modify certain immigration-related crimes and increase border prosecutions; and strengthen the existing electronic entry–exit system.<sup>33</sup> The bill also includes a number of provisions to strengthen oversight of border security activities. If enacted, these measures may likely decrease the number of persons who enter the United States without inspection and, in turn, reduce the number of individuals who might seek employment without authorization.

### *Interior Enforcement*

S. 744 would amend the Immigration and Nationality Act (INA) to create additional grounds of inadmissibility and deportability,

while broadening judges' discretion to waive some of them.<sup>34</sup> In its current form, the bill amends INA provisions on unlawful reentry to increase criminal penalties. Similar to S. 744's border security initiatives, the interior enforcement initiatives may also result in fewer individuals who are able to unlawfully seek employment.

#### *Employment Eligibility Verification and Worksite Enforcement*

S. 744 proposes significant employment eligibility verification and worksite enforcement reforms that are likely to be enacted (in some form) in the near future.<sup>35</sup> The basic tenet of S. 744 is to cut the red tape for employers and to eliminate the backlog for employment-sponsored immigration. Outdated legal immigration programs

any adverse action against an individual based solely on a lack of employment verification unless (1) a nonconfirmation has been issued; (2) a further action notice was contested and the individual failed to file an administrative appeal within the permissible time period; or (3) an appeal before an administrative law judge was filed and the nonconfirmation was upheld or the appeal was dismissed.<sup>43</sup>

#### **Enhanced Enforcement and Administrative Procedures**

With respect to compliance and investigations, S. 744 would give DHS the authority to establish procedures for filing and investigating complaints regarding alleged violations of the prohibition against knowingly hiring of aliens who are not authorized to work.<sup>44</sup> It would

## **Seventy-eight percent of Americans have indicated support for a path to earned citizenship for undocumented immigrants if they meet certain requirements.**

would be reformed to meet current and future demands.<sup>36</sup>

Current law prohibits employers from knowingly hiring, recruiting, referring for a fee, or continuing to employ an alien who is not authorized to be employed.<sup>37</sup> Employers are currently expected to comply with this regulation by, *inter alia*, completing the Form I-9, Employment Eligibility Verification Form. However, simply completing Form I-9 has never ensured that U.S. employers employ a legal workforce. Moreover, enforcing employment verification requirements has historically been cumbersome and costly for both employers and the government. S. 744 expressly addresses this breakdown in U.S. employment eligibility law.<sup>38</sup>

S. 744 re-writes the employment verification and worksite enforcement provisions of the INA, taking steps to strengthen document integrity and imposing a new requirement (to be phased in over time) that all employers use an electronic eligibility verification system. The bill proposes increasing civil and criminal penalties against employers who violate these provisions and includes additional provisions to protect the rights of U.S. citizens and other lawful workers.

#### **Electronic Employment Eligibility Verification Reforms**

If enacted, S. 744 would require employers to attest that they have verified the identity and employment authorization status of an individual by examining certain documents and using an identity authentication mechanism.<sup>39</sup> DHS would eventually publish an attestation form that employers would complete either in paper form or via telephone, video conference, or electronically.<sup>40</sup> The law would establish a photo tool that would enable employers to verify an individual's identity by matching a photo on an acceptable document with a photo in a U.S. Citizenship and Immigration Service (USCIS) database.<sup>41</sup>

S. 744 would also include various employee protections associated with the proposed employment eligibility verification procedures. For example, employers would be required to notify individuals when their employment eligibility cannot be confirmed.<sup>42</sup> Further, an employer would not be allowed to terminate or take

also establish procedures for notifying the Department of Justice's Office of Special Counsel for Immigration-Related Unfair Employment Practices of potential discrimination and unfair immigration-related employment practices.<sup>45</sup> Immigration officers would have the ability to issue subpoenas to compel evidence and witnesses for investigative purposes.<sup>46</sup>

The bill sets forth detailed procedures for compliance investigations.<sup>47</sup> Should S. 744 become law, DHS would be required to initiate investigations by issuing a written Notice of Violation that includes the material facts, the proposed penalty, and the deadlines for an employer's response.<sup>48</sup> Such investigations would be limited to violations that occurred in the past three years.<sup>49</sup> Employers would have 60 days to respond in writing and request a hearing before an administrative law judge.<sup>50</sup> If they do not request a hearing, the penalty would become final.<sup>51</sup>

