

**COMPREHENSIVE IMMIGRATION REFORM IN 2009:  
CAN WE DO IT AND HOW?**

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**HEARING**

BEFORE THE

SUBCOMMITTEE ON IMMIGRATION,  
REFUGEES AND BORDER SECURITY

OF THE

**COMMITTEE ON THE JUDICIARY**

**UNITED STATES SENATE**

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## COMPREHENSIVE IMMIGRATION REFORM IN 2009: CAN WE DO IT AND HOW?

THURSDAY, APRIL 30, 2009

U.S. SENATE,  
SUBCOMMITTEE ON IMMIGRATION,  
REFUGEES, AND BORDER SECURITY  
COMMITTEE ON THE JUDICIARY,  
*Washington, DC*

The Subcommittee met, pursuant to notice, at 2:04 p.m., in room SD-226, Dirksen Senate Office Building, Hon. Charles E. Schumer, Chairman of the Subcommittee, presiding.

Present: Senators Schumer, Feinstein, Whitehouse, Cornyn, and Kyl.

### OPENING STATEMENT OF HON. CHARLES E. SCHUMER, A U.S. SENATOR FROM THE STATE OF NEW YORK

Chairman SCHUMER. The hearing will come to order, and first I would ask unanimous consent that Chairman Leahy's and Senator Kennedy's opening statements be read into the record, without objection.

And, second, we will have a vote, I believe, at approximately 2:30, so we will have to take a brief break then to allow people to vote. I am also going to allow any of the members who are here to give opening statements. That is not usually the practice, but I think this is an important issue and it would be fair to do that. And I want to thank our witnesses for being here.

Now, before we begin today's business, I would like to take the opportunity to recognize the remarkable leadership that my predecessor—Senator Kennedy—has provided to this subcommittee.

For the last 46 years, Senator Kennedy has been at the forefront of every major immigration debate in this country as a member, Chairman, or Ranking Member of this Subcommittee.

I am sure I speak for my colleagues on both sides of the aisle when I say that no Senator has worked harder or contributed more to the immigration conversation than Senator Kennedy, and we all sincerely thank him for his leadership.

Now, since I became Chairman of this Subcommittee in February, I am often asked the question that we hope to answer today: "Can we achieve significant immigration reform in this session and, if so, what would this reform look like?" That is the question that many people are asking.

Now, people only need to pick up a newspaper or turn on their televisions to see many stories quoting Washington insiders and political pundits who say it is bad politics to even discuss immigra-

tion reform at a time when America is facing such serious economic challenges.

But these articles do not report what I am hearing in my conversations with Americans. No one is happy with our current system, whether they are left, right, or center. There is recognition in America that the status quo is clearly not working. Indeed, recent polls show that 57 percent of Americans believe that immigration reform should be a high priority for this Congress. The politics may be hard, but the reality is obvious: It is in everyone's best interest to change and fix our current immigration system.

And it is, therefore, my belief that we can and must try to find a way to enact significant improvements to our immigration system now.

So how do we get from here to there?

From my perspective, it is time to tone down the rhetoric, focus on the facts, and carefully weigh what is in the best interests of our taxpayers, our economy, our security, and our future.

That is the spirit in which we have called today's hearing and the spirit in which we can conduct our considerations moving forward.

It is my belief that the American people are pro-legal immigration and anti-illegal immigration. It is my belief that the American people are not afraid of an immigration system that is both tough and fair. They want an immigration system that both faces up to reality and respects the rule of law. They want an immigration system that will stop the flow of illegal immigrants and respect legal immigrants who want to work, pay taxes, remain in this country, and become citizens.

That is what I want, too, and I believe that is what the majority of my colleagues here in the Senate want.

But make no mistake: We cannot restore confidence in our immigration system until and unless we face up to reality, put ideology aside, and find solutions that will work to address the situation in which we find ourselves today.

I am hopeful that we can find solutions because a well-functioning immigration system is not only a part of America's legacy; it is also critical to our country's future.

The Founding Fathers never intended for America to close the door to new Americans, and in each generation since the birth of our country, we have accepted the most determined and idealistic people from everywhere in the world. And we have been stronger for it.

Because of immigration, Google, Yahoo, Intel, and eBay are American success stories. In New York, one-quarter of all businesses are immigrant owned. According to the U.S. Census Bureau, these immigrant-owned businesses have combined sales of \$42.7 billion and employ 230,000 workers, some of whom are immigrants themselves and some of whose families have been in this country for 12 generations.

Nationally, 40 percent of patents in the U.S. are awarded to immigrants. And a recent study found that immigrants are 50 percent likelier to start businesses than native-born citizens. New inventions and startup businesses are critical to improving our economy,

and as the numbers tell us, immigrants play a vital role in both of these areas.

Given the very high stakes in whether and how we move forward on the issue of immigration, we have invited a broad spectrum of our country's finest and most distinguished leaders to share their wisdom and experience, and we thank you for coming.

These individuals come from a broad array of disciplines and offer vastly diverse perspectives regarding immigration based on their training and their area of expertise.

These distinguished witnesses will tell us whether they agree that comprehensive immigration reform is necessary and should be enacted in 2009. They will also help us determine what a reformed system might look like.

As we go forward with this hearing today and with this debate throughout the year, I hope that my colleagues will agree to work together to capitalize on areas of consensus rather than exploit areas of disagreement.

For instance, although my colleague the distinguished Ranking Member from Texas and I may have some ideological differences, we both approach the immigration conversation from a common starting point: We are both Senators from border States with long and rich histories of welcoming immigrants from all over the world. In fact, the Texas seaport at Galveston became known as "the Second Ellis Island."

And that is why our discourse on immigration should take place with the common understanding that even if we all came to America on a different boat—or through some other means—we are all in the same boat now.

So as Chairman of this Subcommittee, I pledge that I will work and work and work and work to strike the right balance and achieve the critical reforms to our immigration system that the American people are asking us to enact. This will be very, very hard to do, make no mistake. This is hardly an easy task. But we have to try for the sake of the future of our country.

I am confident that our distinguished panel will move us closer toward a pathway to reform, and I look forward with great interest to their testimony.

I now want to recognize the distinguished Ranking Member, Senator Cornyn, for an opening statement. We will let any member who is here issue an opening statement.

Senator Cornyn?

**STATEMENT OF HON. JOHN CORNYN, A U.S. SENATOR FROM  
THE STATE OF TEXAS**

Senator CORNYN. Thank you, Mr. Chairman. I appreciate your opening statement. It is one that I would have been quite comfortable delivering myself, especially the part about Galveston being the second Ellis Island.

I want to thank all of our witnesses for being here, and I am grateful to Chairman Leahy and Senator Schumer for initiating once again this important dialog on, I think, an absolutely critical issue. No one—no one—benefits from the status quo with regard to our immigration situation. I agree that legal immigration is something that has made our country a better place. It has strength-

ened our economy. It has forged ties of kinship between the United States and our neighbors. It renews our national identity as the promised land for families in every generation.

In Texas, as you pointed out, we are a big border State where we see and enjoy a lot of cultural diversity. Many of my constituents have family on both sides of the Rio Grande River, and they are watching very closely the way that we treat this debate. And I agree with you it needs to be respectful; it needs to be civil; and, most importantly, we need to get something done in a practical sort of way and find that common ground.

As I said, the status quo is not acceptable to anyone. Texans see and Americans see that our border is not yet secure. We see employment verification laws which are not yet enforced. And we see millions of men, women, and children who are here in violation of our immigration laws who, in essence, are afforded no protection from all our other laws. In other words, I think the immigrant that comes here without going through our legal immigration system finds themselves a victim in so many circumstances, whether a woman who is a victim of domestic violence is afraid to go to the police because she is afraid of being deported, or a worker who is denied fair earnings by an employer who says, "Well, you know, you take what you get or I will turn you in to the immigration authorities." All down the line, I think the biggest victim of the status quo is the immigrant who is here living in the shadows and who is in noncompliance with our immigration laws.

Obviously, there is a public health component of our immigration system, and so we need to restore one that is protective of the public health, as the recent incidents of this last week or so have reminded us.

I believe that an important component of an immigration reform system—in addition to border security, in addition to employment verification so employers do not have to operate as the police officer but, rather, the Government provides them the tools to determine whether somebody can legally work at their place of employment or not—is a temporary worker program. These are essential components of an immigration reform bill.

As a matter of fact, some of this may sound familiar because in 2005, Senator Kyl, my distinguished colleague, our distinguished colleague from Arizona, and I undertook to introduce what we called the "Comprehensive Border Security and Immigration Reform Act of 2005." And that has been, obviously, 4 years ago.

Since that time, we have had a number of bills considered on the floor, the McCain-Kennedy bill and other iterations of that, and I had to go back to check my notes, but I am advised we spent 36 business days on the floor of the U.S. Senate grappling with this issue. And talking in terms of calendar days, that is almost 2 months. And we have not yet gotten the job done, and we have to persevere.

Now, as I said, I appreciate the Chairman calling this hearing and the distinguished witnesses we have. I hope this is just the beginning of a number of hearings we have so we can engage the American people in an essential dialog to work our way through this problem.

If we learned anything about the debate, it is that the Washington elites cannot dictate to the American people what the solution must be. We have got to work with and listen to the American people and see what we can do in order to come up with a practical solution to this challenge.

I welcome the President's announcement that he considers immigration reform to be an important subject. I am a little discouraged that he seems now to be talking about establishing working groups to develop a framework for legislation rather than tackling this head on, but I am going to give him the benefit of the doubt, and I hope he will tell us, the Congress, who must work on this legislation, what his plan is. We know what Senator Kyl's and my plan was. We know what Senator McCain and Senator Kennedy's plan was. And I think it is essential that a President demonstrate the kind of leadership that can only come from the President telling us what his plan is so we can get them on the table and work our way through them.

So I want to say again how grateful I am to you, and, again, your opening statement, Mr. Chairman, is one that I was very comfortable with as well. I believe we must streamline our temporary working programs, offer more visas to highly skilled students who study at our colleges and universities, and when they cannot work here, they go back to their native land and they compete with us and create jobs there rather than here in the United States. So I think we need a fair but firm solution, one that embraces the rule of law and one that creates the kind of order that right now in the absence of that order only makes life more difficult for people who are living outside of our immigration laws.

Let me close by saying I agree with your comments about Senator Kennedy. He has been in the middle of every immigration debate for 40 years. As a matter of fact, one of the bills that I am proud of is when I got here, Senator Kennedy and I joined together to pass, along with our colleagues' help, an expedited pathway to citizenship for individuals who are part of our United States military. If they are willing to sacrifice and serve in our United States military as legal immigrants but not yet citizens, I think it is only appropriate that we provide them an expedited path to becoming American citizens so they can actually have the full benefits of American citizenship for a country that they have risked their life to serve.

So thank you very much, Mr. Chairman. I look forward to hearing from our witnesses.

Chairman SCHUMER. Well, first let me thank Senator Cornyn. We are off to a great start because he agrees with 90 percent of my statement and I agree with 90 percent of his statement. That is pretty good to start off and I think bodes well for the future.

We are joined by two colleagues who have played very active and fundamental, important roles in the immigration debate, and I am glad they are here, and I know Senator Cornyn agrees with me. We look forward to their active participation and input as we move toward a comprehensive solution.

First, my good friend and colleague, Senator Feinstein from California.

**STATEMENT OF HON. DIANNE FEINSTEIN, A U.S. SENATOR  
FROM THE STATE OF CALIFORNIA**

Senator FEINSTEIN. Well, thank you very much, Mr. Chairman, and I thank the Ranking Member, Senator Cornyn. I agree with your statement, and I agree with Senator Cornyn's. I am delighted to see the distinguished witnesses here today.

I was one that participated, as did everyone at this dais, when we discussed and debated comprehensive immigration reform. And what I learned from that debate was that there is indeed a dark side in this country, and that dark side really prefers to distort the issue. That dark side really caters to the fear in people that if we repair a broken system, that if we develop a comprehensive immigration plan that is fair to people, that moves people out of the shadows, which uses them in their most constructive and productive way, that it is harmful to this Nation.

The point I want to make in my few remarks is the harm that is being caused to this Nation by not moving. One small part of the bill—it is not a small part; it is a large part—has been ag jobs, and I have worked with the growers and workers in the agriculture of America in virtually many of the States, and here is what I have seen:

Between 2007 and 2008, 1.56 million acres of farmland have been shut down in the United States, no labor. American farmers are moving to Mexico. At least 84,155 acres are now in production in the Mexican States of Baja, Sonora, and Guanajuato. American farmers have moved 22,285 United States jobs to Mexico, which means they are all in Mexico to cultivate crops varying in diversity from avocado to green onions to watermelon.

Farmers are decreasing the size of their farms and switching to less labor intensive and less profitable crops. In the next 1 to 2 years, the United States stands to lose \$5 to \$9 billion in agriculture sales to foreign competition if Congress does not act.

As United States farms close and growers downsize production, the United States is also becoming more reliant on foreign imports of fresh fruits and vegetables—foreign imports where the standards on pesticides and farming are not nearly what they are today. Let me give you just a few examples.

In March 2008, Keith Eckel, the largest producer of fresh market tomatoes in Pennsylvania, closed down due to a shortage of farm workers. In the height of the 7-week summer harvesting period, 10,000 tomatoes were picked usually by manual labor at Eckel's Lackawanna County farm. His tomato crop was valued at \$1.5 to \$2 million. Last year, he had planted 2.3 million tomatoes on 340 acres. Now he is essentially shutting it down or greatly reducing it.

In your own State, Mr. Chairman, New York, 800 farms and \$700 million of sales may be forced to go out of business or scale back their farm operations if labor shortages continue. For the first time since 1991, Jim Bittner, the owner of Singer farms in Appleton, New York, raised 10 percent of his sweet cherry and peach orchards. The labor shortage has forced him to switch over to crops that can be harvested by machines.

Senator Kyl, in your State, in Yuma, Paul Muthart manages 8,000 acres of production for the Pasquinelli Produce Company. His

company has been in business for 6 years in a part of the State that provides up to 90 percent of the fresh lettuce, broccoli, celery, and cauliflower in American grocery stores during some winter months. Mr. Muthart is short 20 to 25 percent of the labor force he needs.

Colorado farmers estimate that the State's fruit and vegetable industry will disappear in the next 5 to 10 years.

Now, California farmers produce half of America's fruits, vegetables, and nuts and a quarter of the Nation's dairy. The California ag industry is estimated to lose between \$1.7 to \$3.3 billion in the next year without a stable supply of labor.

Now, I have heard those who say go out and have Americans do the work, and we would all be delighted to have Americans do the work. But the fact is they will not.

In California, we put notices in every welfare department: "Ag Jobs Available. Please Come." How many people came? None.

So this is highly skilled in the sense of it is back-breaking, it takes certain techniques, we have a lot of row crops, and the people who do this work are, by and large, undocumented. And they cannot do it now. So the industry is collapsing.

In my State alone, we have fallowed a half a million acres. We now have dust storms that necessitate the closure of I-5 from dust.

This is not the way it should be. We have farmers in bread lines. This is not the way it should be. And so we need this program that will get a stable and continuing supply of labor. This is the ag jobs bill.

Now, right now I should tell you that there is a difference between workers and growers on the H-2A part of the bill. I have offered to both sides to negotiate that difference and try to put it together, and as soon as I do, we will be introducing the ag jobs bill, which I think will fit nicely into whatever hopefully this Subcommittee will do. So thank you very much.

Chairman SCHUMER. We look forward to your leadership on that issue, Senator Feinstein.

Senator Kyl.

**STATEMENT OF HON. JON KYL, A U.S. SENATOR FROM THE  
STATE OF ARIZONA**

Senator KYL. Thank you very much, Mr. Chairman, and I think it is interesting that the four of us mostly agree with everything that each of us has said. Certainly all of the comments regarding agriculture that Senator Feinstein just made apply, as you noted, to Arizona as well—not quite as much agriculture in Arizona, but many of the same conditions, and we face the same problem.

Senator FEINSTEIN. Can I make you a cosponsor of the bill?

[Laughter.]

Senator KYL. We are not going to solve the problem piecemeal, and therein is perhaps the first lesson for all of us in this room. My growers well understand my commitment to resolving the problem for them.

We just had an announcement by two major labor unions in the country that they would not support a temporary worker program. We are going to have to get around that problem—well, we are not going to have to get around it. We are going to have to solve it if

we are to have the kind of success with the kind of bill that Senator Feinstein noted. So it illustrates the difficulty of the problem. We both totally agree on the need to solve both this agricultural issue but also, frankly, in both of our States and in others, you have got the home-building industry, which relied extensively on illegal immigrants. The industry itself acknowledged that. And there are many other industries as well, certainly the hospitality industry and many others. Now, times are not as good now, and so the pressure is not on as much in those industries. But it is every bit as much still, the pressure on, in the agricultural industry.

What I want to do is just briefly note—and, frankly, Senator Feinstein's question makes the point—that since the comprehensive immigration reform, which we spent hundreds of hours on—and certainly Senator Kennedy is to be complimented for his sitting through every one of those meetings as well—there were many complicated provisions that were the result of compromise. One could identify four specific ones, though each of us had a little different view as to what the most important provisions were. But I support eroding on at least three of these four, and that is the primary point that I wanted to make. We have got to deal with this reality.

I mentioned the temporary worker provision. That was part of the key of the legislation. Support for that appears to be eroding, at least with respect to organized labor, and yet it is a critical component to any successful bill, and not just for agriculture.

The path to citizenship, we all know what happened to that. It became amnesty and was probably the most specific reason why the comprehensive immigration legislation went down.

There was a very innovative provision that was, frankly, one of the key reasons why there was strong support, especially on the Republican side, and that was revising our immigration laws to be more reflective of the trend occurring worldwide, which is more of an emphasis on workforce requirements rather than family or chain migration. Interestingly, America still would have had about 50 percent family immigration, more than most other countries—in fact, I think more than any other country. But that was a big part of the reform as well with a lot of emphasis on the so-called stem migrants, the high-tech-related folks.

And, finally, employer verification. As Senator Cornyn mentioned, we cannot even get a full year of authorization of the E-Verify program now. These were all essential elements of the bill last time, and I see support eroding across the board. So we are going backward, not forward. We have to find a way to come back together to put that kind of a bill together, or something totally different that I cannot quite conceive of.

I just want to close with this point. Senators McCain and Lieberman and I just had a hearing a few days ago in Arizona related to the fact that we have not controlled the border yet and that it is dramatically impacting my State of Arizona, but others as well, not so much with respect to illegal immigration today, but the crime and drugs violence part of this. We have always known that about 10 to 15 percent of the people illegally immigrating across the southern border were criminals. And if you have a million illegal immigrants, that is 100,000, at least, people we do not want in

this country. So there are reasons to secure the border other than relating to illegal immigration.

But we are all aware of the crime associated with the drug cartels in Mexico. With over half of the illegal immigration coming through my State, and much of that drug trade now resulting in violence in my State, this has become an extraordinarily important problem to solve. And as the police chief testified at the hearing, almost all of the crime is illegal immigrant on illegal immigrant, with women being raped, people being kidnapped, more ransom being sought, drug violence, murder of people within the cartels and all the rest of it. So we have got a huge problem to solve.

And as my colleague John McCain said during the campaign when this was a very political hot potato, he said, "Those of us who supported comprehensive immigration reform learned a lesson. People want us to secure the border and enforce the law before they are going to have an open mind about comprehensive reform." Unfortunately, sadly, we still do not have that border under control, as is evident by the hearing that we held a few days ago.

So we have a lot of challenges ahead of us. Those of us who supported comprehensive immigration reform the last time around have a lot of challenges in front of us, and I appreciate the witnesses who are here today to help us work through those challenges. And I urge everybody in the audience and others who care about this issue to approach it in the spirit of good will that I believe it was my colleague Senator Feinstein said would be needed for us to get this resolved.

Thank you, Mr. Chairman.

Chairman SCHUMER. Well, thank you, Senator Kyl, and I am hardly unaware of the challenges that you put forward. They are all legitimate challenges. I do think there are potential ideas and solutions out there that I have, others have, and I think we can do it. I do. Anyway, we are going to try.

Now, we have a vote at 2:45, so what I think I would like to do so we could move things along, we will have our first witness, Chairman Greenspan, give his testimony, and then we will probably break and resume about 15 minutes later, if that is OK with all of our witnesses. So let me introduce Chairman Greenspan, and I will introduce the others after the break.

Although he needs no introduction, Alan Greenspan is an economist who served as Chairman of the Federal Reserve System of the United States from 1987 to 2006. He currently works as a private adviser and consultant for firms throughout the United States through his company, Greenspan Associates, LLC. He is the author of the book "The Age of Turbulence: Adventures in a New World" in which he addresses, among other things, the relationship between immigration and the American economy.

Chairman, we really appreciate your taking the time to be here, and we look forward to your testimony.

**STATEMENT OF ALAN GREENSPAN, ECONOMIST, FORMER  
CHAIRMAN, FEDERAL RESERVE SYSTEM, WASHINGTON, DC**

Mr. GREENSPAN. Thank you very much, Mr. Chairman.

Chairman SCHUMER. If you could just pull the microphone a little closer to you, I think that would work better.

Mr. GREENSPAN. I appreciate this opportunity to testify before you this afternoon.

Immigration to the United States slowed markedly with the onset of the current economic crisis. But as the crisis fades, there is little doubt that the attraction of the United States to foreign workers and their families will revive. I hope by then a badly needed set of reforms to our Nation's immigration laws will have been put in place.

There are two distinctly different policy issues that confront the Congress. The first is illegal immigration, of course. The notion of rewarding with permanent resident status those who have broken our immigration laws does not sit well with the American people. In a recent poll, two-thirds would like to see the number of illegals decreased.

But there is little doubt that unauthorized—that is, illegal—immigration has made a significant contribution to the growth of our economy. Between 2000 and 2007, for example, it accounted for more than a sixth of the increase in our total civilian labor force. The illegal part of the civilian labor force diminished last year as the economy slowed, though illegals still comprised an estimated 5 percent of our total civilian labor force. Unauthorized immigrants serve as a flexible component of our workforce, often a safety valve when demand is pressing and among the first to be discharged when the economy falters.

Some evidence suggests that unskilled illegal immigrants—almost all from Latin America—marginally suppress wage levels of native-born Americans without a high school diploma and impose significant costs on some State and local governments.

However the estimated wage suppression and fiscal costs are relatively small, and economists generally view the overall economic benefits of this workforce as significantly outweighing the costs. Accordingly, I hope some temporary worker program can be crafted.

The second policy issue that must be addressed by Congress is the even more compelling need to facilitate the inflow of skilled foreign workers. Our primary and secondary school systems are increasingly failing to produce the skilled workers needed to utilize fully our ever more sophisticated and complex stock of intellectual and physical capital. This capital stock has been the critical input for our rising productivity and standards of living and can be expected to continue to be essential for our future prosperity. The consequence of our educational shortfall is that a highly disproportionate number of our exceptionally skilled workers are foreign born. Two-fifths of the science PhDs in our workforce, for example, are foreign born. Silicon Valley has a remarkably large number of foreign-born workers. And as you, Mr. Chairman, have pointed out, 40 percent of our patents are issued to those who are foreign born.

The quantity of temporary H-1B visas issued each year is far too small to meet the need, especially in the near future as the economy copes with the forthcoming retirement wave of skilled baby boomers. As Bill Gates, the chairman of Microsoft, succinctly testified before Congress in March 2007, "America will find it infinitely more difficult to maintain its technological leadership if it shuts out the very people who are most able to help us compete." He

added that we are “driving away the world’s best and brightest precisely when we need them most.”

Our skill shortage, I trust, will ultimately be resolved through reform of our primary and secondary education systems. But, at best, that will take many years. An accelerated influx of highly skilled immigrants would bridge that gap and, moreover, carry with it two significant bonuses.

First, skilled workers and their families form new households. They will, of necessity, move into vacant housing units, the current glut of which is depressing prices of American homes. And, of course, house price declines are a major factor in mortgage foreclosures and the plunge in value of the vast quantity of U.S. mortgage-backed securities that has contributed substantially to the disabling of our banking system.

The second bonus would address the increasing concentration of income in this country. Greatly expanding our quotas for the highly skilled would lower wage premiums of skilled over lesser skilled. Skill shortages in America exist because we are shielding our skilled labor force from world competition. Quotas have been substituted for the wage pricing mechanism. In the process, we have created a privileged elite whose incomes are being supported at noncompetitively high levels by immigration quotas on skilled professionals. Eliminating such restrictions would reduce at least some of the income inequality.

If we are to continue to engage the world and enhance our standards of living, we will have to either markedly improve our elementary and secondary school systems or lower our barriers to skilled immigrants. In fact, progress on both fronts would confer important economic benefits.

Immigration policy, of course, is influenced by far more than economics. Policy must confront the very difficult issue of the desire of a population to maintain the cultural roots that help tie a society together. Clearly a line must be drawn between, on the one hand, allowing the Nation to be flooded with immigrants that could destabilize the necessary comity of a society and, on the other hand, allowing the Nation to become static and bereft of competition and as a consequence to lose its economic vitality.

The United States has always been able eventually to absorb waves of immigration and maintain its fundamental character as a Nation, particularly the individual rights and freedoms bestowed by our Founding Fathers. But it must be conceded that the transitions were always more difficult than hindsight might now make them appear.

In closing, Mr. Chairman, I would like to concur with President Bill Clinton’s view of our immigration history as expressed in remarks of more than a decade ago: “America has constantly drawn strength and spirit from wave after wave of immigrants....They have proved to be the most restless, the most adventurous, the most innovative, the most industrious of people.”

We as a Nation must continue to draw on this source of strength and spirit. To do so, in the context of a rapidly changing global economy, our immigration laws must be reformed and brought up to date.

Thank you, Mr. Chairman. I look forward to your questions.

[The prepared statement of Mr. Greenspan appears as a submission for the record.]

Chairman SCHUMER. Thank you, Chairman Greenspan.

Since we do have a little time, I think we will call on Mr. Manger, Chief Manger, to testify. He is the Chief of the Montgomery Police Department, Montgomery County, one of the largest in Maryland, with more than 1,200 sworn and 550 civilian members serving 950,000 residents in the Greater Washington, D.C., Metropolitan Area. Chief Manger is a member of the International Association of Chiefs of Police and serves as Chairman of Legislative Committee of the Major Cities Chiefs Association.

Thank you for coming, Chief Manger, and we look forward to your testimony.

**STATEMENT OF J. THOMAS MANGER, CHIEF OF POLICE,  
MONTGOMERY COUNTY, MARYLAND, AND CHAIRMAN OF  
LEGISLATIVE COMMITTEE OF MAJOR CITIES CHIEFS ASSO-  
CIATION, ROCKVILLE, MARYLAND**

Chief MANGER. Mr. Chairman, members of the Committee, thank you for allowing me to speak on this important issue. I am speaking on behalf of the Major Cities Chiefs Association, which is comprised of the 56 largest police departments in the United States.

Let me begin by stating that the failure to secure our borders has resulted in significant consequences for local governments. And while I am here to focus on the impacts to local law enforcement, it is important to keep in mind the overwhelming impact it has had on local school systems as well as health and human services agencies. Education, social services, and health care are all impacted as much if not more than public safety.

With regard to the role that immigration issues play within the law enforcement community, I will focus my comments primarily on illegal immigration and the consequences of having millions of undocumented residents living in our cities and towns.

The first thing that any police chief would want you to know is that all individuals—regardless of citizenship—are entitled to basic rights and privileges set forth in the Constitution of the United States.

Indeed, every police chief in this nation would, I hope, tell you that all persons—regardless of citizenship—have a right to expect police service and protection whenever and wherever they need it. And herein lies one of the compelling reasons for comprehensive immigration reform: It is tremendously challenging to deliver police service to a community of people who are afraid to have any contact with the police. The results are an increase in unreported crime, reluctant victims and witnesses, and the targeting of immigrants by criminals because the bad guys know that many immigrants will not call the police. It is imperative that we find a way to bring these people out of the shadows so that they can get the service they need and deserve.

In addition to the over-representation of our immigrant population as crime victims, the presence of large numbers of undocumented residents adds significantly to local government budgets and increases the workload for public safety. I will highlight some examples.

First, an increase in gang activity. Each one of us in our youth wanted to feel as though we were a part of something and that we were among people who cared about us. For many of us, sports and recreation, church, school, and family fulfilled those needs. But for any 13-year-old boy thrown into a school and a neighborhood where he knows no one, unable to speak English, with little or no parental involvement because his parents are working three jobs, criminal street gangs offer that boy everything he wants. Again, allowing that family to come out of the shadows gives that boy access to more opportunities and healthier choices.

Police are also struggling with a rise in the crimes of identity theft and other types of fraud. Until just a few weeks ago, when the Maryland General Assembly changed the law, Maryland did not require proof of citizenship before issuing a driver's license. Consequently, undocumented residents from all over the East Coast submitted fraudulent information and obtained a Maryland driver's license.

Police departments are also seeing an increase in human-trafficking cases, hate crimes, and cases involving unscrupulous employers not paying their laborers. Many categories of crimes would be favorably impacted by immigration reform.

Perhaps the most significant reason to enact immigration reform is to allow police departments all over this Nation to get out from being placed squarely in the middle of a huge problem with which we have little to no control over the solution.

The number of undocumented residents has grown tremendously in the past 15 years. In fact, 15 years ago, outside of a few border cities, I doubt any police chief would have mentioned illegal immigration as even an issue. But today, illegal immigration has affected our budgets, our workload, and most significantly our trust and confidence levels in the community.

Police find themselves trying to respond to pressures from the community and elected officials who have extremely diverse viewpoints on the police department's role in enforcing immigration law. This issue has polarized our communities.

Municipalities have chosen a range of managing this issue. Some are proud to be called "sanctuary jurisdictions" where not only does local law enforcement not inquire about one's immigration status but those jurisdictions also will not honor nor serve warrants from the Immigration and Customs Enforcement agency. On the other end of the spectrum, some jurisdictions have adopted policies that prohibit government services going to undocumented individuals, and they have elected also to participate in the Federal 287(g) training.

Most jurisdictions have adopted policies somewhere between the two approaches I have just described. The overwhelming majority of major city police agencies have elected not to participate in the 287(g) training, primarily because it undermines the trust and cooperation with immigrant communities that are essential elements of community policing.

One of the realities is that public safety increases when people have trust and confidence in their police department. Delivering fair and consistent police service to all crime victims has to be a priority.

A second reason that most jurisdictions cannot become the immigration police is that local agencies do not possess adequate resources to enforce these laws in addition to the added responsibility of homeland security. Enforcing Federal law is an unfunded mandate that most agencies just cannot afford to do.

In addition, immigration laws are very complex, and the training required to understand them would significantly detract from the core mission of the local police to create safe communities.

Prior to a few years ago, enforcing immigration law was solely a Federal responsibility. It was a specialty like tax law. If the Federal Government comes to the conclusion someday that too many people are tax evaders, will the solution be to authorize local police to enforce tax laws? This is certainly contrary to our mission.

The bottom line remains: Local law enforcement needs to work closely with all of our Federal partners, but we cannot do their job for them.

Let me conclude by making the most important point of my testimony. No matter what you do, Mr. Chairman, you cannot solve this complex issue if we do not find a way to stop the buildup of another group of undocumented residents. Securing our borders must be a top priority. Let us find a way to align the labor needs in our country with a sensible immigration policy. Let us bring these members of our community out of the shadows and allow them to make a better life for their family.

Let us target those undocumented residents with criminal records. Those individuals with criminal histories should find no safe harbor, no sanctuary. And, Mr. Chairman, I urge you to use your influence with the Attorney General of the United States to remove civil immigration detainers from the NCIC data base. Do not force local law enforcement officers to become the immigration police.

And, finally, consulting with and involving local police when developing any immigration initiative is imperative if this initiative somehow involves or affects local law enforcement. It is imperative that Congress work with the President to enact comprehensive immigration reform. Done right, our country will only become stronger.

[The prepared statement of Chief Manger appears as a submission for the record.]

Chairman SCHUMER. Well, thank you, Chief Manger, for your excellent testimony.

I apologize to Dr. Hunter and Mr. Moseley. We will be back shortly and resume what is, I think, excellent witnesses and great testimony to get us started on this major issue.

The Committee is temporarily in recess.

[Recess 2:51 p.m. to 3:24 p.m.]

Chairman SCHUMER. OK. The hearing will resume, and we apologize. We do not expect more votes for quite a while, so I think now we will be able to run through, and I want to welcome our next witness. We are truly honored to have him here. Dr. Joel Hunter—and I just want to say he went out of his way and changed his schedule because he cares so much about this, and the whole Committee really appreciates that, Dr. Hunter.

Everyone knows him. He is the senior pastor of Northland. It is a Church Distributed in central Florida. He is one of America's leading conservative evangelical voices, heads a congregation of more than 12,000 members, which I would say even for New York City that is a large number of congregants.

On February 5, 2009, he was appointed to the President's Advisory Council on Faith-Based and Neighborhood Partnerships, which will advise President Obama on substantive policy issues, including interfaith relations, strengthening the roles of fathers in society, and reducing the number of abortions.

It is an honor to have you here, Dr. Hunter. Thank you for being here.

**STATEMENT OF JOEL C. HUNTER, SENIOR PASTOR, NORTHLAND, A CHURCH DISTRIBUTED, AND MEMBER, PRESIDENT'S ADVISORY COUNCIL ON FAITH-BASED AND NEIGHBORHOOD PARTNERSHIPS, LONGWOOD, FLORIDA**

Reverend HUNTER. Well, thank you, Chairman Schumer, and thank you for the work you did in getting me here. And thank you, Senator Cornyn and other esteemed colleagues on this panel, for providing me with the opportunity to speak on the moral and religious reasons for immigration reform.

I am one of hundreds of thousands of local religious leaders in this country. I have been a pastor for almost 40 years, and that is what I want to be for all my years remaining. And even though I am also in leadership positions of national and international groups that are dealing with immigration, it is at the local level that I am continually reminded that policy truly does hurt or help people.

In my faith tradition, we all start as strangers and aliens, outsiders to the commonwealth of God. But because we have a God who was willing to do what it took to include us, at great personal cost, we "are no longer strangers and aliens, but [we] are fellow citizens," the Bible says.

So I find it a high honor to speak to those in power as an advocate for those who have no power. In a verse that would be echoed in many religions, Proverbs 31:8 commands us to "Speak up for those who cannot speak for themselves."

The hope of any religion is that those who have been on the wrong path can be set on the right path. The need for comprehensive immigration reform is to create a path that will help people do the right thing. A broken system produces a dysfunctional society, fractured families, and it increases the vulnerability of both legal and illegal residents. It helps criminals who thrive in the shadows and it harms decent people, consigning them to a life of insecurity, hiding, and minimal contribution to the general welfare.

A broken system produces both broken and crooked people. The cost to our Nation in terms of productivity, national unity, and national security is depressing. But it does not compare to the damage being done to individuals and families.

Broken systems tempt many to predatory practices. I cannot count the stories I have heard about attorneys taking the entire life savings of undocumented workers, producing no results, and then abandoning those workers when the money was gone. Is that typ-

ical of the profession? We would not believe so. But “lead me not into temptation.” It is a mighty temptation to de-prioritize those who are desperate and too intimidated to raise their voices to complain. And what about employers who take advantage of the powerless because there is no system of accountability?

Or the bureaucrats who have no incentive to produce results—or even to keep track of the paperwork—because, who will know? Or the talk show hosts that increase their fame and fortune by picturing those without the proper papers only as conniving and dangerous parasites instead of persons made in the image of God, deserving both respect and help to do the right thing? We are producing cottage industries of exploitation. We are also hearing millions of stories that are the opposite of the American dream.

My friend Reverend Silas Pintos tells of a family in his Hispanic congregation that came from England. Both the husband and wife were successful business people, and they hoped that in the U.S. their children would be immersed in a better environment for family values. So they came to start an alternative energy company. After a 2-year ordeal with the immigration system and absurd legal fees, the immigration department could not even clearly explain to them why their residency application had not gone through. They returned to England emotionally and financially devastated.

My friend Imam Mohammed Musri told me the wife of a 60-year-old man in his congregation was very sick. The man had papers, but when the attorney handling his case took a judgeship, the man was not told he needed to re-register. He was deported even though his wife was too sick to go with him. She was hospitalized and died without him because he could not get back into the country to be by her side.

Pastor Augustine Davies is on the staff at my church. He and his wife are from Sierra Leone and have just completed the long and arduous task of becoming citizens, but they have special relationships with many of the Africans inside and outside our congregation who are caught in the system. One of them is George.

George is from Liberia, West Africa. He is married and has four adult children who live in poverty back in his home country. When George arrived, the INS approved the refugee for temporary protection status. George completed a nursing program and got a job. He was turned down for TPS renewal, but now George feels the almost crushing pressure of providing for his family and other countrymen who need the money he can send to them because of his job. He stays in the shadows for now. I do not agree with what he is doing, but I know his present life is because he loves his family, not because he is out for himself.

Our immigration system can also intimidate congregations as well as individuals and families. My friend Rabbi Steven Engel told me that his congregation had sponsored a family from Argentina to come to the U.S. The INS lost the paperwork many times. They made regular visits to the synagogue, suspicious that the congregation might be doing something wrong. The whole process was so stressful and unwelcoming that when Sergio died from a heart attack at the age of 43, the remaining family returned to Argentina.

These stories and many others do not live up to the ideals of our country. We can do better, and we know it. Everyone is frustrated with the present system. Our immigration system in many cases has us echoing the words of the despairing saint who proclaimed, "I am not practicing what I would like to do, but I am doing the very thing I hate."

The urgency for immigration reform that yields efficiency and compassion cannot be overstated because it is so overdue.

Some of the central principles that comprise most major religions are also woven into our country's history and can be used as a standard for immigration reform.

These principles deem each person as valuable, "endowed by their Creator" with a dignity that transcends earthly circumstance. Therefore, our system must treat each person respectfully.

They acknowledge the family as the bedrock of personal and social development, and the support of the family as the foundation of a strong society. Therefore, our system should prioritize the family.

They see law as not only necessary for restraining evil, but as needed for structuring healthy relationships. It is right that wrongdoers are restrained and/or punished, but it is a better justice when the laws yield correction and the redemption of bad circumstances.

Therefore, our system should have ways to choose to live upright lives after the penalties for wrong decisions. So most people of faith are hoping for policies that will prioritize family togetherness, respect for the law, personal productivity, and compassion for those who are most helpless.

We do not envy you your charge. Immigration reform is a morally complex and a politically explosive challenge. But many of us are praying earnestly for you, and we are seeking God's wisdom in this matter.

Including the stranger is not just a matter of compassion but a necessity for greatness.

Loving your neighbor as you love yourself is not only a moral commandment but a path to national nobility. If we can build a nation of families and support networks that not only help the marginalized to be successful, but help the successful to be helpful, then we can better live up to our potential as a people.

In the end, I believe our Nation will not be judged by the productivity of our budgets or the genius of our laws or even the earnestness of our faith communities. We will be judged, both by history and by God, by the way we have treated people, especially those who needed our help.

[The prepared statement of Reverend Hunter appears as a submission for the record.]

Chairman SCHUMER. Dr. Hunter, I want to thank you for those moving and powerful words. And we are going to send your testimony and some of the others to all of our colleagues. It was really terrific.

Our next witness, thank you for your patience in waiting, Mr. Moseley. Our next witness is Jeff Moseley. He is the President and CEO of the Greater Houston Partnership. The partnership facilitates corporate relocations and expansions in the Houston area, international outreach initiatives such as business development

missions outside the U.S. in foreign trade delegations, and strategic planning. Prior to joining the partnership, Mr. Moseley was the CEO of the Office of the Governor for Economic Development and Tourism, a position he held from 2003 to 2005. And since you are Senator Cornyn's constituent, maybe he would like to add a word of introduction.

Senator CORNYN. Well, Mr. Chairman, thank you for allowing me to ask Mr. Moseley to come up and testify today. There is great interest, as I indicated in my opening remarks, about this subject across the board. The chief talked about impact on local governments, and certainly we see that not only in law enforcement but also in our hospitals and health care system. It is a matter of finding skilled workers for jobs where we lack skilled workers, and we need to fix this system. And Mr. Moseley has made it his job, along with those of the Greater Houston Partnership, to try to come up with good solutions and ideas for us. And so I am delighted he could be here with us today and share some of his ideas with us.

Thank you.

**STATEMENT OF JEFF MOSELEY, PRESIDENT AND CHIEF EXECUTIVE OFFICER, GREATER HOUSTON PARTNERSHIP HOUSTON, TEXAS**

Mr. MOSELEY. Thank you, Senator Cornyn, Chair Schumer, and members of this Committee. It is a delight to be able to bring a few remarks to you this afternoon, and I thank you for your leadership and for your commitment to reforming America's immigration laws. And even though, as we have talked earlier, we may not always agree on specific legislative proposals, I am most grateful to each of you as members of this Committee for continuing this conversation that Senator Kennedy initiated with the American people so many years ago.

By way of introduction, the Greater Houston Partnership is a business association whose membership represents more than \$1.6 trillion in annual revenues. Our organization seeks to represent a grass-roots voice for business and industry in this immigration reform dialog, and it is a voice that we know has been missing from the debate. We have witnessed most recently the two failed attempts to pass immigration reform. Arguably, the business community bears some responsibility, Chairman, for these failures by standing on the sidelines.

The intent of the 1986 Immigration Control and Reform Act was to make employers responsible for verifying the legality of their workforce. However, the current system by which employers determine worker authorization is actually no better than the Social Security card, which is still printed on a low-cost basis and, quite frankly, has not been upgraded in any fashion since it was begun back in the 1930's.

We would also argue that there must be a strong balance between securing our borders and safeguarding our prosperity, to echo Chair Greenspan's testimony.

The Greater Houston Partnership recognizes the need to secure our borders. We also support immigration reform that will allow employers, through an efficient temporary worker program, to recruit skilled and unskilled immigrant workers when there is a

shortage of domestic workers. We also believe there is need to provide a process for legal status for qualified, screened undocumented migrant workers that are now in the country.

The Greater Houston Partnership further believes that employers should be responsible for verifying the legal status of those they hire. And to this end, we support the creation of a very fast, reliable employment verification system. However, we would also add that we oppose laws that would increase civil and criminal penalties on employers without providing viable legal options for hiring skilled and semi-skilled workers.

The partnership's task force on this issue actually thought we should go further, and this led to the creation of a nonprofit organization called "Americans for Immigration Reform."

Chairman and members, the purpose of Americans for Immigration Reform is very simple, and that is, is to build a broad, grassroots national coalition that favors immigration reform.

