

**Testimony of
Former Utah Attorney General Mark L. Shurtleff**

Senate Judiciary Committee

**“Hearing on Border Security, Economic Opportunity and Immigration
Modernization Act, S.744”
April 22, 2013**

Chairman Leahy, Ranking Member Grassley and distinguished Members of the Judiciary Committee:

My name is Mark Shurtleff. I am currently a Partner in the Washington DC office of Troutman Sanders LLP, and the former three term Attorney General for the State of Utah. Thank you for inviting me to testify before you today regarding the important issue of comprehensive immigration reform.

Let me start by saying our hearts and prayers go out to the people of Boston. As the former top law enforcement official for the State of Utah I know what a difficult time this can be. We are extremely grateful for the fast and successful work of federal, state and local law enforcement officials in responding to this atrocious attack. Any strike against America is an attack against all Americans regardless of their faith, ethnicity or national origin. All Americans are united in our revulsion at this crime, and in our resolve to pull together for the security of our communities and our nation.

Having been a long-time Republican advocate for comprehensive reform of America's immigration system, I applaud the Committee for moving so quickly and with purpose in holding this hearing on Senate bill S. 744, the Border Security, Economic Opportunity, and Immigration Modernization Act.

Prior to being elected Utah Attorney General I was an assistant attorney general, deputy country attorney and a county commissioner. From my experience on the ground at the state and local level observing and dealing with the impact of a broken system, and my study of this bill, it is clear that it not only addresses the moral imperative of reform, but also demonstrates the best of what is a uniquely American tradition of pulling together for the good of the country - not the least purpose of which is to enhance national security and local public safety.ⁱ

From a law enforcement perspective, we need to fix legal immigration in order to reduce illegal immigration. By modernizing our system and making legality and accountability

our top priority, our government can take control and make immigration once again work for America.

I believe Congress must now seize upon the momentum that has been building around immigration reform. For more than two years, starting with the Utah Compact, an alliance of conservative faith, law enforcement and business leadership has come together to forge a new consensus on immigrants and America. These relationships formed through outreach in the evangelical community; the development of state compacts; and convening of regional summits in the Mountain West, Midwest and Southeast.

In early December 2012, I was one of over 250 faith, law enforcement and business leaders from across the country — including two of today's other witnesses, Dr. David Fleming, Senior Pastor of Champion Forest Baptist Church, and Grover Norquist, President of Americans for Tax reform— who came to Washington, D.C. for a National Strategy Session and Advocacy Day. We told policymakers and the press about the new consensus on immigrants and America. More importantly, faith, law enforcement and business leaders from across the country committed to work together to urge Congress to pass broad immigration reform in 2013.

In February, we launched the Bibles, Badges and Business for Immigration Reform Network to achieve that goal. Over the last few months, 'Bibles, Badges and Business' have hosted dozens of events all over the country to keep the momentum going around immigration reform.

As the Judiciary Committee discusses reforming our immigration system, I applaud the work of four of the committee's members, Senators Richard Durbin, Charles Schumer, Lindsey Graham and Jeff Flake, who helped craft the Border Security, Economic Opportunity, and Immigration Modernization Act. This bipartisan legislation is a strong start for the immigration debate this year. I am also pleased that my Senators Mike Lee and Orrin Hatch of Utah have been engaged in these bipartisan negotiations and hope they continue to be involved in the process.

Now that the legislation is introduced, many will work to improve it as it goes through the important process of regular order in the Senate, first in Committee and then to the Senate floor. This bill strikes a careful balance among its most important pillars: interior enforcement and border security, earned legalization and a path to citizenship, needed reforms to our current immigration system, and efforts to deal with the current backlog of immigration.

I urge this Committee, and all Senators, as they consider this bill, to continually remember that the whole of the bill is much more than just the sum of its parts. This bill is not perfect. There is no such thing as a perfect bill. Each part of the bill has impacts on the other areas.

It is also important that the discussion does not become singularly focused on enforcement. Over the last few years we have carefully followed and analyzed the consequences of state enforcement-only approaches on immigration reform, and they have led to less law and less order. Law enforcement must deal pragmatically with the reality of how policy translates to the street; and a commonsense, workable solution is imperative.

Our Border Has Never Been More Secure

Since 2004, I have participated in numerous border and cross-border conferences and training exercises with American and Mexican federal, state and local law enforcement and criminal justice professionals including many of the attorneys general from states in Mexico. During these conferences we have been briefed on the ongoing efforts to further secure the border.

Currently, the entire Southwest border is either “controlled,” “managed,” or “monitored” to some degree according to the Department of Homeland Security. When I was first elected Attorney General of Utah in 2000 we had a total 8,500 agents at the border and were apprehending 1.6 million people per year. Now, we have a record 21,370 Border Patrol agents that continue to be stationed at the border, a number that does not include the thousands of agents from other federal agencies, including the Drug Enforcement Agency (DEA), the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Federal Bureau of Investigations (FBI), and other agencies, supplemented by National Guard troops. As a result of these increased resources and programs, in my last year in office, 2012, we apprehended 365,000 people attempting to cross the border. Indeed our border with Mexico is more secure today than it has ever been.