#### **Increased Civil Penalties Associated with Employment Verification Violations**

S. 744 proposes a significant increase in the civil penalties associated with employment verification violations:

- Fines for knowingly hiring, recruiting, referring for a fee, or continuing to employ an unauthorized alien include:
  - \$3,500 to \$7,500 per worker, for first-time violators
  - \$5,000 to \$15,000 per worker, for second-time violators
  - \$10,000 to \$25,000 per worker, for multiple-time violators
- Fines for failing to comply with document verification or e-verify use requirements, except for minor or inadvertent failures include:
  - \$500 to \$2,000 per violation, for first-time violators
  - \$1,000 to \$4,000 per violation, for second-time violators
  - \$2,000 to \$8,000 per worker, for multiple-time violators
- Enhanced penalties for failure to comply with document verification or e-verify use requirements include:
  - \$1,000 to \$4,000 per violation, for second-time violators
  - \$2,000 to \$8,000 per worker, for multiple-time violators

- Enhanced penalties for failing to use the e-verify system or for violating federal, state, or local labor laws after e-verify becomes mandatory for all employers.
- Increased penalties for employers who engage in pattern or practice of knowingly hiring, recruiting, referring for a fee, or continuing to employ unauthorized aliens, to a fine of up to \$10,000 per worker and imprisonment of up to two years.
- Increased maximum term of imprisonment by five years for any criminal offense that is part of a pattern or practice violation.
- Fines and/or imprisonment of up to 10 years for persons who knowingly employ, hire, recruit, or refer for a fee 10 or more unauthorized aliens and violate certain labor laws.

The legislation also allows DHS to do the following:

- Impose additional penalties, including cease-and-desist orders, compliance plans, and suspended fines.
- Order compliance programs for employers who have failed to comply with employment verification provisions.
- Place liens on all real or personal property of employers who fail to pay penalties following demand or final judgment by court.
- Place jurisdiction for administrative proceedings with the attorney general.
- Debar federal contractors who violate employment verification procedures.
- Bring district court action for temporary or permanent injunction of such pattern or practice violations.<sup>52</sup>

### Reformed Social Security Administration Initiatives

S. 744 also provides for increased security and integrity for social security cards.<sup>53</sup> The Social Security Administration Commission would be required to issue fraud-, tamper-, wear-, and identity theft-resistant social security cards no later than 180 days after the bill is enacted and to complete card issuance within five years of enactment. Social Security fraud would be punishable by a fine or up to five years imprisonment, or both.<sup>54</sup>

### Enhanced Antidiscrimination Provisions

S. 744 also includes improved prohibition on discrimination based on national origin or citizenship status.<sup>55</sup> S. 744 would expand

or potential employees self-verify; (9) use of alternative systems to verify employment eligibility; (10) granted unauthorized access to e-verify or failing to implement reasonable safeguards to protect data.<sup>57</sup> Under this regime, the Equal Employment Opportunity Commission (EEOC) would be required to refer all matters alleging immigration-related unfair employment practices to the Department of Justice's Office of Special Counsel for Immigration-Related Unfair Employment Practices.

### Legalization of Unauthorized Aliens

The most controversial provision of S. 744 is its remedy for the approximately 11 million unauthorized alien population currently living in the United States.<sup>58</sup> S. 744 would establish a general legalization program for most unauthorized aliens. The bill would create a new multistep, multiyear process that would allow eligible unauthorized aliens to transition to a provisional legal status.<sup>59</sup> Under this proposal, qualified aliens would ultimately have the opportunity to become permanent legal residents.<sup>60</sup>

### Immigrant Visas

If passed, S. 744 would revise future flows of immigrant visas.<sup>61</sup> Certain high-skilled employment-based immigrants who have advanced degrees in science, technology, engineering, or mathematics (STEM) fields would be exempt from numerical limits.<sup>62</sup> Likewise, two merit-based systems would be established: one to admit workers based on their employment skills and the other to admit persons in the existing visa backlog.