Last year, Americans for Immigration Reform commissioned a major study on the economic impact of undocumented workers, and this will sound similar to what Mr. Greenspan talked about. The Perryman study, available at [Houston.org](http://Houston.org) and [AmericansforImmigrationReform.org](http://AmericansforImmigrationReform.org), states it this way—and, quite frankly, if you think that subprime mortgages and the freezing of credit markets and high-priced energy have a chilling effect on our economy, the Perryman study concluded that if all undocumented workers were removed from the United States economy, the immediate effect would be the loss of some 8.1 million jobs. And even if the economy adjusted, job losses would still exceed 2.8 million. And, moreover, our economy would lose, Mr. Chairman and members, \$1.76 trillion in annual spending and \$652 billion in annual output. So even if we did have the resources to round up and deport every undocumented worker in this Nation—which we do not—the consequences to our economy would be staggering. The Perryman study, again, as I said, can be found free of charge on our website, but we think that in today's economic climate, you and I can recognize that even a person who is unemployed in New York's financial sector more than likely would not be willing to relocate and do agricultural work in California or construction work in Houston in spite of our mild weather.

Chairman SCHUMER. Certain seasons.

Mr. MOSELEY. Yes, sir, Mr. Chairman. So that is where we certainly agree with Chairman Greenspan that immigrants are net contributors to our tax base. And while it is recognized that there are costs affiliated with health care and public education, the economic benefit of an educated and healthy workforce strengthens our economy.

We do not believe in amnesty, Mr. Chairman. We do not believe in deportation. But there should be a recognized legal status for the undocumented so that their contributions to the economy can be recorded and they can be taxed for public services just like all of us in our community.

What the business community requires and what the religious community desires and what Americans for Immigration Reform need, we believe, as has been stated here many times, less rhetoric and a real strong, common-sense solution that we can all support.

We want leaders that are willing to share the truth rather than having the primary source of information come from the entertainment industry that inflames, rather than explains, the reality and complexities of the immigration issue.

Mr. Chairman, on behalf of the Greater Houston Partnership, may I extend an invitation to you and your distinguished colleagues for us to host a field hearing for you in the Houston area at some time in the future.

Thank you, Mr. Chairman.

[very difficultThe prepared statement of Mr. Moseley appears as a submission for the record.]

Chairman SCHUMER. Well, thank you, Mr. Moseley. I want to thank all four of our witnesses. I do not think we could have had four better witnesses to begin this, and from different perspectives each showed the need for immigration reform. And we will have more witnesses in the second panel who will augment that.

I am going to ask my first question of Dr. Hunter. Your testimony was a tour de force. It really was. And I hear lots of testimony, and it is right at the very top of the list, so thank you.

Can I ask you this: How many of your colleagues, would you say, in the ministries and all of the clergy would agree with your views on immigration? And do you think this time around more religious leaders who agree with your view will speak out in favor of immigration reform, as you have done so strongly, not just here but repeatedly?

Reverend HUNTER. I do, Mr. Chairman, and let me tell you why.

First of all, most local religious leaders are that because they care very deeply about people, and the more they hear these stories and the more they become familiar with people who are caught in a very bad system, the more sympathy they have and the more they are aware of people's hurts and families' break-ups.

The second reason is I think the tide has turned in our country as far as—it is almost like we are—we have been systematically de-sensitized to, you know, everybody extremizing or extrapolating every wrong thing that could happen. And so, therefore, the pundits do not quite have—you notice they are getting more and more extreme, and that is for the reason they have to escalate in order to get the same amount of attention.

And for the religious community, there are quite a few now that used to be very hard on one side or the other, and they are kind of saying, "Wait a minute. Let us take a second look at this. Let us approach this more intelligently. Let us take a look at this as complex problem and, therefore, work this thing through."

I think there is just a new day in this country, and I think that many local religious leaders are going to be hopeful, be prayerful, and be working toward a solution to the immigration reform challenge.

Chairman SCHUMER. That is very good news, and I agree with you. I mean, even if you just look at the polling data, there are a small minority of Americans on either end, but most Americans want a solution that will be a fair solution, a humane solution, a legal solution. I think the time is right. That is, frankly, why I chose to chair this Subcommittee. In previous years, I had other Subcommittees here on this Committee.

The next question is for Alan Greenspan, again, who gave great—I do not think I have to ask many questions because the four testimonies here were just so incredible and made a much more powerful case than my questions would. I would just like to flesh out a few things with Chairman Greenspan.

You said that undocumented workers contribute positively in certain ways to the economy. Having said that, do you believe that a system which would rely far more on legal immigration and be balanced between family immigration and economically oriented immigration, where, let us say, 90 percent of the new immigrants into this country were legal as opposed to about 40 or 45 percent, which it is now, would work better?

Mr. GREENSPAN. Most certainly, Mr. Chairman. It is very difficult to envisage what it must be like to be an undocumented, illegal immigrant. I think that the Chief specified very well the fear that these people have of being deported. That cannot but have a very chilling effect on the flexibility or willingness to take certain different types of jobs.

But let me go a step further and say how important it is to recognize, as Mr. Moseley has pointed out, that the very substantial proportion of both documented and undocumented immigrants in our labor force are at critical positions. They have very large participation at both the very lowest skill levels and at the very highest skill levels. If you were to remove either of those groups, the economy would be in very serious trouble.

That also tells you, incidentally, that when you have a complementary labor forces, which is what the total foreign-born employment is, the tendency is to increase the productivity of the total.

For example, on your staff, Mr. Chairman, you have a number of senior assistants. If you hire two or three people for each of those, those people whom you hire are not as good as your assistants, but the working together of the assistants and the helpers enhances the productivity of both. The wage rates of both go up; or in a broader context in the economy, the level of productivity and standards of living rise. So that when you have a very large group of individuals who have less than a high school education and you put them in, say, construction jobs, the foremen will be far more productive because they have more people to supervise and more gets done. The wage rates of the less skilled go up. The wage rates of the foremen go up. Everybody benefits.

Those who argue that immigration suppresses the wage levels of native-born Americans are mistaken. It does not. On the contrary, it raises them with the sole exception of a small body of those with less than a high school diploma. And even they—it is an arguable case.

So the arguments against immigrant labor are just wrong.

Chairman SCHUMER. Thank you, Mr. Chairman.

For Chief Manger, you testified that asking State and local law enforcement to enforce Federal immigration laws is an unfunded mandate, which it truly is. Can you just describe in a little more detail the amount of money and manpower that the average major city police chief currently has to divert from other areas if you were

to have to fulfill the unfunded mandate of enforcing Federal immigration law?

Chief MANGER. The 287(g) training I think is a prime example where the resources necessary to take on these immigration investigations is really a lot more than most police departments can afford to do. It is not just simply a matter of going for a day's training and all of a sudden you become—you know, you have this 287(g) training and you can do immigration investigations. The training itself takes over a month. And to have police officers that you take out of service to train for that length of time to be able to begin to do investigations that previously we have never had to do—I mean, it was—so you are taking on complicated investigations that take a long period of time.

I will just give an example. You stop someone for a simple traffic violation, and there are some police departments—not many, but some in this country now that if you do not have a driver's license with you and you appear to be foreign born, they will initiate an immigration investigation. And it is not just simply running a name through a data base. Very often these are complicated investigations that take days in order to determine with some certainty someone's immigration status.

I do not know of a police department in this country that has the ability to take on these types of investigations, which are time-consuming, which are crimes that we have never had to investigate before, and just do it with no impact to their budget and their resources.

Chairman SCHUMER. I would imagine, as difficult as it is for a large city police department, it may be harder for a smaller suburban or rural police department.

Chief MANGER. Absolutely.

Chairman SCHUMER. They have fewer resources.

Chief MANGER. True. Larger departments do have some additional resources. We generally have staff that can do specialized investigations. But, again, I will speak for my police department. If I had additional personnel, I have got robbery issues, I have got auto theft issues, I have got a lot of other crimes that I think threaten public safety a lot more than going after someone who may have overstayed a visa.

Chairman SCHUMER. Thank you.

Senator Cornyn.

Senator CORNYN. I have just a couple of questions, Mr. Chairman. Let me start with Mr. Moseley.

In 2007, when we were debating a comprehensive immigration reform bill, there was an amendment adopted that basically eviscerated the temporary worker provisions or guest worker provisions in the bill, and some observers called that a "poison pill" because that was part of the understanding that a comprehensive immigration reform bill would necessarily include a guest worker provision for people who did not necessarily want to be American citizens but wanted to come to the United States, fill necessary jobs in a legal status, and take the skills and savings they earned during that temporary work period back with them to their native land.

How important do you believe that a guest worker provision is to a comprehensive immigration reform bill? And why do you feel that way?

Mr. MOSELEY. Senator, I think one of the biggest challenges for all of us would be to somehow put together a law with caps or quotas and somehow think that we can anticipate the workforce demands of our economy 5 years from today or 3 years from today or next year.

The reality of it is we all admit today that we are part of a global marketplace, and as we move more and more into this global economy, we see a demand for workforce, and those demands need to be met, or we need to export jobs. It is pretty clear.

Today, in the Houston economy, one of the demands we hear over and over again is the need for engineers in the energy clusters. And the people that are managing these large energy companies are warning us that, with baby boomers retiring, there is a curve that is really not going to be met without some type of an opportunity to bring in trained, highly trained workers from outside the United States, or we need to export those jobs. That is kind of where we see it.

Today we have 4,000 job openings at the Texas Medical Center in Houston. Now, that is a range of jobs, but anybody who has recently been in a hospital probably has looked up and seen that we are importing skilled workers when they look into the face of a technician or a nurse and they happen to be from the Philippines. But we believe there is a huge value, whatever that mechanism is, in letting the workforce come into our economy and be used, and if they need to go back home, whatever that mechanism looks like, we do see a value in that.

Senator CORNYN. Chairman Greenspan, may I ask you about a related topic? That is, to me one of the benefits of a guest worker program or a temporary worker visa as a component of comprehensive immigration reform, which was suggested by Mr. Moseley, for example, during times of prosperity and a lot of jobs you could ratchet it up. During times when the economy was softer and perhaps the need for those workers was reduced, you could dial it back without creating a permanent threat to American citizens not being able to find a job because maybe there was a foreign worker who was permanently here in the country who would occupy that position.

Do you see any benefit to the flexibility in our economy given the ups and downs of the economy in having a temporary worker or a guest worker program?

Mr. GREENSPAN. Yes, I do, Senator. But in the context of broad guidelines, the markets will work by themselves in that regard. Currently, for example, employment of foreign-born workers has suffered, because they happen to be concentrated in areas which are economically the weakest, such as construction. We are witnessing very significant decline occurring and a very substantial part of that are undocumented workers. They are withdrawing because the demand is not there. If you set broad principles, you do not have to calibrate as specifically as is implied, although I have no objection to doing it. I am not even sure it is necessary. But I grant you, you do need limits because, as I indicated in my pre-

pared remarks, opening up in today's world to an unlimited flood of immigrants does unsettle a society. But within that context, there is far more leeway to open up for guest workers or temporary workers than even anybody is remotely talking about. And I think our economy could absorb them very productively, very quickly.

Senator CORNYN. Thank you very much.

I just have one last question for Chief Manger. You talked about the—and I am sympathetic with your views that the responsibility of Federal law enforcement officials should not be thrust as an unfunded mandate on local and State officials. But can you talk with me just a second about a phenomenon which I think occurs in many of our big-city jails, where you have people who are here illegally but who have committed serious crimes. And if we can separate the people who have come here in violation of our immigration laws, which I think most people would not view as a threat to their safety necessarily, and those who are here illegally but who have committed crimes and exploiting perhaps other immigrants in the immigrant community because they know those crimes are unlikely to be reported, is there some—what can the Federal Government do better to provide you the tools or to allow for the separation of those and to deal with the really dangerous criminals, including the transnational gangs who are taking advantage of our porous borders now and preying on a lot of innocent people in many of our big cities and elsewhere?

Chief MANGER. I think that ICE has heard the message that you just stated. The days of us notifying ICE that we have in custody someone who has overstayed a student visa and them thinking that it is a priority to deport that individual I think are passing.

Now we have a policy within the Montgomery County Police Department where if we arrest someone for a violent crime and the individual is foreign born, we make that notification to ICE for them to check on the status.

Every police chief I think would tell you that what you just described, there is a big difference between someone who is in our community committing crimes, an undocumented resident committing crimes in our community, the threat to public safety there I think necessitates ICE doing their job and removing that person from our community.

One of the things that I talked about in my testimony was the fact that people that are here, undocumented, committing crimes, preying on our community, I think should receive no sanctuary, no safe harbor in our country. And we have enough folks here, documented and undocumented immigrants, that are contributing in our community, that are in no way threatening our public safety, that we need to concentrate on, and those that are here committing crimes I think we need to remove from our community.

Senator CORNYN. A quick follow-up, and this is my last question. How good a job do you think the Federal Government, ICE, is doing now in accomplishing that goal?

Chief MANGER. Much better, I would say, than a few years ago. They realize they do not have the resources to get rid of every undocumented resident. They are now focusing on the worst offenders, and that is what we need them to do. And I think they are doing a better job of it today.

Senator CORNYN. Thank you.

Chairman SCHUMER. Thank you, Senator Cornyn.

I could not think of four better witnesses to start off our long goal, quest, to come up with a comprehensive immigration reform bill this year. So I want to thank each and every one of you, and as I said, I want to distribute this testimony to all of my colleagues. Thanks for being here.

Chairman SCHUMER. Now we will call our second panel to the witness stand and give them a minute to get settled.

Let us get started with our second panel. I am going to introduce all four, and your entire statements will be submitted into the record, and then we will ask some questions.

Doris Meissner—and I sat on the Immigration Committee when she has testified before, and I sat on the Immigration Subcommittee in the House when she was the then-INS Commissioner. She is a Senior Fellow now at the Migration Policy Institute and one of the leading thinkers in America on immigration and national security. Between 1993 and 2000, as I mentioned, she served as Commissioner of the INS. Her accomplishments include reforming the Nation's asylum system, creating new strategies for managing U.S. borders, improving naturalization and other services for immigrants, shaping new responses to migration and humanitarian emergencies, and strengthening cooperation in joint initiatives with Mexico, Canada, and other countries.

Eliseo Medina is the International Executive Vice President of the SEIU, the fastest-growing labor union on the West Coast and the largest union in California. More than 2 million workers across the country, including many hundreds of thousands in New York, I am proud to say, are SEIU members, which is the union with the largest membership of immigrant workers.

Wade Henderson is expected, and we hope he will be—anyone hear from the Leadership Conference? Is he on his way? OK. He said he would be here, in all fairness to Wade, he said he would be here at about this time, so we expect him, and I will introduce him now. He will not hear the introduction, but as my kids used to say, “No big whoop.”

Wade Henderson is the President and CEO of the Leadership Conference on Civil Rights, counselor to the Leadership Conference on Civil Rights Education Fund. The Leadership Conference is the Nation's premier civil and human rights coalition. He is also the Joseph L. Rauh Professor of Public Policy at the David Clark School of Law in the University of the District of Columbia.

And Kris Kobach is a professor at the University of Missouri, Kansas City School of Law. In 2001, Professor Kobach was awarded a White House fellowship which took him to Washington, D.C., to work for the Bush administration in the office of U.S. Attorney General John Ashcroft. After his fellowship ended, Attorney General Ashcroft asked Professor Kobach to stay on as his counsel. In that capacity, he served as the Attorney General's chief adviser on immigration law and border security.

We welcome all of you, and we will begin with Doris Meissner.

**STATEMENT OF DORIS MEISSNER, SENIOR FELLOW, MIGRATION POLICY INSTITUTE, FORMER COMMISSIONER, U.S. IMMIGRATION AND NATURALIZATION SERVICE, WASHINGTON, DC**

Ms. MEISSNER. Thank you. Thank you very much, Senator. Let me begin by congratulating you for taking on this Committee and thank you for doing so. We all know, as you have said, that these are big shoes to fill, and I and my colleagues at the Migration Policy Institute, which is a nonpartisan think tank here in Washington, are available to be helpful to you and to the Committee with research, analysis, and policy ideas.

I want to begin by just saying a few things about the economy because that, of course, looms above all right now. Where the economy and immigration is concerned, there are a couple of key facts that I think really are critical for the work that you are setting out to do. Chairman Greenspan alluded somewhat to this, but let me underscore it further, and that is that the growth in the foreign-born population in this country has slowed considerably since 2007, when the recession began, and that slowdown really began in 2006 with the unauthorized population. We have seen no significant growth in the increase of the size of the unauthorized population since 2006.

That is very important because that growth was going at about 500,000 a year, a large number of people, for quite a few years running. It does not mean, however, that the people who are in the United States in an unauthorized status are going home. There is some anecdotal reporting about return migration, but the data do not support that there is a trend of return migration. So particularly where the case of the unauthorized population is concerned, although it is not growing, it is also not being reduced.

So we are in a period of pause where immigration increases are concerned. It is particularly because of a slowdown in illegal immigration. That is new for the first time in a decade, and it really does provide a historic opportunity for needed reforms so that when growth does resume, which will happen, the disconnect between our broken immigration system and the economy might be fixed, and immigration can contribute then in a much healthier way to recovery and to our future as a Nation.

So, with that backdrop, let me touch on just a few critical points that have to do with solutions, how we do this fixing. I want to make three points.

First, enforcement. Where enforcement is concerned, we know, of course, that the new system has to have rules that are workable, and those are rules that have to be able to be enforced. Border enforcement is a given. Of course, we have to have border enforcement and border control. But it is also the case—and I think there is wide agreement—that border enforcement cannot succeed without meaningful employer enforcement. And meaningful employer enforcement depends on the universal verification, mandatory electronic verification, so that employers can comply with the requirements to hire only legal workers.

The focus where verification is concerned has been almost entirely on the E-Verify system and on the means, the technology means by which one could do verification more effectively. But that

ultimately will fail in the same way as the I-9 system has failed without the companion piece of reliable identification documents.

I mention that because I have seen you quoted on this point. It is a point that I raise again and again and that we raise in our work, and I want to validate your position on that, and I want to encourage that the Committee work on that and that we work together on that. It is an absolutely essential piece of the verification puzzle.

The second point has to do with legalization. This, of course, is the issue where all of the passion is invested. I am not going to do the pros and cons on legalization, but I want to make two points about legalization.

First of all, if you take a hard-headed economic look at legalization, and legalization now during a recession period, there is a persuasive case to be made why it makes sense to do legalization during a recession period. I have provided the research and the references in detail in my statement so that they are available to the Committee, but I think it is important to step back and take that into account in this discussion.

Second on legalization, I think that it is extraordinarily important for the Committee to work very closely with U.S. CIS and with DHS and Government agencies on designing a legalization program so that it is a program that can be implemented.

We need a phased legalization program that begins with a simple requirement for a background check so that criminals can be weeded out and a straightforward registration process that leads to work authorization and a chance to get in the queue for adjustment. Then over time applicants can earn their way to permanent residency and ultimately to citizenship for those who so choose.

My final point has to do with future flows. I think if we look back or IRCA, one might argue that the single biggest failing of IRCA was to fail to anticipate future flows of immigration. We looked at IRCA as a one-shot deal, we could do it, and move on. That was a mistake. Immigration is dynamic. Legal and illegal are closely tied. So we will need increased flows of immigration again at some point in the future when job growth returns, and we need to be able to provide for that in legislation.

The dilemma, of course, is not only the current dilemma of a recession; it is the bigger dilemma of the way in which our immigration statutes are written today. They are extremely inflexible, and there is really very little ability in the current statutory frameworks to adjust levels of immigration against labor market demands and labor market changing circumstances. So that far too rigid system with ceilings numerically written into the statute are really frustrating our ability to have immigration work much more effectively and constructively for the country and for the economy. And the only real variable here has been illegal immigration, which is responsive, and that is obviously not an acceptable way to go or situation to be in.

We at MPI have addressed this issue several years ago in work that we did with a task force that we convened, which was under the co-chairmanship of former Senator Abraham and Congressman Hamilton. Our report was called "Immigration and America's Future." We made many recommendations, but among them the rec-

ommendations that we made was the idea of what we call a Standing Commission on Immigration and Labor Markets as a way of establishing an institutional response to this problem of flexibility and adaptation.

Now, I know the word "commission" is always a problematic word. It has all kinds of connotations that are worrisome. But I would like to urge that the Committee think about this as a permanent capability within the Federal Government, in the executive branch, really akin to what the Bureau of Labor Statistics and the Census Bureau do, which would be to provide ongoing research and analysis on the relationship between immigration and labor markets. That is research that is not now available. It is not going to be produced by the academy because of the nature of the work and the way work gets done. But we need evidence, and we need ongoing evidence from which the Congress can make decisions that adjust levels of immigration in a far more systematic, regular fashion. So that a body like this would make recommendations based on evidence to the Congress for adjustments regularly, and those adjustments would be for the purposes of promoting economic growth and competitiveness for our economy for the future.

I have given you a fuller description in the statement, but suffice it to say that our ability to have a more dynamic, responsive legal immigration system for employment-based needs in this country is going to be increasingly important to us in the future. This provides a possible way to get from here to there.

Thank you very much. I look forward to working with you in the future.

[The prepared statement of Ms. Meissner appears as a submission for the record.]

Chairman SCHUMER. Thank you, Ms. Meissner.  
Mr. Medina.

**STATEMENT OF ELISEO MEDINA, EXECUTIVE VICE PRESIDENT, SERVICE EMPLOYEES INTERNATIONAL UNION, WASHINGTON, DC**

Mr. MEDINA. Thank you, Mr. Chairman. My name is Eliseo Medina, and I am a very proud immigrant today. To address a U.S. Senate Subcommittee is a great honor, and I thank you for the opportunity.

My family and I came to this country in 1956. We worked in the fields harvesting grapes, oranges, and other crops. We worked very long days, without breaks, for very low wages and terrible working conditions. To ask for better treatment was asking to be fired on the spot. But as difficult as the work was, we also knew that if we worked hard we had an opportunity to claim our own little piece of the American Dream. Because of my history, the issue of immigration reform is very personal to me.

Today, I am an Executive Vice President of the Service Employees International Union, one of the largest unions in America. I am honored to be here today to represent the 2 million homecare, janitors, security officers, and other SEIU members who live and work throughout the United States. Many of them immigrants who came to this country from all over the world.

Regardless of where we came from, we go to work every day with the same goal: to work hard, to contribute to society, and to achieve our own American Dream.

Today immigrant workers are advocating alongside their co-workers and neighbors in support of economic reform, real health care reform, and strengthening the rights of workers through passage of legislation like the Employee Free Choice Act. I believe that to achieve that dream, we also have to finally address our broken immigration system. The status quo is simply unacceptable and works only to the benefit of those who break the rules.

That is why the largest workers organizations in the country—the Change to Win federation and the AFL–CIO—have come together around a unified proposal for comprehensive immigration reform that consists of five components, each of which depends on the others for success: rational control of the border; a secure and effective worker authorization mechanism; adjustment of status of the current undocumented population; improvement, not expansion, of temporary worker programs; and an independent commission to assess and manage future flows, based on labor market shortages that are determined on the basis of actual need.

This proposal will allow millions of undocumented workers to come out of the shadows, relieving them of the fear of arrest and deportation and of leaving behind their families. It will stop unscrupulous employers from taking advantage of their lack of legal status to exploit them and violate existing wage and hour and health and safety laws. Guest workers fare no better because they are tied to their sponsoring employer, with no effective redress because to complain is to lose your visa and be deported.

I saw this system firsthand with my father and brother and later as an adult working with sugar cane cutters in Florida under the H–2A program. These workers are not treated as “guests” in our country; they are treated more like indentured servants.

The current broken system has given rise to a three-tier caste worker system in America: citizens, guest workers, and undocumented workers. This onerous system depresses wages for all workers because too many employers seek out the cheapest, most vulnerable workers in order to gain a competitive advantage. This helps no one, not American workers, not immigrants, and not businesses that play by the rules, and certainly not taxpayers who wind up paying for an ineffective enforcement system that is focused on arresting service workers, farm and meatpacking workers, instead of stopping drug smugglers, gang members or other larger threats to our national security.

Real reform will allow us to focus our resources on our priorities instead of on our prejudices. It will solve many problems at one time instead of the current Band-aid approach.

Since we unveiled our proposal, the portion that has received the most attention has been the independent commission. The men and women of the labor movement have long believed that our current system for bringing in permanent and temporary workers simply does not work effectively.

The key to designing a sustainable workplace immigration system is that the flow of future workers must be rationally based on the always evolving labor market needs of the United States.

The commission would act in two phases. First, it would examine the impact of immigration on the economy, wages, the workforce, and business in order to recommend to Congress a new flexible system for meeting our labor needs and set the number of employment visas. Next, the commission would set and continuously adjust future numbers based on a congressionally approved method.

We believe our proposal will give all stakeholders a seat at the table in order to build a system that works for the long term that is based on sound public policy, not on politics, and it will provide for lasting political support.

We hope that you will give it your consideration. Thank you, Mr. Chairman.

[The prepared statement of Mr. Medina appears as a submission for the record.]

Chairman SCHUMER. Thank you.

OK. Mr. Henderson, I read your introduction and explained to people you had promised to be here around 4 o'clock, and you were true to your word.

**STATEMENT OF WADE HENDERSON, PRESIDENT AND CHIEF EXECUTIVE OFFICER, LEADERSHIP CONFERENCE ON CIVIL RIGHTS, WASHINGTON, DC**

Mr. HENDERSON. My apologies. Let me begin again. Thank you, Chairman Schumer, for the opportunity to address what for the Leadership Conference on Civil Rights is even now one of the pre-eminent civil and human rights issues of the 21st century.

I would like to begin with what I hope are a few points on which we can all agree.

First, I think it is clear to everyone that our Nation's immigration is badly broken. It fails to keep up with economic realities; it does not keep track of who is here; and it does not give people enough incentive to play by the rules. We clearly need drastic changes.

I think we also agree on the need to include more effective but also more realistic and more human immigration enforcement. It is simply unrealistic to stretch fences across our borders, and we cannot leave enforcement to local police or, worse, to private groups. But we can take more sensible measures like hiring more Border Patrol agents, making better use of technology, and working closely with Mexico against human and drug trafficking.

Third, I hope we can agree on the compelling need to give millions of undocumented immigrants in our country a realistic, humane way to come out of the shadows and legalize their status. As a lifelong civil rights advocate, I recognize the treatment of undocumented immigrants is an economic and legal issue of great importance. But it is also a civil rights issue of profound significance that goes directly to our most fundamental understanding of civil and human rights.

We do not need to condone violations of immigration laws, but motives count. And when we consider why most of our current undocumented population came here and the role that immigration policy played in aiding and abetting their arrival, it is clear that we should not treat them as fugitives. If they are otherwise law-

abiding and willing to contribute and play by our Nation's rules, then we should provide them with lawful status.

And, fourth, because we all agree that families are the backbone of our society, our immigration laws should reflect this instead of keeping them apart as they do now.

Moving more directly to the focus of today's hearing, how to overhaul our immigration system, I am certainly mindful that these are incredibly challenging times. Our economy is badly struggling, leaving countless numbers of Americans economically insecure, and Congress obviously has a lot on its plate this year. But from our perspective, the challenge of immigration reform in 2009 is also pressing. However, to achieve reform, the American people must be convinced that even in these difficult times, reform makes sense economically as well as morally, and that the needs of all Americans are considered.

For example, the needs of low-wage workers, a group disproportionately composed of African Americans, have long been neglected by policymakers, and this neglect could impede immigration reform. The situation facing African American workers is a complicated one, and as I explain in more detail in my written testimony, there is no consensus on whether immigration worsens their employment situation.

For example, long before immigration policies were made more generous in the 1960s, black unemployment rates were twice as high as for white workers, and they have stayed that way even as the immigrant percentage of our population has increased. Nevertheless, immigration opponents continue to raise the specter of job loss and reduced wages among African Americans as a tactic in their opposition to comprehensive reform.

Economic insecurity is certainly very keenly felt today in the African American community, as in every community. But this does not mean that African Americans oppose comprehensive immigration reform, and we at the LCCR have done extensive research that confirms that point. Instead, it underscores the need for reform proposals that will simultaneously advance the economic well-being of all low-wage workers.

I believe that reform must take two key steps in order to succeed: first, it must forge policies that promote economic advancement for native-born workers; and, second, prevent immigrant workers from being exploited and being used to undercut the wages for everyone else.

As to the first part, my written testimony describes some ideas jointly developed by civil rights leaders to address the concerns of low-income workers across the board. They include: better enforcement of anti-discrimination laws; improved job vacancy notification systems to give native-born workers better job information; increased enforcement of workplace standards; and more resources for job skills, training, and to help workers relocate.

The second key component is an immigration bill that provides for genuinely fair treatment of immigrants and prevents immigrant workers from being used to undercut standards for all workers. The American labor movement recently issued a blueprint that embodies these ideas, and my friend Eliseo Medina has already addressed some of these issues in his testimony.

Now, before I finish, I would like to add that most African Americans understand better than almost anyone else that it is inherently wrong to divide people along the lines of race and ethnicity or national origin, and that "us versus them" wedge politics hurts everyone in the long run. That is why finally African Americans also take note of how consistently certain groups show their concern for us across the board and not just when it comes to immigration policy.

Sadly, immigration restrictionists rarely show interest in the African American community at other times. To anyone who looks closely at where immigration restrictionists stand on other priorities of importance to African Americans, it is clear that they are not and never have been our friends.

I want to thank you again for having me here today, and I look forward to your questions.

[The prepared statement of Mr. Henderson appears as a submission for the record.]

Chairman SCHUMER. Thank you, Wade Henderson.

Now they did call another vote. We have about 6 minutes left on it, so, Mr. Kobach, to give you a full hearing and so I would have time to ask questions, do people mind waiting? I will get back as quickly as I can. Is that OK with all our witnesses? Great. OK. Thank you.

The hearing is temporarily recessed once again for a vote.

[Recess 4:29 p.m. to 4:52 p.m.]

Chairman SCHUMER. The hearing will come to order, and we apologize to all the witnesses for that brief interlude. And now we are ready for Mr. Kobach.

**STATEMENT OF KRIS W. KOBACH, PROFESSOR OF LAW,  
UNIVERSITY OF MISSOURI, KANSAS CITY, MISSOURI**

Mr. KOBACH. Thank you, Mr. Chairman. I will assume for the sake of this hearing that when we talk about comprehensive immigration reform, we mean reform similar in basic respects to the Senate bill 1348 of 2007, and I will explain with that understanding two basic reasons why pursuing that course of action would be ill-advised: first, the incapacity of the administration of U.S. CIS, the bureaucratic incapacity to implement the amnesty in the time scale that was anticipated by that bill; and, secondly, the national security concerns that must flow from any large-scale amnesty.

First, looking at the CIS, it simply does not have the resources at this time to effectively implement an amnesty of the scale contemplated by the 2007 bill. To understand this, just consider a few numbers. On top of the 12 million-plus illegal aliens in the country who would be eligible for the amnesty, presumably, there would also be a mass influx of hundreds of thousands or perhaps millions more, which is exactly what happened after the 1986 amnesty, who would present fraudulent documents to apply for the amnesty as if they had already been here. INS reported after the 1986 amnesty that they discovered 398,000 cases of such fraud, and it is reasonable to expect that a similar influx would occur this time.

But let us just assume for the sake of argument that 12 million illegal aliens are eligible and apply for the amnesty. Now, the 2007

bill required everyone to apply within a single year period. There are 250 calendar days that the Government is open for business in a given year. That means that there would have to be an average of 48,000 applications for amnesty every day. As of September 2008, there were only 3,638 status adjudicators at U.S. CIS, and that number cannot be increased quickly because of the difficulty of hiring and training them quickly, and, of course, the attrition of existing adjudicators. Forty-eight thousand applications spread among about 3,600 adjudicators means an average of 13 amnesty applications per adjudicator per day. And, of course, on some days the number might well be double that amount. And under the 2007 bill, with each application the adjudicator had only one business day to determine if there were any national security or criminal reasons why an individual application should not be granted.

Now, that is a bleak picture, but unfortunately it gets worse because that is assuming that those adjudicators are not doing anything right now. Of course, they are. There is a backlog of pending applications of approximately 3 million cases at present, and, of course, on top of that comes the 4 to 6 million applications for things like green cards and other benefits that we currently grant that come in every year.

The GAO recently reported that U.S. CIS is, accordingly, stretched to the breaking point—so much so that there is so much time pressure that they spend too little time scrutinizing the applications. As a result, the GAO concluded the failure to detect fraud is already “an ongoing and serious problem” at U.S. CIS. They said a high-pressure production environment exists, and it is widely known that at some U.S. CIS offices, there is an informal so-called 6-minute rule in place where an adjudicator has to get through at least 10 applications per hour, and it is a veritable bureaucratic sweatshop.

Well, as a result of this time pressure, U.S. CIS right now is failing to engage in common-sense verification with outside agencies, for example, calling a State DMV to see if two people who allege that they are married are actually living together. And, in fact, in many offices adjudicators are discouraged from making back-up calls like that.

So this agency is already dangerously overburdened and susceptible to fraud. What would an amnesty of the style contemplated by the 2007 bill do? It would more than triple their existing workload. This 6-minute rule might become a 3-minute rule or a 2-minute rule. And it must also be remembered that the much smaller amnesty of 1986 for 2.7 million aliens was extended—or, rather, it took 17 years for that amnesty to be fully implemented. As late as fiscal year 2003, U.S. CIS was still adjudicating applications from the 1986 amnesty. This Committee is now contemplating an amnesty that would be approximately 4 times as large.

Now, in the past U.S. CIS, when presented with a proposal like this, has said that the way it would deal with that surge of applications is by hiring contractors and that that might somehow solve the problem. But that approach is problematic for two reasons.

First of all, it is unlikely that the necessary background checks and training of the contractors could be completed in time. There is already a massive backlog at the Office of Personnel Manage-

ment, which does background checks on U.S. Federal Government employees, of several hundred thousand people. The 2007 bill ignored that problem.

The second problem is that contractors, even if they could be found and quickly put into place, they have to be trained.

Now, one of the benefits of our current status adjudicators is that they are expert in immigration law and they are trained in detecting fraud in the applications for benefits. It is simply critical that in any amnesty the adjudicators be properly trained.

Secondly, I want to talk about some national security concerns. An additional flaw in the 2007 bill is that it would have required any background check, as I mentioned, for the probationary visa to be accomplished within one business day. Now, that might be possible if the U.S. Government had a readily searchable computer database of every terrorist in the world. But, in fact, many of the records are paper records, and many of the records are held by foreign governments. So a 24-hour background check simply is impossible. Indeed, right now the FBI is doing name checks for U.S. CIS for applicants for benefits, and there is a huge backlog of about 60,000 name checks waiting at the FBI right now.

Now, their objective, if all of the problems are solved, is to get to a world where most of the name checks can be done in 30 days and all of the name checks can be done in 90 days. But we are not there yet. So to imagine that we could do something like the 2007 bill and have a thorough name check in 24 hours is simply infeasible.

But even when the Government has as much time as it needs, as much time as it wants to do a name check, terrorist applications can get through. Case in point: Mahmud "the Red" Abouhalima. He was given legal status under the 1986 amnesty as a seasonal agricultural worker even though he was driving a cab in New York. He subsequently was a ringleader in the 1993 plot against the World Trade Center, and his brother Mohammed also got amnesty fraudulently in the 1986 amnesty.

Finally, I would like to conclude by pointing that a terrorist has one other option other than attempting to apply for the amnesty under his real name, and that is to simply invent a clean identity, a fictitious identity. The 2007 bill failed to include any safeguard for this problem, and I would urge you, if a bill is drafted again, it must close this loophole, because the former bill never contained any requirement that a secure, biometric embedded passport be provided to prove that the amnesty applicant is who he says he is. All it required was two scraps of paper, two easily forged documents, like a pay stub or a bank slip, saying that a person of this name exists. Under that bill, a person could walk into U.S. CIS office, call himself "Rumpelstiltskin," offer two easily forged pieces of paper, and walk out the next day with a Federal Government-issued ID card under that name, which he could then use as a breeder document to get a driver's license, to board airplanes, to do all sorts of things. And that gap can be closed if the bill were to include a requirement that every amnesty applicant provide a passport, a secure passport of the type that has embedded biometrics, which some countries, but not all countries, currently issue today.

In conclusion, there are very large bureaucratic problems, incapacity problems, and there is also the issue of terrorism, which is a very real threat. I am not saying that all or even a very large number of amnesty applicants would be terrorists, but the point is if an amnesty program is created, it has to take into this risk.

Thank you.

[The prepared statement of Mr. Kobach appears as a submission for the record.]

Chairman SCHUMER. Thank you, Mr. Kobach.

All right. Here is what I want to ask our panel. The basic formulation, as I see it, to do immigration reform is I think the American people would accept a fair, reasonable path to citizenship for the illegal immigrants who are here. I think they would accept a full future immigration policy which would have room for both, and we are going to have to resolve both. I know, Wade, you said family has to come first. There are people who say jobs has to come first. I think you have to have both in there. I think there would be room for it. And I think we can even come to an agreement. I mean, there is a great deal of disagreement, as Mr. Medina would admit, as to how you get temporary workers into the country.

If the American people were convinced there would not be another wave of illegal immigration, which means you have really got to be hard on that, very hard, that is basically my view. And I would like to know from at least the three panelists here, since Mr. Kobach is against the whole thing and just calls it "amnesty" and that is that, I would like to ask the other three on the panel: Do you think that is a reasonable formulation? We can start with you, Ms. Meissner.

Ms. MEISSNER. Yes, I do, and I think that it actually tracks the way in which—the comments that I gave, and I think that there is—that continues to be the framework, and I think we have got to work out the details of that framework.

Chairman SCHUMER. All right. How about you, Mr. Medina?

Mr. MEDINA. I would agree, Mr. Chairman, and let me just say, correcting one of the comments that the labor market is not opposed to temporary workers coming in the future, it is a question of how many, how do they get here, and what rights they have when they get here. But we are not opposed to that question because we understand that there may be, will be times when the economy needs these workers.

The last thing I would—

Chairman SCHUMER. And there are probably certain industries that need them more than others.

Mr. MEDINA. Yes.

Chairman SCHUMER. I mean, I have not studied this yet, but you could see where agriculture would need it more than construction, for instance. Is that unfair?

Mr. MEDINA. And this is why we propose a commission so that you can actually wrestle with all of these questions and come up with a workable solution.

And, Mr. Chairman, if I may, one last comment is on the question of national security concerns. It seems to me that it does not make any sense to think that somehow we are safer if there are 12 million people that we do not know who they are, what their

intentions are, or what their background is, that we are much safer if we bring them forth and figure out who they are, where they live, where they work, and what they are doing. And to continue to ignore that, I would submit to you, is more about national security concern than legalizing them.

Chairman SCHUMER. Mr. Henderson.

Mr. HENDERSON. Mr. Chairman, I think you have articulated a common-sense framework that really is the core of, I think, popular support for immigration reform as we understand it, and I think it would unite the American people around a comprehensive bill, even in a time of economic challenge where jobs obviously and employment are on the minds of all Americans. I think you are right that Americans recognize the compelling nature of a legalization program and would be willing to support it so long as the bill met the other criteria that you have outlined.

Chairman SCHUMER. I mean, I have put it and I think we have to put frankly and not beat around the bush if we are going to get something done here, which is my goal. Most Americans are pro-immigration but anti-illegal immigration.

Does anyone on the panel disagree with that? No? Mr. Kobach, you agree with that, right? OK.

OK. Now, let's talk a little bit about—because Mr. Medina and Ms. Meissner had a little bit of common ground in terms of a commission, but I did not understand yours first, Ms. Meissner. Would you want the commission to set a number that Congress would have to ratify every year?

Ms. MEISSNER. I view this commission as a permanent capability of the Federal Government to be doing research and analysis that is the basis for recommendations to Congress to adjust levels.

Chairman SCHUMER. How frequently?

Ms. MEISSNER. And it could be as frequent—I would say mandatorily every 2 years, but more frequently if need be.

Chairman SCHUMER. You could run into lots of different problems; by having Congress do this every 2 years is a problem.

Ms. MEISSNER. Well, you would not have to. You could get a recommendation that things are fine and stay at a steady state. But the point is to be constantly reviewing and learning about what is happening and where there are disconnects. And the point is to be doing it on the basis of evidence, not political horse trading.

Now, the horse trading obviously needs to go on, and that is your job. I am simply saying that you—

Chairman SCHUMER. Hard enough once every decade, let alone every 2 years.

Ms. MEISSNER. Well, but the problem with every decade is exactly where we are at.

Chairman SCHUMER. You are right.

Ms. MEISSNER. So, you know, my mental model of this is, given where we are at, to have levels that are written into the statute, because I do not think that the Congress at this point is prepared to have enough confidence in any other way of doing it, and then to begin over time to adjust against those levels the same up or down. And in a period of recession, as we are in right now, it might be much more frequently that this bureau—I am going to call it a “bureau” of the executive branch—you know, comes to the Con-

gress, and then there has got to be a mechanism for how it is that you actually decide to act or not act on that recommendation.

Chairman SCHUMER. I just wonder if a commission—you know, I do not know. I am not taking a position pro or con on a commission, just trying, since two different witnesses threw it out, I am not sure that the commission would be trusted, so to speak, by either side in the debate, or if it is trusted by one side, not on the other. What do you have to say about that? Mr. Medina, some have said that, well, the commission you are talking about is just a way to sort of say we do not need any guest workers or—

Mr. MEDINA. Not at all.

Chairman SCHUMER. OK. Could you address that?

Mr. MEDINA. We certainly understand that there are labor market needs. What we envision is a commission that would be much more nimble than the current system so that they would be able, as Ms. Meissner said, to develop the data on where and how and how many workers are needed and then adjust accordingly. It would still be subject to congressional approval.

Chairman SCHUMER. Oh, yours would be as well to congressional approval?

Mr. MEDINA. Yes, but the whole process, but that the commission would be the one that would be charged with developing the information and then saying here is our proposal.

Chairman SCHUMER. Right. And so your commission and Ms. Meissner's commission are not all that different.

Mr. MEDINA. I think that other than what we would like it to be able—we see also the commission as a place where we could all sit together, that all the stakeholders would come together and hash out what the system is, and then Congress then could take up approval or disapproval on—what we thought about is that we had a fast-track process. And, again, this is just the concepts that we have come up with for purposes of the conversation.