As of February 2012, 651 miles of border fencing had been built out of the 652 miles that the Border Patrol feels is operationally necessary. The fence now covers almost the entire length of the border from California to Texas. There is double fencing in many areas.

Customs and Border Protection now has more than 250 Remote Video Surveillance Systems with day and night cameras deployed on the Southwest border. In addition, the agency relies on 39 Mobile Surveillance Systems, which are truck-mounted infrared cameras and radar. CBP has also deployed additional Mobile Surveillance Systems,

Remote Video Surveillance Systems, thermal imaging systems, non-intrusive inspection systems, radiation portal monitors, RFID readers and license plate readers to the Southwest border and is the process of acquiring more. CBP currently operates three Predator B unmanned aerial drones from an Arizona base and two from a Texas base, providing surveillance coverage of the entire Southwest border across Arizona, New Mexico, and Texas.

Prior to August 2006, many persons who were apprehended at the border were released pending their immigration hearing. That practice was ended in August 2006, and now nearly all persons crossing the border illegally are detained. Immigration and Customs Enforcement (ICE) is now funded to hold 33,400 individuals in detention at any given time. In Fiscal Year (FY) 2011 ICE detained a *record* number of people: 429,000. In FY 2012 ICE deported a *record* 409,849 people. Of these, approximately 55 percent, or 225,390, were convicted of felonies or misdemeanors — almost double the number of criminals removed in FY 2008. On top of this, 96 percent of all removals (also a *record* high) fell under ICE's priorities for deportation.

ICE priorities include recent border crossers and people who re-enter the country illegally. An enormous amount of resources are devoted to prosecuting individuals who enter the country illegally. For example, in the first 10 months of FY 2011, over 63,000 people were charged with illegal entry or illegal re-entry, making up 46 percent of *all* federal prosecutions during that time.

Increased Border Provisions in S.744

Notwithstanding the forgoing, the eight committed sponsors of this legislation understand that as part of a comprehensive approach to the problem, they need to provide additional resources and programs to help further secure our nation's borders.

The bill calls on the Department of Homeland Security to create a "Comprehensive Southern Border Security Strategy" which would achieve and maintain an effectiveness rate of 90 percent or higher in all high-risk border sectors. To help implement this strategy, three billion dollars from fees and fines collected under the bill will be made available.

The Secretary of Homeland Security must also submit a "Southern Border Fencing Strategy" to Congress and the Comptroller General of the United States to identify areas of the southern border where enhanced barriers should be put in place, including double and triple fencing. Another \$1.5 Billion will be made available to implement this additional fencing.

The Best Defense is a Good Offense

It is often said in sports that the best offense is a good defense, but as a former offensive lineman, I always believed the opposite was true. So that while the additional border security provisions of S.744 are very important to law enforcement, of perhaps even greater value to national and local security, are the many reforms that fix legal immigration, deal pragmatically and justly with those currently here in an unauthorized status, and enhance identification for future immigrants and migrant workers. These reforms will reduce and eliminate the causes and incentives for past illegal entry or overstays.

For example, streamlining legal immigration; eliminating backlogs for family and employment-based immigrants; opening up greater numbers and new categories of visas; enhancing and improving employment verification systems; mandating “biometric work authorization cards”; creating SSN “locks”; adding due process protections; and registering employers will all work to ensure legal migration and immigration are the first choice of those who want to come to this country to better their own lives and those of their families, and contribute to the growth, vitality and improvement of the United States of America.

The American people want this problem solved. In poll after poll the American people demand law and order, secure borders and broad immigration reform that includes earning U.S. citizenship. Immigration reform is good for national security and public safety as a whole. We learned in Utah that when brave and selfless policy makers step up and do what is right, instead of what is thought to be politically expedient, they will be supported by not just those who carry Bibles, wear badges, and own businesses; but by the majority of the American public and in particular, by those who participate in our Constitutional Republic by going to the polls.

I look forward to continuing this positive discussion on how best to move forward with passing broad immigration reform into law this year. We cannot let the status quo continue any longer. The moral imperative is now for uniquely American comprehensive immigration reform that is just, pragmatic, fair and compassionate.

ⁱ Last year First Focus Campaign For Children published a treatise I wrote entitled “A Dream of Youthful Hopes” which details much of my experience in dealing with the lack of action by federal policymakers to address immigration reform which resulted in the introduction of state laws around the country that have a direct impact on children of immigrants. The paper highlights the success of the Utah Compact as well as the importance of recent federal administrative reforms and need for comprehensive reform. It gives insight into my education and experience underlying my testimony today. A copy can be downloaded at <http://www.firstfocus.net/library/reports/a-dream-of-youthful-hopes>