### Nonimmigrant Visas

S. 744 would expand nonimmigrant visa programs for high-skilled and low-skilled workers.<sup>63</sup> If enacted, the law would increase the cap on H-1B workers, while also imposing new requirements on businesses that employ H-1B workers and intracompany transferees (L visa holders). The bill would also reform the H-2B program for lower-skilled temporary workers and would totally phase out the H-2A program. The law apparently would establish new nonimmigrant programs for lower-skilled agricultural and nonagricultural workers that would be more flexible for employers.

***The most controversial provision of S. 744 is its remedy for the approximately 11 million unauthorized alien population currently living in the United States.***

existing antidiscrimination provisions in the INA to ensure employers do not use e-verify in a discriminatory or unlawful manner.<sup>56</sup> The definition of "unfair immigration-related employment practice" would be expanded to include: (1) use of e-verify to illegally discharge an employee; (2) unlawful use of e-verify; (3) use of e-verify to re-verify current employees; (4) selective use of e-verify; (5) failure to provide required e-verify notices; (6) use of e-verify to deny benefits; (7) misuse of e-verify to discriminate based on national origin or citizenship status; (8) any requirement that employees

### Looking Ahead

Here are a few changes employers can reasonably expect and actions they could take to facilitate them.

### *Worksite Enforcement Activity Will Only Increase and Will Include Criminal Exposure*

Employers can reasonably expect targeted immigration enforcement efforts to continue at the federal level. Over the past three years, the Obama Administration has undertaken an unprecedented

effort to transform the current immigration enforcement system into one that focuses on the integrity of the system as a whole. According to U.S. Immigration and Customs Enforcement (ICE), “[T]he prospect for employment in the United States continues to be one of the leading causes of illegal immigration.”<sup>64</sup> However, of the more than 6,000 arrests related to worksite enforcement in 2008, only 135 were of employers.<sup>65</sup> Current trends show an increase in enforcement efforts on employers to target the causes of illegal immigration.<sup>66</sup> Hence ICE has indicated that it will enforce a strategy to accomplish the following objectives: (1) penalize employers who knowingly hire illegal workers; (2) deter employers who are tempted to hire illegal workers; and (3) encourage all employers to take advantage of well-crafted compliance tools.

Critically, ICE has indicated it will prioritize the criminal prosecution of employers who knowingly hire illegal workers because such employers are not sufficiently punished by the arrest of their illegal workforce—which was the previous remedy.<sup>67</sup> For purposes of this enforcement strategy, “employer” refers to someone involved in the hiring or management of employees. This includes owners, CEOs, supervisors, managers, and other occupational titles.<sup>68</sup>

To implement this employer-specific enforcement strategy, ICE has indicated that it will use confidential sources and cooperating witnesses; the introduction of undercover agents, consensual, and non-consensual intercepts; and Form I-9 audits.<sup>69</sup> ICE officers will consider a wide variety of criminal offenses that may be present in a worksite case, including, but not limited to mistreatment of workers, trafficking, smuggling, harboring, visa fraud, identification document fraud, money laundering, and other similar criminal conduct.<sup>70</sup> According to the policy directive, officers should obtain indictments, criminal arrest or search warrants, or a commitment from a U.S. attorney’s office to prosecute the targeted employer before arresting employees for civil immigration violations at a worksite.<sup>71</sup>

The agency will also use administrative and civil tools to advance criminal cases and to support the levy of civil fines or other available penalties.<sup>72</sup> In most cases, officers will use the Notice of Inspection and resulting administrative Form I-9 audit as their principal administrative tools.<sup>73</sup> This process will be utilized in both criminal and administrative investigations to identify illegal workers, including criminal aliens employed at a business.<sup>74</sup> This process marks an important step in the criminal investigation and prosecution of employers, which is a significant change in policy.<sup>75</sup> Ultimately, ICE has reprioritized and refined existing worksite enforcement strategies to emphasize the criminal prosecution of employers who violate the law.<sup>76</sup> Accordingly, employers must take action to better protect themselves by implementing immigration-compliance procedures.

### ***Mandatory E-verify Is on the Horizon***

Mandatory e-verify is almost a given, based on indications from the federal government. The internet-based system will enable businesses to determine the eligibility of their employees to work in the United States.<sup>77</sup> Although currently operational, S. 744 would mandate its use nationally. Regardless of whether S. 744 is passed in its current form, employers should brace for mandatory e-verify for several compelling reasons.