Chairman SCHUMER. Right, and you believe that there is a need, there is room, you would accept a certain amount of guest workers each year or—

Mr. MEDINA. There will need to be workers coming in the future. We absolutely understand that.

Chairman SCHUMER. Right, but sometimes you could so no guest workers, just everyone who comes should have a path to citizenship.

Mr. MEDINA. Well, what we would like—

Chairman SCHUMER. That is the other side of it.

Mr. MEDINA.—is to be able to take a look at the future flow that we have today and provide a legal and orderly way for them to get here so that the way to get here is not through the desert or not through sidestepping the port of entry.

Chairman SCHUMER. Of course.

Mr. MEDINA. And then as we do that, the one change that we think is important is that it not be like today's H-1B and H-2A where workers have no rights, and there is a series of things that we would advocate, as we have continuously, about in order for workers not to come and then be in a situation where they are so tied to the employer that they have no effective redress when they get exploited.

Chairman SCHUMER. Right. Ms. Meissner, you have the most experience with the bureaucracy. What do you have to say about Mr. Kobach's view that the bureaucracy would be incapable of dealing with a path to citizenship for such a large number of people.

Ms. MEISSNER. Well, it certainly is incapable of dealing with it right now, but that is a totally static view of the way things work. Obviously, if there were legalization developed by the Congress, it would have to include the kind of planning and the kind of resources for the implementing agencies to implement. And I think, you know, you would do that, and the reason that I urged that the legislation be written in very close collaboration with U.S. CIS and DHS is precisely for reasons of resources, but also for reasons how it is designed.

The worst thing that could be done this time around based on what we learned during IRCA is a program that is what I think of as retrospective; in other words, a program that asks to look at documents from the past for people to prove that they have been in the country. That would be a deal breaker.

This should be a program that is prospective, is getting people to register and come forward, a requirement to come forward, and then prospectively earn the adjustment to permanent residence and to citizenship. That is an entirely different scheme to try to implement, but it matters very much how the legislation is written.

Now, you know, you look at IRCA. The legalization program in IRCA was actually successfully implemented. INS created an entirely parallel structure within the agency focused solely on legalization—its own offices, its own staff, its own training—and they were able to get it done through the fees that were collected with the application. You would have to do something along those lines. It would be different, but you can do it.

When the 1996 laws passed, there was an enormous workload with the 1996 laws. We wrote 60 regulations in 6 months during that period. A bureaucracy staffs up and does the planning, working with the Congress, to carry out a mandate like this.

Chairman SCHUMER. Right. You disagree with her analysis of IRCA, Mr. Kobach, with a separate group so it would not have the extra burdens with enough employees to do the job? Or do—

Mr. KOBACH. I agree that—

Chairman SCHUMER.—you think it is just impossible, period?

Mr. KOBACH. No, I do not think it is impossible, period, the administrative—but you would have to massively increase the number of people. We are talking about going from 3,600 to somewhere north of 10,000, and that would require training them, and that would require finding them, and that would require a period of time to get them in place.

And if I might just mention one other point—

Chairman SCHUMER. But it could be done.

Mr. KOBACH. In theory, it could be done, but it would take time. If I could—

Chairman SCHUMER. Well, no one is saying—you know, your plan is one plan, but it is not the only one, that all 12 million apply and get their papers processed in a year. Certainly everyone should have to register immediately so you avoid fraud and stuff, but not be processed, not put on the path.

Mr. KOBACH. But the 2007 bill actually said, "From this date, you have 12 months, and everybody has to come in." So it actually did not allow time to beef up—

Chairman SCHUMER. But you could phase it in, right?

Mr. KOBACH. In theory, one could. I want to mention one other point about commissions. You know, we did have a very big and important commission, the Jordan Commission, which studied immigration reform, and I think it is fitting for everyone to go back and re-read that Commission's report because they had a lot of good recommendations. And on the subject of legal immigration, one of their points was that, yes, legal immigration is good, but within reasonable limits. And that is my view, too. You have to have limits so you do not displace American workers, and you have to have limits so that you do not overload our assimilation system, so that our melting pot continues to work and that people continue to recognize themselves as Americans.

Chairman SCHUMER. But you do admit, obviously, that the present system is broken?

Mr. KOBACH. Well, I will admit that some aspects of it are broken, but actually our enforcement aspects have been working relatively well in the last year because of the increased worksite enforcement that ICE has been engaged in and also because of some of the assistance from States like Arizona that compel E-Verify, you have actually seen self-deportation from certain jurisdictions, especially Arizona, because of the enhanced enforcement pressure.

Chairman SCHUMER. I think one of the witnesses testified that the number of illegal immigrants here in America had not gone down. It had not gone up, but it had not gone down.

Mr. KOBACH. According to—

Chairman SCHUMER. Is that your view?

Ms. MEISSNER. That was mine, yes.

Mr. KOBACH. I believe that that is incorrect. According to the Current Population Survey of the U.S. Census Bureau, in fiscal year 2008—and these numbers were reported by the Center for Immigration Studies. In 2008, there was a net decrease of 1.3 million illegal aliens.

Chairman SCHUMER. You disagree with that, Ms. Meissner?

Ms. MEISSNER. If you take deportations—which is the normal course of enforcement—out, there has not been a net change in the size of—it is just not growing.

Chairman SCHUMER. OK. Let me see here. Let me see if I have anything else.

Yes, Mr. Medina, I think the labor market has had a change in its views on immigration over the last 5 years, fairly dramatic, led by your union, I would say. Could you tell us why you think immigration reform done in the right way would not hurt the members of your union, many of whom compete with immigrants for jobs?

Mr. MEDINA. We think that the problem right now, Senator, is that you have millions of workers with no rights, cannot defend themselves, get taken advantage of by the employers, and under that situation where you have undocumented workers, guest workers, and native workers, you wind up with a situation where everybody suffers. And we believe that the best way to ensure is to have a level playing field for all employers that have to comply with the

laws, that have to do the same things, whether it be OSHA or wage and hour laws, and that also are protected by our labor laws, that that will do more to protect the standard for workers in this country than anything else we can do.

Chairman SCHUMER. And does most of the labor—I mean, the NCIU has been, as I said, ahead of the curve on this issue. Do you think most of the labor market now supports what you are saying here?

Mr. MEDINA. This position that we took has been endorsed by every union in the Change to Win Federation and in the AFL–CIO. So we are all on the same page. I know much has been made about divisions within labor in the past, but in reality, we were on the same page with 90 percent of the issues. The one question that we were wrestling with was future flows, how you address them. We have now come to a process that we believe would deal with that question, and so we are all moving forward.

Chairman SCHUMER. If I sat you down with, say, Mr. Moseley, do you think you could come to an agreement on how to structure it?

Mr. MEDINA. I believe so. I think that one of the things that we really are working hard on is to have this conversation with every stakeholder.

Chairman SCHUMER. Well, that is what we hope to encourage here on the four or five major issues that get in the way of immigration reform. But on guest workers, which helped bring down the bill last time, you heard, I think, Jon Kyl, you think that business and labor could come to an agreement.

Mr. MEDINA. I think that everybody is sick and tired of a system that does not work, and I think people want to make it work.

Chairman SCHUMER. I think the time is right. I do.

Do you agree with that, Doctor—Doris—are you Dr. Meissner or—

Ms. MEISSNER. No. I am Doris Meissner.

Chairman SCHUMER. Mrs. Meissner, Ms. Meissner. Former Commissioner. I used to call you “Commissioner.” Do you think labor and business could come to an agreement on the guest worker—

Ms. MEISSNER. I do not know, because I do not—I mean, I do not know all of the issues, the political issues. But I will tell you this—

Chairman SCHUMER. Just your hunch. You have more experience—

Ms. MEISSNER. I do think so, and I actually think that there is an idea here that I want to throw into the mix, which is an idea that we also came up with in the “America’s Future” task force, and it is the idea of provisional visas, which is a new visa stream that starts out as a temporary visa but can also become a visa that leads you into permanent immigration. And I think that is the reality of the way things happen on the ground, is that people tend to come for temporary reasons, whether they are high-skilled or low-skilled. Right now with H–1Bs, we have found a way that they should be allowed to adjust. But that kind of a concept of a visa that actually may start with one purpose, but as people attach to the labor market and as conditions change, may ultimately make

it possible for them to be eligible to become permanent is another form of flexibility that we need.

I think ideas like that in connection with discussions among constituency groups, business and labor, do offer the opportunity for some real synergies.

Chairman SCHUMER. Mr. Medina, is that on the outset something you would consider? I am not asking you to endorse it.

Mr. MEDINA. We are always ready and eager to sit down and have conversations to figure out how we solve it. Absolutely.

Chairman SCHUMER. All right. Now I just want to ask each of you a final question. If the goal is to come up with comprehensive immigration reform that would get us support of the majority of the American people, a majority of the House, a majority of the Senate, which issue do you think is our biggest stumbling block? OK? You can have a minute to think about it. It is sort of like asking what is your favorite song. It is hard to pick one, right? Or your favorite movie.

Go ahead, Ms. Meissner.

Ms. MEISSNER. I think it remains the issue of legalization.

Chairman SCHUMER. You mean the path to citizenship, how it—

Ms. MEISSNER. No. The idea that a legalization program is rewarding lawbreaking and the continued inability to have that conversation. So that I think that it ultimately becomes the difficult—the most difficult continues to be a political issue, not a substantive policy issue.

Chairman SCHUMER. Right. But, again, my view is that at least that view is mooted, A, if the path to citizenship is a real path and has penalties and other types of things but is reasonable, OK? You know, Mr. Kobach would just call anything “amnesty,” but if you rob somebody and serve 5 years in jail and then come out, it is not amnesty, OK? Or you get fined and you pay it, it is not amnesty. Amnesty is saying we absolve you, and no one is for that. So I thought it was sort of unfair for you to call this program “amnesty.” That is not what it is, and I will let you respond to that. But my view is—

Ms. MEISSNER. But I think explaining is the critical issue.

Chairman SCHUMER. Yes, but, again, I think most Americans, at least the polling data I have seen and talking to people, their greatest fear is not this time’s path to citizenship, because they know that there is no real other solution, and they are not happy with the present, but that it is going to happen again and again and again. And as most of you know, I have some thoughts on that issue, which we are not going to discuss at this hearing, but I think there are ways to convince people it is pretty foolproof.

What do you think, Mr. Medina?

Mr. MEDINA. I would agree with Ms. Meissner, but I think that all the polls and all the focus groups that have been done is that once people understand this is not Ronald Reagan’s amnesty, this is earned legalization where you will have to pay a fine, you will have to be gainfully employed, you have to undergo a background check, you have to learn English and integrate yourself into society—

Chairman SCHUMER. Go to the back of the line.

Mr. MEDINA [continuing].—You need to earn that and go to the back of the line. It is earned legalization, not amnesty. When people hear that, I think they say, “That sounds like a good thing to me. Let’s fix it.” And so I think—

Chairman SCHUMER. I think what the polling data shows is when it is described as amnesty, they say no, and then when you describe it without either calling it amnesty or a legal path—you know, a path to legalization, people say, “That sounds good.” They list the five or six things that you have. But that is not how it always works.

Wade? Mr. Henderson.

Mr. HENDERSON. Please call me “Wade,” Mr. Chairman. Actually—

Chairman SCHUMER. You can call me—if I am going to call you “Wade,” you can call me “Chuck.”

Mr. HENDERSON. All right. I actually think, sir, that your formulation really highlights the greater difficulty, I think, in securing public support for comprehensive reform as we have described it. I would agree with both Doris Meissner and Eliseo Medina about legalization being a challenge. But I do not think it is the most difficult challenge. I think the public is there. I think for all kinds of compelling reasons they will embrace it in time.

I think you have identified what is probably the greater challenge, which is to convince the public that this process will not have to be repeated again or every decade, as now has been the case, in order to accommodate this new flow of undocumented individuals. I think that is No. 1.

Hand in glove with that goes this issue of a secure form of identification that helps to ensure that both individuals who are given access to legalization as well as those given access to employment have gone through a process that ensures that they are the individuals they purport to be and that that form of identification will be viable and not then be somehow used improperly in other contexts, whether it is for purposes of harassment in the law enforcement sense, for purposes of exclusion under voter ID laws. There are many permutations of this issue that—

Chairman SCHUMER. Do you think it is doable?

Mr. HENDERSON. I think it is doable, but I think it will be—

Chairman SCHUMER. For the audience, Wade—Mr. Henderson—used to be ACLU, so his previous hat is going to be valuable in helping us do this right.

Mr. HENDERSON. I think it can be done, but I think it is going to be a real challenge. I think it is a challenge.

Chairman SCHUMER. Mr. Kobach, you get the last word. What is going to be the toughest part of this?

Mr. KOBACH. Mr. Chairman, if I might just—

Chairman SCHUMER. Aside from convincing you.

[Laughter.]

Mr. KOBACH. Let me just go to your discussion about the term “amnesty.” I think an amnesty would probably be defined as something that gives the unlawfully present alien legal presence in the—

Chairman SCHUMER. Why don’t you define “amnesty” without using the specific? What is amnesty in general?

Mr. KOBACH. Well, think of the analogy of a thief. If you give a thief an amnesty, an amnesty would include forgiving him for his crime after he has paid his—or maybe not making him pay a penalty. But you certainly would not say that an amnesty has to include giving the thief the money that he stole.

Now, what has an illegal alien taken? Presence in the United States that was not given to him. So, therefore, an amnesty should not include, in my view, a true amnesty or a good amnesty would not include giving him what he has taken.

What kind of amnesty could I support? Well, here is one, and maybe you did not think I could support one. But that is, right now we have a 10-year bar that says if you have been unlawfully present in the United States, you cannot apply for a visa for 10 years. I would say do not give the illegal alien lawful presence in the United States right away, say, “You can go back to your home country, and you can get in line with all the other millions of people, and we will not impose that 10-year bar.” That would be the kind of amnesty I could accept, because that would actually encourage people to go home and it would encourage them to get right with the law.

But as far as the stumbling block, I agree with former Commissioner Meissner. The biggest stumbling block is the sentiment of the American people—this is according to a Rasmussen poll in August of 2008—that 69 percent of voters say controlling the border is more important than legalizing the status of undocumented workers, and I think the American people are right, and the American people would probably prefer to see for a while if enforcement works.

Chairman SCHUMER. Let me ask you this. If you said you could do both, would they say yes or no—controlling the border and—what was the second part?

Mr. KOBACH. The second—

Chairman SCHUMER. The Rasmussen poll, what—

Mr. KOBACH. Oh, controlling the border and legalizing the status of undocumented workers.

Chairman SCHUMER. If you said both or neither, what do you think the American people would say?

Mr. KOBACH. Well, but—

Chairman SCHUMER. Just answer the question.

Mr. KOBACH. If the American people—if it said both or neither?

Chairman SCHUMER. Yes.

Mr. KOBACH. That is an interesting question. I have never seen that question polled.

Chairman SCHUMER. OK. What do you think?

Mr. KOBACH. I think probably most would say neither, because I think the reaction—they already perceive that the border is uncontrolled, and so, therefore, legalizing would be a change from the status quo, so they would probably say they would rather have the status quo than an amnesty program. And I think you would probably get that result.

Chairman SCHUMER. Right. Anyone else want to say anything here? Because we are going to probably call on you in the future to help us.

[No response.]

Chairman SCHUMER. Well, then, I thank you. This has been a great start, and as I said, I am optimistic, using the formulations that we have talked about today, that we might—not for sure, and, boy, it is hard. I do not want to give anyone the illusion that this is easy. But we might be able to get something done that really stands by the basic view that Americans support, like legal immigration and do not like illegal immigration, and implement something that makes that happen.

With that, I want to thank our panel not only for their wisdom and their excellent testimony and their patience, but for being here. And just before we break, I have to ask unanimous consent to put—OK. At this time I would also like to submit for the record testimony from the following organizations: AFL–CIO, Asian American Justice Center, Economic Policy Institute, El Paso Police Department, Essential Worker Immigration Coalition, National Korean American Service and Education Consortium, New York Immigrant Coalition, Partnership for New York Services, Immigrant Rights, and Education Network. So, without objection, those are added to the record. The record is open for 7 days.

And with that, we are closing this hearing and thanking our witnesses again.

[Whereupon, at 5:28 p.m., the Subcommittee was adjourned.]

[Submissions for the record follow.]

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April 28, 2009

The Honorable Charles Shumer  
Chair, Senate Immigration Subcommittee  
U.S. Senate  
Washington, D.C.

The Honorable John Cornyn  
Ranking Member, Senate  
Immigration Subcommittee  
U.S. Senate  
Washington, D.C.

Dear Senators Shumer and Cornyn:

We applaud you for holding the important Senate Immigration Subcommittee hearings. For years, the federal government has failed to deal with the broken immigration system and left our communities to deal with the effects: smugglers who take advantage of immigrant workers and families; criminals who prey on immigrants because they believe they won't be reported; millions of individuals who are not criminals but are working with false papers or driving without a license.

The lack of a coherent national immigration policy has created chaos in our communities and made the job of law enforcement much harder. Local and state resources are being siphoned away from fighting criminals in favor of the enforcement of federal, civil immigration laws. Instead of forcing state and local police to pick up where the federal government has failed, Congress and the President must reform our immigration laws.

The federal government must enact a comprehensive immigration law that secures the borders and legalizes immigrants who are working without papers. There should be stringent criteria for who qualifies under the new law, including passage of criminal background checks and payment of back taxes. From a law enforcement point of view, we need to know who is here in our country, get them documented, weed out the bad apples, and ensure we never face another build-up of illegal immigration again. We need a national immigration policy that punishes human smugglers and others who profit from our broken immigration system, ensures that all residents of our community feel safe reporting crimes and working with the police, and allows state and local police to focus on job number one: protecting all members of our communities from crime.

We look forward to the Committee's future deliberations over national immigration reform this year, and stand ready to assist in any way.

Respectfully,

*Gregory K. Allen*  
Gregory K. Allen  
Chief of Police



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**Testimony and Policy Statements On Immigration from State and Local Law Enforcement**

- Testimony from President of Police Foundation, Hubert Williams, before U. S. House of Representatives Committee on the Judiciary, Subcommittee on the Constitution, Civil Rights, and Civil Liberties and Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law Thursday, April 2, 2009:  
<http://judiciary.house.gov/hearings/pdf/Williams090402.pdf>
- Testimony from Mesa, AZ Police Chief, George Gascón before U. S. House of Representatives Committee on the Judiciary, Subcommittee on the Constitution, Civil Rights, and Civil Liberties and Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law Thursday, April 2, 2009:  
<http://judiciary.house.gov/hearings/pdf/Gascon090402.pdf>
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# NCLR

Written Statement for a Hearing on  
**Comprehensive Immigration Reform in 2009:  
Can We Do It and How?**

Testimony Submitted to:  
**U.S. Senate Subcommittee on Immigration, Refugees, and Border Security**

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## INTRODUCTION

The National Council of La Raza (NCLR)—the largest national Hispanic civil rights and advocacy organization in the United States—works to improve opportunities for Hispanic Americans.<sup>\*</sup> Through its network of nearly 300 affiliated community-based organizations (CBOs), NCLR reaches millions of Hispanics each year in 41 states, Puerto Rico, and the District of Columbia. To achieve its mission, NCLR conducts applied research, policy analysis, and advocacy, providing a Latino perspective in five key areas—assets/ investments, civil rights/immigration, education, employment and economic status, and health. In addition, it provides capacity-building assistance to its Affiliates who work at the state and local level to advance opportunities for individuals and families. Founded in 1968, NCLR is a private, nonprofit, nonpartisan, tax-exempt organization headquartered in Washington, DC. NCLR serves all Hispanic subgroups in all regions of the country and has operations in Atlanta, Chicago, Los Angeles, New York, Phoenix, Sacramento, San Antonio, and San Juan, Puerto Rico.

NCLR has a long history in the immigration debate. Our work on this issue is focused on ensuring that we have an immigration system that functions in the best interest of the nation. Immigration in the United States should be orderly and legal, promote economic growth, sustain our families, and be implemented in a way consistent with our nation's values. After more than two decades of neglect, our immigration system, far from achieving those goals, creates conditions that contradict or trample those values. The effects of our failed system have made the need for policy solutions urgent. The consequences of unabated toxic rhetoric around the issue have made progress a moral imperative. And the engagement and message from voters in recent elections have shown that real solutions on immigration are smart politics. This alignment indicates that the time for comprehensive immigration reform is now, and action can prove an important tool on our path to economic recovery. NCLR, our Affiliates, and our many coalition partners are committed to working with Congress to reform U.S. immigration laws in a way that promotes order, fairness, and above all, legality.

## IMPACT OF INACTION ON LATINO COMMUNITY

Of the country's 45.5 million Latinos, about 39% are foreign-born, and a significant portion of Latinos live in families with mixed immigration status, making immigration policy an important issue for this community. In addition to an overhaul of the nation's immigration system that would deal effectively and humanely with undocumented immigrants, family reunification, worker protections, immigrant integration, and future flows, Latinos are also interested in forward movement on this issue because of its impact on civil rights.

Failure to reform the nation's immigration system has led to piecemeal state and local measures that are often detrimental to the well-being and safety of Hispanic communities. These measures, combined with the toxic nature of the immigration debate, are contributing to an environment of intolerance against immigrants, regardless of immigration status, and against

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<sup>\*</sup> The terms "Hispanic" and "Latino" are used interchangeably by the U.S. Census Bureau and throughout this document to refer to persons of Mexican, Puerto Rican, Cuban, Central and South American, Dominican, Spanish, and other Hispanic descent; they may be of any race.

Latinos, who are often erroneously assumed to be all immigrants. Coinciding with the rise in vitriol in the immigration debate, the FBI has documented a nearly 40% increase in hate crimes targeting Latinos in the last four years, and the Southern Poverty Law Center (SPLC) attributes the 47% rise in hate groups between 2000 and 2007 almost completely to the manipulation of anti-immigrant rhetoric. This rise in intolerance has resulted in tragic consequences for the Latino community, horrifyingly exemplified more recently by the brutal, fatal beatings of Luis Ramirez, Jose Osvaldo Sucuzhañay, and Marcelo Lucero for “walking while being Latino.”

The harsh tone of the immigration debate galvanized Latino voters in the 2008 election, who turned out in record numbers and supported candidates favoring comprehensive immigration reform over candidates who engaged in anti-immigrant rhetoric. As election results and polling demonstrate, the country as a whole is in a more pragmatic place on this issue than Congress seems to realize. In 2008, reform-minded candidates won 20 out of 22 battleground races against opponents supporting deportation-only or restrictionist approaches, and 66% of voters in swing districts supported an approach that will result in undocumented immigrants becoming legal, tax-paying workers within the system.<sup>1</sup>

#### **A WORSENING STATUS QUO**

The nation’s immigration system is in urgent need of reform that restores dignity and the rule of law and rejects a deteriorating status quo that does neither. NCLR believes that the United States can and should enforce its immigration laws. As with any set of laws, the nation should enforce them wisely and well. This requires an examination of the costs and benefits of particular enforcement strategies to ensure that the priorities and tactics we choose do not undercut other important laws, values, and goals. A true return to legality calls for a systemic overhaul that addresses problems exacerbated by over two decades of neglect, including:

- A burgeoning undocumented population whose status makes it easier to prey upon and harder to integrate into American society
- Unscrupulous employers ready to exploit undocumented workers to the disadvantage of all workers and good employers
- Obstructed legal channels that keep families apart and legal workers out, as well as foster a black market and smuggling rings
- Hard-line, high-cost enforcement strategies that do little to curb immigration but terrorize communities and decrease national security
- A costly and ineffective patchwork of state and local laws that do little to address these problems but introduce greater chaos into an already broken system

Half-measures will not work. In fact, failure to enact comprehensive immigration reform has left behind a lopsided and ineffective federal system of enforcement that attacks the symptoms but not the problem.

As we have seen in recent years, trying to solve the problems of our broken immigration system through a deportation-only approach does not work. The strategy of using raids and local law enforcement agencies to round up, detain, and deport the undocumented population has been costly and ineffective. There has been a significant increase in interior immigration

enforcement operations by the Department of Homeland Security in the form of large-scale worksite raids as well as raids on homes throughout the country. In 2007, according to U.S. Immigration and Customs Enforcement (ICE), more than 4,900 arrests were made in connection with worksite enforcement investigations, representing a 45-fold increase in criminal worksite arrests compared to fiscal year 2001.<sup>2</sup> In 2008, ICE conducted a five-state sweep of Pilgrim's Pride poultry plants, and one year ago this month, it raided Agriprocessors, Inc., a kosher meatpacking plant in Postville, Iowa, a raid which ICE has called the largest in history. While the stated goal of the worksite and home raids has been to focus on unscrupulous employers and the "worst of the worst" in the undocumented population, the agency has not maintained that focus. The results have led to racial profiling and rounding up anyone who may be undocumented in order to increase the numbers of immigrants in detention.<sup>3</sup> Instead of looking for solutions to our outdated, ineffective immigration system, resources have been allocated toward the expansion of SWAT-like teams that have descended on the homes of families who are suspected of being undocumented. In the ICE Fugitive Operations Program, ICE agents have not focused on immigrants who have criminal convictions, as intended by the program; instead, 73% of the immigrants apprehended from 2003 to 2008 had no criminal convictions.<sup>4</sup>

In addition to worksite and home raids, the rapid proliferation of agreements between local law enforcement agencies and the federal government to enforce complex immigration laws has led to further civil rights violations. U.S. citizens and legal immigrants are being racially profiled because of agreements between the federal government and local law enforcement agencies that allow police officers to question the immigration status of community members. As of March 2009, there are 67 law enforcement entities in 23 states that have signed memoranda of agreement (MOAs) with ICE as part of the 287(g) program.<sup>5</sup> Reports by the government and nongovernmental organizations alike have found numerous problems with these agreements.

As a result of the raids and the indiscriminate rounding up of immigrants (and, in some cases, U.S. citizens), the numbers of people who are in detention facilities has grown tremendously in recent years. As many as 30,000 immigrants are held in detention centers every day, which is a three-fold increase in the number of immigrant detainees from a decade ago.<sup>6</sup> By the end of 2009, the U.S. government will hold more than 440,000 people in immigration custody in approximately 400 facilities at an annual cost of more than \$1.7 billion.<sup>7</sup> Immigrants are detained in a variety of facilities ranging from detention centers operated by ICE or private contractors to county jails under contract with ICE. Conditions in detention centers have come under fire after multiple news reports and investigations outlined the substandard conditions that led to the death of more than 80 immigrants in ICE custody since 2002.<sup>8</sup> In one case, an immigrant from El Salvador was detained for 11 months and denied medical care. He was released from detention after being diagnosed with terminal cancer. He subsequently died at the age of 36. The federal government has admitted medical negligence in a lawsuit that his family is pursuing.<sup>9</sup> Cases such as this underscore the need for scrutiny of the standards in detention facilities.

Upon examination, it becomes evident that the government's tactics of rounding up undocumented immigrants through raids and with local law enforcement cooperation have high costs that far outweigh the benefits. While Congress has increased the resources for

enforcement efforts, it must ensure that there is oversight of enforcement resources and that the priorities are not lost.

The zeal with which federal and local law enforcement agencies have applied enforcement policies has violated the rights and civil liberties of many in various communities, including legal residents and U.S. citizens. Latinos specifically have been racially profiled, arrested without warrant, detained without counsel, and in some cases even deported out of the country despite being legally present. These concerns over racial profiling and abuse of authority are not new for Latinos. In 1993, a report documented that U.S. citizens, as well as Hispanic immigrants, have been harassed by immigration authorities.<sup>10</sup> More recently, a publication by the Southern Poverty Law Center reported that nearly 50% of respondents to their survey of Latinos in the South knew someone who had been treated unfairly by the police.<sup>11</sup> In one case, a worker who was traveling to Mexico with his earned wages was stopped by a police officer in Alabama "for failure to maintain a marked lane." Even though the worker was not arrested or charged with any crime, the officer confiscated his savings and wages of nearly \$20,000, "claiming it was drug money."<sup>12</sup> Such policy is an abrogation of civil rights, common decency, and human dignity. This is not the way to resolve the problems in our immigration system.

One of the primary concerns with the 287(g) program has been the blatant use of racial profiling, which affects all Latinos. There have been many news stories and investigative reports, as well as pending lawsuits, which suggest that law enforcement officers who are part of the 287(g) program are using race or Latino appearance to make stops and arrests for minor offenses.<sup>13</sup> In Tennessee, where racial profiling data collection is mandated, and where there are two MOAs in place, a study of arrest data shows that the number of arrests of Latino defendants driving without a license in Davidson County more than doubled after the implementation of the 287(g) program.<sup>14</sup> Alarming, jurisdictions that have been found to engage or have been accused of engaging in racial profiling have signed or are in the process of entering into 287(g) agreements. In communities like Rogers, Arkansas, community groups and immigrants' advocates have strongly opposed the 287(g) agreement because the city was sued for unlawfully targeting Latino motorists for stops, searches, and investigations in 2001. When the City of Rogers applied for 287(g) authority to enforce immigration law, it was still under federal court supervision pursuant to the lawsuit.<sup>15</sup>

Another cost of the tactics that we have seen in recent years is the impact on families. One of the fundamental values we uphold in this country is the importance of family unity. Our broken immigration system has resulted in the degradation of this American value. Nationwide, there are approximately four million U.S. citizen children who have at least one undocumented parent<sup>16</sup> and policies that target their parents have grave effects on these children. A report released by the Urban Institute and commissioned by NCLR in 2007 found that for every two immigrants apprehended in an immigration enforcement operation, one child is left behind.<sup>17</sup> The impact of these operations on children, the most vulnerable group in our society, is significant and long-lasting. In the status quo, these children are victims of a system that disrupts their lives and forces them to bear the distress of being torn apart from their parents and loved ones. In one case, a U.S.-born citizen, Paul, who had been married to his wife, Teresa, since June 2005, is now raising their three-year-old daughter on his own as he waits to find out if his wife will be allowed to reenter the country. At 6:00 a.m. on a mid-

November day in 2008, ICE agents pounded on the family's door and took his pregnant wife from their home. A month later, she was deported to Argentina. Paul remains in the U.S. with their daughter while he awaits news from their attorney. The couple was in the process of adjusting Teresa's immigration status.<sup>18</sup> This is only one of many stories of families who are forced apart.

In addition to tearing apart families living in the United States, our outdated immigration system also separates families through its untenable backlogs. In the family immigration system, U.S. citizens and legal permanent residents may file applications for close relatives to join them in the United States. The applications are first processed by the U.S. Citizenship and Immigration Service and, upon approval, are sent overseas for further processing. While the applications are in process, the loved ones of U.S. citizens and legal permanent residents wait for an appointment at the U.S. Consulate's office abroad. Currently, there are three Latin American countries on the State Department's list of top ten countries with the highest number of waiting-list applicants.<sup>\*</sup> Mexico alone has nearly one million applicants currently on the waiting list.<sup>†</sup> In the case of one of our family immigration categories, spouses have remained separated from each other for more than a decade. We have neglected the legal avenues that were created to uphold our ideal of keeping families united. These practices chip away at the principle of family unity that has been a part of our immigration policies and strike the very core of our fundamental moral and civic values as a nation.

Not only have failed deportation-only tactics raised concerns about the protection of civil rights, they also threaten the safety of communities throughout the country, evidenced by the chilling effect these agreements have on the relationships between local law enforcement officials and the communities they are responsible for protecting. In fact, local law enforcement agencies have spoken out against the 287(g) program because it goes against their efforts to build strong relationships in their communities, thus hindering their ability to earn the trust of community members.<sup>19</sup> Impacted communities are less likely to report crimes or come forward as witnesses as a result of the wedge that has been driven between police and residents.

Yet we shoulder all of these costs for a system that does not work. From 1990 to 2006, the United States witnessed a large increase in the number of undocumented immigrants entering the country.<sup>20</sup> Over the past decade, billions of dollars have been spent on detention and deportation efforts without making a dent in the problem. The immigration enforcement agencies within the Department of Homeland Security have seen their budgets skyrocket while the number of undocumented immigrants in the United States has grown. The annual budget of the U.S. Border Patrol has increased 332% and the number of Border Patrol agents has increased 276% since fiscal year 1993. Still, the undocumented population has increased three-fold.<sup>21</sup> We cannot solve the problems of our immigration system through expensive deportation-only strategies. The current undocumented population is estimated to be approximately 12 million people. If the United States is deporting approximately 250,000 immigrants per year, it would take about 40 years to deport our way out of this situation.

<sup>\*</sup> Mexico, the Dominican Republic, and El Salvador are numbers one, three, and nine, respectively. U.S. Department of State, Immigrant Waiting List, 2009.

<sup>†</sup> Mexico has 961,744 registrants on the waiting list. Ibid.

**LATINOS AND THE ELECTORATE AS A WHOLE WANT TO SEE SOLUTIONS**

The American people have demonstrated in numerous national polls and multiple election cycles that they want to see a solution to the problem of our broken immigration system. They want to see “a comprehensive approach that secures the border, cracks down on employers who hire illegal immigrants, and requires all illegal immigrants to register and meet certain requirements to become legal” over an enforcement-only approach that doesn’t offer a real solution.<sup>22</sup>

Congress and the administration need to restore the rule of law and enact an immigration system that works for the good of the country. A true return to legality calls for a systemic overhaul that addresses the problems exacerbated by more than two decades of neglect. Given the complex nature of the problems in our immigration system, it is clear that this issue cannot be resolved in a piecemeal fashion. To be effective and achieve a solution that serves the national interest, reform must include measures that bring order to our borders, protect workers, and bring the undocumented out of the shadows.

A part of comprehensive immigration reform includes the ability to secure our borders. From 2001 to 2008, the Bush administration spent billions of dollars to build barriers and increase the number of border patrol agents and other enforcement controls. Border security must be enacted in a fiscally responsible and efficient manner. This requires border enforcement policies that focus on the criminal elements and are developed in collaboration with communities on both sides of the border. Attention must be paid to the ports of entry to ensure that there are sufficient inspectors working in a safe and efficient environment in order to complete screening and inspections of visitors.

Comprehensive immigration reform will restore order by getting approximately 12 million undocumented people in our country to come forward, obtain legal status, learn English, and assume the rights and responsibilities of citizenship. Enforcement agencies need to follow the mandate of their programs and seek out those who have been convicted of committing violent crimes. Comprehensive immigration reform will allow immigrants who have been working, paying taxes, and learning English—and who can pass background checks—to become a part of the formal economy and work “on the books,” therefore contributing more to the tax rolls and making it more difficult for corrupt employers to cheat them and, consequently, all Americans.

We recognize that people of goodwill differ on how to address the question of a “future flow” of potential workers from abroad. Indeed, NCLR itself feels somewhat conflicted because both sides of the argument bring legitimate perspectives to bear. On the one hand, we sympathize with those who have correctly noted the tendency of temporary worker programs to restrict workers’ rights. They also correctly note that many legal immigrants who enter via the family reunification system also work.

On the other hand, it’s hard to disagree with those who point out that virtually every credible, long-term economic projection strongly suggests that once our economy recovers, we will continue to need some number of workers from abroad to maximize economic growth. We

also believe that U.S. citizens and legal immigrants wishing to reunite with family members abroad should be permitted to do so lawfully in a reasonable period of time.

Clearly, our future immigration policy must balance these competing interests, and NCLR believes an appropriate balance is possible. Specifically, NCLR supports:

- Increased family-based immigration, which includes reducing backlogs that have made it virtually impossible for all but the closest relatives of U.S. citizens to immigrate lawfully to the United States
- A rational, needs-based process to link the future flow of employment-based visas to independent assessments of U.S. labor market needs
- Full labor rights and protections for employment-based workers, accompanied by vigorous enforcement to ensure that any future flow program does not undercut wages and working conditions of domestic workers

Some of our critics have confused our opposition to ineffective, counterproductive, and harmful enforcement efforts as tantamount to opposition to any form of enforcement. Permit me to disabuse them of that notion in this testimony. For the record, NCLR supports the right of the United States, as a sovereign nation, to control its borders. Furthermore, we believe it is in the interest of the Hispanic community, both substantively and politically, for our country to implement an enforcement system that is fair, effective, and humane. We do not believe any of those adjectives could be used to describe the status quo.

Specifically, we believe that any effective enforcement system must be nondiscriminatory, must actually reduce the undocumented population in the U.S. as well as deter future unlawful entries, and must be implemented in a manner consistent with our highest ideals as a nation. We believe comprehensive immigration reform is the only way to achieve such a system, as described below.

First, by adjusting the status of the bulk of the undocumented population in the U.S., and by increasing avenues for lawful entry, we can ensure that the proverbial “front door” to our country remains open; among other benefits, this will allow us to concentrate enforcement resources on closing the “back door” to illegal entries. In a society as free and open as ours, finding lawbreakers has been compared to finding a “needle in a haystack.” Our previous policy of increasing legal immigration backlogs and growing the “criminalization” of civil immigration offenses has been, in effect, creating more stacks of “hay,” making it harder to find the “needles,” even with greater resources. In this context, creating a path to permanent residence and eventual citizenship for the undocumented who pay taxes, learn English, and pass background checks is an essential part of any enforcement strategy. Simply put, these policies make the “haystack” smaller and more manageable.

Second, we must recognize that there is no single strategy that will eliminate all forms of unauthorized entry and presence. Even effective elimination of all unauthorized entries, for example, would not affect the estimated 40% of the undocumented population that entered with lawful visas and then overstayed. Similarly, even a perfect employment verification system would not address those who entered the country for purposes other than employment. Thus,

NCLR believes any effective enforcement system must consist of a series of “layers” of enforcement, none of which may in and of itself be 100% successful, but taken together would provide both an effective deterrent and swift and efficient punishment to those who break the law in the future.

The first layer involves smart border enforcement, which provides a reasonable deterrent against unlawful entry of individuals, drugs, and human traffickers without adversely affecting the lawful flow of goods and commerce. It would require more efficient resources and infrastructure developments on ports of entry, allowing well-trained enforcement officers to focus on smugglers and traffickers. It would also require increased deployment of technology and greater cooperation with Mexico to reduce the southern flow of arms and the northern flow of drugs and traffickers.

The second layer should focus on labor law enforcement to deter and punish unscrupulous employers from hiring and exploiting a vulnerable, undocumented labor force. Such a policy would have the salutary additional effect of improving wages, working conditions, and worker safety for the entire low-wage domestic workforce.

The third and probably most important layer is an effective, nondiscriminatory worker verification system. Immigration experts have long recognized that the U.S. labor market is the single strongest incentive for unauthorized migration to the United States. But as this committee knows, the existing systems offer the worst of both worlds—they permit widespread hiring of unauthorized workers while subjecting many lawful workers to intentional or inadvertent discrimination. Surely we can do better. NCLR supports the investment of sufficient resources to reduce error rates to reasonable levels and permit maximum access of lawful workers to mechanisms that document their employment status. Moreover, because we recognize that any system will produce some errors, we must insist on effective nondiscrimination provisions and swift redress mechanisms. I would also note that the vast majority of Latinos of my acquaintance want a verification system that permits them to demonstrate—and prospective employers to confirm—their authorization to work in the U.S. It is not the concept but the execution that raises concerns for most Hispanic Americans.

The fourth layer of enforcement should focus on employers that engage in a pattern and practice of recruiting and hiring unauthorized workers. Any efficient law enforcement effort should target the “big fish,” yet in recent years it has been individual workers, rather than employers, that have borne the full brunt of immigration enforcement. Part of this involves a simple change of focus, and in this respect we are cautiously optimistic that Secretary Napolitano’s recent announcement may reflect a more balanced strategy. But this may also require policy changes, including, for example, addressing loopholes in labor laws that permit employers to evade responsibility by labeling workers as “independent contractors.”

Finally, we agree with the overwhelming majority of local law enforcement personnel that immigration should be a federal responsibility. Our own assessment, confirmed by independent reviews by the Government Accountability Office, a number of federal courts, and others, is that state and local enforcement has produced little enforcement benefit but resulted in widespread violations of the rights of citizens and lawful permanent residents. One possible

exception involves agreements by state and local law enforcement to assess the immigration status of violent criminals, which seems to us a sensible way of reducing the burden on local governments while remaining focused on serious offenders.

Taken together, NCLR believes that these five layers of enforcement would substantially reduce the current population of those who live outside the scope and protection of the law; maintain a credible deterrent at the border; crack down on unscrupulous employers for violations of labor and immigration law; establish an accurate and reliable employer verification system to reduce the scope of unlawful employment; and ensure the swift identification and disposition of violent criminals who have also violated immigration laws.

Federal leadership is required to address the inconsistencies of current policies and ensure that our treatment of immigrants is aligned with America's best values and traditions. Congress and the administration can, and must, achieve comprehensive immigration reform this year because reform will demonstrate that America is true to its best values, not its worst instincts. How lawmakers resolve the immigration debate will say much about who we are as a country and as human beings.

The American people have made it clear that they are interested in solutions to our country's difficult problems. Numerous polls and election results over multiple election cycles have demonstrated that Americans support a realistic solution that is tough but comprehensive, as opposed to half-measures that only focus on deportation. The status quo is unacceptable. We look forward to working with members of the subcommittee, as well as other members of Congress and the administration, to achieve comprehensive immigration reform this year.

#### ENDNOTES

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<sup>13</sup> Ryan Gabrielson and Paul Giblin, "Sweeps and Saturation Patrols Violate Federal Civil Rights Regulations," *The East Valley Tribune*, July 11, 2008; Aarti Shahani and Judith Greene, *Local Democracy on ICE: Why State and Local Governments Have No Business in Federal Immigration Law Enforcement* (Brooklyn, NY: Justice Strategies, 2009); *Ortega Melendres v. Arpaio*, No. CV-07-2513-PHX-MHM, Az. Feb. 10, 2009, <http://www.aclu.org/immigrants/gen/387091gl20090210.html> (accessed May 6, 2009).

<sup>14</sup> *Arrests for No Drivers License by Ethnicity and Race: A Comparison of May-July 2006 to May-July 2007* (Nashville, TN: Tennessee Immigrant and Refugee Rights Coalition, 2007), <http://tirre.bondwaresite.com/photos/File350.pdf> (accessed May 6, 2009).

<sup>15</sup> House Committee on Homeland Security, *Written Statement for a Hearing on Examining 287(g) ACLU Washington Legislative Office*, 111<sup>th</sup> Cong., 1<sup>st</sup> sess., 2009.

<sup>16</sup> Jeffrey Passel and D'Vera Cohn, *A Portrait of Unauthorized Immigrants in the United States* (Washington, DC: Pew Hispanic Center, 2009).