First, e-verify already exists and is being used by employers in increasing numbers. Therefore, mandatory conversion could be easily achieved nationally. Second, the government has already taken steps to facilitate the more widespread use of e-verify. Indeed,

U.S. Citizen and Immigration Services recently announced a newly revised Employment Eligibility Verification form, Form I-9.<sup>78</sup> The new form became available for use on March 8, 2013, and includes several enhancements to improve its use. Inasmuch as the Form I-9 is the critical component to e-verify, its modification only foreshadows upcoming changes.

### ***HR Policies and Procedures Must Change to Accommodate Comprehensive Immigration Reform***

If enacted (either in its current form or some alternative form), S. 744 would (1) significantly modify employment eligibility verification procedures and (2) vastly increase the number of foreign nationals who are lawfully eligible for employment in the United States. Indeed, the enactment of a legitimate pathway to citizenship could enable 11 million foreign nationals to enter the American workforce. This massive influx will be accompanied by change, and human resources departments should prepare in advance by revising policies and procedures. Some recommended actions employers should consider include the following:

- Employers should identify a dedicated transition team or department that can implement e-verify, if (or when) that program becomes mandatory. The transition team should review the employer’s current policies and procedures and revise them to accommodate the new rules. The transition team should also train HR representatives concerning program regulations.
- Employers should carefully review their I-9 compliance procedures to make sure that safeguards are in place to timely and properly complete I-9 forms. HR managers should determine whether periodic audits are appropriate, and establish protocol for such audits. Larger employers could also establish a worksite enforcement response team comprising managers and counsel. That team could direct the employer’s response to worksite enforcement activities, which often are initiated without warning.
- HR managers should carefully review their nondiscrimination and anti-retaliation policies to make sure their policies address citizenship status and national origin discrimination concerns.

### **Conclusion**

No one can determine exactly how comprehensive immigration reform will be once enacted. Nonetheless, recent changes in immigration law and policy thus far can help employers anticipate potential forthcoming changes and prepare for expected reform initiatives. At a minimum, employers should modify their immigration compliance systems to deal with the likelihood of increased worksite enforcement activity and refined employment verification procedures. Doing so now will help employers transition easily if and when comprehensive immigration reform is ultimately enacted.



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## Endnotes

<sup>1</sup>S. 744, 113th Cong. (2013).

<sup>2</sup>See The White House, Office of the Press Secretary, *Fact Sheet: Fixing Our Broken Immigration System so Everyone Plays by the Rules*, (Jan. 29, 2013); see also 8 U.S.C. §1101 *et seq.*

<sup>3</sup>Betsey Maestro, Illustrated by Susannah Ryan, *Coming to America: The Story of Immigration* 34 (1996) (exploring the evolving history of immigration in the United States).

<sup>4</sup>Although many foreign nationals migrated to America in search of opportunity, innumerable others were forcibly transported to America as slaves. See Emberson Edward Propar, *Colonial Immigration Laws: A Study of Immigration by the English Colonies in America* 19-20, 27-29 (1990).

<sup>5</sup>See THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776).

<sup>6</sup>See generally Norman C. Saunders, *A Summary of BLS Projections to 2014*, Monthly Lab. Rev., Nov. 2005, at 5, available at [www.bls.gov/opub/mlr/2005/11/art1full.pdf](http://www.bls.gov/opub/mlr/2005/11/art1full.pdf).

<sup>7</sup>See generally Office of Policy and Planning, U.S. Immigration and Naturalization Serv., *Estimates of the Unauthorized Immigrant Population Residing in the United States: 1990 to 2000*, available at [www.dhs.gov/xlibrary/assets/statistics/publications/III\\_Report\\_1211.pdf](http://www.dhs.gov/xlibrary/assets/statistics/publications/III_Report_1211.pdf).

<sup>8</sup>See generally Number, Length of H-1B Visas Must Rise for U.S. to Stay Competitive, *Bill Gates Testifies*, 59 Bull. To Mgmt. 13, 99 (Mar. 25, 2008).

<sup>9</sup>See Pew Hispanic Center Tabulations of the Current Population Survey November Supplements; see also Pew Hispanic Center Tabulations of the August Current Population Survey.

<sup>10</sup>See Pew Hispanic Center Tabulations of the March 2011 and August 2012 Current Population Surveys.

<sup>11</sup>*Id.*

<sup>12</sup>*Id.*

<sup>13</sup>See Paul Taylor et al., *An Awakened Giant: The Hispanic Electorate is Likely to Double by 2030*, Pew Research Center, Hispanic Trends Project, (Nov. 14, 2012) available at [www.pewhispanic.org/2012/11/14/an-awakened-giant-the-hispanic-electorate-is-likely-to-double-by-2030/](http://www.pewhispanic.org/2012/11/14/an-awakened-giant-the-hispanic-electorate-is-likely-to-double-by-2030/).

<sup>14</sup>*Id.*

<sup>15</sup>*Id.*

<sup>16</sup>*Id.*

<sup>17</sup>*Id.*

<sup>18</sup>See Jeffrey S. Passel and D'Vera Cohn, *A Portrait of Unauthorized Immigrants in the United States*, Pew Research Center, Hispanic Trends Project, (Apr. 14, 2009), available at [www.pewhispanic.org/2009/04/14/a-portrait-of-unauthorized-immigrants-in-the-united-states](http://www.pewhispanic.org/2009/04/14/a-portrait-of-unauthorized-immigrants-in-the-united-states). Additionally, in 2012, the Pew Research Center's National Survey of Latinos found that among Latino immigrants who are not U.S. citizens or legal permanent residents (and therefore likely unauthorized immigrants) 31 percent identify as Democrats and just 4 percent as Republicans. See Gretchen Livingston, *Hispanics, Health Insurance and Health Care Access*, Pew Research Center, Hispanic Trends Project, (Sept. 25, 2009)

available at [www.pewhispanic.org/2009/09/25/hispanics-health-insurance-and-health-care-access](http://www.pewhispanic.org/2009/09/25/hispanics-health-insurance-and-health-care-access).

<sup>19</sup>See Pew Hispanic Center, 2012 National Survey of Latinos.

<sup>20</sup>See Robert Suro et al., *Hispanics and the 2004 Election: Population, Electorate and Voters*, Pew Research, *Hispanic Trends Project*, (June 27, 2005) available at [www.pewhispanic.org/2005/06/27/hispanics-and-the-2004-election/](http://www.pewhispanic.org/2005/06/27/hispanics-and-the-2004-election/).

<sup>21</sup>See The Executive Office of the President, *Fixing Our Broken Immigration System: The Economic Benefits of Providing a Earned Citizenship*, at 5 (Aug. 2013).

<sup>22</sup>See Ather H. Akbari, *Immigrant Naturalization and its Impacts on Immigrant Labor Market Performance and Treasury*, in THE ECONOMICS OF CITIZENSHIP (Peter Bevelander & Don J. DeVoretz eds., 2008).

<sup>23</sup>See The Executive Office of the President, *The Economic Benefits of Fixing Our Broken Immigration System*, at 4 (July 2013) (citing the Congressional Budget Office, *The Economic Impact of S. 744, the Border Security, Economic Opportunity, and Immigration Modernization Act*, (June 2013) available at [www.cbo.gov/publication/44346](http://www.cbo.gov/publication/44346)).

<sup>24</sup>See Robert Lynch and Patrick Oakford, *The Economic Effects of Granting Legal Status and Citizenship to Undocumented Immigrants*, Center for American Progress, Issues, Immigration, (March 20, 2013) available at [www.americanprogress.org/wp-content/uploads/2013/03/EconomicEffectsCitizenship-1.pdf](http://www.americanprogress.org/wp-content/uploads/2013/03/EconomicEffectsCitizenship-1.pdf).

<sup>25</sup>See America's Voice, *Public Polling on Immigration Reform*, [americasvoiceonline.org/polls/poll-july-2013-cbs-news](http://americasvoiceonline.org/polls/poll-july-2013-cbs-news). See also The Executive Office of the President, *Fixing Our Broken Immigration System: The Economic Benefits of Providing a Earned Citizenship*, at 11 (Aug. 2013).