<sup>17</sup> Randy Capps et al., *Paying the Price: The Impact of Immigration Raids on America's Children* (Washington, DC: National Council of La Raza and The Urban Institute, 2007).

<sup>18</sup> Janine Zeitlin, "Deportations Rise in Florida, Leaving Families Torn," *The News-Press* (Ft. Myers, FL), March 1, 2009.

<sup>19</sup> House Judiciary Joint Subcommittee Hearing, *Public Safety and Civil Rights Implications of State and Local Enforcement of Federal Immigration Laws*, Chief George Gascon, 111<sup>th</sup> Cong., 1<sup>st</sup> sess., 2009; House Homeland Security Committee, *Examining 287(g): The Role of State and Local Law Enforcement in Immigration Law*, Chief J. Thomas Manger, 111<sup>th</sup> Cong., 1<sup>st</sup> sess., 2009.

<sup>20</sup> Jeffrey Passel and D'Vera Cohn, *A Portrait of Unauthorized Immigrants in the United States*.

<sup>21</sup> Walter Ewing, *Money for Nothing: Immigration Enforcement without Immigration Reform Doesn't Work* (Washington, DC: Immigration Policy Center, 2008).

<sup>22</sup> Frank Sharry, *What the 2008 Elections Mean for the Future of Immigration Reform* (Washington, DC: America's Voice, 2009).

April 28, 2009

Hon. Chuck Schumer  
Chairman  
Subcommittee on Immigration, Border Security, and Refugees  
United States Senate

Dear Mr. Chairman:

Please accept this report, *Immigration for Shared Prosperity*, as the Economic Policy Institute's testimony for your kick-off hearing on comprehensive immigration reform. The report, by former Secretary of Labor Ray Marshall, identifies key flaws in the current immigration system and sets out an interdependent, five-part framework for reform.

We also request that Secretary Marshall be invited to testify at a future hearing on immigration, and in particular, about how employment-based visas should be reformed.

On May 20, the Economic Policy Institute, Johns Hopkins University and the Migration Policy Institute will hold a symposium at EPI on the most technically challenging element of the Marshall framework, the establishment of an independent federal commission to determine labor shortages and needs, and to set the levels for various employment visas. You and your staff are cordially invited.

Thank you.

Sincerely,

Ross Eisenbrey  
Vice president  
Economic Policy Institute

# EWIC

Essential Worker Immigration Coalition

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April 30, 2009

Charles E. Schumer, Chairman  
U.S. Senate Committee on the Judiciary  
Subcommittee on Immigration,  
Refugees and Border Security  
224 Dirksen Senate Office Building  
Washington, DC 20510

John Cornyn, Ranking Member  
U.S. Senate Committee on the Judiciary  
Subcommittee on Immigration,  
Refugees and Border Security  
224 Dirksen Senate Office Building  
Washington, DC 20510

**Re: Hearing on "Comprehensive Immigration Reform in 2009, Can We Do It and How?"**

Dear Chairman Schumer and Ranking Member Cornyn:

The Essential Worker Immigration Coalition (EWIC) is a group of businesses, trade associations, and other organizations from across the industry spectrum seeking to create a legal immigration system for lesser skilled ("essential workers") labor. EWIC commends you for holding this important hearing on immigration reform and requests this letter be introduced for the record of today's hearing. We have worked with Congress for many years to address the serious and important concerns business has with the ineffective and broken immigration system.

EWIC believes in a comprehensive immigration reform approach that pairs new enforcement measures with a new system that creates legal avenues for workers to come to the United States when needed. Only then can we ensure that all workers enjoy the same labor law protections.

Congress must address immigration reform so as not to repeat the serious mistakes of the 1986 immigration reform legislation. Any earned legalization program for those immigrant workers currently in the U.S. must be accompanied by a workable future flow program. EWIC recognizes that this is not an easy issue and appreciates your commitment to addressing its many intricacies.

We strongly urge you to work together with your colleagues on a comprehensive immigration reform package that will also address future needs. Thank you for your continued engagement on this vital issue and we stand ready to work with Congress to push comprehensive immigration reform forward.

Regards,  
EWIC Co-Chairs

Angelo Amador  
**United States Chamber  
of Commerce**  
[aamador@uschambcr.com](mailto:aamador@uschambcr.com)

Craig Brightup  
**National Roofing  
Contractors Association**  
[cbrightup@nrca.net](mailto:cbrightup@nrca.net)

Jenna Morgan Hamilton  
**National Association of  
Home Builders**  
[jhamilton@nahb.com](mailto:jhamilton@nahb.com)

Cc: Members of Subcommittee on Immigration, Refugees and Border Security.

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Essential Worker Immigration Coalition  
1615 H Street, NW • Washington, DC 20062  
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**EWIC MEMBERS**

Alliance for Security and Trade	Mexicans and Americans Thinking Together
Alliance for Worker Freedom	National Association for Home Care
American Health Care Association	National Association of Chain Drug Stores
American Hotel & Lodging Association	National Association of Home Builders
American Immigration Lawyers Association	National Association of RV Parks & Campgrounds
American Meat Institute	National Chicken Council
American Nursery & Landscape Association	National Club Association
American Road & Transportation Builders Association	National Council of Chain Restaurants
American Staffing Association	National Restaurant Association
American Trucking Associations	National Retail Federation
American Subcontractors Association, Inc.	National Roofing Contractors Association
Associated Builders and Contractors	National Tooling & Machining Association
Associated General Contractors	National Wooden Pallet and Container Association
Building Service Contractors Association International	Outdoor Amusement Business Association
California Landscape Contractors Association	Plumbing-Heating-Cooling Contractors - National Association
California Professional Association of Specialty Contractors (CALPASC)	Professional Landcare Network
Colorado Employers for Immigration Reform	Retail Industry Leaders Association
Farm Equipment Wholesalers Association	Small Business & Entrepreneurship Council
Federation of Employers & Workers of America	Society of American Florists
Golf Course Superintendents Association of America	Texas Border Coalition
ImmigrationWorks USA	Texas Employers for Immigration Reform
International Association of Amusement Parks and Attractions	Tree Care Industry Association
International Franchise Association	Truckload Carriers Association
Mason Contractors Association of America	United Fresh Produce Association
	US Chamber of Commerce

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Testimony of Dr. Alan Greenspan  
Subcommittee on Immigration, Refugees, and Border Security  
**Embargoed until: April 30, 2009, 2:00pm EDT**

Mr. Chairman and Members of the Committee:

Thank you for this opportunity to testify before you this afternoon.

Immigration to the U.S. slowed markedly with the onset of the current economic crisis. But as this crisis fades, there is little doubt that the attraction of the United States to foreign workers and their families will revive. I hope by then a badly needed set of reforms to our nation's immigration laws will have been put in place.

There are two distinctly different policy issues that confront the Congress. The first is illegal immigration. The notion of rewarding with permanent resident status those who have broken our immigration laws does not sit well with the American people. In a recent poll, two-thirds would like to see the number of illegals decreased.

But there is little doubt that unauthorized, that is, illegal, immigration has made a significant contribution to the growth of our economy. Between 2000 and 2007, for example, it accounted for more than a sixth of the increase in our total civilian labor force. The illegal part of the civilian labor force diminished last year as the economy slowed, though illegals still comprised an estimated 5% of our total civilian labor force. Unauthorized immigrants serve as a flexible component of our workforce, often a safety valve when demand is pressing and among the first to be discharged when the economy falters.

Some evidence suggests that unskilled illegal immigrants (almost all from Latin America) marginally suppress wage levels of native-born Americans without a high school diploma, and impose significant costs on some state and local governments.

However the estimated wage suppression and fiscal costs are relatively small, and economists generally view the overall economic benefits of this workforce as significantly outweighing the costs. Accordingly, I hope some temporary worker program can be crafted.

The second policy issue that must be addressed by Congress is the even more compelling need to facilitate the inflow of skilled foreign workers. Our primary and secondary school systems are increasingly failing to produce the skilled workers needed to utilize fully our ever more sophisticated and complex stock of intellectual and physical capital. This capital stock has been the critical input for our rising productivity and standards of living and can be expected to continue to be essential for our future prosperity. The consequence of our educational shortfall is that a highly disproportionate number of our exceptionally skilled workers are foreign-born—two-fifths of the science PhDs in our workforce, for example, are foreign-born. Silicon Valley has a remarkably large number of foreign-born workers.

The quantity of temporary H-1B visas issued each year is far too small to meet the need, especially in the near future as the economy copes with the forthcoming retirement wave of skilled baby boomers. As Bill Gates, the chairman of Microsoft, succinctly testified before Congress in March 2007, “America will find it infinitely more difficult to maintain its technological leadership if it shuts out the very people who are most able to help us compete.” He added that we are “driving away the world’s best and brightest precisely when we need them most.”

Our skill shortage, I trust, will ultimately be resolved through reform of our primary and secondary education systems. But, at best, that will take many years. An

accelerated influx of highly skilled immigrants would bridge that gap and, moreover, carry with it two significant bonuses.

First, skilled workers and their families form new households. They will, of necessity, move into vacant housing units, the current glut of which is depressing prices of American homes. And, of course, house price declines are a major factor in mortgage foreclosures and the plunge in value of the vast quantity of U.S. mortgage-backed securities that has contributed substantially to the disabling of our banking system. The second bonus would address the increasing concentration of income in this country. Greatly expanding our quotas for the highly skilled would lower wage premiums of skilled over lesser skilled. Skill shortages in America exist because we are shielding our skilled labor force from world competition. Quotas have been substituted for the wage pricing mechanism. In the process, we have created a privileged elite whose incomes are being supported at noncompetitively high levels by immigration quotas on skilled professionals. Eliminating such restrictions would reduce at least some of our income inequality.

If we are to continue to engage the world and enhance our standards of living, we will have to either markedly improve our elementary and secondary education or lower our barriers to skilled immigrants. In fact, progress on both fronts would confer important economic benefits.

Immigration policy, of course, is influenced by far more than economics. Policy must confront the very difficult issue of the desire of a population to maintain the cultural roots that help tie a society together. Clearly a line must be drawn between, on the one hand, allowing the nation to be flooded with immigrants that could destabilize the

necessary comity of a society and, on the other hand, allowing the nation to become static and bereft of competition, and as a consequence to lose its economic vitality. The United States has always been able eventually to absorb waves of immigration and maintain its fundamental character as a nation, particularly the individual rights and freedoms bestowed by our Founding Fathers. But it must be conceded that the transitions were always more difficult than hindsight might now make them appear.

In closing, I would like to concur with President Bill Clinton's view of our immigration history as expressed in remarks of more than a decade ago: "America has constantly drawn strength and spirit from wave after wave of immigrants. . . They have proved to be the most restless, the most adventurous, the most innovative, the most industrious of people."

We, as a nation, must continue to draw on this source of strength and spirit. To do so, in the context of a rapidly changing global economy, our immigration laws must be reformed and brought up to date.



## Leadership Conference on Civil Rights

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STATEMENT OF  
WADE HENDERSON, PRESIDENT & CEO,  
LEADERSHIP CONFERENCE ON CIVIL RIGHTS

“COMPREHENSIVE IMMIGRATION REFORM IN 2009:  
CAN WE DO IT, AND HOW?”

SUBCOMMITTEE ON IMMIGRATION, BORDER SECURITY AND CITIZENSHIP

SENATE COMMITTEE ON THE JUDICIARY

APRIL 30, 2009

Chairman Schumer, Ranking Member Cornyn, and members of the Subcommittee: I am Wade Henderson, President and CEO of the Leadership Conference on Civil Rights (LCCR). I appreciate the opportunity to present to you the views of the Leadership Conference in today's hearing on the possibilities for immigration policy reform in 2009.

LCCR is the nation's oldest and most diverse coalition of civil rights organizations. Founded in 1950 by Arnold Aronson, A. Philip Randolph, and Roy Wilkins, the Leadership Conference seeks to further the goal of equality under law through legislative advocacy and public education. LCCR consists of more than 200 national organizations representing persons of color, women, children, organized labor, persons with disabilities, the elderly, gays and lesbians, and major religious groups. I am privileged to represent the civil and human rights community in submitting testimony for the record to the Committee.

**Comprehensive Immigration Reform, a Matter of Civil and Human Rights**

I would like to begin by noting what I hope are a few general points of agreement. First, I believe that everyone in this room can agree that our nation's immigration system is badly broken. It fails to keep up with economic realities, it fails to provide an orderly way to keep track of who is here, it inhumanely splits and keeps families apart, it penalizes children for the actions of their parents, and it is so unfair and so burdensome that it fails to give people enough incentives to play by the rules. America's immigration system clearly needs sweeping changes, and it needs them soon.

Second, I think we can also agree that in fixing our immigration system, it is vital that we include more effective – but also more realistic and more humane – immigration enforcement. It is important for many reasons to know who is coming here and under what circumstances, but it is simply unrealistic to attempt to stretch fences across our massive national borders, and we certainly cannot leave federal immigration law enforcement haphazardly in the hands of state and local law enforcement officials, or worse, in the hands of private groups such as the Minutemen. As a nation, we can and must take more sensible measures like hiring additional



inspectors and border patrol agents, making better use of technology, and working more closely with Mexico to cut down on problems like human trafficking and the drug trade.

Third, I would hope that we can also agree on the importance of giving the estimated 12 million undocumented immigrants, living and working in our country, a realistic way to come out of the shadows and legalize their status. As a lifelong civil rights advocatc, I do not see this as an issue of economics. I see it as a moral one, and I believe it goes directly to our most basic understanding of civil and human rights.

It is easy to focus on the charge that undocumented immigrants have broken the rules in order to get here. We do not need to condone violations of our immigration laws. But as we do in most other circumstances, we should also look at *why* these individuals broke the rules. Motives count. And the overwhelming majority of these 12 million people have broken the rules *not* to “steal jobs,” to live off the government, or to take advantage of anyone else. Instead, most of them have been motivated, to the point where many have even risked their lives to come here, by the desire to escape economic or political hardships that few native-born Americans today could fully understand. And they are all too often enticed here by employers who are perfectly happy to use and abuse them in the process.

When we consider the motives of the bulk of the undocumented immigrants who live and work in our country, it is clear to LCCR – and hopefully to everyone – that our policies should not treat them as fugitives. For example, undocumented immigrants should not be so afraid of the police, due to their immigration status, that they even refuse to report crimes in their own neighborhoods. When they go to work, they – like every human – have a right to know they will be treated safely and paid fairly. If they drive on our roads, it is in the interest of everyone to make sure they have been insured, trained, and certified to obey the rules of the road. And regardless of how they may have initially come here, if they show a willingness to play by the rules and contribute to our economy and our society, we should have policies in place that will reward their hard work and allow them to enjoy the fullest protections of the law.

Finally, I am sure that we agree that family unity should be a key foundation of our immigration laws, in the same way that it is a key foundation of our society itself. Yet sadly, our current immigration system is chronically plagued by administrative backlogs in the family-based visa process, as well as by the woefully inadequate numbers of family-based visas that become legally available each year. As a result, it can often take years or even more than a decade for close relatives of U.S. citizens or permanent residents to obtain immigrant visas, delays that simply encourage people to overstay temporary visas or find other ways to enter the country in order to be with their loved ones. Addressing these and numerous other problems in our immigration system is an essential component of the modern civil and human rights agenda.

**How to Move Forward with Immigration Reform in 2009: Common Solutions for Native-Born and Immigrant Workers**

Moving more directly to the focus of today’s hearing, which is on how to establish a path to overhauling our immigration system, I am mindful that these are challenging times to take up an issue like immigration reform. Our economy is clearly struggling, leaving countless numbers of Americans uncertain about their jobs and their economic well-being. Furthermore, Congress has a lot on its plate this year, including many complex “big ticket” priorities, such as the need to address the foreclosure crisis, expand access to affordable health care, and improve our



education system. For the reasons I have outlined in the first part of my testimony, however, the need for immigration reform remains as strong as ever. For the reasons I will explain below, I believe that it can be accomplished.

From our perspective, the biggest hurdle to immigration reform in 2009 lies, as it always has, in addressing concerns about how immigrants affect the existing labor market in the United States. The needs of low-wage workers – a group disproportionately composed of African-American workers – have long been neglected by policymakers, a situation that has needlessly exacerbated tensions between the African-American and immigrant communities. African-American workers are justifiably troubled by the absence of policies to promote economic advancement in their communities. And while there is tremendous disagreement among scholars over the actual effect of immigration on African-American workers, many African Americans, as a result of the difficult economic conditions they face, understandably fear that the immigrant workforce will worsen their situation as increased competition for jobs reduces the opportunities and the wages of all vulnerable workers.

As I will explain, however, there are measures we can take – both within the context of an immigration reform proposal and as a separate workers' rights package – to address the pressing needs of African-American workers, while simultaneously building support within the African-American community for immigration reform. These can help pave the way to a more just and equitable economy and to an immigration policy that treats both foreign and domestic workers fairly and humanely.

#### **The Impact of Immigration on African-American Employment**

The situation facing African-American workers is a complicated one, and the impact of immigration on African Americans' wages is far from clear. As economists such as Steven Pitts of the Center for Labor Research and Education at the University of California have pointed out, the employment crisis facing African Americans began long before our nation took a more generous approach to immigration policy in 1965. Looking at overall unemployment rates over the last 50 years, we see that the unemployment rate for African Americans has always been approximately twice as high as White Americans, and has remained approximately the same<sup>1</sup> even as the percentage of foreign-born Americans, relative to the population as a whole, has increased in the past several decades:

Year	Black Unemployment	White Unemployment	Black/White Unemployment Ratio
1956	8.3%	3.6%	2.3
1965	8.1%	4.1%	2.0
1975	14.8%	7.8%	1.9
1985	15.1%	6.2%	2.4
1995	10.4%	4.9%	2.1
2005	10.0%	4.4%	2.3

This employment crisis is primarily the result of both historical and contemporary racial discrimination, not only in the labor market, but also in other aspects of society such as housing markets, educational systems, and the criminal justice system. The higher rates – and the lasting

<sup>1</sup> U.S. Department of Labor, Bureau of Labor Statistics; also Council of Economic Advisors, *Changing America: Indicators of Social and Economic Well-Being by Race and Hispanic Origin*, September, 1998, at 26.



stigmatic effects – of incarceration of African-American males are especially significant.<sup>2</sup> The situation has also been compounded by broader changes in the U.S. economy as a whole, including the globalization of the economy and the movement of many types of jobs overseas.

As to the question of whether immigration might play a role in aggravating the long-existing causes of African-American unemployment, economists who have studied the issue have not been able to establish any sort of consensus.<sup>3</sup> Even among experts who do think there is an impact, there is disagreement over its extent. For example, Bernard Anderson, an economist at the University of Pennsylvania's Wharton School, believes that while immigrants have probably taken some jobs previously performed largely by African Americans, there is also evidence that African Americans are less likely to perform low-skill service jobs because they have largely moved on to take better-paying jobs or have retired from the labor force. The displacement that has taken place, Anderson argues, has not had a significant effect on the wages or opportunities of native-born workers.<sup>4</sup>

#### **The Current State of Our Economy and Its Implications for Immigration Reform**

While there is no consensus regarding the true economic impact of immigration on low-income native-born workers, one cannot discuss the issue of immigration reform without acknowledging the current troubled state of our economy. Economic insecurity is more keenly felt now in the African-American community than during the last attempt at comprehensive immigration reform in 2007. During these difficult economic times, many African Americans who have successfully achieved a foothold in the middle class are now threatened with the erosion of their standard of living. African Americans have been profoundly affected by the wave of home foreclosures, which have wiped out the family economic assets that African-American families have struggled to accumulate. Similarly, like all Americans, African Americans struggle to keep up with escalating health care costs and other challenges. But this does not mean that African Americans will not support immigration reform – rather, it merely underscores the need for reform proposals that are sensitive to the needs of low-wage workers.

Although many immigration reform opponents will advance the idea that the present economy and the difficulties it presents for American workers militate against immigration reform, I strongly believe that the opposite is true. Immigration reform – if done carefully and with sensitivity to the needs of all low-wage workers – is an important component of a pro-worker agenda. Immigration reform is itself critical to protecting all low-wage workers, including low-wage African-American workers, during this economic downturn. For example, by giving current undocumented workers a path to legal status while making sure that future flow is consistent with labor market needs, we will give these workers the full protection of our labor and employment laws, and will thus prevent employers from exploiting them to drive down the wages of all workers. It is just this kind of thoughtful, fair-minded solution that African Americans genuinely want – contrary to the distorted view that news media has presented of incidents such as the immigration enforcement raid at Howard Industries in Laurel, Mississippi

<sup>2</sup> See, e.g., Jenny Bussey and John Trasviña, *Racial Preferences: The Treatment of White and African American Job Applicants by Temporary Employment Agencies in California*, Discrimination Research Center, December 2003; Devah Pager, *The Mark of a Criminal Record*, AMERICAN JOURNAL OF SOCIOLOGY 108(5): 937-975.

<sup>3</sup> See, e.g., Roger Lowenstein, *The Immigration Equation*, THE NEW YORK TIMES, July 9, 2006.

<sup>4</sup> *The Immigration Debate: Its Impact on Workers, Wages and Employers*, KNOWLEDGE@WHARTON, May 17, 2006 (located at <http://knowledge.wharton.upenn.edu/article.cfm?articleid=1482>).



last year<sup>5</sup> —, and which presents a real opportunity to improve the lives of low-wage workers, the native-born, and immigrants alike.

The solution is twofold: to forge policies that 1) better promote economic advancement for all low-wage workers, and 2) prevent immigrant workers themselves from being exploited and used to undercut the wages of domestic workers. We can thus simultaneously give African-American workers a long overdue shot at economic prosperity and can reduce tensions between the African-American and immigrant communities.

#### **Policies Aimed at Improving Conditions for Low-Wage Workers**

There are numerous policy proposals that academics and advocates have advanced to assist low-wage workers. By giving these proposals serious consideration, our elected officials can both provide low-wage African-American workers with much-needed assistance, and can help mitigate tensions between African-American and immigrant workers. Enactment of these policies promises to substantially mitigate African-American concerns about aspects of immigration reform that many perceive as presenting a continuing threat to their standard of living.

In 2007, LCCR organized a summit of leaders from African-American, Latino, and Asian-American communities to discuss how the concerns of low-income workers might best be addressed in the ongoing debate over immigration reform. The organizations and leaders involved in those discussions have followed up by coming together in support of a statement of principles and legislative recommendations that we are today urging Congress to take up as the debate over comprehensive immigration reform moves forward. They call upon Congress to provide for:

- Better enforcement of antidiscrimination laws, through testing and other measures, and enhanced public education efforts to counter stereotypes about immigrants and African Americans;
- More open vacancy notification systems, to overcome the use of informal networks of friends and relations to fill low-wage jobs, which reduces job competition;
- Increased enforcement of workplace standards including fair wage and overtime requirements, safety and health and labor laws;
- Making it easier for workers to compete for jobs in other locations through better advertising of unskilled jobs and the allocation of resources to pursue and relocate for them; and
- More job skills, training and adult education opportunities for low-wage workers, including young people and high school dropouts.

I would add, to this list, stronger protections for the right to form a union. Unions have a significant positive effect on the wages and benefits for all economically disenfranchised Americans. In 2006, median earnings for women in unions was 31 percent higher than for non-union women; 36 percent greater for unionized African Americans; 8 percent more for Asian

<sup>5</sup> See *Immigration raid divides a Mississippi town*, L.A. TIMES, Aug. 31, 2008, at <http://www.latimes.com/news/nationworld/nation/la-na-raids31-2008aug31,0,219718.story?track=rss>.



Americans; and 46 percent more for Latinos.<sup>6</sup> Indeed, African-American leaders have long recognized the importance of unions. LCCR co-founder A. Philip Randolph, the head of the largely African-American union, the Brotherhood of Sleeping Car Porters, viewed unions as a vital component of the civil rights agenda and critical to bringing African Americans into the middle class.

#### **Comprehensive Immigration Reform that is Mindful of the Needs of Low-Wage Workers**

The second key component of an agenda to assist African-American workers and build their support for immigration reform is an immigration bill that provides for the fair and humane treatment of immigrants, and that prevents immigrant workers from being exploited and used to undercut work standards to the detriment of all workers. The two American labor federations, the AFL-CIO and Change to Win, together representing over 60 different unions and about 16 million American workers, recently issued a joint blueprint for immigration reform that embodies these ideas.

This recent agreement promises to be a watershed for immigration and workers rights advocates alike. In the past, the labor movement had grappled internally with the thorny issue of how to both show compassion for international workers who are drawn to this country by the promise of economic opportunity, on one hand, and protect the wages of domestic workers whose wages are diminished as a result of employer exploitation of immigrant workers, on the other hand. The joint blueprint, entitled *Framework for Comprehensive Immigration Reform*, balances these competing interests.<sup>7</sup>

My friend Eliseo Medina of the Service Employees International Union will offer more detail on the proposal, I am sure, in his testimony, so I will only outline it briefly. The labor proposal consists of five major elements: 1) establishment of a commission to determine the number of foreign workers to be admitted annually, based in part on the impact of the flow of workers on the economy and wages; 2) a mechanism to verify worker eligibility, which protects privacy and prevents discrimination, but also works more effectively to prevent unlawful employment; 3) a rational system of border control, which respects the rights of visitors to the United States and border residents; 4) adjustment of status of current undocumented workers, in recognition that deportation is both inhumane and unrealistic, and that denying these workers legal status only enables employers to exploit them; and 5) improvement, not expansion, of current temporary worker programs, to ensure there is no broad class of workers in our democracy who are denied civil and employment rights.

Labor's blueprint meets many of the concerns felt in the African-American community. Rational control over future entry of foreign workers will help prevent immigration from having a strong negative effect on the working conditions of the low-wage workforce. Adjustment of status for current undocumented workers will prevent employers from exploiting these workers – who lack any workplace protections – at the expense of all low-wage workers.

<sup>6</sup> House of Representatives, Committee on Education and Labor, Report on the Employee Free Choice Act of 2007, at [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110\\_cong\\_reports&docid=f:hr023.110.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_cong_reports&docid=f:hr023.110.pdf). Even when adjusted for experience, education, region, industry, occupation and marital status, the wage premiums remain large: 10.5 percent for women, 20.3 percent for African Americans, 21.9 percent for Latinos and 16.7 percent for Asian Americans. Economic Policy Institute, *State of Working America 2006/2007*, at [http://www.stateofworkingamerica.org/tabfig/03/SWA06\\_Table3.34.jpg](http://www.stateofworkingamerica.org/tabfig/03/SWA06_Table3.34.jpg).

<sup>7</sup> <http://www.aflcio.org/issues/civilrights/immigration/upload/immigrationreform041409.pdf>.



**So-called “Black vs. Brown” in the Immigration Debate: Perceptions and Realities**

Finally, Chairman Schumer, I would like to say more about the misperceptions about relations among African Americans and Latinos, misperceptions that many immigration restrictionists have attempted to foster, in recent years, in an effort to pit community against community with the goal of preventing immigration reform. In 2007, for example, a group that called itself the Coalition for the Future American Worker, organized primarily by restrictionist organizations (including several that have been designated as hate groups by the Southern Poverty Law Center), deliberately attempted to stir up African-American resentment toward immigrant communities and immigration reform by running full-page newspaper ads that blamed immigrants for taking hundreds of thousands of jobs from African Americans.

As with any controversial issue, and immigration reform is undoubtedly a controversial issue, there will inevitably be a range of individual opinions within any community. But on the whole, the relationship between the African-American community and immigrant communities has long been far too complex to neatly summarize in a newspaper ad.

Recent research conducted by our partner, Celinda Lake, shows that not only are these perceptions and relationships complex, they also point to opportunities to strengthen collective action among these communities. For example, the research consistently points out that, on one hand, as minority groups in America, African Americans and immigrants share a strong common interest in fairness and equal opportunity. Indeed, because the immigrant community includes many individuals of African and Caribbean descent, African Americans do have a direct interest in fair immigration policies. For these reasons, the traditional civil rights movement was instrumental in eliminating discriminatory immigration quota laws in favor of more generous policies in the 1960s, and leading civil rights organizations have continued to speak out on behalf of immigrants' rights since then.

On the other hand, as I have explained above, it is clear that many individuals represented by traditional civil rights organizations, particularly those who struggle the most to make ends meet in today's economy, are concerned about the way their economic well-being is affected by increased immigration. Time and time again, immigration opponents focus only on these anxieties while ignoring the common ground that exists. For example, following last year's raid at Howard Industries, restrictionists focused on a segment of some African-American workers who apparently celebrated the arrests, as an example of the divide between native-born and immigrant workers while ignoring the fact that the black leadership at Howard Industries' union supported signing up Latino workers and forging solidarity to improve the living standards of all employees.

Contrary to what the propaganda by restrictionist groups might suggest, African-American concerns about the effects of immigration do not, on the whole, lead to any widespread resistance to the legalization of undocumented immigrants or the other elements of comprehensive reform. Our own public opinion research confirms this. In 2007, Lake Research Partners conducted for us African-American focus groups in a number of cities throughout the country, followed by a poll of 700 African-American voters nationwide.

What we found was not surprising. For example, a slim majority of respondents (51 percent) did believe that immigrants take jobs away from Americans, and 52 percent believe that they drive



down wages for Americans, with 59 percent believing that they cause lower wages for African-American workers in particular. Despite these fears, however, we found that 70 percent of respondents supported comprehensive immigration reform that includes increased border security, penalties on employers of illegal workers, and criteria for a path to citizenship, with only 22 percent opposing such reforms. Furthermore, a strong majority (83 percent) agreed that if an immigrant has been working and paying taxes in this country for five years and learning English, there should be a way for her or him to become a citizen, with a 55 percent majority “strongly” agreeing. Finally, our research confirmed that strong majorities of African Americans believe that they can work together with immigrant communities on common social and economic goals such as expanding access to health care and education, reducing crime, and improving wages, work benefits, and job opportunities.<sup>8</sup>

In short, generally, African Americans understand that it is inherently wrong to divide people along the lines of race or ethnicity or national origin, and that creating “us versus them” scenarios does not help anyone in the long run. If Congress does more to protect low-income, native-born workers as a part of immigration reform, consistent with the principles I outlined above, the numbers I have just cited would be even more favorable.

In closing, I would like to add that civil and human rights organizations do take note of how consistently – or inconsistently, in this case – advocates for restrictive immigration policies show their concern for the welfare of African Americans on the whole. For example, during the 2006 reauthorization of the Voting Rights Act, the most important civil rights law governing our most important civil right, the same groups and individuals who claim to be protecting black Americans now stood squarely against us then, and at one point they even went so far as to prevent the reauthorization bill from coming to the House floor. Sadly, the same has often been true of restrictionist voices when it comes to matters such as education, Head Start, racial profiling, affirmative action, hate crimes, and a host of other issues that are of critical importance to the economic well-being of African Americans and other minority groups. To anyone who looks closely, and does not rely solely on full-page newspaper ads, it is clear that immigration restrictionists are not – and never have been – our friends.

This concludes my prepared remarks. Again, I want to thank you for the opportunity to speak before your subcommittee today. I look forward to answering any questions you may have.

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<sup>8</sup> Polling conducted by Lake Research Partners, for the Leadership Conference on Civil Rights & Leadership Conference on Civil Rights Education Fund, December 8-17, 2007, among 700 African-American voters.



**“Comprehensive Immigration Reform in 2009,  
Can We Do It and How?”**

*Comments by*

**Dr. Joel C. Hunter**

Senior Pastor of  
Northland, A Church Distributed

Senate Judiciary Committee  
Subcommittee on Immigration,  
Border Security and Citizenship

April 30, 2009

## Dr. Joel C. Hunter: Curriculum Vitae

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### PROFILE

Since June 1985, Dr. Hunter has served as senior pastor of Northland, A Church Distributed, an evangelical congregation of 12,000 that worships concurrently at four sites in Metro Orlando and at more than 1,000 sites worldwide via interactive webcast. A bridge-builder for issues that advance the common good, Dr. Hunter serves on the boards of the World Evangelical Alliance (420 million constituents) and the National Association of Evangelicals (30 million members). Recently, he was appointed to President Obama's Advisory Council on Faith-Based and Neighborhood Partnerships. He is author of several books, including *A New Kind of Conservative*, which outlines a non-partisan approach to political involvement. He has been profiled in many national publications, including *The New York Times*, *The New Yorker* and *Newsweek*. He has been married to his wife, Becky, since 1972. They have three married sons, two in full-time ministry and one completing an ophthalmology residency, and five grandchildren.

### EDUCATION

**Christian Theological Seminary**, Indianapolis, IN ■ 1974

**Doctor of Ministry**

Areas of Concentration: Culture and Personality

**Christian Theological Seminary**, Indianapolis, IN ■ 1973

**Master of Divinity**

Areas of Concentration: Ministry

**Ohio University**, Athens, OH ■ 1970

**Bachelor of Science**

Areas of Concentration: Education, History and Government

### WHITE HOUSE APPOINTMENTS

- President's Advisory Council on Faith-Based and Neighborhood Partnerships

### GOVERNOR'S APPOINTMENT

- Florida's Faith-Based and Community-Based Advisory Council

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**INTERNATIONAL FORUMS**

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- Alliance of Civilizations (United Nations)
- U.S. / Islamic World Forum

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**BOARDS OF DIRECTORS**

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- World Evangelical Alliance
- National Association of Evangelicals
- Global Pastors' Network
- Children's Environmental Health Network
- Christian Peacemaking Resources, Inc.

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**ADVISORY BOARDS**

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- Belhaven College
- Christian HELP
- Man in the Mirror Ministries
- Vision Orlando
- Vernon C. Grounds Institute of Public Ethics (Denver Seminary)

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**ORGANIZING DIRECTOR**

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- First Green Bank of Florida

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**GUEST LECTURER IN PRACTICAL THEOLOGY**

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- Reformed Theological Seminary

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**PUBLISHED WORKS**

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- A New Kind of Conservative
- Church Distributed
- Prayer, Politics and Power

Comments by

**Dr. Joel C. Hunter**

Senior Pastor of  
Northland, A Church Distributed

**Senate Judiciary Committee  
Subcommittee on Immigration,  
Border Security and Citizenship**

April 30, 2009

Thank you Chairman Schumer, distinguished members of the subcommittee, esteemed colleagues on this panel, and other guests, for providing me an opportunity to speak on the moral and religious reasons for immigration reform.

I am a one of hundreds of thousands of local religious leaders in this country. I have been a pastor for almost 40 years and that is what I want to be in all my years remaining. Even though I am also in leadership positions of national and international groups that are dealing with immigration, it is at the local level that I am continually reminded that policy truly does hurt or help people.

In my faith tradition we all start as strangers and aliens, outsiders to the commonwealth of God. But because we have a God who was willing to do what it took to include us (at great personal cost), we "are no longer strangers and aliens, but [we] are fellow citizens..." (Ephesians 2:18-19a)

So I find it a high honor to speak to those in power as an advocate for those who have no power. In a verse that would be echoed in many religions, Proverbs 31:8 commands us to "Speak up for those who cannot speak for themselves."

**"You will make known to me the path of life..." (Psalm 16:11)**

The hope of any religion is that those who have been on the wrong path can be set upon the right path. The need for Comprehensive Immigration Reform is to create a path that will help people do the right thing. A broken system produces a dysfunctional society, fractured families, and it increases the vulnerability of both legal and illegal residents. It helps criminals who thrive in the shadows and it harms decent people, consigning them to a life of insecurity, hiding, and minimal contribution to the general welfare.

A broken system produces both broken and crooked people. The cost to our nation in terms of productivity, national unity, and national security is depressing. But it does not compare to the damage being done to individuals and families.

A broken system tempts many to predatory practices. I cannot count the stories I have heard about attorneys taking the entire life savings of undocumented workers, producing no results, then abandoning those workers when the money was gone. Is that typical of the profession? We would not believe so. But "lead me not into temptation." It is a mighty temptation to de-prioritize those who are desperate and too intimidated to raise their voices to complain. And what about employers that take advantage of the powerless because there is no system of accountability? Or the bureaucrats that have no incentive to produce results (or even to keep track of the paperwork) because, who will know? Or the talk show hosts that increase their fame and fortune by picturing those without the proper papers only as conniving and dangerous parasites instead of persons made in the image of God, deserving both respect and help to do the right thing?

We are producing cottage industries of exploitation. We are also hearing millions of stories that are the opposite of the American dream.

My friend Rev. Silas Pintos tells of a family in his Hispanic congregation that came from England. Both the husband and wife were successful business people, and they hoped that in the U.S. their children would be immersed in a better environment for family values. So they came to start an alternative energy company. After a two-year ordeal with the immigration system and absurd legal fees, the immigration department could not even clearly explain to them why their residency application had not gone through. They returned to England emotionally and financially devastated.

My friend Imam Mohammed Musri told me the wife of a 60 year old man in his congregation was very sick. The man had papers but when the attorney handling his case took a judgeship, the man was not told he needed to re-register. He was deported even though his wife was too sick to go with him. She was hospitalized and died without him because he could not get back into the country to be by her side.

Pastor Augustine Davies is on the staff at my church. He and his wife are from Sierra Leone and have just completed the long and arduous task of becoming citizens, but they have special relationships with many of the Africans inside and outside our congregation who are caught in the system. One of them is George.

George is from Liberia, West Africa. He is married and has four adult children who live in poverty back in his home country. When George arrived, INS approved the refugee for TPS. George completed a nursing program and got a job. He was turned down for TPS

renewal, but now George feels the almost crushing pressure of providing for his family and other countrymen who need the money he can send them because of his job. He stays in the shadows for now. I do not agree with what he is doing, but I know his present life is because he loves his family, not because he is out for himself.

Our immigration system can also intimidate congregations as well as individuals and families. My friend Rabbi Steven Engel told me that his congregation had sponsored a family from Argentina to come to the U.S. The INS lost the paperwork many times, and they made regular visits to the synagogue, suspicious that the congregation might be doing something wrong. The whole process was so stressful and unwelcoming that when Sergio died from a heart attack at the age of 43 the remaining family returned to Argentina.

These stories and many others don't live up to the ideals of our country. We can do better, and we know it. Everyone is frustrated with the present system. Our immigration system in many cases has us echoing the words of the despairing saint who proclaimed, "I am not practicing what I would like to do, but I am doing the very thing I hate."

(Romans 7:15)

The urgency for immigration reform that yields efficiency and compassion cannot be overstated because it is so overdue.

#### **The Moral Principles for a better system**

Some of the central principles that comprise most major religions are also woven into our country's history and can be used as a standard for immigration reform:

These principles deem each person as valuable, "endowed by their Creator" with a dignity that transcends earthly circumstance. Therefore, our system must treat each person respectfully.

They acknowledge the family as the bedrock of personal and social development, and the support of the family as the foundation of a strong society. Therefore, our system should prioritize the family.

They see law as not only necessary for restraining evil, but as needed for structuring healthy relationships. It is right that wrongdoers are restrained and/or punished, but it is a better justice when the laws yield correction and the redemption of bad circumstances.

Therefore, our system should have ways to choose to live upright lives after the penalties for wrong decisions.

So most people of faith are hoping for policies that will prioritize family togetherness, respect for the law, personal productivity, and compassion for those who are most helpless.

### **Conclusion**

We do not envy you your charge. Immigration reform is a morally complex as well as a politically explosive challenge. But many of us are praying earnestly for you and for God's wisdom in this matter.

Including the stranger is not just a matter of compassion but a necessity for greatness. Loving your neighbor as you love yourself is not only a moral commandment but a path to national nobility, if we can build a nation of families and support networks that not only help the marginalized to be successful, but help the successful to be helpful, then we can better live up to our potential as a people.

In the end, I believe our nation will be not be judged by the productivity of our budgets, or the genius of our laws, or even the earnestness of our faith communities. We will be judged, both by history and by God, by the way we treated people, especially those who needed our help.

**Edward M. Kennedy Statement  
Senate Judiciary Subcommittee on Immigration  
Hearing on "Comprehensive Immigration Reform in 2009,  
Can We Do It and How"  
Thursday, April 30, 2009**

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I commend Chairman Schumer for renewing the debate on immigration reform in this new Congress by asking the vital question, "Can we do this?"

We know what the answer is: "Yes, we can do this." And under Senator Schumer's leadership, we will do it.

We know why we must do this. Today, we have a shattered system that separates families and loved ones from one another. We have a system that has cheated native and foreign-born workers out of a decent wage, and failed to give employers a strong and predictable foundation for their businesses.

Immigration reform is right for America, because too many individuals have their basic rights threatened by a system of overreaching enforcement, rather than a sustainable system which protects and builds upon America's basic needs.

Reform is also about opening the door for the millions of people living in the shadows and in fear, who could and genuinely want to contribute to this country they love, if only the law would permit them to do so.

Above all reform is about the renewal of the American Dream for a new generation of Americans.

It's abundantly clear that immigration reform will benefit our economy, our security and the fundamental values that reflect our country's heritage and history as a nation of immigrants. The witnesses today will revive our national conversation on the issue, and they speak for economists, police chiefs, pastors, business and labor leaders, and civil rights advocates, all of whom are calling for change.

We know that President Obama supports comprehensive immigration reform. Our shared goal is to create a system that serves American principles and interests and is true to our heritage and history. Today's hearing emphasizes that what is good for immigration reform is also good for America.

We may differ on the how to get this done, but there is no doubt that we must address the issue together. The status quo is unacceptable. By enacting immigration reform that works for all of us, we can help move our country toward an America that prospers once again and grows stronger together.

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**Kris W. Kobach**

**Professor of Law**

**University of Missouri (Kansas City) School of Law**

April 30, 2009

Testimony on

“Comprehensive Immigration Reform in 2009, Can We Do It and How?”

Before the

Senate Committee on Judiciary

Subcommittee on Immigration, Border Security and Refugees

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Mr. Chairman and Members of the Subcommittees, it is an honor and privilege to appear before you today. I come before in my capacity as former Counsel to the U.S. Attorney General during 2001-2003,<sup>1</sup> at which time I served as the Attorney General's chief adviser on immigration law and border security. I am also a Professor of Constitutional Law and Immigration Law at the University of Missouri (Kansas City), where I teach immigration law and constitutional law. As my university does not take official positions on legislation, I offer my testimony solely in my personal capacity.