<sup>26</sup>See Americans for a Conservative Direction, *National Republican Primary Poll on Immigration Issues*, (July 8, 2013) available at [www.americansforaconservative.com/primary\\_poll](http://www.americansforaconservative.com/primary_poll). See also The Executive Office of the President, *Fixing Our Broken Immigration System: The Economic Benefits of Providing a Earned Citizenship*, at 11 (Aug. 2013). In comparison, among Republicans, 39 percent say that supporting legal status would help the party in national elections while 20 percent say it would hurt the party politically and 40 percent say it would not make much difference. See 'Borders First' a Dividing Line in Immigration Debate, Pew Research, Center for the People and the Press, at 5 (June 23, 2013).

<sup>27</sup>See The Leadership Conference, Press Release—The Leadership Conference on Civil and Human Rights, *New Polling on African-American Attitudes on Immigration Reform*, (May 1, 2013) available at [www.civilrights.org/press/2013/polling-african-americans-support-immigration-reform.html](http://www.civilrights.org/press/2013/polling-african-americans-support-immigration-reform.html); see also Asian-American Legal Defense and Education Fund, *Majority of Asian-American Republicans and Democrats Support Immigration Reform*, (Apr. 8, 2013) available at [aaldef.org/press-releases/press-release/majority-of-asian-american-republicans-and-democrats-support-immigration-reform.html](http://aaldef.org/press-releases/press-release/majority-of-asian-american-republicans-and-democrats-support-immigration-reform.html).

<sup>28</sup>See S. 744, 113<sup>th</sup> Cong. (2013). The senators included Michael Bennet (D-Col.), Dick Durbin (D-Ill.), Jeff Flake (R-Ariz.), Lindsey Graham (R-S.C.), John McCain (R-Ariz.), Bob Menendez (D-N.J.), Marco Rubio (R-Fla.), Chuck Schumer (D-N.Y.).

<sup>29</sup>See The Executive Office of the President, *Fixing Our Broken*

*Immigration System: The Economic Benefits of Providing a Earned Citizenship*, at 11 (Aug. 2013).

<sup>30</sup>See S. 744, 113th Cong. (2013).

<sup>31</sup>See *id.* § 1101 *et seq.* (2013).

<sup>32</sup>See The Executive Office of the President, *Fixing Our Broken Immigration System: The Economic Benefits of Providing a Earned Citizenship*, at 11 (Aug. 2013).

<sup>33</sup>See S. 744, 113th Cong. § 1105 (2013).

<sup>34</sup>See *id.* §§ 3501-3506 (2013).

<sup>35</sup>See *id.* §§ 3101-3204 (2013).

<sup>36</sup>See The White House, Office of the Press Secretary, *Fact Sheet: Fixing Our Broken Immigration System so Everyone Plays by the Rules*, (Jan. 29, 2013).

<sup>37</sup>See generally 8 C.F.R. §274a.2 (2010).

<sup>38</sup>See S. 744, 113th Cong. (2013).

<sup>39</sup>See S. 744, 113th Cong. § 3101 (2013).

<sup>40</sup>*Id.*

<sup>41</sup>*Id.*

<sup>42</sup>*Id.*

<sup>43</sup>*Id.*

<sup>44</sup>*Id.*

<sup>45</sup>*Id.*

<sup>46</sup>*Id.*

<sup>47</sup>*Id.*

<sup>48</sup>*Id.*

<sup>49</sup>*Id.*

<sup>50</sup>*Id.*

<sup>51</sup>*Id.*

<sup>52</sup>See generally American Immigration Lawyer Association/American Immigration Council, *Section-by-Section Summary of S. 744*, at 52-54 (June 24, 2013).

<sup>53</sup>See S. 744, 113th Cong. § 3102 (2013).

<sup>54</sup>*Id.*

<sup>55</sup>See *id.* § 3105 (2013).

<sup>56</sup>See *id.* §§ 3101-3105 (2013).

<sup>57</sup>*Id.*

<sup>58</sup>See Immigration Policy Center, *A Guide to S. 744: Understanding the 2013 Senate Immigration Bill*, (July 10, 2013) available at [www.immigrationpolicy.org/print/special-reports/](http://www.immigrationpolicy.org/print/special-reports/).