Because there is no specific piece of legislation currently before the Committee, I will assume for the sake of this hearing that by "comprehensive immigration reform," the Committee means a legislative initiative that similar in basic respects to the proposed Comprehensive Immigration Reform Act (S. 1348) that was before the U.S. Senate in 2007. At the center of that bill was a broad amnesty—whereby the vast majority of the 12-20 million illegal aliens in the country could become lawfully present relatively quickly after filing an application, renew their newly-acquired visas, apply for adjustment of status to legal permanent resident, and thereafter become U.S. citizens. The basic qualifications for receiving this amnesty were that an alien had to have entered before a date certain,<sup>2</sup> and have remained in the United States since that date. In addition, the alien had to possess a job or be the parent, child, or spouse of someone who possessed a job. Finally the alien had to pay a fine to be eligible for the amnesty. Assuming that these basic contours of the amnesty remain the same, there are two general reasons why pursuing such a course of action would be ill-advised: (1) the inability of U.S.

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<sup>1</sup> I served as White House Fellow to the U.S. Attorney General during 2001-02.

<sup>2</sup> January 1, 2007, was the date specified in S. 1348.

Citizenship and Immigration Services (USCIS) to implement the amnesty, and (2) the national security risks that would result.

#### **I. Resource Constraints in the Implementation of an Amnesty**

Central to the 2007 bill was the probationary Z visa, which was issued to amnesty applicants shortly after they applied for the amnesty and received a “background check” that had to be completed by the end of the next business day. Regardless of what this status platform is called, it is a common attribute of most comprehensive immigration reform proposals. It provides the previously-illegal alien immediate lawful status, protecting him from deportation, authorizing him to work, and allowing him to exit and re-enter the country. Under the 2007 bill, this probationary visa was then converted to a non-probationary visa.

U.S. Citizenship and Immigration Services (USCIS) simply does not have the resources at this time to effectively implement an amnesty of the scale contemplated by the 2007 bill. To understand this problem, consider a few numbers.

On top of the 12-20 million illegal aliens who are already in the United States and who would be eligible for the amnesty, there would be a mass influx of millions of newly-arriving illegal aliens who would fraudulently apply for the amnesty by presenting records suggesting that they had actually been present in the United States before the cut-off date. According to the 2007 bill, any bank statement, pay stub, remittance receipt, or similarly forgeable record would suffice. This is exactly what happened with the 1986 amnesty. Hundreds of thousands streamed across the border to fraudulently apply for it.

The Immigration and Naturalization Service (INS) discovered 398,000 cases of fraud in connection with the 1986 amnesty. No one knows how many cases went undetected.

Assume for the sake of argument that 12 million illegal aliens apply for the amnesty. The 2007 bill required that the aliens' initial applications be received within one year. There are 250 days in the calendar year on which the federal government is open for business. That means that there would have been an average of 48,000 applications for the amnesty every day. As of September 30, 2008, there were 3,638 status adjudicators at USCIS.<sup>3</sup> This number cannot be increased quickly, due to the difficulty of hiring new people, the delay of training them, and the attrition of existing status adjudicators.

48,000 applications spread among 3,638 status adjudicators means an average of 13 amnesty applications per adjudicator per day. Of course, on some days, the number of applications might well be double that amount. And under the 2007 bill, with each application, the adjudicator had only until the next business day to determine if the alien is a criminal or a national security threat.

It is a bleak picture. Unfortunately, it gets worse. Those numbers assume that the adjudicators are not doing anything at the moment. In fact, they are already swamped. The backlog of pending applications for benefits at USCIS is approximately 3 million cases at present.<sup>4</sup> On top of that backlog USCIS typically receives 4-6 million applications for benefits each year.<sup>5</sup> USCIS is stretched to the breaking point. According to a 2006 Government Accountability Office (GAO) study, because adjudicators must go

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<sup>3</sup> U.S. Citizenship and Immigration Services, *2008 Comprehensive Response to the DHS CIS Ombudsman Report*, Sept. 30, 2008, p. 16

<sup>4</sup> As of February 2009, USCIS reported 2,900,273 pending cases.

<sup>5</sup> In FY 2008, USCIS reported receiving 4,319,134 new applications for benefits.

through so many applications for benefits (green card applications, asylum applications, etc.) every day, they spend too little time scrutinizing them.<sup>6</sup> As a result, the GAO concluded, the failure to detect fraud is already “an ongoing and serious problem.”

The back-breaking workload results in what the GAO called a “high pressure production environment.” It is widely known that an unofficial “six minute rule” applies—spend no more than six minutes looking at any single application. It is a bureaucratic sweatshop.

The 2006 GAO study found that according to adjudicators, their managers were consumed with meeting “production goals,” driving them to process applications too quickly and increasing the risk that fraud will go undetected. As a result, USCIS routinely fails to engage in commonsense verification with outside agencies—for example, calling a state’s DMV to see if two people claiming to be married actually live at the same address. And many adjudicators are actually *discouraged* from requesting more information from aliens who submit suspicious applications.

The agency is already dangerously overburdened and is unable to effectively detect fraud. So what would an amnesty do? *More than triple* the workload by adding 12 million amnesty applications in a single year, on top of the 4 million-plus applications that the agency already receives. Not only that, under the 2007 bill, the 12 million provisional visa holders would have had to come back in four years to renew their status and convert to non-provisional visas. The 6-minute rule would have become a 3-minute rule. Fraudulent applications would have been accepted by the millions. It is a recipe for bureaucratic collapse.

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<sup>6</sup> GAO 06-259, *IMMIGRATION BENEFITS Additional Controls and a Sanctions Strategy Could Enhance DHS’s Ability to Control Benefit Fraud*, March 2006.

It must also be remembered that the much smaller amnesty of 1986 took years to implement. As recently as FY 2003, USCIS was still granting adjustments of status based on the 1986 amnesty.<sup>7</sup> In other words, that amnesty for 2.7 million aliens took 17 years to complete. This Committee is now contemplating an amnesty four times larger.

In the past, whenever an amnesty has been on the table, USCIS has indicated that it would attempt to deal with the surge in applications by hiring contractors to do the work. This is a highly problematic approach, for two reasons. First, it is unlikely that the necessary background checks on the contractors themselves could be completed in time. There is already a back-up of hundreds of thousands of pending background checks at the Office of Personnel Management. The 2007 bill completely ignored this problem. Had it been enacted, the contractors either could not have been hired in time, or the background checks would have been skipped entirely. Second, USCIS status adjudicators go through extensive training in immigration law before they are deemed competent to detect fraud and properly apply the law. Contractors lack this expertise.

Finally, it must be stated the pressure created by any time limits in an amnesty bill, either for background checks or for processing adjudications generally, will force all amnesty applicants to the top of the pile. The statement that “illegal aliens will go to the back of the line” is an empty promise, for two reasons. First, a rapidly-implemented amnesty with processing deadlines like that proposed in the 2007 bill necessarily forces amnesty applications to the top of the pile. Other applications, *which do not have statutorily-imposed deadlines*, must wait. Second, as long as the illegal alien is allowed to stay in the United States, he has by definition “jumped to the front of the line”—he has

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<sup>7</sup> In FY 2003, USCIS granted 39 adjustments of status based on the 2006 amnesty.

gained lawful presence while millions of others must continue to wait. And their wait would only grow longer because of the amnesty.

## II. National Security Vulnerabilities Created by an Amnesty

An additional flaw in the 2007 bill was that it would have made it extremely difficult for the federal government to prevent criminals and terrorists from obtaining the probationary visa. The most obvious problem in this respect was that the bill allowed the federal government *only until the end of the next business day* to conduct a so-called “background check” to determine if the applicant is a criminal or terrorist. If the USCIS adjudicator couldn’t find any terrorist connection in time, then the alien would have to be provided with a probationary visa on the next business day. Twenty-four hour background checks might suffice if the U.S. government had a single, readily-searchable database of all the world’s terrorists. But we don’t. Much of the relevant information exists only on paper, while foreign governments are the source for other data. It is simply not feasible to expect thorough background checks to occur in 24 hours, or even in the period of one week.

There is already a significant backlog at the FBI of approximately 60,000 name checks for USCIS adjustment of status applications. The ultimate objective of the FBI and USCIS in addressing this persistent backlog is to eventually reach a state of affairs in which most name checks are completed within 30 days and all name checks are completed within 90 days.<sup>8</sup> But we are not there yet. Considering that the agencies are not even aspiring to complete all name checks within 30 days, it is clear that the one-day

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<sup>8</sup> See U.S. Citizenship and Immigration Services, *2008 Comprehensive Response to the DHS CIS Ombudsman Report*, Sept. 30, 2008, p. 3.

background check requirement in the 2007 bill was a significant threat to the national security of the United States.

Even if the reckless provision requiring that background checks be completed within one business day were removed from the next amnesty, it is still highly likely that many terrorists would succeed in using their real names to obtain amnesty. Seeking amnesty under one's real name is a promising option for any terrorist who has operated completely underground during his terrorist career. This is also a likely choice for a terrorist who has been recruited into a terrorist organization only recently. Such an individual will not have a record of past terrorist activity maintained by any government.

Even when the federal government has had as much time as it needs to perform background checks, such terrorists have had little difficulty obtaining amnesties. Case in point: Mahmud "the Red" Abouhalima. He fraudulently obtained legal status under the 1986 amnesty that was supposed to be limited to seasonal agricultural workers. He was actually driving a cab in New York City. He was also a ringleader in the 1993 terrorist attacks against the World Trade Center, and he used his new legal status to travel abroad for terrorist training. His brother Mohammed—a fellow terrorist in the plot—also obtained legal status under the 1986 amnesty.

These are not isolated instances. A 2005 study by Janice Kephart, Counsel to the 9/11 Commission, found that 59 out of 94 foreign-born terrorists (about 2/3) successfully committed immigration fraud to acquire or adjust legal status.<sup>9</sup> With his newly acquired legal status, a terrorist can operate with a great deal more freedom, secure in the knowledge that a traffic violation won't lead to deportation. He can also exit and re-enter

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<sup>9</sup> Janice Kephart, *Immigration and Terrorism: Moving Beyond the 9/11 Staff Report on Terrorist Travel*, Center for Immigration Studies, Sept. 2005.

the country, allowing international terrorist networks to support him more easily.

However, the terrorist alien has another option that is even more troubling— inventing a new, entirely “clean” identity. The 2007 bill failed to provide any safeguards against terrorists who choose to create a new identity with the help of the U.S. government. Because the bill contained no requirement that the alien produce a secure foreign passport proving that he is who he says he is, terrorists would have had little trouble gaming the system. A terrorist could have walked into any USCIS office and offered a completely fictitious name—one that does not have any negative information associated with it. In other words, a terrorist could declare that his name is “Rumpelstiltskin,” and most likely, walk out the next day with a probationary visa, complete with a government-issued ID card backing up his false identity.

All that the terrorist needed to do under the 2007 bill was provide two easily-forged pieces of paper indicating that a person of that name was in the country before January 1, 2007. A pay stub, a bank receipt, or a remittance receipt would have sufficed, as would a declaration from one of the terrorist’s associates that he was in the country before January 1, 2007.

With this newly-minted identity backed up by an ID card issued by the federal government, the alien terrorist would be armed with the perfect “breeder document,” allowing him to obtain drivers licenses and just about any other form of identification that he desires. This is similar to what the nineteen 9/11 hijackers did. They used their passports and visas as breeder documents to obtain 63 drivers licenses. With these valid identity documents, they were able to travel openly and board airplanes easily.

This particular terrorist loophole in the 2007 bill could be corrected in future

legislation—by requiring that *every* applicant for the amnesty produce a secure passport that contains embedded biometrics in the document. This is not a trivial requirement. Most of the countries that issue secure passports and meet these standards only started issuing these enhanced passports in the last few years. And many of the home countries of illegal aliens do not yet issue secure passports with embedded biometrics. If the authors of any comprehensive immigration bill in the future are truly serious about national security, then they must include this requirement: presentation of a secure passport and nothing less.

Of course, closing this one terrorist loophole would not stop terrorists with “clean” identities from using their true names and obtaining the benefit of amnesty in that fashion. Nor would it solve the administrative capacity problems faced by USCIS. In conclusion, the U.S. government lacks the ability to implement a large-scale amnesty at this time. And the security risks inherent in attempting to do so are unacceptable.

**Statement Of Senator Patrick Leahy (D-Vt.),  
Chairman, Senate Judiciary Committee,  
Hearing Before The Subcommittee On Immigration, Border Security And Citizenship  
On Comprehensive Immigration Reform In 2009  
April 30, 2009**

As President Obama reiterated last night, we need to begin the process that will lead to comprehensive immigration reform. The Senate Judiciary Committee is following up on his remarks today with a hearing in our Immigration Subcommittee. I was delighted to arrange for this hearing at the request of our new subcommittee chairman, Senator Schumer. I look forward to working with him, continuing to work with Senator Kennedy who has been our leader for so many years on these issues and to working with Senators from both sides of the aisle. The President and Secretary Napolitano are making a good start and doing what they can administratively. Secretary Napolitano will appear before the Committee at a hearing next Wednesday, in fact, and we will have an opportunity to continue the dialogue that we have begun.

I believe we can all agree that our immigration system is in need of reform. We need tough, fair, and realistic improvements that secure our borders, respect American workers, help our economy, and recognize the importance and value of strong families. With an administration that recognizes the need for reform in this area, I am hopeful that Congress can finally enact legislation to modernize our immigration laws consistent with our values and our history as a Nation of immigrants. Two weeks ago during a visit to Mexico City, President Obama spoke of his continued commitment to repairing our country's broken immigration system. I was encouraged by his words, and I agree that we need solutions to the real issues with immigration that are facing this country. Bumper sticker slogans and mean-spirited, harshly divisive policies that appeal to fear and prejudice will solve nothing.

I supported efforts in the last two Congresses to pass practical and effective reforms to our immigration system. Unfortunately, those efforts were defeated by Members who resisted these efforts to achieve realistic solutions. In approaching immigration reform for the 21<sup>st</sup> century, Congress and the administration must devise legislation that is durable, and which will modernize our system to accommodate the evolving needs of the American worker, the business community, the value of family, and is consistent with our traditions of providing asylum to those who seek it.

And when we consider the importance of family in our immigration system, we must respect all families. For example, it would be inequitable to move toward the legalization of millions of undocumented immigrants without also providing immigration benefits to the thousands of American citizens in same-sex relationships with foreign nationals who now feel abandoned by our laws. We cannot leave out hardworking American families simply because the partnership consists of people of the same gender. Our society is moving beyond these prejudices, and Federal policy must reflect this reality. America should join 19 of our closest allies around the world who provide these benefits. Immigration reform that leaves such inequality in place is in no way comprehensive. I hope that important legislation, like the Uniting American Families Act, which addresses this issue, is part of this critical immigration reform debate.

We must also address the terrible consequences that have resulted from the overly-broad current laws concerning terrorism and material support as bars to asylum. We cannot continue to deny asylum seekers because they have been forced at the point of a gun to provide assistance to those engaged in terrorist acts. We cannot continue to label as terrorist organizations those who have stood by the United States in armed conflict.

Existing immigration programs set to expire need our attention as well. Where these programs have contributed to our communities and our economies, whether through providing foreign doctors in underserved rural areas, or providing workers for religious organizations, they should be made permanent. The EB-5 Regional Center program is just such a program. We have the opportunity to harness vast foreign investment capital to create American jobs and breathe life into rural and economically challenged communities. This program has the potential to spur innovation and development with no cost to taxpayers, and at a time of great economic difficulty. It should be made permanent, and where it needs to be improved, that should be done as well.

On April 22, 2009, *The New York Times* reported that efforts to crack down on illegal immigration through workplace raids has left thousands of children with uncertain futures, as their parents are deported or detained. We need to address these problems, not with sweeping expulsion of undocumented parents, but by recognizing those who are currently living in the shadows of our society, and providing opportunities to become lawful residents. Detaining or deporting undocumented workers who have been abused by American employers does nothing to change an environment that remains ripe for these abuses. We need real, sensible solutions to repair our broken system, and policies that target unscrupulous employers who exploit the most vulnerable among us.

Immigration enforcement must be more competent and consistent with American values. We cannot continue to tolerate the tragic and needless death persons in U.S. custody for lack of basic medical care. In the conduct of immigration enforcement we must ensure that children are not needlessly separated from their parents. Immigration enforcement should focus on removing the most dangerous and destructive individuals from the United States. Secretary Napolitano understands the imperative of smart enforcement, and I commend her for it.

The American people will look to us to forge a consensus for immigration reform that rejects the extreme ideology that has attended this issue and prevented real progress. Next week we will hear from Secretary Napolitano when the Judiciary Committee holds an oversight hearing of the Department of Homeland Security. I look forward to the discussion of immigration reform and I am hopeful that we can work together to find a sound, comprehensive solution. I welcome today's hearing.

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April 29, 2009

Subcommittee on Immigration, Refugees and Border Security  
Committee on the Judiciary  
United States Senate  
Washington, DC 20510  
SENT VIA FAX: 202-228-0464

**Re: Testimony and Questions for "Comprehensive Immigration Reform in 2009, Can We Do It and How?" hearing on 4/30/2009**

To Whom It May Concern:

On behalf of the National Korean American Service & Education Consortium (NAKASEC) and its affiliates – the Korean American Resource & Cultural Center (KRCC) in Chicago and the Korean Resource Center (KRC) in Los Angeles – we respectfully submit the attached to inform you of the perspectives of Asian American and Pacific Islander communities to support comprehensive immigration reform in 2009.

If you should have any questions, please do not hesitate in contacting me at 323.937.3703 ext 205 or elee@nakasec.org.

Thank you for your considerate attention.

Sincerely,

EunSook Lee  
Executive Director

Attachments: Testimony (3 pages), Questions (1 page)



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TESTIMONY of

EunSook Lee on behalf of

National Korean American Service & Education Consortium (NAKASEC)  
Korean American Resource & Cultural Center (KRCC), Chicago, IL  
Korean Resource Center (KRC), Los Angeles, CA

submitted to the

Subcommittee on Immigration, Refugees and Border Security  
Committee on the Judiciary  
United States Senate

April 30, 2009

The National Korean American Service & Education Consortium (NAKASEC) was founded in 1994 by local community centers to project a national progressive voice and promote the full participation of Korean Americans as a part of a greater goal of building a national movement for social change. These affiliates include the Korean American Resource & Cultural Center (KRCC) in Chicago and the Korean Resource Center (KRC) in Los Angeles. NAKASEC maintains its national office in Los Angeles and an office in Washington, D.C.

Since our inception, advancing immigrant rights has been NAKASEC's signature program. Key campaigns to support comprehensive immigration reform include the Dollar A Day campaign that resulted in raising funds to place prominent ads in the New York Times and Washington Post, the national Asian Pacific American Mobilization for Immigration Reform that brought together 400 Asian Americans and Pacific Islanders (AAPIs) from 37 states, and the Dreams Across America Tour that presented compelling immigrant and non-immigrant spokespeople to garner over 500 positive media hits in a one-week period. While seeking policy victories, NAKASEC and its affiliates' campaigns are deliberate in humanizing the issue and securing broad public support for immigrants and immigration reform.

**Why AAPIs care about immigration reform**

AAPIs and Korean Americans are hurt by every aspect of the broken immigration system. Thousands of bright youth cannot fulfill their dreams, many more are living in the shadows, countless others are separated because of the immigration backlogs and immigrant enforcement activities, and there are those languishing and dying in detention centers.

- 58% of AAPIs and 76% of Korean Americans are immigrants. 1 out of 10 AAPIs and 1 out of 5 are undocumented. Most AAPIs live in mixed status families. Every year, 65,000 undocumented students graduate from high school unable to realize their potential and fully participate in American society. An accurate count of the AAPI undocumented youth population is not available. What is known is that 24% of AAPIs are under the age of 18, 15% of AAPI youth are U.S. born citizens, and 10% of the total population is undocumented.

- Family and employment immigration are the two primary means of entry to the U.S. for AAPIs and Korean Americans. An estimated four to five million spouses, children, and siblings of U.S. citizens and green card residents are currently caught in the family immigration backlogs. AAPIs are more likely than other groups to be caught in the backlogs waiting for family unification. Chinese, Indian and Filipino families, among others, all face wait times of over ten years because of the backlogs.
- As a predominantly immigrant work force with a significant population that are limited English proficient, the protection of rights for workers and employers is fundamental. It is estimated that 18.8 million (14%) of the U.S. workforce are immigrants, and 4.9 million (26%) of them are from Asia. One-third of all Korean American families are employed in or operate a small business, working long hours with little or no benefits, including health insurance.
- Basic due process rights and civil liberties to individuals are important for Korean Americans. Because AAPIs account for about 2% of total deportations and detention and we are a racial minority, we face additional and different challenges, such as language barriers, social isolation and lack of access to cultural competent treatment or services. AAPI detainees and their families have reported that they make choices without understanding their rights or have difficulty requesting medical attention because of the lack of language access.

#### **Community Stories**

**Kannie Yoon**, an undocumented student, is an incredibly gifted young artist who studied at one of the top art institutions in the country. She came to the U.S. from Korea as a teenager and began working in her family's dry cleaning business to support her family. Despite language barriers, Kannie studied hard and graduated with a 4.0 GPA. Because she is undocumented, she did not have access to financial aid or loans. Kannie and her family worked long hours and multiple jobs to pay for her tuition and expenses. Her sister even sacrificed her hopes to go to college to support Kannie. Despite these hardships, Kannie was able to graduate. But without the opportunity to become gain full citizenship and contribute to society, how can she put that degree to work?

**Andrew Jung's** life turned upside down at the age of 15 years. Born in Toledo, Ohio to Young Jung, a volunteer librarian, and Dae Jung, a sushi chef, Andrew was a high school student at Emanuel Baptist. His parents came as a newlywed couple in 1984 from South Korea. However because of a document misfiling, they became undocumented. On Valentine's Day 2005, Toledo police along with the Department of Homeland Security came to their home and took Young away, leaving Dae to care for Andrew as a minor. While being moved to four different detention facilities, with each move unannounced to Andrew and Dae, Young's health began to deteriorate gravely. On August 11, 2005, his parents made the painful decision of leaving Andrew alone in the U.S. with family friends, and self-deported. A minor, with no other family in the United States, Andrew's parents signed away their parental rights and granted guardianship to the parents of his best friend since childhood. What national security threats do a volunteer librarian and a sushi chef pose? How is America made better with the forced removal of Young and Dae Jung? How can we support policies that leave U.S. citizen children parentless?

**Young Sook Kim** was detained during a raid on a massage parlor in Arizona. Diagnosed with pancreatic cancer, her health deteriorated rapidly to the point that she could not eat. Despite other Korean American detainees translating Kim's pleas for medical attention, she never received proper medical care. Instead she was given only Tums or Tylenol and periodic finger-

prick blood tests. Only after her eyes turned yellow did detention facility staff agree to send her to the hospital. She died two weeks later on or around September 10, 2006. How can this country justify the inhumane treatment of any individual held in detention centers?

#### **Conclusion**

Comprehensive immigration reform must be based on the principles of keeping families together, strengthening our economy, and making America more secure. A comprehensive solution must contain the following policy priorities: broad legalization (including provisions for talented undocumented young people), preservation of the family-based immigration system, elimination of family immigration backlogs, end to mandatory and indefinite detentions and cruel deportations for minor infractions, allow every person to have their day in court, protection of workers against profiling and unjust termination, and promotion of immigrant integration.

To address today's economic crisis and tomorrow's future challenges, it is in our shared national interest to promote measures that enable everyone to contribute to their fullest. Immigration reform is key to America's prosperity. The Congressional Budget Office (CBO) estimated that \$66 billion in new revenue over 10 years would have been generated if the 2006 immigration reform bill, which would have legalized most of America's undocumented population, had passed. The White House Council of Economic Advisers concluded that immigration increases the U.S. Gross Domestic Product by \$37 billion each year.

Like all Americans, Korean Americans and immigrants arrived to contribute to the greatness and strength of this nation from the arts and science to the economy. 1.1 million Asian-owned firms provided jobs to 2.2 million employees and had receipts of \$326.4 billion in 2002. One third of Korean Americans operate and/or work in small businesses. 469,991 (36%) of Korean American are registered voters. Statistics show that when registered, Korean Americans demonstrate high rates of continued political participation. The Korean American citizen voting age population, according to the 2000 Census, is 529,692. That number is expected to increase tremendously and represent the political potential of Korean Americans.

The political moment is now. Congress must focus on the enactment of a comprehensive immigration reform law that is a workable solution to the problems plaguing our immigration system. It is the right thing to do to provide all Americans with equitable and fair opportunities to build a better life for themselves, their children and their community. Thank you again for your attention and consideration.

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The National Korean American Service & Education Consortium (NAKASEC) is a member of the Campaign for Community Values, Fair Immigration Reform Movement (FIRM), National Council of Asian Pacific Americans, Reform Immigration for America, and the Rights Working Group, the testimony reflect our 15 years of educating and organizing in Korean American communities.

Testimony of Police Chief J. Thomas Manger  
Montgomery County [Maryland] Department of Police  
Chairman, Major Cities Chiefs Association's Legislative Committee

Senate Judiciary Subcommittee on Immigration  
hearing  
"Comprehensive Immigration Reform in 2009, Can We Do It and How?"  
Thursday 04/30/2009

Mr. Chairman, members of the Committee ...

Thank you for allowing me to speak on the compelling need for comprehensive immigration reform. I am speaking on behalf of the Major Cities Chiefs Association, which is comprised of the 56 largest police departments in the United States.

Let me begin by stating unequivocally that our failure to secure our borders has resulted in significant consequences for local governments. And while I am here to focus on the impacts to local law enforcement, it is important to keep in mind the overwhelming impact it has had on local school systems as well as health & human services agencies. Education, social services and health care are all impacted as much if not more than public safety.

With regard to the role immigration issues play within the law-enforcement community, I will focus my comments primarily on

illegal immigration and the consequences of having millions of undocumented residents living in our cities and towns.

The first thing that any police chief would want you to know is that all individuals—regardless of citizenship—are entitled to basic rights and privileges set forth in common law, state and federal law, and the Constitution of the United States. In addition, all foreign nationals, whether here documented or not, are protected by the Vienna Convention and other international laws.

Indeed, every police chief in this nation would, I hope, tell you that all persons—regardless of citizenship—have a right to expect police service and protection whenever they need it. And herein lies one of the compelling reasons for comprehensive immigration reform: It is tremendously challenging to deliver police service to a community of people who are afraid to have any contact with the police. The results are an increase in unreported crime, reluctant victims and witnesses, and the targeting of immigrants by criminals because the bad guys know that many immigrants will not call the police. It is imperative that we find a way to bring these people out of the shadows so that they get the service they need and deserve.

In addition to the over-representation of our immigrant population as crime victims, the presence of large numbers of undocumented residents adds significantly to local government budgets and increases the workload for public safety. Let me highlight where my officers' duties have been affected:

1. First, an increase in gang activity. Each one of us, in our youth, wanted to feel as though we were a part of something and we were among people who cared about us. For many of us, sports and recreation, church, school and family fulfilled those needs. But for a 13-year-old boy thrown into a school and a neighborhood where he knows no one, unable to speak English, little or no parental involvement because the parents work three jobs and still can't make ends meet ... criminal street gangs offer that boy everything he wants. Again, allowing that family to come out of the shadows gives that boy access to more opportunities and healthier choices.

Police are also struggling with a rise in the crimes of identity theft and other types of fraud. Until just three weeks ago, when the Maryland General Assembly changed the law, Maryland did not require proof of citizenship before issuing a driver's license.

Consequently, undocumented residents came from all over the East Coast, submitted fraudulent information and obtained a Maryland driver's license.

Police departments are also seeing an increase in human-trafficking cases, hate crimes, and cases involving unscrupulous employers not paying day laborers. Many categories of crimes would be favorably impacted by immigration reform.

Perhaps the most significant reason to enact comprehensive immigration reform is to allow police departments all over this nation to get out from being placed squarely in the middle of a huge problem that with which we have little to no control over the solution.

The number of undocumented residents has grown tremendously over the past 15 years. In fact, 15 years ago, outside of a few border cities, I doubt any police chief would have mentioned illegal immigration as even an issue. Today, illegal immigration has affected our budgets, our workload, and most significantly our trust and confidence levels with the community.

Police find themselves trying to respond to pressures from the community and elected officials who have extremely diverse

viewpoints on the police department's role in enforcing immigration law. Nowhere is this challenge more acute than in this country's largest urban settings. This issue has polarized our communities. Municipalities have chosen a range of approaches: some are proud to be a "sanctuary jurisdiction." Not only does local law enforcement **not** inquire about anyone's immigration status but some jurisdictions also will not honor nor serve warrants from the Immigration and Customs Enforcement agency. On the other end of the spectrum, some jurisdictions have adopted policies that prohibit government services going to undocumented individuals, and also have elected to participate in the federal 287(g) training.

Most jurisdictions have adopted policies somewhere between the two approaches I just described.

The overwhelming majority of major-city police agencies have elected not to participate in 287(g) training. In fact, the last figures I've seen indicate that over 95% of police and sheriffs departments in the U.S. have elected **not** to participate in the 287(g) training—primarily because it undermines the **trust and cooperation** with immigrant communities that are essential elements of community policing. We need to have strong policies that take into full account

the realities of local law enforcement. One of those realities is that public safety increases when people have trust and confidence in their police department. Delivering fair and consistent police service to all crime victims has to be a priority.

2. A second reason that most jurisdictions are not taking the 287(g) training is that local agencies do not possess adequate resources to enforce these laws in addition to the added responsibility of Homeland Security. Enforcing federal law is an unfunded mandate that most agencies just cannot afford to do.

3. Third, immigration laws are very complex and the training required to understand them would significantly detract from the core mission of the local police to create safe communities.

Prior to a few years ago, enforcing immigration law was solely a federal responsibility. It was a specialty like the IRS and tax law. If the federal government comes to the conclusion some day that too many people are tax evaders, will the solution be to authorize local police to enforce tax laws? It is contrary to our mission.

The bottom line remains: local law enforcement needs to work closely with all of our federal partners ... but we cannot do their job for them.

Let me conclude by making the most important point of my testimony: no matter what you do, Mr. Chairman, you cannot solve this complex issue if we do not find a way to stop the build up of another group of undocumented residents. Securing our borders must be a top priority.

Let's find a way to align the labor needs in our country with a sensible immigration policy. Let's bring these members of our community out of the shadows and allow them to make a better life for their family. Let's target those undocumented residents with criminal records. Those individuals should find no safe harbor or sanctuary. Let's remove civil-immigration detainees from the NCIC database—don't force local law enforcement officers to become the immigration police.

And finally, consulting and involving local police when developing any immigration initiative is imperative if this initiative involves local law enforcement.

It is imperative that Congress work with the President to enact comprehensive immigration reform. Done right, our country will only become stronger.

# # #

Testimony before the House Committee on Homeland Security  
***“Examining 287(g): The Role of State and Local Law Enforcement in  
Immigration Law”***

Chief J. Thomas Manger, Montgomery County (Maryland) Police  
Department, Chairman of the Legislative Committee for the Major Cities Chiefs  
Association, presents testimony on behalf of the Major Cities Chiefs:

**Enforcement of Immigration Laws by Local Police Agencies:**

**A. STATEMENT OF ISSUE:**

Illegal immigration is a problem that vases our nation and society as a whole and one that must be dealt with at the national level. It is absolutely critical that our country develop a consistent unified national plan to deal with immigration and this plan must include the critical component of securing our borders to prevent illegal entry into the United States.

Since the horrendous attacks of September 11, 2001, local law enforcement has been called upon to do its part in protecting the nation from future terrorist attacks. The response of local law enforcement to the call to protect the homeland has been tremendous. Today, local police agencies stand as the first line of defense here at home to prevent future attacks. Local law enforcement’s unending efforts include providing additional training and equipment to officers, increasing communication and coordination with federal agencies, gathering, assessing and sharing intelligence, modifying patrol methods and increasing security for potential targets such as power plants, airports, monuments, ports and other critical facilities and infrastructure. Much of these efforts have been at a high cost to local budgets and resources.

The federal government and others have also called upon local police agencies to become involved in the enforcement of federal immigration laws as part of the effort to protect the nation. This issue has been a topic of great debate in the law enforcement community since September 11<sup>th</sup>. The call for local enforcement of federal immigration laws has become more prominent during the debate over proposed immigration reform at the national level.

Major city police departments have a long undeniable history of working with federal law enforcement agencies to address crime in the United States, whether committed by citizens, visitors, and/or illegal immigrants. Local police agencies have not turned a blind eye to crimes related to illegal immigration. They have worked and continue to work daily with federal agencies whenever possible and to the extent allowable under state criminal law enforcement authority to address crimes such as human trafficking and gang violence, which have a nexus with illegal immigration.

How local agencies respond to the call to enforce immigration laws could fundamentally change the way they police and serve their communities. Local enforcement of federal immigration laws raises many daunting and complex legal, logistical and resource issues for local agencies and the diverse communities they serve. Some in local law enforcement would embrace immigration enforcement as a means of addressing the violation of law represented by illegal immigration across our borders. Many others recognize the obstacles, pitfalls, dangers and negative consequences to local policing that would be caused by immigration enforcement at the local level.

It is important for Major Cities Chiefs [MCC] as a leader and representative of the local law enforcement community to develop consensus on this important subject. The purpose of this position statement is to evaluate and address the impact and potential consequences of local enforcement of federal immigration laws and to highlight steps that, if taken, might allow local agencies to become involved in immigration enforcement. It is hoped that this statement will help to draw attention to the concerns of local law enforcement and provide a basis upon which to discuss and shape any future national policy on this issue. In this regard it is absolutely critical that MCC be involved in all phases of this debate from developing this official position statement to demanding input and involvement in the development of any national initiatives.

#### **B. OVERVIEW OF IMMIGRATION AND IMMIGRANT STATUS**

The federal government has the clear authority and responsibility over immigration and the enforcement of immigration laws. With this authority, the federal government has enacted laws, such as the Immigration and Naturalization Act (INA), that regulate a person's entry into the United States, his or her ability to remain in the country, and numerous other aspects of immigration. The federal government has given federal agencies such as Immigration and Customs Enforcement [ICE] the specific authority to investigate a person's immigration status and deport individuals who have no legal status or authority to be in the United States.

Under the current immigration laws there exist various immigration-status classifications. The immigration status of any particular person can vary greatly. The most common status classifications include the following:

- 1) **Legal Immigrants** are citizens of other countries who have been granted a visa that allows them to live and work permanently in the United States and to become naturalized U.S. citizens. Once here, they receive a card, commonly referred to as a "green card" from the federal government indicating they are permanent residents. Some legal immigrants are refugees who fear persecution based on race, religion, nationality, membership in a

particular social group, or political opinion in their home countries. Refugees are resettled every year in the United States after they requests for asylum have been reviewed and granted.

- 2) **Nonimmigrant Visa Holders** are persons who are granted temporary entry into the United States for a specific purpose, such as visiting, working, or studying. The U.S. has 25 types of nonimmigrant visas, including A1 visas for ambassadors, B2 visas for tourists, P1 visas for foreign sports stars who play on U.S. teams and TN visas for Canadians and Mexicans entering the U.S. to work under NAFTA. Visa Holders are allowed to stay in the U.S. as long as they meet the terms of their status.
- 3) **Illegal Immigrants** are citizens of other countries who have entered or remained in the U.S. without permission and without any legal status. Most illegal immigrants cross a land or sea border without being inspected by an immigration officer. Some persons fall into illegal status simply by violating the terms of a legal entry document or visa.
- 4) **Absconders** are persons who entered the United States legally but have since violated the conditions of their visa and who have had a removal, deportation, or exclusion hearing before an immigration judge and are under a final order of deportation and have not left the United States.

C. **CONCERNS WITH LOCAL ENFORCEMENT OF FEDERAL IMMIGRATION LAWS**

Local police agencies must balance any decision to enforce federal immigration laws with their daily mission of protecting and serving diverse communities, while taking into account: limited resources; the complexity of immigration laws; limitations on authority to enforce; risk of civil liability for immigration enforcement activities and the clear need to foster the trust and cooperation from the public including members of immigrant communities.

1) **Undermine Trust and Cooperation of Immigrant Communities**

Major urban areas throughout the nation are comprised of significant immigrant communities. In some areas the immigrant community reaches 50%-60% of the local population. Local agencies are charged with protecting these diverse populations with communities of both legal and illegal immigrants. The reality is that undocumented immigrants are a significant

part of the local populations that major police agencies must protect, serve and police.

Local agencies have worked very hard to build trust and a spirit of cooperation with immigrant groups through community-based policing and outreach programs and specialized officers who work with immigrant groups. Local agencies have a clear need to foster trust and cooperation with everyone in these immigrant communities. Assistance and cooperation from immigrant communities is especially important when an immigrant—whether documents or undocumented—is the victim of or witness to a crime. These persons must be encouraged to file reports and come forward with information. Their cooperation is needed to prevent and solve crimes and maintain public order, safety and security in the whole community. Local police contacts in immigrant communities are important as well in the area of intelligence-gathering to prevent future terroristic attacks and to strengthen homeland security.

Immigration enforcement by local police would likely negatively affect and undermine the level of trust and cooperation between local police and immigrant communities. If the undocumented immigrant's primary concern is that he/she will be deported or subjected to an immigration-status investigation, then the individual will not come forward and provide needed assistance and cooperation. Distrust and fear of contacting or assisting the police would develop among legal immigrants as well. Undoubtedly legal immigrants would avoid contact with the police for fear that they themselves or undocumented family members or friends may become subject to immigration enforcement. Without assurances that contact with the police would not result in purely civil immigration-enforcement action, the hard-won trust, communication and cooperation from the immigrant community would disappear. Such a divide between the local police and immigrant groups would result in increased crime against immigrants and in the broader community, create a class of silent victims, and eliminate the potential for assistance from immigrants in solving crimes or preventing future terroristic acts.

## 2) **Lack of Resources**

The budgets and resources of local police agencies are not unlimited. Local police agencies struggle every year to find the resources to police and serve their respective communities. Since the events of September 11, local agencies have taken on the added duty of serving as the first line of defense and response to terrorist attacks for our country. These efforts on the local level to deter and prevent another terrorist attack and to be prepared to respond to the aftermath of an attack have stretched local resources even further. Since the creation of the Homeland Security Department, federal funding for major city police departments has been greatly reduced. Local agencies have also had to take on more responsibilities in areas that have traditionally been handled by

the FBI, whose investigative resources are now more focused on counter-terrorism efforts. Local agencies are forced to fill the gap left by the shift of federal resources away from investigating white-collar crimes and bank robberies, areas traditionally handled by federal agencies.

Enforcement of federal immigration laws would be a burden that most major police agencies would not be able to bear under current resource levels. The cost in terms of personnel, facilities and equipment necessary for local agencies to address the 8-12 million illegal immigrants currently living in the United States would be overwhelming. The federal government, which has primary authority to enforce immigration laws, has itself failed to provide the tremendous amount of resources necessary to accomplish such enforcement to its own agencies specifically charged with that responsibility. Local communities and agencies have even fewer resources to devote to such an effort than does the federal government, given all the numerous other demands on local police departments.

Local police agencies must meet their existing policing and homeland-security duties and can not even begin to consider taking on the added burden of immigration enforcement until federal assistance and funding are in place to support such enforcement. Current calls for local police agencies to enforce immigration come with no clear statement or guarantee to provide adequate federal funding. Local agencies also fear that the call for local enforcement of immigration laws signals the beginning of a trend towards local police agencies being asked to enter other areas of federal regulation or enforcement.

### 3) **Complexity of Federal Immigration Law**

Federal immigration laws are extremely complicated in that they involve both civil and criminal aspects. The federal government and its designated agencies such as ICE and the Department of Justice have clear authority and responsibility to regulate and enforce immigration laws. It is these federal agencies who have the authority to determine if a person will be criminally prosecuted for his/her violations of immigration laws or be dealt with through a civil-deportation process. Based on their authority, training, experience and resources available to them, these federal agencies and the federal courts are in the best position to determine whether or not a person has entered or remained in the country in violation of federal regulations and the applicability of criminal sanctions.

Immigration violations are different from the typical criminal offenses that patrol officers face every day on their local beats. The law enforcement activities of local police officers revolve around crimes such as murder, assaults, narcotics, robberies, burglaries, domestic violence, traffic violations and the myriad of other criminal matters they handle on a regular basis. The

specific immigration status of any particular person can vary greatly and whether the person is in fact in violation of the complex federal immigration regulations would be very difficult if not almost impossible for the average patrol officer to determine. At this time local police agencies are ill-equipped in terms of training, experience and resources to delve into the complicated area of immigration enforcement.

4) **Lack of Local Authority and State Law Limitations of Authority**

The federal government has clear authority over immigration and immigration enforcement. Federal law does not require the states or local police agencies to enforce immigration laws nor does it give the states or local agencies the clear authority to act in the area of immigration.

Laws in their respective states define the authority of local police officers. The authority of local police officers to act to enforce against criminal acts is clear and well established. Federal immigration laws, however, include both civil and criminal process to address immigration violations. It is within the authority of federal agencies such as ICE and the Department of Justice to determine if an immigration violation will be dealt with as a criminal matter or through a civil process. Given the complexity of the immigration laws, it would be difficult for local police agencies to determine if a particular violation would result in criminal charges or purely civil proceedings and regulation. This duality in immigration law creates a gap in authority for local police officers who generally are limited to acting only in criminal matters.

In addition, state laws may restrict a local police officer's authority to act even in criminal matters in such a way that it would prevent or hinder the officer's ability to investigate, arrest or detain a person for immigration violations alone. Federal agents are specifically authorized to stop persons and conduct investigations as to immigration status without a warrant. Local police officers may be constrained by local laws that deal with their general police powers such as the ability to arrest without a warrant, lengths of detention and prohibitions against racial profiling.

An example of this conflict between the civil nature of immigration enforcement and the established criminal authority of local police exists in the federal initiative of placing civil immigration detainer notices on the NCIC system. The NCIC system had previously been used only to notify law enforcement of strictly criminal warrants and/or criminal matters. The civil detainees being placed on this system by federal agencies notify local officers that the detainees are civil in nature by including a warning that local officers should not act upon the detainees unless permitted by the laws of their state. This initiative has created confusion due to the fact that these civil detainees do not fall within the clear criminal-enforcement authority of local police agencies and in

fact lays a trap for unwary officers who believe them to be valid criminal warrants or detainers.

5) **Risk of Civil Liability**

In the past, local law enforcement agencies have faced civil litigation and liability for their involvement in immigration enforcement. For example, the Katy, Texas, Police Department participated in an immigration raid with federal agents in 1994. A total of 80 individuals who were detained by the police were later determined to be either citizens or legal immigrants with permission to be in the country. The Katy Police Department faced suits from these individuals and eventually settled their claims out of court.

Because local agencies currently lack clear authority to enforce immigration laws, are limited in their ability to arrest without a warrant, are prohibited from racial profiling and lack the training and experience to enforce complex federal immigration laws, it is more likely that local police agencies will face the risk of civil liability and litigation if they chose to enforce federal immigration laws.

D. **MCC's NINE-POINT POSITION STATEMENT**

Based upon a review, evaluation and deliberation regarding the important and complex issue of local enforcement of federal immigration laws, the members of MCC, who are the 56 Chief Executive Officers of police departments located within a metropolitan area of more than 1.5 million population and which employ more than 1,000 law enforcement officers, hereby set forth our consensus-position statement, which is comprised of nine crucial components.

1) **SECURE THE BORDERS**

Illegal immigration is a national issue and the federal government should first act to secure the national borders to prevent illegal entry into the United States. We support further and adequate funding of the federal agencies responsible for border security and immigration enforcement so they can accomplish this goal. We also support consideration of all possible solutions including construction of border fences where appropriate, use of surveillance technologies and increases in the number of border-patrol agents. Only when the federal government takes the necessary steps to close the revolving door that exists at our national borders will it be possible for local police agencies to even begin to consider dedicating limited local resources to immigration enforcement.

2) **ENFORCE LAWS PROHIBITING THE HIRING OF ILLEGAL IMMIGRANTS**

The federal government and its agencies should vigorously enforce existing immigration laws prohibiting employers from hiring illegal immigrants. Enforcement and prosecution of employers who illegally seek out and hire undocumented immigrants or turn a blind eye to the undocumented status of their employees will help to eliminate one of the major incentives for illegal immigration.

3) **CONSULT AND INVOLVE LOCAL POLICE AGENCIES IN DECISION-MAKING**

Major Cities Chiefs and other representatives of the local law enforcement community such as the International Association of Chiefs of Police and local district attorneys and prosecutors should be consulted and brought in at the beginning of any process to develop a national initiative to involve local police agencies in the enforcement of federal immigration laws. The inclusion of local law enforcement at every level of development would utilize their perspective and experience in local policing, address their concerns and likely result in a better program that would be more effectively implemented.

4) **COMPLETELY VOLUNTARY**

Any initiative to involve local police agencies in the enforcement of immigration laws should be completely voluntary. The decisions related to how local law enforcement agencies allocate their resources, direct their workforce and define the duties of their employees to best serve and protect their communities should be left in the control of state and local governments. The decision to enter this area of enforcement should be left to the local government and not mandates or forced upon them by the federal government through the threat of sanctions or the withholding of existing police assistance funding.

5) **INCENTIVE-BASED APPROACH WITH FULL FEDERAL FUNDING**

Any initiative to involve local police agencies in the enforcement of immigration laws should be an incentive-based approach with full federal funding to provide the necessary resources to the local agencies that choose to enforce immigration laws. Federal funds should be available to participating local agencies to cover the costs associated with enforcement such as expenditures on equipment and technology, training and educational programs and costs of housing, caring for and transporting immigrants prior to their release to federal authorities.

6) **NO REDUCTION OR SHIFTING OF CURRENT ASSISTANCE FUNDING**

The funding of any initiative to involve local police agencies in the enforcement of immigration laws should not be at the detriment or reduction directly or indirectly of any current federal funding or programs focused on assisting local police agencies with local policing or homeland-security activities. Local police agencies are currently working on strained budgets and limited resources to meet local policing needs and strengthening homeland security and in fact need increased funding and grant assistance in these areas. Merely shifting or diverting federal funding currently available for local policing and homeland-security activities to any new immigration-enforcement initiative would only result in a detrimental net loss of total resources available to local police agencies to police their neighborhoods and strengthen homeland security.

7) **CLARIFICATION OF AUTHORITY AND LIMITATION OF LIABILITY**

The authority of local police agencies and their officers to become involved in the enforcement of immigration laws should be clearly stated and defined. The statement of authority should also establish liability protection and an immunity shield for police officers and police agencies that take part in immigration enforcement as authorized by clear federal legislation.

8) **REMOVAL OF CIVIL IMMIGRATION DETAINEES FROM THE NCIC SYSTEM**

Until the borders are secured and vigorous enforcement against employers who hire illegal immigrants has taken place and the concerns regarding lack of authority and confusion over the authority of local agencies to enforce immigration laws and the risk of civil liabilities are adequately addressed, MCC strongly requests that the federal agencies cease placing civil-immigration detainees on NCIC and remove any existing civil detainees currently on the system. The integrity of the system as a notice system for criminal warrants and/or criminal matters must be maintained. The inclusion of civil detainees on the system has created confusion for local police agencies and subjected them to possible liability for exceeding their authority by arresting a person upon the basis of a mere civil detainee.

MCC would encourage the federal agencies to seek federal criminal warrants for any person they have charged criminally with violations of immigration laws and to submit those criminal warrants on the NCIC system so the warrants can be acted upon by local police officers within their established criminal-enforcement authority and training.

9) **COMMITMENT OF CONTINUED ENFORCEMENT AGAINST  
CRIMINAL VIOLATORS REGARDLESS OF IMMIGRATION  
STATUS**

MCC member agencies are united in their commitment to continue arresting anyone who violates the criminal laws of their jurisdictions regardless of the immigration status of the perpetrator. **Those immigrants—documented and/or undocumented—who commit criminal acts will find no safe harbor or sanctuary from their criminal violations of the law within any major city but will instead face the full force of criminal prosecution.**

**Chief Manger's oral testimony before the Committee:**

Mr. Chairman, distinguished members of the Committee ... I'm Chief Tom Manger, Chief of Police in Montgomery County, Maryland, and Chairman of the Major Cities Chiefs Legislative Committee. The Major Cities Chiefs Association represents the 56 largest police departments in the U.S. and we are the first responders to over 50 million residents.

Each one of these 56 police chiefs is dealing every day with the issues of undocumented residents and the crime committed by a fraction of these residents. Nowhere is this challenge more acute than in this country's largest urban settings.

Local governments have, by necessity, had to react and respond to the growing number of challenges caused by an increasing population of undocumented residents. Municipalities have chosen a range of approaches:

Some are proud to be "sanctuary jurisdiction." Not only does local law enforcement not inquire about anyone's immigration status, some jurisdictions will not honor nor serve warrants from immigration and customs enforcement agency. On the other end of the spectrum, some jurisdictions have adopted policies that prohibit government services going to undocumented individuals and have elected to participate in the federal 287(g) training.

Most jurisdictions have adopted policies somewhere between the two approaches I just described.

The overwhelming majority of major city police agencies have elected not to participate in 287(g) training. In fact, the last figures I've seen indicate that

over 95% of police and sheriffs departments in the U.S. have elected not to participate in the 287(g) training. I think it is important to make two points here:

- 1) we are not critical of those agencies who do participate in 287(g);
- 2) we believe that there should be strong cooperation and coordination with all of our federal law enforcement partners, including ICE.

So why have the nation's largest police agencies elected not to participate in 287(g)?

First, it undermines the trust and cooperation with immigrant communities that are essential elements of community policing. We need to have strong policies that take into full account the realities of local law enforcement. One of those realities is that public safety increases when people have trust and confidence in their police department. Consequently, unreported crime goes down. Another reality is that immigrants—both documented and undocumented—are more likely to be victims of crimes than are U.S. citizens. Delivering fair and consistent police service to all crime victims has to be a priority.

A second reason that most jurisdictions are not taking the 287(g) training is that local agencies do not possess adequate resources to enforce these laws in addition to the added responsibility of Homeland Security. Enforcing federal law is an unfunded mandate that most agencies just cannot afford to do.

Third, immigration laws are very complex and the training required to understand them would significantly detract from the core mission of the local police to create safe communities.

Prior to a few years ago, enforcing immigration law was solely a federal responsibility. It was a specialty like the IRS and tax law. If the federal government comes to the conclusion some day that too many people are tax evaders, will the solution be to authorize local police to enforce tax laws? It is contrary to our mission.

That said, working cooperatively with our federal partners is essential for public safety. Using the IRS again as an example, when we make a case against an individual as a major narcotics distributor, notifying and working closely with the IRS is the effective thing to do.

In the same way, working closely with ICE on human-traffic cases, gang investigations, and fraudulent-document cases is a proven crime-fighting technique.

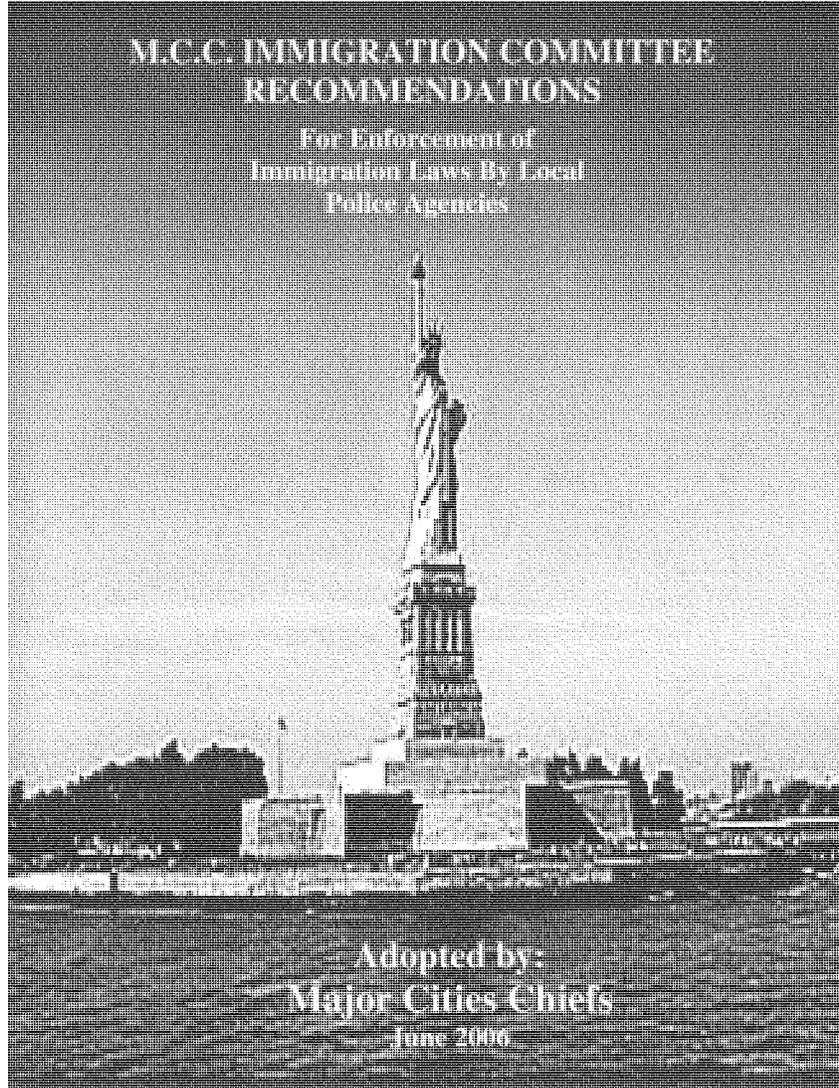
The bottom line is this: local law enforcement needs to work closely and effectively with ICE ... but we cannot do their job for them.

The Major Cities Chiefs have sent a clear and consistent message to each attorney general for the past eight years:

- 1) securing our borders must be a top propriety
- 2) remove the civil-immigration detainees from the NCIC data base. In August 2003, Attorney General John Ashcroft put these civil warrants in a national database that had previously been for criminal warrants. Our current Attorney General can remedy this with the stroke of a pen.
- 3) Consulting and involving local police agencies when developing any immigration initiative is imperative if the initiative is to involve local law enforcement.

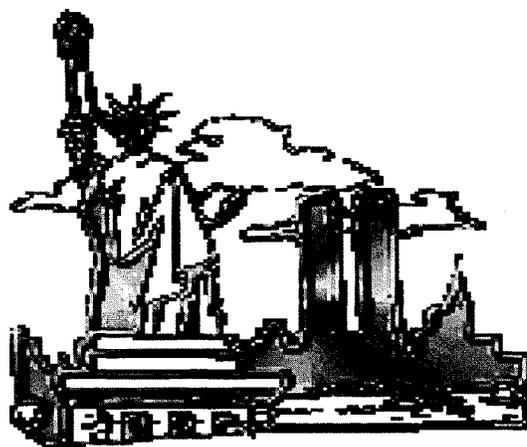
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JTM:mam



**Prepared By:**

**M.C.C. IMMIGRATION  
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## **M.C.C. NINE (9) POINT POSITION** **STATEMENT**

### ***ENFORCEMENT OF IMMIGRATION LAWS BY LOCAL POLICE AGENCIES***

#### **A. STATEMENT OF ISSUE**

Illegal immigration is a problem that faces our nation and society as a whole and one, which must be dealt with at the national level. It is absolutely critical that our country develop a consistent unified national plan to deal with immigration and this plan must include the critical component of securing our borders to prevent illegal entry into the United States.

Since the horrendous attacks of September 11, 2001, local law enforcement has been called upon to do its part in protecting the nation from future terrorist attacks. The response of local law enforcement to the call to protect the homeland has been tremendous. Today, local police agencies stand as the first line of defense here at home to prevent future attacks. Local law enforcement's unending efforts include providing additional training and equipment to officers, increasing communication and coordination with federal agencies, gathering, assessing and sharing intelligence, modifying patrol methods and increasing security for potential targets such as power plants, airports, monuments, ports and other critical facilities and infrastructure. Much of these efforts have been at a high cost to local budgets and resources.

The federal government and others have also called upon local police agencies to become involved in the enforcement of federal immigration laws as part of the effort to protect the nation. This issue has been a topic of great debate in the law enforcement community since September 11. The call for local enforcement of federal immigration laws has become more prominent during the debate over proposed immigration reform at the national level.

Major city police departments have a long undeniable history of working with federal law enforcement agencies to address crime in the United States whether committed by citizens, visitors, and/or illegal immigrants. Local police agencies have not turned a blind eye to crimes related to illegal immigration. They have and continue to work daily with federal agencies whenever possible and to the extent allowable under state criminal law enforcement authority to address crimes such as human trafficking and gang violence which have a nexus with illegal immigration.

How local agencies respond to the call to enforce immigration laws could fundamentally change the way they police and serve their communities. Local enforcement of federal immigration laws raises many daunting and complex legal, logistical and resource issues for local agencies and the diverse communities they serve. Some in local law enforcement would embrace

immigration enforcement as a means of addressing the violation of law represented by illegal immigration across our borders. Many others recognize the obstacles, pitfalls, dangers and negative consequences to local policing that would be caused by immigration enforcement at the local level.

It is important for Major Cities Chiefs [M.C.C.] as a leader and representative of the local law enforcement community develop consensus on this important subject. The purpose of this position statement is to evaluate and address the impact and potential consequences of local enforcement of federal immigration laws and highlight steps, which if taken might allow local agencies to become involved in immigration enforcement. It is hoped that this statement will help to draw attention to the concerns of local law enforcement and provide a basis upon which to discuss and shape any future national policy on this issue. In this regard it is absolutely critical that M.C.C. be involved in all phases of this debate from developing this official position statement to demanding input and involvement in the development of any national initiatives.

## **B. OVERVIEW OF IMMIGRATION AND IMMIGRANT STATUS**

The federal government has the clear authority and responsibility over immigration and the enforcement of immigration laws. With this authority, the federal government has enacted laws, such as the Immigration and Naturalization Act (INA), that regulate a person's entry into the United States, his or her ability to remain in the country, and numerous other aspects of immigration. The federal government has given federal agencies such as Immigration and Customs Enforcement [I.C.E.] the specific authority to investigate a person's immigration status and deport individuals who have no legal status or authority to be in the United States.

Under the current immigration laws there exists various immigration status classifications. The immigration status of any particular person can vary greatly. The most common status classifications include the following:

- 1) **Legal Immigrants** are citizens of other countries who have been granted a visa that allows them to live and work permanently in the United States and to become naturalized U.S. citizens. Once here, they receive a card, commonly referred to as a "green card" from the federal government indicating they are permanent residents. Some legal immigrants are refugees who fear persecution based on race, religion, nationality, membership in a particular social group, or political opinion in their home countries. Refugees are resettled every year in the United States after their requests for asylum have been reviewed and granted.
- 2) **Nonimmigrant Visa Holders** are persons who are granted temporary entry into the United States for a specific purpose, such as visiting, working, or studying. The U.S. has 25 types of nonimmigrant visas, including A1 visas for ambassadors, B2 visas for tourists, P1 visas for foreign sports stars who play on U.S. teams and TN visas for Canadians and Mexicans entering the U.S. to work under NAFTA. Visa Holders are allowed to stay in the U.S. as long as they meet the terms of their status.

- 3) **Illegal Immigrants** are citizens of other countries who have entered or remained in the U.S. without permission and without any legal status. Most illegal immigrants cross a land or sea border without being inspected by an immigration officer. Some person falls into illegal status simply by violating the terms of a legal entry document or visa.
- 4) **Absconders** are persons who entered the United States legally but have since violated the conditions of their visa and who have had a removal, deportation, or exclusion hearing before an immigration judge and are under a final order of deportation and have not left the United States.

Currently there are between 8-12 million illegal immigrants living in the U.S., with another estimated 800,000 illegal immigrants entering the country every year. These immigrants by their sheer numbers have become a significant part of local communities and major cities in our nation. Some major urban areas estimate that their immigrant communities, regardless of immigration status, comprise 50%-60% of the local population and other areas report similar trends. The reality for major local police agencies throughout the nation is that the communities they serve and protect are diverse and include significant immigrant communities including documented and undocumented immigrants.

### **C. CONCERNS WITH LOCAL ENFORCEMENT OF FEDERAL IMMIGRATION LAWS**

Local police agencies must balance any decision to enforce federal immigration laws with their daily mission of protecting and serving diverse communities, while taking into account: limited resources; the complexity of immigration laws; limitations on authority to enforce; risk of civil liability for immigration enforcement activities and the clear need to foster the trust and cooperation from the public including members of immigrant communities.

#### **1) Undermine Trust and Cooperation of Immigrant Communities**

Major urban areas throughout the nation are comprised of significant immigrant communities. In some areas the immigrant community reaches 50-60 percent of the local population. Local agencies are charged with protecting these diverse populations with communities of both legal and illegal immigrants. The reality is that undocumented immigrants are a significant part of the local populations major police agencies must protect, serve and police.

Local agencies have worked very hard to build trust and a spirit of cooperation with immigrant groups through community based policing and outreach programs and specialized officers who work with immigrant groups. Local agencies have a clear need to foster trust and cooperation with everyone in these immigrant communities. Assistance and cooperation from immigrant communities is especially important when an immigrant, whether documented or undocumented, is the victim of or witness to a crime. These persons must be encouraged to file reports and come forward with information. Their cooperation is needed to prevent and solve crimes and maintain public order, safety, and security in the whole community. Local

police contacts in immigrant communities are important as well in the area of intelligence gathering to prevent future terroristic attacks and strengthen homeland security.

Immigration enforcement by local police would likely negatively effect and undermine the level of trust and cooperation between local police and immigrant communities. If the undocumented immigrant's primary concern is that they will be deported or subjected to an immigration status investigation, then they will not come forward and provide needed assistance and cooperation. Distrust and fear of contacting or assisting the police would develop among legal immigrants as well. Undoubtedly legal immigrants would avoid contact with the police for fear that they themselves or undocumented family members or friends may become subject to immigration enforcement. Without assurances that contact with the police would not result in purely civil immigration enforcement action, the hard won trust, communication and cooperation from the immigrant community would disappear. Such a divide between the local police and immigrant groups would result in increased crime against immigrants and in the broader community, create a class of silent victims and eliminate the potential for assistance from immigrants in solving crimes or preventing future terroristic acts.

## **2) Lack of Resources**

The budgets and resources of local police agencies are not unlimited. Local police agencies struggle every year to find the resources to police and serve their respective communities. Since the events of September 11, local agencies have taken on the added duty of serving as the first line of defense and response to terrorist attacks for our country. These efforts on the local level to deter and prevent another terrorist attack and to be prepared to respond to the aftermath of an attack have stretched local resources even further. Since the creation of the Homeland Security Department, federal funding for major city police departments has been greatly reduced. Local agencies have also had to take on more responsibilities in areas that have traditionally been handled by the F.B.I. whose investigative resources are now more focused on counter-terrorism efforts. Local agencies are forced to fill the gap left by the shift of federal resources away from investigating white-collar crimes and bank robberies; areas traditionally handled by federal agencies.

Enforcement of federal immigration laws would be a burden that most major police agencies would not be able to bear under current resource levels. The cost in terms of personnel, facilities and equipment necessary for local agencies to address the 8-12 million illegal immigrants currently living in the United States would be overwhelming. The federal government which has primary authority to enforce immigration laws has itself failed to provide the tremendous amount of resources necessary to accomplish such enforcement to its own agencies specifically charged with that responsibility. Local communities and agencies have even fewer resources to devote to such an effort than the federal government given all the numerous other demands on local police departments.

Local police agencies must meet their existing policing and homeland security duties and can not even begin to consider taking on the added burden of immigration enforcement until federal assistance and funding are in place to support such enforcement. Current calls for local police agencies to enforce immigration come with no clear statement or guarantee to provide

adequate federal funding. Local agencies also fear that the call for local enforcement of immigration laws signals the beginning of a trend towards local police agencies being asked to enter other areas of federal regulation or enforcement.

### **3) Complexity of Federal Immigration Law**

Federal immigration laws are extremely complicated in that they involve both civil and criminal aspects. The federal government and its designated agencies such as I.C.E. and the Department of Justice have clear authority and responsibility to regulate and enforce immigration laws. It is these federal agencies who have the authority to determine if a person will be criminally prosecuted for their violations of immigration laws or be dealt with through a civil deportation process. Based on their authority, training, experience and resources available to them, these federal agencies and the federal courts are in the best position to determine whether or not a person has entered or remained in the country in violation of federal regulations and the applicability of criminal sanctions.

Immigration violations are different from the typical criminal offenses that patrol officers face every day on their local beats. The law enforcement activities of local police officers revolve around crimes such as murder, assaults, narcotics, robberies, burglaries, domestic violence, traffic violations and the myriad of other criminal matters they handle on a regular basis. The specific immigration status of any particular person can vary greatly and whether they are in fact in violation of the complex federal immigration regulations would be very difficult if not almost impossible for the average patrol officer to determine. At this time local police agencies are ill equipped in terms of training, experience and resources to delve into the complicated area of immigration enforcement.

### **4) Lack of Local Authority and State Law Limitations of Authority**

The federal government has clear authority over immigration and immigration enforcement. Federal law does not require the states or local police agencies to enforce immigration laws nor does it give the states or local agencies the clear authority to act in the area of immigration.

Laws in their respective states define the authority of local police officers. The authority of local police officers to act to enforce against criminal acts is clear and well established. However, federal immigration laws include both civil and criminal process to address immigration violations. It is within the authority of federal agencies such as I.C.E. and the Department of Justice to determine if an immigration violation will be dealt with as a criminal matter or through a civil process. Given the complexity of the immigration laws, it would be difficult for local police agencies to determine if a particular violation would result in criminal charges or purely civil proceedings and regulation. This duality in immigration law creates a gap in authority for local police officers who generally are limited to acting only in criminal matters.

In addition state laws may restrict a local police officer's authority to act even in criminal matters in such a way that it would prevent or hinder the officer's ability to investigate, arrest or detain a person for immigration violations alone. Federal agents are specifically authorized to stop persons and conduct investigations as to immigration status without a warrant. Local police

officers may be constrained by local laws that deal with their general police powers such as the ability to arrest without a warrant, lengths of detention and prohibitions against racial profiling.

An example of this conflict between the civil nature of immigration enforcement and the established criminal authority of local police exists in the federal initiative of placing civil immigration detainer notices on the N.C.I.C. system. The N.C.I.C. system had previously only been used to notify law enforcement of strictly criminal warrants and/or criminal matters. The civil detainees being placed on this system by federal agencies notify local officers that the detainees are civil in nature by including a warning that local officers should not act upon the detainees unless permitted by the laws of their state. This initiative has created confusion due to the fact that these civil detainees do not fall within the clear criminal enforcement authority of local police agencies and in fact lays a trap for unwary officers who believe them to be valid criminal warrants or detainees.

#### **5) Risk of Civil Liability**

In the past, local law enforcement agencies have faced civil litigation and liability for their involvement in immigration enforcement. For example, the Katy, Texas Police Department participated in an immigration raid with federal agents in 1994. A total of 80 individuals who were detained by the police were later determined to be either citizens or legal immigrants with permission to be in the country. The Katy police department faced suits from these individuals and eventually settled their claims out of court.

Because local agencies currently lack clear authority to enforce immigration laws, are limited in their ability to arrest without a warrant, are prohibited from racial profiling and lack the training and experience to enforce complex federal immigration laws, it is more likely that local police agencies will face the risk of civil liability and litigation if they chose to enforce federal immigration laws.

### **D. M.C.C. NINE (9) POINT POSITION STATEMENT**

**Based upon a review, evaluation and deliberation regarding the important and complex issue of local enforcement of federal immigration laws, the members of M.C.C., who are the 57 Chief Executive Officers of police departments located within a metropolitan area of more than 1.5 million population and which employs more than 1,000 law enforcement officers, hereby set forth our consensus position statement, which is comprised of nine crucial components.**

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**2) ENFORCE LAWS PROHIBITING THE HIRING OF ILLEGAL IMMIGRANTS**

The federal government and its agencies should vigorously enforce existing immigration laws prohibiting employers from hiring illegal immigrants. Enforcement and prosecution of employers who illegally seek out and hire undocumented immigrants or turn a blind eye to the undocumented status of their employees will help to eliminate one of the major incentives for illegal immigration.

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Major Cities Chiefs and other representatives of the local law enforcement community such as the International Association of Chiefs of Police and local district attorneys and prosecutors should be consulted and brought in at the beginning of any process to develop a national initiative to involve local police agencies in the enforcement of federal immigration laws. The inclusion of local law enforcement at every level of development would utilize their perspective and experience in local policing, address their concerns and likely result in a better program that would be more effectively implemented.

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**5) INCENTIVE BASED APPROACH WITH FULL FEDERAL FUNDING**

Any initiative to involve local police agencies in the enforcement of immigration laws should be an incentive based approach with full federal funding to provide the necessary resources to the local agencies that choose to enforce immigration laws. Federal funds should be available to participating local agencies to cover the costs associated with enforcement such as expenditures on equipment and technology, training and educational programs and costs of housing, caring for and transporting immigrants prior to their release to federal authorities.

**6) NO REDUCTION OR SHIFTING OF CURRENT ASSISTANCE FUNDING**

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The authority of local police agencies and their officers to become involved in the enforcement of immigration laws should be clearly stated and defined. The statement of authority should also establish liability protection and an immunity shield for police officers and police agencies that take part in immigration enforcement as authorized by clear federal legislation.

**8) REMOVAL OF CIVIL IMMIGRATION DETAINERS FROM THE N.C.I.C. SYSTEM**

Until the borders are secured and vigorous enforcement against employers who hire illegal immigrants has taken place and the concerns regarding lack of authority and confusion over the authority of local agencies to enforce immigration laws and the risk of civil liabilities are adequately addressed, M.C.C. strongly requests that the federal agencies cease placing civil immigration detainees on N.C.I.C. and remove any existing civil detainees currently on the system. The integrity of the system as a notice system for criminal warrants and/or criminal matters must be maintained. The inclusion of civil detainees on the system has created confusion for local police agencies and subjected them to possible liability for exceeding their authority by arresting a person upon the basis of a mere civil detainee.

**M.C.C. would encourage the federal agencies to seek federal criminal warrants for any person they have charged criminally with violations of immigration laws and submit those criminal warrants on the N.C.I.C. system so the warrants can be acted upon by local police officers within their established criminal enforcement authority and training.**

**9) COMMITMENT OF CONTINUED ENFORCEMENT AGAINST CRIMINAL VIOLATORS REGARDLESS OF IMMIGRATION STATUS**

**M.C.C. member agencies are united in their commitment to continue arresting anyone who violates the criminal laws of their jurisdictions regardless of the immigration status of the perpetrator. Those immigrants, documented and/or undocumented, who commit criminal acts will find no safe harbor or sanctuary from their criminal violations of the law within any major city but will instead face the full force of criminal prosecution.**



## DEALING WITH FOREIGN NATIONALS

**FC No.: 520**

**Date: 02-11-09**

If a provision of a regulation, departmental directive, rule, or procedure conflicts with a provision of the contract, the contract prevails except where the contract provision conflicts with State law or the Police Collective Bargaining Law. (FOP Contract, Article 61)

**Contents:**

- I. Policy
- II. Questioning of Foreign Nationals/Arrest Policy
- III. Foreign Nationals as Victims/Witnesses
- IV. Arrest Procedures
- V. Consular Relations
- VI. Contact Information
- VII. CALEA Standards
- VIII. Proponent Unit
- IX. Cancellation

**I. Policy**

All individuals, regardless of citizenship, are entitled to basic rights and privileges which are set forth in common law, state and federal law, and the Maryland and United States Constitutions. In addition, foreign nationals (persons who are not U.S. citizens) may be entitled to rights and privileges set forth in the Vienna Convention and other international laws. It is the policy of the department to provide service to all persons and to exercise its duties in conformance with all applicable laws, regardless of citizenship status, nationality, or racial/ethnic background.

**II. Questioning of Foreign Nationals/Arrest Policy**

**A. Questioning of Foreign Nationals**

The indiscriminate questioning of foreign nationals about their citizenship status (possession of their "green card") without a reasonable basis for suspicion of state/local traffic or criminal charges is unconstitutional according to Supreme Court decisions. Officers may ask a person who is under arrest about their citizenship for the purpose of complying with the Vienna Convention. (See Section IV)

**B. Authority to Arrest**

Officers have no statutory authority to enforce violations of federal immigration laws. If any foreign national is arrested, the arrest must be based on a confirmed warrant or on state/local traffic or criminal charges.

**C. Participation in ICE Raids**

MCP officers are permitted to assist ICE agents when officers have been assigned to a task force or a joint criminal investigation involving ICE agents when the primary focus of the task force or investigation is not federal immigration violations. Examples include, but are not limited to, customs violations, money laundering, narcotics cases, hate crimes, human trafficking, and terrorist activities. Even in these circumstances, officers shall obtain authorization from an Assistant Chief or the Director, SID, prior to participating in an ICE raid. Other exceptions may be made on a case by case basis. Nothing in this order prohibits officers from responding to or being on the scene of any federal warrant service in order to maintain safety in exigent circumstances.

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D. Traffic Violations

If an individual who is stopped for a traffic violation is not wanted for other charges and has a valid permit, the individual should be treated the same as any other violator and not be subjected to arrest or further questioning because of nationality. Without reasonable suspicion of criminal activity, the individual must not be detained longer than necessary for the traffic stop to be completed.

E. Confiscating Immigration Documents

Generally, officers do not have authority to confiscate Resident Alien Cards (a.k.a. "green cards") or Employment Authorization Cards without the express authorization of an ICE official. If an officer has probable cause to believe that immigration documents are altered or counterfeit with fraudulent intent, the officer is permitted to confiscate those documents and to place charges as appropriate for the possession of fraudulent government identification documents (CR 8-303 of the Maryland Annotated Code).

**III. Foreign Nationals as Victims/Witnesses**

- A. A police report/investigation is not contingent upon a person's citizenship. Department employees shall provide service to all persons regardless of their citizenship status.
- B. If it becomes known that a victim or witness who is essential to a case is facing deportation, officers may request that ICE delay the deportation by forwarding their request in writing through the Office of the Chief. If the victim/witness has a criminal history, chances are reduced that ICE will approve such a request. Any approval by ICE to delay deportation does not constitute employment authorization or confer any benefit upon the victim/witness.

**IV. Arrest Procedures**

When foreign nationals are physically arrested, officers will follow the procedures in this section.

- A. The United States is obligated under international treaties and customary international law to notify foreign authorities when foreign nationals are arrested or otherwise detained in the United States. Officers shall:
1. Promptly inform the foreign national of the right to have their government notified concerning their arrest/detention.
  2. If the foreign national asks that such notification be made, do so without delay by informing the nearest consulate or embassy and note that fact in the event report. Consulate phone numbers can be obtained at each district station, ECC, and CPU. Also, officers may obtain assistance and advice from the U.S. Department of State's 24-hour Operations Center at (202) 647-1512.
  3. In the case of certain countries, such notification must be made without delay regardless of whether the arrestee/detainee so wishes. A list of these countries can be obtained at each district station, ECC, and CPU.
- B. The arresting officer will notify ICE by telephone (refer to section VI) as soon as possible after the arrest *for specific offenses, (see IV D)*, and provide the following information:
1. Full name of the arrested subject
  2. Date and place of birth
  3. When and where the foreign national entered the United States (if known)
  4. Charges against the foreign national or the reason for the arrest
  5. The registered alien file number (this number appears on the Resident Alien Card or "green card" issued to registered resident foreign nationals and should be in their possession). If no card is available, ICE will advise the officer of what action to take. The Resident Alien Card is known by many as a "green card," however the color of the card depends on the date it was issued.

- C. The arresting officer's report will include:
1. A statement that the person arrested is in fact a foreign national.
  2. The name of the ICE investigator and the date and time notified.
  3. Registered alien file number, if available.
- D. **Offenses requiring notification to ICE**
1. *Child Abuse, physical, 1<sup>st</sup> degree, CR 3-601*
  2. *Child Abuse, sexual, CR 3-602(b)*
  3. *Arson, 1<sup>st</sup> degree, CR 6-102(a)*
  4. *Assault, 1<sup>st</sup> degree, CR 3-202*
  5. *Unlawful use of handgun in commission of felony or crime of violence, 1<sup>st</sup> offense, CR 4-204(b)(2)*
  6. *Unlawful use of handgun in commission of felony or crime of violence, CR 4-204(b)(1)*
  7. *Child Abduction, Child under 12, CR 3-503(a)(1)*
  8. *Kidnapping, Child under 16, CR 3-503(a)(2)*
  9. *Kidnapping, Generally, CR 3-502(a)*
  10. *Manslaughter, voluntary, CR 2-207*
  11. *Murder, 1<sup>st</sup> degree, CR 2-201(a)*
  12. *Murder, 1<sup>st</sup> degree, attempted, CR 2-205*
  13. *Murder, 2<sup>nd</sup> degree, CR 2-204(a)*
  14. *Murder, 2<sup>nd</sup> degree, attempted, CR 2-206*
  15. *Abduction, Child under 16 for immoral purposes, CR 11-305(a)*
  16. *Carjacking, Unarmed, CR 3-405(b)*
  17. *Carjacking, Armed, CR 3-405(c)*
  18. *Robbery, CR 3-402(a)*
  19. *Robbery With a Dangerous or Deadly Weapon, CR 3-403(a)*
  20. *Rape, 1<sup>st</sup> degree, CR 3-303(a)*
  21. *Attempted Rape, 1<sup>st</sup> degree, CR 3-309(a)*
  22. *Rape, 2<sup>nd</sup> degree, CR 3-304(a)*
  23. *Attempted Rape, 2<sup>nd</sup> degree, CR 3-310(a)*
  24. *Sex Offense, 1<sup>st</sup> degree, CR 3-305(a)*
  25. *Attempted Sexual Offense, 1<sup>st</sup> degree, CR 3-311(a)*
  26. *Sex Offense, 2<sup>nd</sup> degree, CR 3-306(a)*
  27. *Attempted Sexual Offense, 2<sup>nd</sup> degree, CR 3-312(a)*
  28. *Wearing, Carrying, or Transporting Handgun, CR 4-203*
- V. **Consular Relations**
- A. Consul officers should be given timely notification concerning the death of a foreign national and disposition of the deceased's property.
  - B. When requested, assistance should be given to any consul in ascertaining the whereabouts of their citizen. This does not include disclosing any information obtained through MILES or NCIC. This information is restricted to law enforcement only.
- VI. **Contact Information**
- A. **Immigration and Customs Enforcement (ICE)**  
When seeking information from or making notifications to ICE, the following numbers should be used:
    1. Officers are encouraged to seek assistance 24 hours a day from the ICE Law Enforcement Support Center (LESC) at 1-802-872-6020. They can also be contacted by sending a message via NCIC.
    2. The agents at the Baltimore Field Office can be reached at (410) 962-7449 (0800-1630 week days).

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- B. U.S. Department of State  
The U.S. Department of State's 24-hour Operations Center can be reached at (202) 647-1512.
- C. Document Notification  
If assistance was requested or a notification was made from either ICE or the U.S. Department of State, a notation should be made in the incident report.

**VII. CALEA Standards: 74.3.1**

**VIII. Proponent Unit: Vice & Intelligence Section**

**IX. Cancellation**

This directive cancels Function Code 520, effective 09-04-08.

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J. Thomas Manger  
Chief of Police

## National Conference of State Legislatures Implementation of the REAL ID

On May 11, 2005, the REAL ID Act was enacted as part of supplemental spending bill (P.L. 109-13). Under the REAL ID Act, a state must implement new federal standards for the issuance of drivers licenses (DL) and identification cards (ID) by May 11, 2008 or the federal government will not recognize the state's DL/ID for federal purposes. The United States Department of Homeland Security is currently developing regulations to implement the Act. Congress is failing to provide adequate funds to implement the Act.

NCSL urges the federal government to:

- Maintain a definition of official purpose consistent with the underlying legislative intent. Establish an official process, which includes state legislatures, to consider future application.
- Provide states sufficient time for conversion of DLs/IDs issued after the underlying federal infrastructure is in place.
- Allow for states to self-certify as to their compliance with the requirements of the Act. DHS should involve states in the development of this process.
- Establish standards and do not set specific substrates for card security features.
- Allow for the display of an alternative address on the face of the license.
- Exempt documents related to verification of proof of principal residence from electronic verification, scanning and retention requirements.
- Make necessary improvements to the Systematic Alien Verification for Entitlements (SAVE) program and other federal systems necessary for the Act's implementation. These changes should be federally funded.
- Establish a state working group to ensure the appropriate functionality of the SAVE system for the purposes of the Act and to ensure that SAVE is to be used by any jurisdiction only for the purpose for which it is intended.
- Recognize that states issue other temporary licenses. Continue to allow states to use the same method of identifying those drivers.
- Require states to electronically verify identity documents only if the systems for verification are operational, reliable and federally funded.
- Provide states sufficient time to change record retention laws.
- Allow states to convert to front-end image capture as system contracts come up for renewal or upgrade.
- Allow for REAL-ID compliant DLs/IDs to be renewed through the mail or Internet, or other methods that states currently have available.
- Allow states to identify those staff that require security clearances as part of the self certification process, to include disqualifying factors. Allow new hires to be granted a provisional status.
- Access to state information, as it relates to an all-driver's system should be as a query and response and not wholesale penetration. Access must adhere to the Driver Privacy Protection Act (DPPA) as well as additional state requirements which may exist, and be limited to state issuance and law enforcement management.
- Provide federal funds for implementation and recognize the need for an annual appropriation to maintain the system. Federal appropriations must recognize and cover the costs of new requirements on states in support of federal security initiatives required by the Act.
- Repeal the REAL ID Act if Congress does not provide for full funding or the federal government does not provide for the points listed in this policy on or before December 31, 2007.

This policy replaces and supersedes the NCSL standing committee policy "Identity Security, Driver's Licenses and State Identification Cards."

## **MAJOR CITIES CHIEFS** **POSITION PAPER**



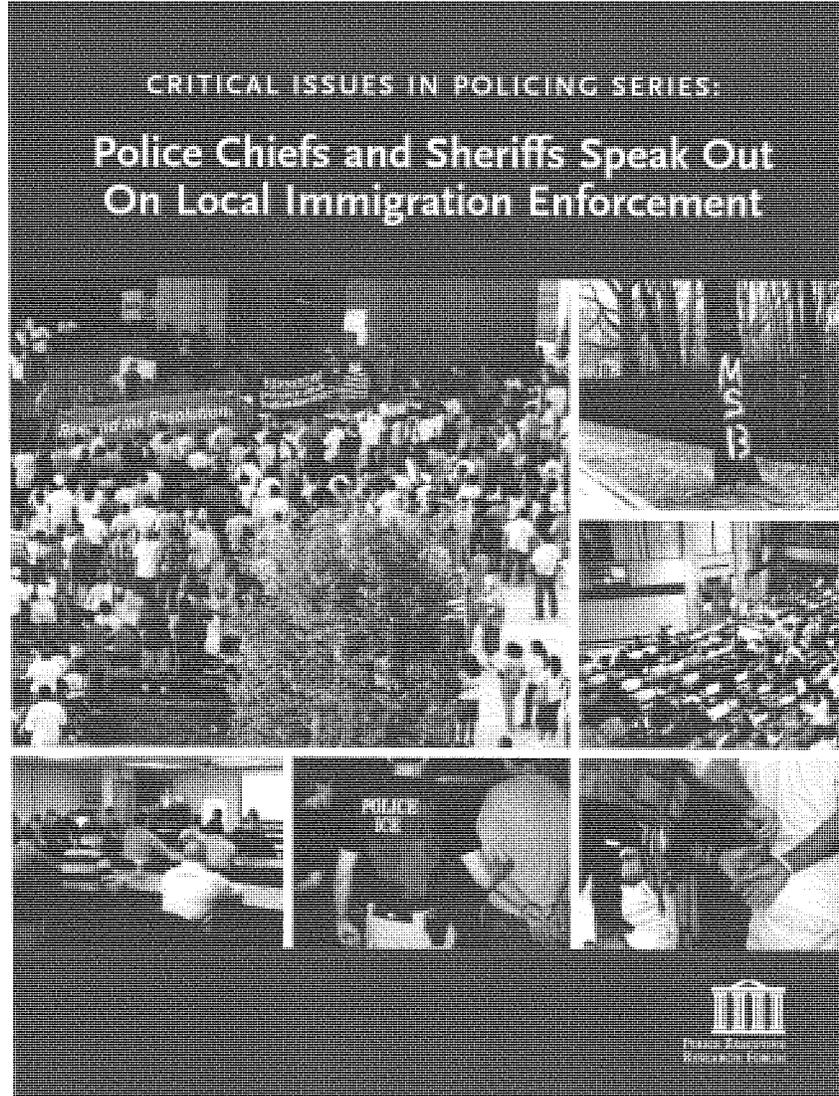
**ISSUE:** Immigration

**SUMMARY:** Currently there are between 8-12 million illegal immigrants living in the U.S., with another estimated 800,000 illegal immigrants entering the country every year. These immigrants by their sheer numbers have become a significant part of local communities and major cities in our Nation. As a part of local law enforcement's post 9/11 homeland security mission, the federal government has called upon local police agencies to become involved in the enforcement of federal immigration laws as part of the effort to protect the Nation.