<sup>59</sup>Eligibility would be triggered after the Department of Homeland Security certifies that certain enforcement triggers have been satisfied. See Congressional Research Service, *Comprehensive Immigration Reform in the 113<sup>th</sup> Congress: A Short Summary of Senate-Passed S. 744*, at 3 (Aug. 27, 2013).

<sup>60</sup>*Id.*

<sup>61</sup>See *id.* at 4.

<sup>62</sup>*Id.*

<sup>63</sup>*Id.*

<sup>64</sup>See *Priorities Enforcing Immigration Law: Hearing Before the Subcomm. On Homeland Security of the H. Appropriations Comm.*, 111th Cong. (2009) (statement of Marcy M. Forman, Director Office of Investigations, U.S. Immigration and Customs Enforcement).

<sup>65</sup>*Id.*

<sup>66</sup>*Id.*

<sup>67</sup>*Id.*

<sup>68</sup>*Id.* at 2.

<sup>69</sup>*Id.* at 2.

<sup>70</sup>*Id.*

<sup>71</sup>*Id.*

<sup>72</sup>*Id.*

<sup>73</sup>*Id.*

<sup>74</sup>*Id.*

<sup>75</sup>*Id.*

<sup>76</sup>*Id.*

<sup>77</sup>See *Illegal Immigration Reform and Immigrant Responsibility Act of 1996*, Pub. L. No. 104-208, 110 Stat. 3009-3546.

<sup>78</sup>Introduction of the Revised Employment Eligibility Verification Form, 78 Fed. Reg. 48, 15030 (Mar. 8 2013).

<sup>14</sup>*Alexander v. Trilogy Health Services, LLC*, No. 11-295, 2012 WL 5268701 (S.D. Ohio Oct. 23, 2012).

<sup>15</sup>*Mayorga v. Alorica, Inc.*, No. 12-21578, 2012 WL 3043021 (S.D. Fla. July 25, 2012).

<sup>16</sup>See, e.g., *Tate v. Sam's East, Inc.*, No. 11-87, 2013 WL 1320634, \*11 (E.D. Tenn. Mar. 29, 2013) (finding a genuine issue of fact as to whether plaintiff was an individual with a disability where the plaintiff was limited to lifting less than 20 to 25 pounds); *Lohf v. Great Plains Mfg., Inc.*, No. 10-1177, 2012 WL 2568170, \*4-6 (D. Kan. July 2, 2012) (finding a genuine issue of fact as to whether the plaintiff was disabled under the ADA where he was limited in his ability to bend, sit or stand for prolonged periods and could not engage in frequent and repetitive lifting of 25 to 30 pounds); *Mills v. Temple Univ.*, 869 F. Supp. 2d 609, 621-22 (E.D. Pa. 2012) (denying employer's motion for summary judgment on plaintiff's failure to accommodate claim where the plaintiff was restricted from lifting more than three

pounds); *Williams v. United Parcel Servs., Inc.*, No. 10-1546, 2012 WL 601867, \*3 (D.S.C. Feb. 23, 2012) (finding a disputed issue of fact as to whether a plaintiff limited to lifting less than 20 pounds qualified as disabled under the ADA); *Farina v. Branford Bd. of Educ.*, No. 09-49, 2010 WL 3829160, \*11 (D. Conn. Sept. 23, 2010) (noting in a pre-amendments case that, under the ADAAA, "it is possible that even a relatively minor lifting restriction could qualify as a disability within the statute."), *aff'd*, 458 F. App'x 13 (2d Cir. 2011).

<sup>17</sup>*Heatherly v. Portillo's Hot Dogs, Inc.*, No. 11-8480, 2013 WL 3790909 (N.D. Ill. July 19, 2013).

<sup>18</sup>The EEOC's guidance on pregnancy discrimination specifically lists gestational diabetes and preeclampsia as impairments that may be considered disabilities, even under the "old" ADA. See Equal Employment Opportunity Commission, *Pregnancy Discrimination*, [www.eeoc.gov/laws/types/pregnancy.cfm](http://www.eeoc.gov/laws/types/pregnancy.cfm).