**MCC POSITION:** As growing concern for law enforcement, immigration presents several challenges to police chiefs. *Any immigration reform legislation considered by Congress should address several key areas: securing the borders; enforcing laws prohibiting the hiring of illegal immigrants; consulting and involving local police agencies in decision making; voluntary enforcement of immigration law by local law enforcement; incentive based approaches; no reduction or shifting of current assistance funding; clarification of authority and limitation of liability; removal of civil immigration detainees from NCIC; and continued enforcement against criminal violators regardless of immigration status.*

There are three major areas of funding for law enforcement for immigration. Because DOJ appropriations are subject to a continuing resolution, funding is not settled for FY 2007.

- *Southwest Border Prosecutions*—The House recommends \$30 million and the Senate \$29 million to provide assistance to State and local law enforcement agencies (including prosecutors, probation officers, courts, and detention facilities) along the southwest border with the handling and processing of drug and alien cases referred from Federal arrests.
- *Victims of Trafficking*—The House recommends \$21.5 million and the Senate \$4 million to enhance State and local efforts to combat trafficking of persons and to conduct comprehensive research and statistical review of sex trafficking and unlawful commercial sex acts in the United States.
- *Border Security Program*—The recommendation includes \$1.1 billion for the Department's Border Security program.



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CRITICAL ISSUES IN POLICING SERIES:

# **Police Chiefs and Sheriffs Speak Out On Local Immigration Enforcement**

April 2008



POLICE EXECUTIVE  
RESEARCH FORUM

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PERF'S IMMIGRATION SURVEY WOULD NOT HAVE produced useful findings, and our Immigration Summit would not have been possible, without the strong cooperation of our member chiefs, sheriffs, and other law enforcement executives. I am grateful to the members of PERF for their constant willingness to provide us with information when we ask for it, to make time in their busy schedules to travel to our Summit conferences, and to share their wisdom with us on the critical issues in policing.

I'd like especially to thank several friends of PERF who helped write and test our immigration survey in order to ensure that it zeroed in on the key issues: Chief Charlie Deane (and Sgt. Eileen Welsh) of Prince William County, Va.; Chief Darrel Stephens of Charlotte-Mecklenburg, N.C.; Chief Kim Dine of Frederick, Md.; Chief Jim Burack of Milliken, Colo.; Deputy Director Craig Ferrell of Houston; Chief Al Najera of Sacramento, Calif.; and Chief Gil Kerlikowske of Seattle. Thanks also to the many police departments that sent us copies of their immigration policies.

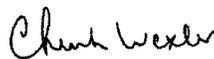
Thanks also to Chief Darrel Stephens and to Jim Pendergraph, a former sheriff and now Executive Director of State and Local Coordination at ICE, for reviewing a draft of this report and sharing their expertise with us.

And of course PERF's work on the immigration issue, like all of our initiatives in the "Critical Issues in Policing" Series, is made possible by the continued generous assistance of the Motorola Foundation. A special thank-you goes to Greg Brown, President and CEO of Motorola; Mark Moon, Corporate Vice President and General Manager; Gino Bonanotte, Vice President, Finance; Eileen Sweeney, Director, Corporate and Foundation Philanthropic Relations; and Rick Neal, Vice

President, Government Strategy and Business Development, who champions the Critical Issues in Policing Series and who came to Washington to participate in the Summit.

I also would like to recognize Chief Charlie Deane, for whom I have enormous respect. He inspired us to study this complex question of immigration enforcement.

Many PERF staffers contributed to the success of this project, starting with my indefatigable chief of staff, Andrea Luna, who provided overall direction along with her dedicated research associate, Elizabeth Sanberg. Our Senior Research Associate Bruce Kubu, Senior Associate Jim Cronin, and Research Assistant Nate Ballard did a terrific job compiling and analyzing the mountains of data produced by the survey. Emily Milstein-Greengart, Amanda Detterline, and Rebecca Neuberger made sure the Immigration Summit ran smoothly so that participants could devote themselves to the difficult issues under discussion. Freelance writer Debra Whitcomb pulled together all of the information and viewpoints from the survey and the Summit, and did an excellent job of synthesizing it into this report. And Craig Fischer deserves special appreciation once again for making sense of this issue and for working with Debra and with PERF's talented graphic design guru, Dave Williams, to produce the final document.



**Executive Director  
Police Executive Research Forum  
Washington, D.C.**



ii — Acknowledgments

## Foreword

SOMETIMES WE AT PERF HAVE TO THINK HARD WHEN we try to identify the emerging issues in policing that we believe will be the most important or difficult problems for police chiefs and sheriffs in the future. Often it isn't easy to predict the future accurately and to say with any certainty, "Here is something that will be occupying the attention of thousands of police executives next year, or two years from now."

The immigration issue is not one of those issues that remained hidden and then surfaced suddenly and unexpectedly. The immigration issue is a freight train that has been barreling down the tracks toward us for some time, whistle blaring. Here's one example of what I mean by that: For more than a year, anyone who has been attending PERF's Town Hall Meetings, where police chiefs and other leaders are invited to speak out on any issue they choose, cannot help but have noticed that the immigration issue spontaneously becomes the hot-button issue whenever there is an open forum of police leaders.

I've also noticed that at our meetings, chiefs, sheriffs, and others express differing views about what the immigration issue means in their jurisdictions, but the range of opinions is relatively limited, compared to the shout-fests that you see on TV news and opinion programs.

Some chiefs do not believe that local law enforcement agencies should spend much of their limited resources to take on what has essentially been the federal responsibility for illegal immigration enforcement in our communities. And many are concerned that tougher immigration enforcement on the local level will threaten the advances we have made in community policing over the last 20 years.

Some chiefs and sheriffs point to facts and figures indicating that illegal immigrants commit a sizeable portion of their local crimes, and these police executives think they have no choice but to work as closely as they can with federal authorities to arrest, prosecute, incarcerate, and eventually deport these offenders. For these chiefs, immigration enforcement is a primarily a matter of local crime control and public safety.

On the immigration issue, as with so many other issues, I have noticed that police leaders' views are far more reasonable, measured, based on solid facts, and "grounded in reality" than the views of so many of the pundits and elected officials that you hear on the airwaves.

Unfortunately, often the most extreme views are expressed by everyday people at local city council meetings and other public hearings. It seems that the exaggerated and overwrought opinions expressed by TV pundits or politicians get "adopted" by their listeners, and then these immoderate views become the basis of discussion at the public forums where real policies are hammered out.

*Often I wish that when the American people take up a difficult issue like immigration, the views of police chiefs and sheriffs would receive a larger share of the attention, commensurate with the knowledge and wisdom that police executives have gained from working on the front lines of many of the nation's most difficult problems for so many years.*

Perhaps this report can take us a step in that direction, by providing a base of information about what police and sheriffs' departments currently are doing regarding immigration enforcement, along with a reporting of police executives' views on the

issue, the views they expressed to each other at a recent Summit meeting convened by PERF.

Specifically, PERF conducted a survey of its members in October 2007, in which we asked police executives whether illegal immigration was a high-profile issue in their jurisdiction, whether their department has written policies on immigration enforcement, what their practices are regarding checking the immigration status of arrestees and others, whether they work with federal authorities from Immigration and Customs Enforcement (ICE), and many other questions.

The survey produced an introductory base of knowledge about immigration enforcement at the local level. For example, most of the survey respondents reported a perception that the number of illegal immigrants arriving in their jurisdiction has increased “substantially” over the last five years. However, a large majority said their departments had no written policy on checking people’s immigration status. Despite this lack of written policies, most departments said they do conduct immigration status checks under certain circumstances.

PERF followed up its survey by hosting an Immigration Summit on November 2, 2007 in Washington, D.C. Police chiefs, sheriffs, mayors,

federal officials, and others convened to compare information about how the hot-button immigration issue is playing out in their jurisdictions, and what they are doing to shape the direction of policies in their communities.

This report summarizes what we learned from the PERF Immigration Survey and the November Summit meeting. And we attempted to go beyond summarizing the various officials’ experiences and recommendations. To the extent possible, we tried to find areas of consensus, where there was strong general agreement among the PERF chiefs and sheriffs. This report looks to build on these points of consensus in order to provide guidance to the many chiefs and sheriffs who will be addressing immigration issues in their communities.

It is clear that the immigration issue will not go away any time soon. Rather, it appears that thousands of American communities are just beginning to ask themselves how they want their local police and sheriffs’ departments to handle the immigration question. We hope that this report will help inform these debates, and will serve as a launching pad for further discussion of immigration-related questions within the policing community.

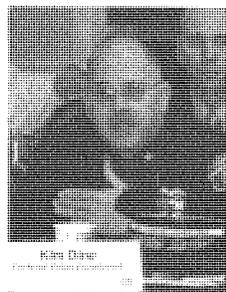
**Chuck Wexler**

## Introduction

“We need a rational, logical, thoughtful policy, some kind of bright line by which police departments can operate. I think there’s general agreement in law enforcement that once someone is arrested for an offense, it makes sense to check their immigration status, just as we would check to see if there was an outstanding warrant from some other state. Because this takes place on the ‘back end,’ after the person has been arrested and is in jail, it obviates complaints of racial profiling and discrimination, and focuses on lawbreakers. On the other hand, I think we can all agree, from what we have heard from ICE officials, that if everyone who’s arrested and determined to be here illegally were turned over to ICE, they could not handle the workload.

“What is missing is a sensible national policy with a standardized approach regarding immigration, including defined sanctions for illegal immigrants who commit various crimes. Without such a policy, we spin our wheels and end up in the middle of a political debate that seems to generate hate and fear. This is not productive, because most local departments continue to believe that building trust and communication with all of our communities, especially our minority communities, is a key component of effective and enlightened policing.”

—FREDERICK, MD. CHIEF KIM DINE



ACROSS THE COUNTRY, IN COMMUNITIES LARGE AND small, residents and policy makers are grappling with the issues raised by a population of immigrants who have entered the United States illegally. For state and local police and sheriffs’ departments, the main issues are the extent to which they should be involved in inquiring about immigration status during encounters on the street, reporting non-criminal illegal immigrants to federal authorities, and otherwise helping to enforce federal immigration laws. Most police departments have traditionally considered immigration law a federal responsibility. Indeed, the federal government has clear authority

over immigration enforcement, while the authority of local police in this area is a complicated legal issue, largely because federal immigration laws have both criminal and civil components, and the role of local police is generally limited to criminal matters. State and local laws place additional layers of complexity on the question of the role of local police in this area.

However, local political leaders increasingly are asking local police departments to take a larger role in immigration enforcement, and state and local governments have been adopting varying and sometimes conflicting policies.

In October 2007, the Police Executive Research Forum (PERF) surveyed its members to learn their perspectives on the nature and magnitude of the problem, its impact on their communities, and the actions their departments are taking. PERF then followed up by convening a one-day Summit conference of 69 police chiefs, sheriffs, and other law enforcement executives, representing a cross-section of the PERF membership, along with nine of their local officials (mayors, town managers, and county executives), and federal government officials and others. The goals of the Summit, held on November 2, 2007 in Washington, D.C., were to articulate the issues facing police departments today, to identify areas of consensus, and to highlight promising policies and practices.

**This report summarizes the experiences, observations and recommendations that emerged from the survey and the Summit.**



Tom Wolfe attended the Summit at the invitation of Chief John Timoney. Mr. Wolfe, author of *The Right Stuff*, *The Bonfire of the Vanities*, *The Electric Kool-Aid Acid Test*, and other best-sellers, is conducting research for a book about immigration.

## Some Immigration Basics

THE DIVISIVENESS OF ILLEGAL IMMIGRATION AS A political issue is reflected in the fact that the terms used in the debate are themselves sensitive and politically charged. The term “alien” is used in the federal Immigration and Nationality Act (INA) to refer simply to “any person not a citizen or national of the United States.” This includes temporary visitors and lawful permanent residents. “Illegal alien” refers to anyone who has entered the United States illegally and is deportable, or anyone who has “overstayed a visa” or otherwise violated the terms of a legal admission.

However, the terms “alien” and “illegal alien” have come to have a political meaning as well. Those in favor of strict enforcement of immigration laws often use the terms to emphasize that people are breaking the law. Those favoring more limited enforcement tend to avoid using those words, saying that “alien” has a connotation of “less than human” and that calling a person “illegal” suggests that the person is inherently illegal, as opposed to the illegality of a person’s actions in entering the United States without permission. Those who avoid saying “illegal alien” often prefer the term “undocumented immigrant.” Advocates of strict policies consider that term a euphemism.

The term “illegal immigrant,” which will generally be used in this report, includes several categories of individuals who are subject to removal from the United States for a variety of reasons defined by the federal Immigration and Nationality Act. In general, an individual may be considered

“removable” because he or she does not qualify for admission to the United States, has entered the country illegally by crossing the border without formal inspection, or has violated the terms of a legal admission, for example, by entering the country on a student visa and then dropping out of school.<sup>1</sup>

A key point that is critical to understanding the issues for local police is that the Immigration and Nationality Act is a very complex mix of both criminal and civil components. Being illegally present in the United States is a civil, not criminal, violation of the INA, and subsequent deportation processes are civil proceedings. For example, lawfully admitted persons may become deportable if their visitor’s visa expires. Criminal violations of the INA can include the illegal entry of aliens, bringing and harboring certain undocumented aliens, and the reentry of persons who have already been deported on one or more occasions.

Persons who are identified as illegal immigrants may be brought before the Immigration Court for a removal proceeding. Individuals who fail to appear for this proceeding, or who fail to comply with a resulting court order, are considered absconders. Their identifying information is then entered into the National Crime Information Center (NCIC) database, which is routinely accessed by federal, state and local law enforcement agencies across the country to check for outstanding warrants. NCIC entries include both civil and criminal violations of immigration laws. A federal immigration “warrant” may be an administrative, or civil, document.

1. Executive Office for Immigration Review, *FY 2006 Statistical Yearbook*, Appendix A, Glossary, p. 16.

The key federal agency in this area, Immigration and Customs Enforcement (ICE), was created in March 2003 as part of the newly established Department of Homeland Security (DHS). ICE is the largest investigative arm of DHS, and its missions include enforcing immigration laws and protecting the United States against terrorism.

On September 30, 1996, the Illegal Immigration Reform and Immigrant Responsibility Act added Section 287(g), "Performance of immigration officer functions by State officers and employees," to the Immigration and Nationality Act. Section 287(g) cross-designates local law enforcement officers, detectives, investigators and correctional officers to perform some immigration enforcement activities, provided that the officers have received appropriate training and that they function under the supervision of sworn ICE officers.<sup>2</sup>

ICE administers the Law Enforcement Support Center (LESC), which provides information from NCIC and other databases (the Interstate

Identification Index, the Student and Exchange Visitor Information System, other ICE databases, etc.) to state and local law enforcement officers about foreign nationals (persons who are not U.S. citizens or permanent residents) whom they encounter in their daily duties. LESL operates 24 hours a day, 365 days a year. In the 2007 fiscal year, LESL received 728,243 requests for information, setting a new record for assistance to other law enforcement agencies, according to ICE.

ICE investigates violations of immigration laws and identifies illegal immigrants who are removable from the United States. In the 2007 fiscal year ICE removed 276,912 illegal aliens from the United States, a record high number, according to the agency's annual report.<sup>3</sup> As a result, ICE was able to reduce the backlog of fugitive alien cases for the first time in history, from 632,726 on October 1, 2006 to 594,756 on October 1, 2007. On an average day, ICE houses nearly 30,000 illegal aliens in detention facilities nationwide.

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<sup>2</sup> <http://www.ice.gov/partners/z87g/section287-g.htm>.

<sup>3</sup> See [http://www.ice.gov/doclib/about/ice07ar\\_final.pdf](http://www.ice.gov/doclib/about/ice07ar_final.pdf).

## State and Local Action On a National Issue

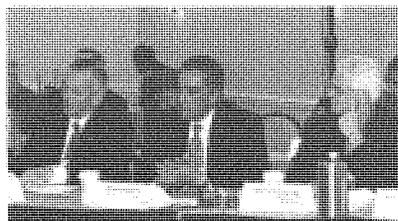
ACCORDING TO THE DEPARTMENT OF HOMELAND Security, Office of Immigration Statistics, the number of illegal immigrants in this country is growing steadily, from an estimated 8.5 million in 2000 to 10.5 million in 2005 and nearly 11 million by January 2006.<sup>4</sup> Mexico was by far the leading source country, followed by El Salvador, Guatemala, India and China.<sup>5</sup> To date, most illegal immigrants have settled in California, Texas, and Florida; but Georgia, Arizona, Nevada and North Carolina experienced the greatest percentage increases from 2000 to 2005.<sup>6</sup>

In June 2007, the Bush Administration introduced legislation with several strategies to address illegal immigration: tightening security at the borders; cracking down on employers who knowingly hire undocumented workers; establishing a legal mechanism for the hundreds of thousands of workers who enter the country each year to fill low-skill jobs; and providing a path to legal status for illegal immigrants now living in America. Congress failed to pass this bill, however, due to conflicts between those who favored stronger border enforcement and those who favored offering a path to citizenship.

Because federal lawmakers have been unable to set policy for the nation, state legislatures and local councils have been adopting various immigration

policies and programs, in response to increasing demands for action by local constituents. In the first six months of 2007 alone, 41 states passed new legislation related to immigrants and immigration.<sup>7</sup> The national picture can perhaps best be described as a "crazy quilt," running the gamut from requiring local police departments to enforce federal immigration law, to expressly prohibiting local law enforcement in so-called "sanctuary" communities from cooperating with their federal counterparts.

These variations were highlighted by two PERF members who attended the Immigration Summit, both from suburban Washington, D.C. area jurisdictions. Chief Charlie T. Deane of the Prince William County, Virginia, Police Department noted that elected officials in his community



Prince William County, Va. Chief Charlie T. Deane, Sacramento, Calif. Chief Albert Najera, and Collier County, Fla. Sheriff Don Hunter

4. M. Hoefel, N. Rytina, and C. Campbell (August 2006). "Estimates of the Unauthorized Immigrant Population Residing in the United States: January 2005." *Population Estimates*. U.S. Department of Homeland Security, Office of Immigration Statistics, Policy Directorate.

5. *Ibid.*

6. *Ibid.*

7. Immigrant Policy Project (August 6, 2007). *2007 Enacted State Legislation Related to Immigrants and Immigration*. National Conference of State Legislatures.

made national headlines last summer when they proposed legislation that would require county police officers to check the citizenship status of everyone they detain or arrest for a violation of a state law or municipal ordinance, even traffic violations.

The Board of County Supervisors scaled back the legislation significantly, adding a requirement that officers have probable cause to believe a person is in the country illegally in order to conduct a status check, after Chief Deane made a strongly worded statement to the board, warning of unintended consequences of the Board's initial proposal. "Community policing efforts will end," he said in written testimony. "This method of policing, which our county has embraced with impressive results, is based on the trust between the public and the police. Approximately 18 percent of our population is Hispanic, and that population will not respond to the current proposed legislation in a positive manner, but rather in a hostile and distrustful one."

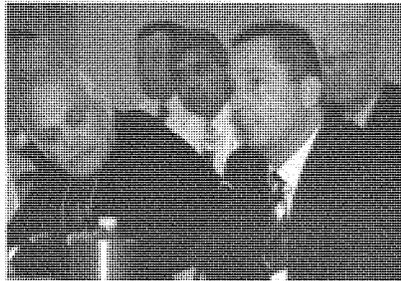
Furthermore, Chief Deane warned the legislators, "Perceptions of racism will increase. Prince William County, which over the past few decades has had an outstanding reputation of inclusion, could be painted by the nation as a racist community intent on driving out a single population."

"I know we're all feeling the need for the county to do more about illegal immigration," Chief Deane concluded. "However, I'm concerned that if we don't strike the right balance in our policy, we will polarize the community and create more problems than we solve."

The elected officials heeded Deane's warnings and adopted a more moderate proposal in July 2007. Since then, the chief has been working with the legislators to implement the policy. Most recently, in February 2008 the chief recommended that the county install video cameras in patrol cars, in order to protect officers and the department against complaints of racial profiling as they implement the new requirements for immigration status checks.

At the other end of the spectrum is Takoma Park, Maryland, which has had a sanctuary ordinance since 1985. In 2007, when the ordinance came up for renewal, Chief Ronald Ricucci asked the city council to make one modification that would allow police, when encountering a person wanted on an immigration warrant in the NCIC, to call ICE to obtain more information about the warrant. Under Chief Ricucci's proposal, if ICE advised the local police that the subject had previously been deported for committing a violent felony, the local police could detain the person. But the city council unanimously refused to make the change. Councilmember Terry Seamens said that if Chief Ricucci's amendment has been approved, "Takoma Park would no longer be a sanctuary city. It would have allowed our police to treat people differently based on where they were born."

Chief Ricucci said the outcome was that "we do not check anything to do with immigrant status. If we get an ICE hit, we can go no further. We cannot talk with ICE, we cannot cooperate with ICE."



**FAR LEFT: Takoma Park, Md. Chief Ronald Ricucci and Framingham, Mass. Chief Steven Carl**

**LEFT: Richmond, Calif. Chief Chris Magnus**

"We're going to continue to do our job; it just handcuffs us," Ricucci added. He expressed concern about the possibility of a police officer or resident of the community being hurt by an illegal immigrant with a long criminal record because the sanctuary policy did not allow police to investigate a suspect's legal status. "I told the council and my mayor that they have to realize, 'If something goes wrong, it's on you. It's on you if one of my officers gets killed in the line of duty because we couldn't go that one step further.'"

Like Chief Ricucci, Chief Deane noted that the immigration issue is a divisive one. "From the beginning we knew this would polarize the community," Chief Deane said. "On the radio the other day I was asked how I would approach this if I were making all the decisions. I said I'd like to go into this in a non-election year. Already, the community

reaction has been very dramatic. We had a 12-hour public hearing recently. Citizens were given three minutes to speak, so you can imagine how many people spoke."

As mentioned, even the terms used in the debate are hotly contested. Federal immigration law uses the term illegal "alien" to describe foreign nationals in the United States, but the term "illegal alien" is politically volatile in many communities. In Richmond, California, the limits on terminology go farther. "I have been counseled not to use the term 'illegal immigrant' by some elected officials," said Richmond Chief Chris Magnus. "They prefer to say 'undocumented' immigrants. We are not allowed to use in any of our materials the word 'citizen.' We are to refer to 'residents,' not 'citizens.' When it comes to this issue, there is no question that there are very strong feelings about immigration."

## Why Is Illegal Immigration Such a “Hot-Button” Topic?

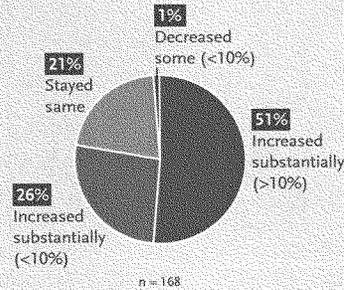
MORE THAN HALF OF THE POLICE AND SHERIFFS' departments that responded to PERF's immigration policy survey believed that the population of illegal immigrants in their communities has increased more than 10 percent over the last five years.

Four out of five respondents said that illegal immigration issues figured “some” or “quite a bit” in local concerns.

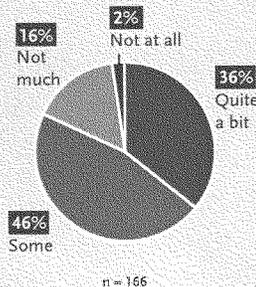
Why is illegal immigration such a controversial issue across the country? Many chiefs and sheriffs at the PERF Immigration Summit said that the public dialogue often fails to differentiate between immigrants who entered the country illegally and others who arrived through lawful means. At community meetings, people often complain about problems in their neighborhoods that may or may not be attributable to illegal immigrants. For example, some contend that immigrants crowd too many people into houses, driving down property values. Or they create parking problems because there are so many adults living in the same house. Or they congregate at the local convenience store, or drive without licenses and insurance, or force local schools to shift priorities toward English-as-a-second-language courses, and so on. Some complain that illegal immigrants work at jobs that pay them in cash, so they don't pay taxes, yet their children attend local schools, driving up class sizes. And others believe that illegal immigrants commit a disproportionate amount of crime.

All of those types of things can add up to residents of a community feeling uncomfortable and threatened, said Irving, Texas Police Chief Larry Boyd. “Immigration has created a rapid change

**Figure 1. Trends in Illegal Immigration**  
Respondents perceived that the illegal immigrant population in their jurisdiction over the last 5 years has...



**Figure 2. How prominently do illegal immigration issues figure in local concerns?**



from what Irving looked like to residents who have been there for the last 30 years," Chief Boyd said. "Irving looks much different today than it did 15 or 20 years ago, and it's frightening to a lot of people."

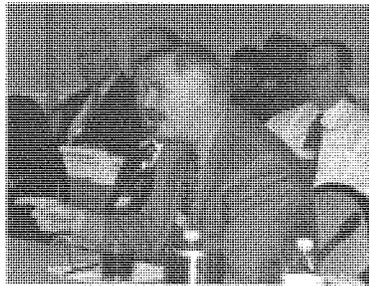
Chief Darrel Stephens of Charlotte-Mecklenburg agreed that concern about immigrants in general has driven the recent push to have police crack down on illegal immigration. And he noted that the feeling about immigrants has changed over the last decade: "When I first went to Charlotte [in 1999], the biggest immigration issue was not having enough police officers who spoke Spanish," he said. "There were newspaper articles condemning the police and other agencies for not having enough people who could communicate in the same languages as our immigrants. We were busy trying to hire people who were bilingual, trying to fill the gap to stem the criticism. And up until about two years ago, most people in the community said 'That's really great; you guys are responsive, and you're trying to deal with the problem [of not having enough bilingual officers] the best you can.' But about two years ago, it hit us like a ton of bricks, people in the community were looking around and seeing signs that weren't in English, feeling pressure in the schools, and all of a sudden, people said, 'It's illegal; it's a crime to be here illegally; and you guys need to do something about it.'"

Sacramento Chief Albert Najera indicated that in his view, the immigration issue is controversial because there is another controversial issue

underlying it: racism. "There's an 800-pound gorilla sitting in the corner that we're not talking about, and that's the race issue," he said. "There's all these brown people who are coming into our communities. We have a long history of this. The Japanese were interned during World War II, completely illegally. Their property was taken from them and they were put in prison camps. We didn't put Germans in prison camps, we didn't put Italians in prison camps, but we did with the Japanese-Americans. And their perspective is that it's because they look different. That is a human failure, that we tend to ostracize people who look different."

Other participants noted that the cataclysmic impact of the September 11, 2001 attacks has tended to make people more fearful of others whose appearance is not like their own.

Finally, many chiefs at the PERF Summit said that the immigration issue has proved too tempting for politicians looking for a "wedge" issue. "Politicians have been using this issue to frighten people for political gain," one chief said. Another chief said: "I can tell you that where I come from, people are getting elected on this issue alone. We had a council member come up for reelection, a young Latino council member, and somehow he got labeled as pro-immigration. Well, that's a death knell. This particular councilor was voted out and another councilor was voted in, just for being 'anti-immigrant,' whatever that means." Another chief said his jurisdiction has been conducting citizen



Montgomery County, Md. Chief Thomas Manger



Irving, Texas Chief  
Larry Boyd



Sacramento, Calif. Chief  
Albert Najera

Why Is Illegal Immigration Such a "Hot-Button" Topic? — 9

surveys about police services for years, and until recently, immigration was not even mentioned as an issue. But suddenly immigration became the top issue in his jurisdiction. Asked why he believed that happened, the chief responded: "Why now? Local elections, that's why now."

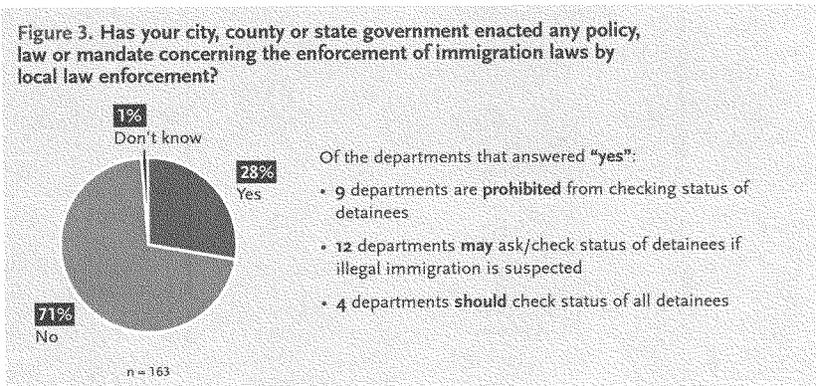
Providence, Rhode Island Chief Dean Esserman predicted that the immigration issue will not vanish as quickly as it arrived, because it is part of a global "megatrend" toward urbanization: "I think what we're facing is part of a much bigger megatrend," he said. "And the trend is we are becoming

more urban. This is the year that the planet becomes majority urban. It's a huge trend taking place on the planet. The United States is already predominantly an urban nation; the majority of all of us live in cities, and it's been that way for some time. There's a new migration inflow, people moving out of the countryside toward cities, across the globe. This conversation about immigration is going on with the same passion right now in London, Paris, Rome, Dublin.... Immigration will become an even more passionate issue in the years ahead."

## Most State and Local Jurisdictions Lack Written Policies on Immigration

DESPITE THE INTENSITY OF EMOTION IN THE DEBATE over illegal immigration, fewer than one-third of the jurisdictions represented in the PERF survey had enacted any policy, law or mandate concerning local enforcement of immigration laws.

Among those jurisdictions where a relevant policy, law or mandate exists, 11 departments are prohibited from checking the immigration status of detainees, 13 “may” check immigration status, and only 4 departments “should” check the status of *all* detainees.

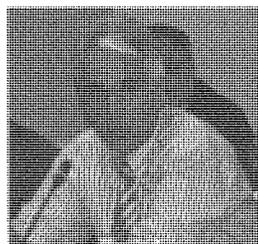


## What Are the Relationships Between Illegal Immigrants And Crime?

AMONG THE CONCERNS EXPRESSED IN THE PUBLIC debate is a perception by some that illegal immigrants contribute to increased crime. Some chiefs at the Summit expressed a strong belief that illegal immigrants are a significant factor in their local crime problems. Others said they believe that illegal immigrants are *less* likely to commit crime because most are here to work, and they try to avoid being noticed by the police for any reason.

Of course, it is possible that both perceptions reflect reality, because there may be wide variations in the extent to which illegal immigrants commit crimes in different communities. And even if illegal immigrants commit crimes at the same rate as legal residents and citizens of the United States, that can be a significant crime problem in jurisdictions with large numbers of illegal immigrants. Some chiefs believe they have a responsibility to do all they can to remove from their jurisdictions criminals who should not have been in the United States in the first place.

There has been surprisingly little research into the question of whether illegal immigrants increase crime levels in the community, and many of the existing studies have methodological problems, a recent report by the RAND Corporation noted.<sup>8</sup> But participants at the Immigration Summit expressed strong views about whether illegal immigrants



Mesa, Ariz. Chief George Gascón

are contributing to crime in their jurisdictions.

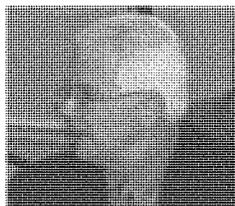
Chief George Gascón of Mesa, Arizona, took issue with those who contend that illegal immigrants are responsible for a large proportion of crime. "I often hear talk about the scourge of crimes by immigrants who are here illegally," Chief Gascón wrote in a recent op-ed article.<sup>9</sup> "In fact, I have heard how unauthorized immigrants are responsible for as much as 90 percent of the serious crime in Mesa. The problem with this assertion is that it is not supported by the facts." Specifically, Gascón wrote, Hispanics—whether legally in this country or not—accounted for 31.6 percent of all arrests in Mesa, and accounted for approximately 30 percent of the city's population. Incarceration figures also led to the conclusion that "the criminality rate among Hispanics, whether they are here legally or not, is proportionate to their representation."

From Chief Gascón's perspective, local law enforcement officials "have a moral obligation to be honest with ourselves and with the people that we serve and to try to stop the spreading of misinformation. You see reports that '9,000 Americans are killed by illegal aliens every year.' Even conservative think tanks have debunked that as mathematically impossible."

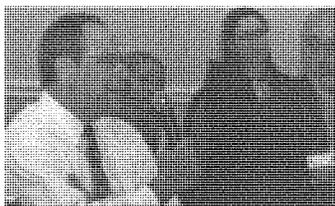
Larry Mulvey, police commissioner in Nassau County, N.Y., also indicated that he does not

8. Hickman, Laura J. "Are Deportable Aliens a Unique Threat to Public Safety?" See <http://rand.org/news/press/2008/02/22/index.html>.

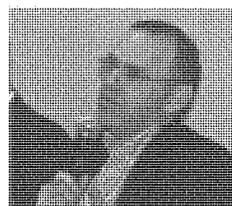
9. George Gascón, "Crime and Immigration," *The Arizona Republic*, Oct. 15, 2007, accessed at [www.azcentral.com/arizonarepublic/viewpoints/articles/1015gasccon1014.html](http://www.azcentral.com/arizonarepublic/viewpoints/articles/1015gasccon1014.html).



Collier County, Fla. Chief  
Donald Hunter



San Diego Assistant Chief  
William Maheu



U.S. Justice Dept. Civil  
Rights Division Deputy Chief  
Dan Weiss

believe immigrants commit a disproportionate amount of crime in his jurisdiction. "Hispanics account for about 15 percent of our population and about 19 percent of our reported crime," he said. "The gap is not huge." And considering that demographic studies show that Hispanic males are more likely to be in the crime-prone years of the late teens and early 20s, he concluded that "Latino involvement in crime is no different."

Conversely, Sheriff Don Hunter of Collier County, Florida, said that statistics justify a concern about illegal immigrants' involvement in crime in his jurisdiction. "To get at the actual specifics of our local crime pattern regarding illegal immigration, we looked at our local jail population. We simply asked the people in jail, at five 'snapshots' in time, and we discovered that on average 24 percent of our jail population was willing to report that they were illegally present foreign nationals. I think I can translate the percentage of people in our jail to street crime. [Considering that 24 percent of the jail inmates *admit* being illegal immigrants,] I suspect that 24 to 30 percent of our crime problem would likely be associated with the presence of illegally present foreign nationals."

Sheriff Hunter added: "We also looked at our felony warrants, and of all the warrants outstanding in our jurisdiction, 40 percent are for illegal aliens. We looked at our homicide warrants and verified that 60 percent are for illegal aliens. I may be cast as a zealot on this, but I think that represents a pretty significant public safety issue. For us not to be involved in enforcing immigration laws would constitute an unnecessary public safety and officer safety risk."

Sheriff Hunter also noted that "mere presence

is not the only violation. Other violations of law must be committed simply to remain here. For instance the undocumented person must acquire some form of identification and authorization in order to get employment, and you have to have an employer who's willing to look the other way—also a violation of law." Illegal identification credentials often are manufactured by organized criminal groups, he added.

"My position has been that we should not equivocate in our law enforcement duties by applying wholesale discretion on the application of law," Hunter concluded. "I think we should enforce the immigration law." At the same time, he added, police exercise situational discretion in many areas. "If I stop a mom for a speeding violation and find that she's on the way to the ER with a sick child, I'd probably escort her there. I certainly won't issue a traffic citation to her. I think the same situational discretion can be applied in the immigration realm."

Some chiefs noted that one type of crime attracts their attention more than any other. "Several months ago one of my officers was killed by an illegal immigrant," said Phoenix Chief Jack Harris. The chief was referring to Officer Nick Erfle, who was shot to death as he tried to arrest Erik Martinez, a Mexican national with warrants for aggravated assault and other crimes. After shooting Officer Erfle, Martinez escaped by committing a carjacking and taking the driver hostage. A short time later, a Phoenix police tactical squad spotted the car and shot Martinez to death when he raised his gun to the hostage. Officer Erfle, who was 33, left a wife and two sons under the age of five.

## Illegal Immigrants as Victims of, And Witnesses to, Crime

SEVERAL SUMMIT PARTICIPANTS EXPRESSED CONCERN over the victimization of illegal immigrants. "Not only do we have heavy involvement in terms of illegal immigrants involved in crimes, in particular gang-related crimes, but we found on the other side we also have disproportionate involvement as victims of crimes," said Chief Chris Magnus of Richmond, Calif. "A lot of our crime involves individuals who are here illegally who are victims or witnesses to it, and getting them to report that is very difficult."

Chief Charlie Deane of Prince William County, Va. agreed. "I think that we would conclude that illegal immigrants are victimized more often, in a very specific way," he said. "They've been a significant part of our increase in robberies." Because illegal immigrants often lack identification papers, they may have trouble opening bank accounts, and even if they can open an account, many are reluctant to do so because they don't know whether the bank might report them to the authorities. "Illegal immigrants are being robbed because they are known to carry cash," Chief Deane said.

Sheriff Don Hunter of Collier County, Fla. agreed that illegal immigrants may well not contact the police when they are victims of crime, especially those illegally present victims from Central and South American countries where there is significant corruption in police forces. "If as a result of cultural disposition they don't trust us, they don't come forward to report, as best as we can determine," he said. "Law enforcement agencies across this nation



Washington, D.C. Assistant Chief  
Joshua Ederheimer

discover crimes that haven't been reported, so I know that some of that is happening. The National Institute of Justice reports that only 42 percent of the victimization in the U.S. is currently reported to law enforcement even now, while sanctuary cities flourish in some of our largest jurisdictions."

Chief Darrel Stephens of Charlotte-Mecklenburg, N.C. agreed. "Latinos in Charlotte are victimized much more than the rest of the population," he said. "They're considered an easy 'hit.' They've got cash on them. A lot don't report being victimized. In fact, a few years ago our robbery rate increased significantly after we established our International Relations Unit. In the past couple of years, however, we have seen indications that crime reporting has declined. That is a huge concern to me."

## If Local Police Enforce Immigration Laws, Will Illegal Immigrants Be Even Less Likely to Report Being a Victim of Crime?

MANY PARTICIPANTS PREDICTED THAT INCREASED enforcement of immigration law will have a significant chilling effect on crime reporting in immigrant communities. Fear of arrest and deportation will give illegal immigrants an even greater incentive to stay “under the radar” and avoid drawing attention to themselves. If crimes are being committed that are not reported, it can undercut a police department’s overall crime-fighting efforts, many chiefs noted. “If you’re a victim, we need to know, regardless of your resident status,” said Miami Chief John Timoney.

As shown in Figure 4, a majority of survey respondents believed that greater immigration enforcement at the local level would cause reported crime to decrease.

Many chiefs also expressed concern that the recent focus on immigration is jeopardizing the value of years of work they have done attending to their relationships with their local community.

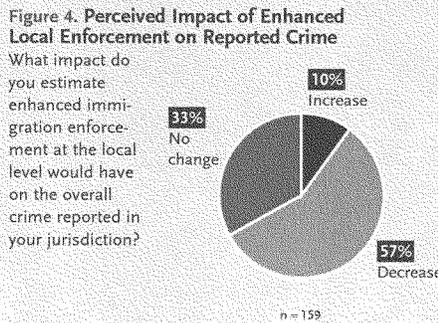
“This definitely has the potential to impact unreported crime,” said Irving, Texas Police Chief Larry Boyd. “It will definitely impact our ability to interact with the Latino community in Irving.”

Chief Steven Carl of Framingham, Massachusetts, described three homicides in a 12-month period among the undocumented Brazilian community in his jurisdiction, all of which could have been prevented, in his view, if the illegal immigrants had not feared calling the police. In one case, for example, a woman and her 11-year-old son were beaten to death after a long history of domestic violence that had not been reported. Framingham is a Boston suburb of approximately 65,000 people, not including a Brazilian immigrant community estimated as high as 25,000. As Chief Carl explained, the homicides prompted his department to examine its effectiveness with the Brazilian community:

“We started looking at this problem of underreporting. We all feel good when the



Miami Chief and PERF President John Timoney



crime statistics are driving down. But after these incidents we started wondering, if 25 percent of the population is not reporting crime, are we really driving the crime statistics down, or are we fooling ourselves? As we started getting more involved with the community and getting intelligence from some of the Brazilian community who were courageous enough to talk to us off the record, we realized that there's a lot of crime, a lot of victimization going on in the community. We learned there are Brazilian gangs with connections to Brazil, creating fear and intimidation problems. Their only targets are illegal immigrants."

David Alejandro of the ICE Office of Detention and Removal reminded Summit participants that some immigrants fear police for another reason. "There are a lot of cultural differences that we misinterpret," Mr. Alejandro said. "A lot of the foreign-born population are not really afraid of being deported, but in their culture, law enforcement officers are corrupt. We have to learn more about these cultures before we deal with them."

Illegal immigrants also are often witnesses to crime. Austin Chief Art Acevedo emphasized how

damaging it can be to the law enforcement mission if substantial numbers of residents are afraid to have any contact with police:

"As I talk to folks, I try to talk about it strictly from a public safety perspective, and I talk about the unintended consequences. And so I ask them, 'If your child was kidnapped by a person at the bus stop, and the only witness is the little old lady or the man on the corner who is an illegal immigrant, and they're afraid to come forward, do you want to create that environment where your child is not rescued by law enforcement because we're not getting full cooperation from the community?' Some of those same people who want us to be involved at the ground level will look at you and say, 'Well, when you put it that way, maybe it's not such a good idea.'"

In fact, as shown on Table 1, the potential erosion of trust between the police department and the immigrant community is second only to insufficient personnel on the list of concerns that police officials have about increasing their role in immigration enforcement, according to PERF's survey.



Austin, Tex. Chief Art Acevedo

Table 1. Top Concerns About Enhanced Local Enforcement

Insufficient personnel	65%
Undermines trust between department and immigrant community	61%
Insufficient \$\$\$ resources	60%
Insufficient jail space	51%
Distract from dept core mission	49%
Inability of ICE to assist	38%
Civil liability issues	29%
Law is too complex	27%
No concerns	9%

n = 168

## What Are the Current Policies And Practices of Local Law Enforcement Agencies?

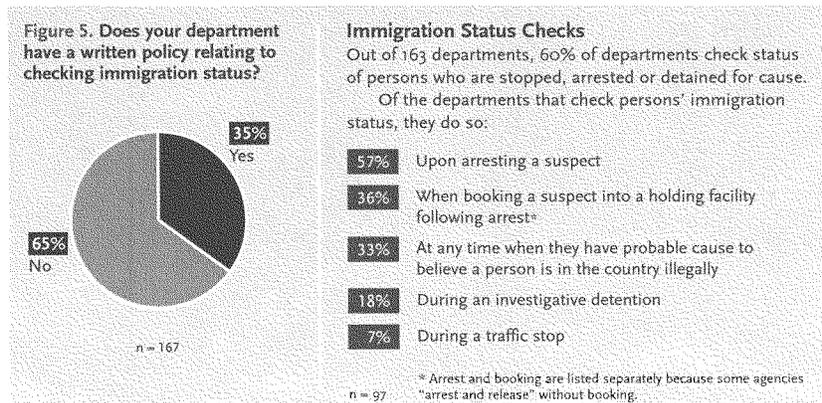
ONLY 35 PERCENT OF THE POLICE AGENCIES RESPONDING TO PERF's Immigration survey said their departments have a written policy relating to checking immigration status.

Overall, 60 percent of all responding departments conduct checks on the immigration status of persons who are stopped, arrested and/or detained for cause. Even among departments that lack written policies, 56 percent conduct status checks. Among those departments that conduct immigration status checks, the most frequent circumstances leading to a status check are arrest (57%), booking (36%),\* and when there is probable cause to believe the person is an illegal immigrant (33%). Smaller numbers of departments check immigration status during an investigative detention (18%) or a traffic stop (7%).

As Sheriff Jim Pendergraph of Mecklenburg

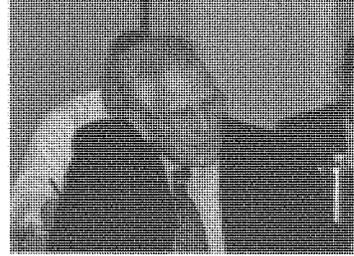
County, North Carolina, observed, "the way to avoid the system [of immigration status checks] is three simple words: *Don't get arrested*. If you don't get arrested, you will never be fingerprinted and checked. But if you *do* get arrested, you can rest assured that you're going to be checked." (Pendergraph recently resigned as sheriff in order to take a new job as ICE's first Executive Director for State and Local Coordination.)

Even departments in some sanctuary cities check immigration status after an arrest and notify ICE if the suspect is found to be in the country illegally. "We are a sanctuary city," said Assistant Chief Howard Jordan of Oakland, California. "But we do allow our officers to investigate the status of illegal immigrants *if they're arrested or stopped for something other than their status*—a high misdemeanor, a felony, or drug-related charge. When they fill out



an arrest report, they're questioned and we're allowed to ask regarding their immigration status. But we don't allow our officers to stop or detain someone solely to investigate their status in the United States."

Most chiefs agreed that status checks are appropriate in the case of serious crimes. Seattle Deputy Chief John Diaz said that even though Seattle has a reputation as a very "liberal" city, "We aren't going to ask them about immigration status—*unless they're involved in a serious crime.*"



Tulsa, Okla. Chief Ron Palmer

## Should Immigration Status Be Checked For Minor Offenders?

A CASE CAN ALSO BE MADE FOR CHECKING THE immigration status of less serious offenders. Some participants at the Immigration Summit observed that checking immigration status in misdemeanor cases often results in finding that the suspect has a more serious criminal record. "We're finding multiple [removable persons] on misdemeanor traffic violations with no driver's license," said Sheriff Jim Pendergraph. "Felony convictions from other states, people who should have been deported a long time ago. *These are time bombs ready to explode somewhere.*"

But Chief Larry Boyd of Irving, Texas, said some in his community would object if misdemeanor arrestees were subject to status checks. "In my community there's no consensus about identifying people after arrest," he said. "Regardless of which side you are on, very few people have trouble with felonies or DWI, turning them over to ICE. But the debate starts when it comes to lower-level misdemeanors, especially traffic violations. The number one reason for someone coming into our jail and getting identified is traffic warrants. They get stopped for a speeding ticket and there's a warrant out for their arrest. I know there's not a consensus in my community that that's where immigration status checks need to start."

Many chiefs also noted that ICE does not have anything close to the number of detention beds or



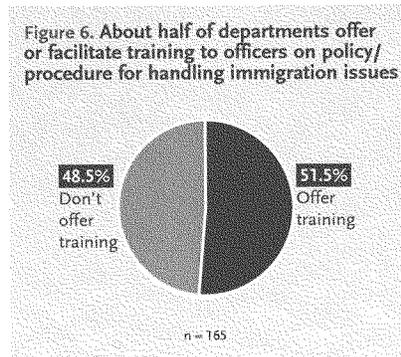
Lawrence, Mass. Mayor Michael Sullivan and San Antonio Deputy Chief David Head

other resources to house all of the illegal immigrants that local police could identify. According to ICE's latest report, ICE houses an average of 29,786 illegal aliens in detention facilities on any given day—a small fraction of the estimated 11 million illegal aliens in the United States. Many chiefs told stories of calling ICE to report having an illegal immigrant in custody on a relatively minor charge, only to be told to call back when they had more serious offenders to report. "If every department reports everyone who's here illegally, but ICE can't deport them, what are we doing it for?" said Frederick, Md. Chief Kim Dine.

## “Probable Cause” and A Cloudy Legal Picture

AS NOTED IN FIGURE 5 (P. 17), 60 PERCENT OF DEPARTMENTS surveyed by PERF check the immigration status of persons they stop, arrest, or detain under various circumstances. Of those departments, 33 percent check when they have probable cause to believe the person is in the United States illegally. Thus, approximately 20 percent of all the departments check immigration status for probable cause.

“Probable cause” is a higher standard of evidence than “reasonable suspicion,” but lower than the “beyond a reasonable doubt” standard required to secure a criminal conviction. And an officer may use any trustworthy information to establish probable cause, even if rules of evidence would bar the information from being admitted at trial—such as hearsay information or a person’s prior criminal record. But it is important that police officers thoroughly document all of the factors that entered into their belief that probable cause existed.



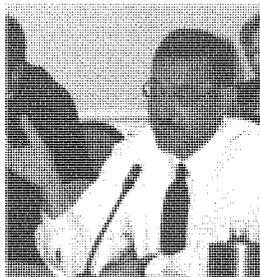
While there is a large body of case law regarding what constitutes probable cause in the areas of arrests and searches and seizures, chiefs and sheriffs noted that it is less clear how to translate “probable cause” into day-to-day practice in the context of immigration enforcement.

Some police leaders are trying to formulate real-world guidelines on how to proceed. For example, Commissioner Larry Mulvey of Nassau County, New York said that in his view, “Merely being at a labor site looking for work is not reasonable suspicion to inquire about status.”

Chief Deane of Prince William County, Virginia, whose department has been directed by elected officials to inquire about immigration status when there is probable cause to believe an individual is in this country illegally, offered some guidance: Probable cause means “factors that would lead a reasonable and experienced police officer to believe that this person is probably guilty of this violation, in this case, that they’re here unlawfully.” As an example, Deane said probable cause “could possibly come in the form of a person presenting a foreign driver’s license, not being able to speak English, and giving two or three names.”

And in the experience of Chief Deane and others at the PERF Summit, some detainees volunteer that they’re here illegally.

“I think the key to making this new policy lawful is that we’re going to train our officers to make sure that the first step is a lawful, routine stop,” Deane said. “And they don’t go any further than that unless there is clear evidence, probable cause, without any aspect of racial profiling.” Deane emphasized the importance of careful training of officers. “We’re going to train each officer in the



Colorado Springs Chief  
Rick Myers



White Plains, N.Y. Commissioner  
Frank Straub



Gaithersburg, Md.  
Chief John King

spirit of our policy, which is, we want to deal with the serious criminal offenders in our community who are threats. We want to first prosecute them, have them serve their sentence, and then deport them.”

(Figure 6 shows that slightly more than half the departments responding to the PERF survey offer or facilitate training for their officers on policy and procedure for handling immigration issues.)

As police try to define what constitutes probable cause to believe a person is an illegal immigrant, the potential for charges of racial profiling loomed large for some Summit participants. Chief Rick Myers of Colorado Springs observed that, “prior to 9/11, racial profiling was a huge issue in the United States, but today these concerns seem to carry less weight.” He worried that “even with tremendous training, there are some officers who are going to base probable cause on appearance.”

Chief Albert Najera of Sacramento raised an additional concern about the legalities of heightened enforcement of immigration laws: how *Miranda* warnings fit into the picture. “Did we forget *Miranda*

along the way here someplace?” he asked. “Especially if they’re in custody? Did we forget their rights to representation before that? Remember, they’re supposed to understand *Miranda*, and they’re supposed to knowingly waive *Miranda*. Once we start down that slippery slope of forgetting Constitutional issues, it gets dangerous, it truly does.”

White Plains, New York, Police Commissioner Frank Straub echoed these concerns, emphasizing the value of maintaining the principles of community policing despite the increased emphasis on immigration enforcement. “We have an obligation to protect all people, legal or illegal, and to do it within the framework of the Constitution, and we have to be very careful with that,” he said. “We in policing have taken a very strong, positive approach to helping people integrate into our community. Our obligation under community policing is to make sure people’s rights are protected, that they’re not victimized by crime, and that they become viable members of our communities. That’s the essence of community policing.”

## Working with Immigration and Customs Enforcement (ICE)

ACCORDING TO THE PERF SURVEY (SEE TABLE 2), A large majority of departments contact ICE when there is an NCIC warrant (76 percent) or when a suspect has been determined to be in the United States illegally (64 percent).

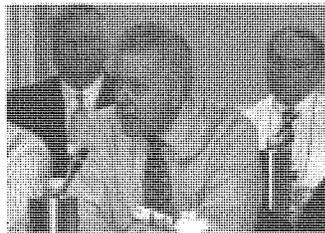
Many Summit participants draw the line at enforcing civil, administrative warrants for absconders that they find in the NCIC during their routine police activities. "We draw a bright red line. We don't get involved on civil; we do get involved on criminal. Our job is to enforce criminal laws, not civil," said Craig Ferrell, deputy director and general counsel to the Houston Police Department.

Chiefs reported varying experiences with ICE. On the positive side, for example, the Phoenix Police Department has homicide detectives working side by side with 10 ICE agents to target violent criminals who are illegal immigrants. "We have a really good relationship with ICE," Chief Jack Harris said. "We go after violent criminals who are illegal immigrants. Basically, if you're a landscaper going to work every day, we don't arrest you and turn you over to ICE, even with a traffic stop. But if you're a criminal, you're going to jail. And if you

happen to be illegal, you'll be turned over to ICE and deported."

But involvement with ICE can be a very divisive issue for police in some communities. "We probably have more organized protests related to ICE coming into our community and making arrests than probably any other issue, even though we have many other issues," said Chief Chris Magnus of Richmond, Calif. "We have as many as 500 or 600 people show up to council meetings to protest and make clear they don't want local law enforcement involved in any way, shape or form working with ICE or making arrests that have to do with immigration status. That's been tough, because we have done some good work with ICE around MS-13 [the violent Latin American gangs known as Mara Salvatrucha]. We have a very active MS-13 presence in Richmond and ICE has been very helpful with that. It's really frustrating when people are almost willing to tolerate illegal gang activity like MS-13 rather than have any cooperative relationship with immigration authorities."

On the negative side, Commissioner Larry Mulvey of Nassau County, N. Y., described a raid in



Phoenix Chief Jack Harris

Table 2. When do departments contact ICE?

When there is an NCIC warrant for a suspect	76%
When a suspect or offender has been determined to be in U.S. illegally	64%
To verify the immigration status of a person	36%
To report a crime victim who is in the U.S. illegally	10%
To report a crime witness who is in the U.S. illegally	8%

n = 168



Herndon, Va. Chief Toussaint Summer, Commissioner Larry Mulvey of Nassau County, N.Y., and Danbury, Conn. Chief Al Baker



Houston Deputy Chief Craig Ferrell, Jr., Bureau of Justice Assistance Deputy Director Jim Burch, National Institute of Justice Deputy Director Thomas Feucht, and NIJ Acting Principal Deputy Director David Hagy

which his officers cooperated with ICE agents to remove 131 identified gang members who were deportable because they had been arrested in the past. "They asked for assistance from my department in terms of a bus to transport subjects to Manhattan and to have uniformed officers present, so when they did consensual knocks on doors, people would look out and see *our* department, which they recognize and trust and they'd answer the door," he said.

The raid did not go well, he indicated. "We entered 131 homes at 4:30 in the morning," he said. "We woke up citizens, legal residents, and undocumented immigrants who were not the focus of the operation. It caused tremendous turmoil in my community." All but six out of 96 administrative warrants issued in this search for gang members had wrong or outdated addresses, and only three of the 40 individuals arrested on the first night of the operation were gang members.<sup>10</sup> From Commissioner Mulvey's perspective, this experience was antithetical to his department's philosophy and potentially damaging to its relationship with the community. Mulvey withdrew his department's support before the third night of the operation.

"I will not support it until we iron out these issues," Mulvey added. "But I believe in the intent of the operation. If there are gang members in the county who have been involved in criminality, if they're undocumented I would like to get them out of our county."

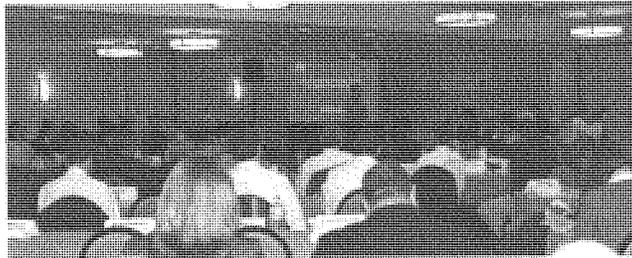
There was agreement that ICE is unable to respond to every call from local law enforcement. "There are about 12 million illegal immigrants in the United States," said David Alejandro of the ICE Detection and Removal Office. "ICE has about 10,000 officers and 30,000 beds. All of those beds are occupied today. Depending on where they're coming from, the type of violation, and the procedure they must go through, some of these individuals can occupy these beds for anywhere from a month to a couple years. These beds are continuously being filled by individuals who are being apprehended."

"If every police agency in America went out and said, 'I'm going to find one, two, three of those absconders today,' ICE would not have the capacity to deal with it," Chief Darrel Stephens said. "It's not practical. And if it's not practical, then we'd better think of other ways to deal with it."

10. Nina Bernstein, "Raids Were a Shambles, Nassau Complains to U.S." *The New York Times*, October 3, 2007.

As Sheriff Jim Pendergraph of Mecklenburg County, North Carolina, observed, "It all boils down to resources. The level of detainment is such that you have to have committed an aggravated felony to be detained for removal, or they are right back in the community."

The situation is similar in police agencies and their own local criminal justice systems, Pendergraph noted. "I have 3,000 beds in my jail and 44,000 outstanding arrest warrants on file. If everyone got arrested the same day, we'd be in a heck of a mess," he said.



## Participation in the 287(g) Program Is Small, But Growing

ONLY A SMALL FRACTION (4 PERCENT) OF PERF'S survey respondents participate in the Section 287(g) program, which establishes a memorandum of agreement between local law enforcement agencies and ICE, under which local departments can perform immigration enforcement functions after participating in ICE-sponsored training. Another 6 percent have applied to participate in the program, and 29 percent are considering participation (see Table 3).

Nationwide, 34 state and local law enforcement agencies in 15 states participate in 287(g), another 77 have applied,<sup>11</sup> and more than 400 local and state officers have been trained.<sup>12</sup>

Summit participants who have joined the 287(g) program said they have found it to be useful. "Members of our gang task force, as well as department officers, are trained in 287(g)," said Chief Toussaint Summers of Herndon, Va. "We refer to it as just another tool in the tool box available to us to ensure the safety of our community. When ICE officers are not available, we now have officers who are authorized to step in and take over those functions and complete whatever task needs to be done. It has been a success from the standpoint that it makes us more efficient, and it allows us access to a database that we wouldn't have normally."

Chief Summers was referring to a database maintained by the Law Enforcement Support Center (LESC), which gathers information on immigration status and identity from eight

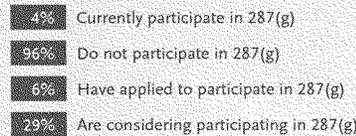
Department of Homeland Security databases, NCIC, the Interstate Identification Index, and other state criminal history indices. Available to law enforcement agencies around the clock, LESL runs data on criminal suspects to determine whether they are subject to ICE intervention.<sup>13</sup>

In Collier County, Florida, 27 members of the Sheriff's Office have 287(g) authority to identify the immigration status of all persons arrested and to work on gangs, fugitive warrants, and organized crime. Sheriff Don Hunter reported that this effort appears to have effectively defused the primary gangs in his county by reporting their leaders to ICE.

Chief Jack Harris of Phoenix noted that the Maricopa County Sheriff participates in 287(g) and checks the status of everyone who is booked into

**Table 3. Participation in 287(g)**  
287(g) establishes a Memorandum of Agreement between departments and ICE allowing departments to perform immigration enforcement functions after participating in an ICE training program.

Of departments responding to survey:

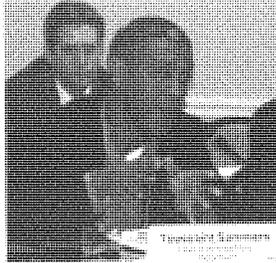


n = 165

11. Daniel C. Vock, "Police join feds to tackle immigration," *www.stateline.org*, November 27, 2007.

12. <http://www.ice.gov/partners/dro/iceaccess.htm>.

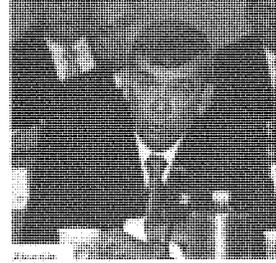
13. <http://www.ice.gov/partners/dro/iceaccess.htm>.



Herndon, Va. Chief  
Toussaint Summers



Mecklenburg County, N.C.  
Sheriff Jim Pendergraph



Las Vegas Sheriff  
Douglas Gillespie

the jail. Last year, of 45,000 individuals booked from Phoenix alone, 6,000 were held for immigration authorities.

Several chiefs reported strong support from their communities for their participation in the 287(g) program—even among the immigrant population. Communication with community groups is the key, they indicated. “I am pursuing the 287(g) program for inside the jail facility, for the criminal element,” said Sheriff Douglas Gillespie of Las Vegas. “I have reached out to the Hispanic community, bringing together roughly 50 people, including political activists in the community, and they are in support of us going after the criminal element. And I think from a local law enforcement standpoint, from my perspective, that’s where we need to keep our focus.”

Chief Summers of Herndon, Va. agreed. “Before entering into the 287(g) program, we met with residents, including immigrant groups, and explained the program. We assured these groups that our actions under 287(g) were defined clearly in the Memorandum of Agreement we have with ICE, and that any officers who act outside the parameters defined in the MOA will be held accountable.”

Sheriff Jim Pendergraph of Mecklenburg County, N.C. said the 287 (g) program has helped Mecklenburg County rid itself of many criminal offenders. “We were seeing people we knew had to be illegal aliens, getting arrested on every charge in the book, making bond and walking out the front door—and we really didn’t know who they were; there was no good way to identify who they were.” The 287 (g) program has helped the Sheriff’s Office work with ICE on identifying those offenders and removing them, he said. “In the last 18 months we have identified 3,200 people in Mecklenburg County who have committed a crime and whom we have identified as illegal aliens, and who are in the removal process or have been removed,” he said.

Pendergraph added that immigrants from 58 different countries have been arrested in Mecklenburg County. “We’re finding people from countries of interest, countries that have made it know that they’re involved in terrorism,” he said. “And it is a national security issue that you know who is in the community.” However, Sheriff Pendergraph added that “the people who are here to hurt us [with terrorism] aren’t going to get arrested for drunk driving.”

## Should Illegal Immigrants Be Allowed to Obtain Official Driver's Licenses or Other Identification Credentials?

DISCUSSION ABOUT THE NEED FOR PROPER IDENTIFICATION of illegal immigrants arose in the context of traffic incidents coming to the attention of local law enforcement. As with other immigration issues, the police executives were not of like mind on the question of identification cards. A number of chiefs noted that because illegal immigrants are not allowed to obtain driver's licenses, they often flee when they are involved in a traffic accident.

Allowing illegal immigrants to obtain a driver's license would help alleviate this problem, some chiefs believed. Issuing driver's licenses to illegal immigrants would also enable them to open bank accounts, so they would be less likely to carry large sums of cash and might be targeted for street robberies less often.

"The vast majority of these people are not criminal aliens; they're economic aliens," said Austin, Texas Chief Art Acevedo. "They are not a threat to our public safety. They want a state driver's license; they want to get insurance. Imagine if we had 12 million people paying insurance, the positive economic impact that would have on all of us."

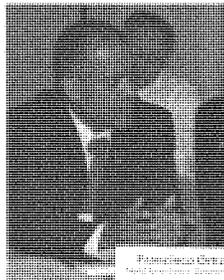
"In California, the driver's license issue is an enormous topic," said Sergio Diaz, deputy chief of the Los Angeles Police Department. As he sees it, "With this driver's license issue in California, we're isolating, alienating, forcing underground a huge part of the population. They're

driving of necessity, we don't know who they are, and there are all these incentives for them to stay underground. We're forcing them further and further to the margins and away from where we can have some positive effect on them. People who would otherwise be inclined to follow the law, are obligated by our own poor public policy into being outlaws."

In July 2007, the city of New Haven, Conn. began issuing resident identification cards that give illegal immigrants access to community services. According to Chief Francisco Ortiz, "We look at this in the police department as a human dignity issue, reaching out to folks who don't normally reach out to the police department. It is consistent with our community policing philosophy."

But several chiefs disputed the validity of credentials that are based on an oath or affidavit, as is New Haven's identification card. Chiefs also cast

doubt on any driver's license or other form of identification that is based on the "Matricula Consular," a card issued by the Mexican government to identify Mexican nationals who are living outside their country. According to the web site of the Mexican consulate,<sup>14</sup> in order to obtain a Matricula Consular, an applicant must appear in person, present an original birth certificate, provide an official government-issued photo I.D., and provide proof of address (utility bill, lease, etc.)



**New Haven, Ct. Chief  
Francisco Ortiz**

<sup>14</sup> <http://www.mexico.us/consulate.htm>.



FAR LEFT: Lawrence, Mass.  
Chief John Romero

LEFT: Brookline, Mass.  
Chief Daniel O'Leary

under the same name. The Matricula includes a picture, a signature, and a brief description of the individual it identifies (name, date, place of birth, and address). Security features include lamination, a watermark and a magnetic strip. The Matricula is normally valid for a period of five years, but it may be issued for lesser terms as indicated by the expiration date.

Despite these apparent precautions, the U.S. Department of Justice and the FBI have determined that the Matricula Consular is not a reliable form of identification because there is no way to verify the true identity of the card holder. As a result, the cards are vulnerable to fraud and forgery.<sup>15</sup>

Sheriff Don Hunter called the cards “an illusion of legitimacy,” and commented that “[just] any form of identification is not necessarily a good thing.” Chief Daniel O’Leary of Brookline, Mass. said, “I wasn’t satisfied with what the Mexican government uses for backup documentation and how we could check on it. In our roles as police officials, if we’re asked to endorse something that people are going to rely on, we should feel comfortable doing that.”

Yet some chiefs observed that U.S. identification credentials are likewise subject to fraud. Chief

Albert Najera of Sacramento cited the false IDs ubiquitously obtained by underage college students as one example. Chief John Romero of Lawrence, Massachusetts noted that when the Massachusetts Registry of Motor Vehicles implemented a facial recognition program as part of the screening process for new driver’s license applications,<sup>16</sup> they found people with three or four different driver’s licenses and state ID cards.

Chief Rick Myers of Colorado Springs said, “We aren’t any better at it in the United States. We don’t have a national ID. I got my Social Security card when I was 12 years old—and the signature looks like a 12-year-old’s. The card looks like it came out of a Cracker Jack box, but it’s an official U.S. document. Some communities don’t want to look at the matricula cards because of the questions about whether they’re verifiable; other cities say they’re better than nothing. But presumably, if every time I stop someone they have the same card, does it matter if their name is spelled right?”

There was general agreement that a more secure, national ID card based on biometrics would be helpful. Chief Harris of Phoenix recommended tying the availability of this type of national ID to a “reasonable immigration and citizenship policy”

15. “Consular ID Cards in a Post-9/11 World,” Testimony of Steve McCraw, Assistant Director of the Office of Intelligence, FBI, Before the House Judiciary Subcommittee on Immigration, Border Security, and Claims, June 26, 2003, accessed at <http://www.fbi.gov/congress/congress03/mccraw062603.htm>.

16. Facial recognition capabilities employ a computer algorithm to examine an applicant’s photo against all other photos of registered drivers in Massachusetts to determine whether the applicant may be attempting to obtain a duplicate license using a false claimed identity.

and work visa, whereby immigrants could obtain the ID, get a driver's license, and have the opportunity to become a U.S. citizen over three to five years.

On the other hand, Chief Deane of Prince William County advised caution before issuing identification to illegal immigrants. "Once you start giving identification credentials to people who are here illegally, I think that opens up a lot of other issues that have more negatives than positives," he said. Lawrence, Mass. Chief John Romero added, "With a state ID card or driver's license, you can build an entire identity."

To illustrate the scope of the credentialing problem, David Alejandro of ICE described situations at the airport in San Juan, Puerto Rico, in which U.S. authorities seize packages of fraudulent identification documents. These packages contain duplicates of original birth certificates, unsigned Social Security cards, and driver's licenses lacking photographs. If these packages make their way into the United States, the recipients can sign the Social Security cards, affix their photos to the drivers' licenses, and use these documents to obtain passports.

## The Need for a Federal Policy

SUMMIT PARTICIPANTS REPEATEDLY RETURNED TO A strongly held conviction that the federal government is responsible for immigration policy:

“Congress has to pass some type of immigration legislation. I think it’s a horrible mistake for local police, in the absence of federal policy, to take on this role when we don’t have the authority and we don’t have the resources—to wrestle with issues like Charlie [Deane] has with his Board, establishing a policy that forces them to take a very active role in dealing with immigration issues when their authority still hasn’t been made clear and federal resources are not sufficient to support them.”

— CHARLOTTE-MECKLENBURG, N.C.  
CHIEF DARREL STEPHENS

“Our national government has let us down because they haven’t addressed this issue.”

— CHIEF MELVIN HIGH,  
PRINCE GEORGE’S COUNTY, MD.

“This is a federal responsibility, so the federal government needs to be realistic and prioritize what we should be focusing on. If we’re trying to get the ‘worst of the worst’ out of the country, instead of saying we’re going to use 287(g) and we’re going to pick up anybody who’s illegal, we really need to give local law enforcement some clear direction. We’re really looking for people who have committed serious felonies, because those are the people that we really stand the best of chance of a) keeping detained, and b) deporting, versus just picking up anyone

who is here illegally. We need clear focus, direction, and structure.”

— WHITE PLAINS, N.Y. COMMISSIONER  
FRANK STRAUB

“If we really wanted to stop this, we would make it tremendously costly to American businesses to hire illegal immigrants, but we recognize the economic impact would be horrible. As a consequence, we in policing are being forced to step into this political, economic debate that we should not be involved in.”

— AUSTIN, TEXAS CHIEF ART ACEVEDO

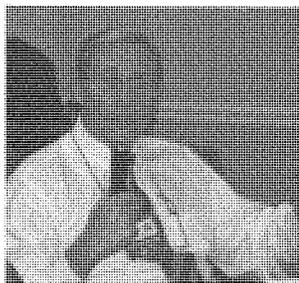
Chief Dean Esserman of Providence, R.I. expressed a different view. “My best guess is that it’s going to be a much more passionate issue in the years ahead,” he said. “This isn’t going to be a bump that’s going to subside. It’s going to be an increasingly front-burner issue. But this trend is going on across the globe, and I think that’s going



Charlotte-Mecklenburg, N.C. Chief Darrel Stephens  
and Providence, R.I. Chief Dean Esserman



FAR LEFT: Prince George's County, Md. Chief Melvin High



LEFT: Peabody, Mass. Chief Bob Champagne

to transform the immigration issue from a nation-states' issue to a very local issue, and we're going to be more involved, and we are not going to be able to rely on our nation-states to tell us. We will regulate this issue. For practical reasons, we will be forced to develop our own policies and procedures."

Regardless of whether policies will be set nationally or at the local level, some chiefs exhorted their colleagues to speak up and take a leadership role in defining the illegal immigration issues and setting policy. "It's time for us to step up and say, 'This really is about the right thing to do,'" said Chief Bob Champagne of Peabody, Mass.

Sheriff Douglas Gillespie of Las Vegas agreed. "We in law enforcement maybe have to become more involved in pushing national policy, because we're being thrust into this. Without us getting our ideas and thoughts out there, I believe some policy will probably come down that a lot of us won't like or agree with. When this topic comes up in communities that I read about or hear about, for the most part I don't see elected officials other than the sheriff *defending* a position, I see them *taking* a position. The challenge that I have as a sheriff is taking a position, and doing it in such a way that protects the rights of all the people in the community."

Commissioner Frank Straub of White Plains, N.Y. noted that a number of PERF members had visited the Holocaust Museum in Washington, D.C. on the day before the Immigration Summit. "We can't allow American policing to become corrupted

by a political agenda," he said. "The Holocaust Museum stands to show how the police and the military were co-opted by a political agenda and turned against a whole segment of the population. We can't become a wedge between the federal government and the communities we serve."

Finally, Sacramento Chief Najera offered a personal experience that exemplified the dilemma for local law enforcement:

"Two or three years ago, I was coming home from a high school event with my daughter. I pulled into line at a DUI checkpoint. My officers had stopped a pickup truck, a young man, his pregnant wife and two little kids, an old pickup truck full of lawn equipment. This guy was an unlicensed driver, undoubtedly an illegal immigrant. In California we're required to tow vehicles for at least a 30-day impound for unlicensed drivers. But they were also taking away the livelihood from this guy. He's here trying to do whatever he could do, and those kids were probably American citizens, born here. It is the law, but we were taking the livelihood away from this guy. How is he going to get the truck and his equipment back? He has to be a licensed driver, he has to register his truck, he has to have insurance. We've put the guy in a Catch-22 situation. Everything that we did was legal; the guy was here illegally. *But is this what we really want?*"

## There Are Some Points Of General Consensus

THE DISCUSSION AT PERF'S IMMIGRATION SUMMIT was spirited, and participants offered a wide range of strongly held and sometimes opposing views on many of the thorny issues that come up in the public debate on illegal immigration.

However, the chiefs who participated in PERF's Summit generally agreed on three points:

### **1. IT IS APPROPRIATE TO CHECK IMMIGRATION STATUS AT THE TIME OF ARREST AND BOOKING FOR SERIOUS OFFENSES.**

This practice is routine in many of the communities represented among Summit participants and survey respondents. Even many departments in so-called sanctuary cities check the immigration status of suspects in serious or violent crimes.

There was some debate, however, about the value of checking the status of misdemeanants. A few chiefs argued that stops for misdemeanor offenses often reveal more serious crimes. Others pointed to two potential drawbacks: 1) objections from their communities to a perceived heavy-handed reaction to relatively minor transgressions, and 2) the limited resources of ICE to respond to lesser offenses. Of paramount importance to many of the chiefs was the potential damage to their relationships with immigrant communities in their jurisdictions.

### **2. A NATIONAL IDENTIFICATION CARD BASED ON BIOMETRIC TECHNOLOGY WOULD BE HELPFUL.**

Despite efforts in some communities to provide some form of acceptable credentials for the illegal immigrant population, all existing forms of identification—whether U.S. driver's licenses, Mexican Matricula Consular cards, or credentials issued by some municipalities such as New Haven, Conn.—were found lacking because they are too easily falsified. Many chiefs called for the development of a national identification card based on biometric technology such as fingerprints or DNA.

### **3. THE U.S. CONGRESS NEEDS TO SET POLICY FOR THE NATION**

Time and again throughout the day, Summit participants decried the lack of federal leadership. They urged their colleagues across the nation to be more vocal on these issues, to take a stand, and to use their collective political clout to move Congress and the executive branch to provide more guidance and resources.

## Conclusion

By PERF Executive Director Chuck Wexler

THE ROLE OF LOCAL POLICE AND SHERIFFS' DEPARTMENTS in immigration enforcement is one of the most difficult issues confronting police executives.

Our approach to many issues in policing is fairly straightforward: conduct solid research, survey the field, seek out the knowledge and wisdom of law enforcement executives and other experts about "best practices" and other aspects of the issue, and based on all of that, try to devise a single set of recommendations that we believe all departments would be well-advised to consider.

On immigration enforcement, however, we have a special problem: No one set of recommendations can account for the extreme differences in the political climate of various jurisdictions on the immigration issue. A measure that seems to make perfect sense in one city—working with ICE in a 287(g) program, for example—is political anathema in another jurisdiction.

Compounding the problem is the fact that the immigration issue is amazingly dynamic. Not only are cities and counties across the country rushing to craft their own policies because federal lawmakers and policy-makers have been unable to set a national policy, but local jurisdictions are also being affected by the policies of their *neighboring* states, counties, and cities. The *Houston Chronicle* recently ran a story that started with this:

Illegal immigrants are flowing into Texas across its long borders. But they aren't just swimming across the Rio Grande from Mexico or making dangerous treks through the rugged desert.

Instead, a new rush of illegal immigrants are driving down Interstate 35 from Oklahoma, or heading east to Texas from Arizona, to flee tough new anti-illegal immigrant laws in those and other states.

"They're really tightening the screws," said Mario Ortiz, an undocumented Mexican worker who came to Houston after leaving Phoenix last year. "There have been a lot coming—it could be 100 a day."<sup>17</sup>

Similarly, stricter immigration enforcement policies being implemented in Prince William County, Va. reportedly have caused illegal immigrants there to move north to jurisdictions like Arlington, Va., which has a reputation for welcoming immigrants. In a story titled "Immigrants Haven't Worn Out the Welcome Mat in Arlington," a *Washington Post* reporter wrote:

When nearby counties began trying to drive out illegal immigrants this summer, Arlington said it would treat everyone with "dignity and respect, regardless of immigration status."

Other counties felt overwhelmed by immigrants, but Arlington officials said they would happily provide them with every service allowed by law.

"The attitude has always been: They're here. They're part of the community. Let's help them succeed," said Chris Zimmerman, a longtime County Board member.<sup>18</sup>

<sup>17</sup>. See <http://www.chron.com/disp/story.mpl/front/5509022.html>

<sup>18</sup>. See <http://www.washingtonpost.com/wp-dyn/content/article/2007/11/14/AR200711402322.html>

So police executives not only have to work with local lawmakers to develop immigration policies that make sense for their own jurisdiction; they need to pay attention to what's going on in the next city, the next county, and the next state, and analyze how other jurisdictions' policies may impact their own situations.

Having said that, let me rush to add that the situation is far from intractable. We still know certain things.

We know that solid research can help inform the debate. For example, we need more research on issues like the extent to which official crime statistics may be understated because immigrants, fearing deportation, are afraid to report being victimized. In coming years, we should conduct research on whether increasingly strict immigration enforcement policies exacerbate this problem.

We also know that principles of community policing are always helpful. So police chiefs and sheriffs, recognizing that immigration enforcement is an extremely polarizing issue, should strive to maintain open lines of communication with all of their community groups on the immigration issue, to maintain a sense of transparency and fairness. Chiefs told us this at our Summit.

We know that the capacity of federal authorities to respond to local immigration enforcement efforts is sharply limited, so it makes sense to focus any immigration enforcement efforts on immigrants who have committed serious crimes. This also helps to guard against complaints of racial profiling. Many chiefs and sheriffs have made that point.

And we know that some departments already have been working on these issues for years, so there is much to be gained by looking at existing policies and recommendations. For example, more than a year ago the Major Cities Chiefs (MCC) issued a set of principles for Congress and the President to keep in mind in devising federal policies on the role of local law enforcement in immigration enforcement.<sup>19</sup> (See Appendix A.) This report highlights the MCC's concerns in several areas,

including: the risk that immigration enforcement will undermine the trust that immigrant communities have in the police; local law enforcement agencies' lack of resources; the extremely complicated nature of federal immigration laws and lack of training of local officers in this area; and the lack of local authority on civil aspects of federal immigration law.

On the other hand, Collier County, Fla. Sheriff Don Hunter has produced a legal analysis that argues against any general unwillingness to enforce immigration laws based on a fear of losing the trust of immigrant communities. (See Appendix M.) "Unbiased, unprejudiced and influence-free enforcement of law is a keystone principle of professional U.S. law enforcement," Sheriff Hunter states. "Trust is not inspired in the idea that certain crimes will not be enforced. The reverse is true. Trust is built on a foundation of predictability; consistent application of law creates predictability, which inspires trust."

Many police departments' policies can be found in appendices to this report. Law enforcement executives trying to help shape the debate in their own jurisdictions can pick and choose elements from various policies that seem most compatible with the direction they want to take.

For PERE, it appears that the immigration issue will be a flashing light at the center of our radar screen for years to come. We already are pursuing new possibilities for immigration enforcement research and other initiatives. And of course, the immigration issue will remain a key issue in PERE's daily contacts with its member law enforcement executives.

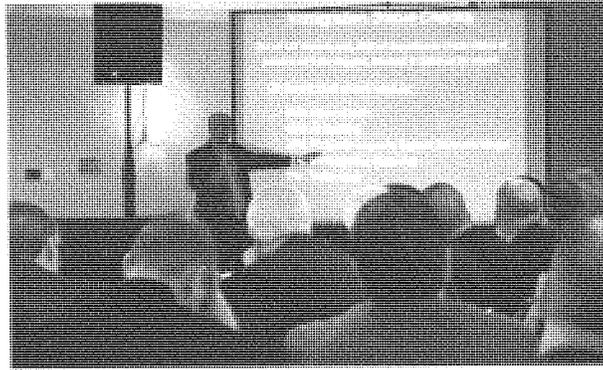
In a sense, this publication should be considered an interim report, a "work in progress." It is too soon to know the consequences, intended and unintended, of many of the immigration policies being developed across the country. Law enforcement policies are evolving as we write this report. Prince William County, Va., for example, is doing the nuts-and-bolts work on implementing the

<sup>19</sup>. See [http://www.majorcitieschiefs.org/pdfpublic/mcc\\_position\\_statement\\_revised\\_cef.pdf](http://www.majorcitieschiefs.org/pdfpublic/mcc_position_statement_revised_cef.pdf)

policies that it enacted last summer; other jurisdictions are just starting to review their practices. There was a time when many local law enforcement agencies simply considered immigration enforcement a federal responsibility, but I think we can say that that time has passed. The new paradigm seems to be that local police and sheriffs will supplement

the federal role, to greater or lesser degrees, depending on local community input. There is a lot of fear, concern, and uncertainty about the implications of that change.

We hope that this publication will serve as an early-2008 status report on the immigration issue and a springboard for further analysis and discussion.



## About the Police Executive Research Forum

THE POLICE EXECUTIVE RESEARCH FORUM (PERF) is a professional organization of progressive chief executives of city, county and state law enforcement agencies who collectively serve more than 50 percent of the U.S. population. In addition, PERF has established formal relationships with international police executives and law enforcement organizations from around the globe. Membership includes police chiefs, superintendents, sheriffs, state police directors, university police chiefs, public safety directors, and other law enforcement professionals. Established in 1976 as a nonprofit organization, PERF is unique in its commitment to the application of research in policing and the importance of higher education for police executives. Besides a commitment to police innovation and professionalism, PERF members must hold a four-year college degree.

PERF continues to conduct some of the most innovative police and criminal justice research and provides a wide variety of management and technical assistance programs to police agencies throughout the world. PERF's groundbreaking work on community and problem-oriented policing, racial profiling, use of force, less-lethal weapons, and crime reduction strategies has earned it a prominent position in the police community. PERF continues to work toward increased professionalism and excellence in the field through its publications and training programs. PERF sponsors and conducts the Senior Management Institute for Police (SMIP). This program provides comprehensive professional management and executive development training to police chiefs and law enforcement executives. Convened annually in Boston, SMIP instructors include professors from leading universities, with the core faculty from Harvard University's Kennedy School of Government.

PERF's success is built on the active involvement of its members. The organization also has types of membership that allow it to benefit from the diverse views of criminal justice researchers, law enforcement professionals of all ranks, and others committed to advancing policing services to all communities. PERF is committed to the application of research in policing and to promoting innovation that will enhance the quality of life in our communities. PERF's objective is to improve the delivery of police services and the effectiveness of crime control through the exercise of strong national leadership, the public debate of criminal justice issues, the development of a body of research about policing, and the provision of vital management services to all police agencies.

PERF has developed and published some of the leading literature in the law enforcement field. Recently, PERF's work on the increase in violent crime during the past two years has received national attention. A series of reports in the "Critical Issues in Policing" series—*A Gathering Storm—Violent Crime in America*; *24 Months of Alarming Trends*; and *Violent Crime in America: A Tale of Two Cities*—provides in-depth analysis of the extent and nature of violent crime and countermeasures that have been undertaken by police. In addition, PERF recently released two publications on contemporary law enforcement issues. The books—entitled *Exploring the Challenges of Police Use of Force and Police Management of Mass Demonstrations: Identifying Issues and Successful Approaches*—serve as practical guides to help police leaders make more informed decisions. In addition, PERF has released a series of white papers on terrorism in the local law enforcement context, *Protecting Your Community from Terrorism: Strategies for Local Law Enforcement*, which examined such issues as local-federal

partnerships, working with diverse communities, bioterrorism, and intelligence sharing. Other recent publications include *Managing a Multijurisdictional Case: Identifying Lessons Learned from the Sniper Investigation* (2004) and *Community Policing: The Past, Present and Future* (2004). Other PERF titles include the only authoritative work on racial profiling, *Racial Profiling: A Principled Response* (2001); *Recognizing Value in Policing* (2002); *The Police Response to Mental Illness* (2002); *Citizen Review Resource Manual* (1995); *Managing Innovation in Policing* (1995); *Crime Analysis Through Computer*

*Mapping* (1995); *And Justice For All: Understanding and Controlling Police Use of Deadly Force* (1995); *Why Police Organizations Change: A Study of Community-Oriented Policing* (1996); and *Police Antidrug Tactics: New Approaches and Applications* (1996). PERF publications are used for training and promotion exams and to inform police professionals about innovative approaches to community problems. The hallmark of the program is translating the latest research and thinking about a topic into police practices that can be tailored to the unique needs of a jurisdiction.

**To learn more about PERF, visit [www.policeforum.org](http://www.policeforum.org).**

## About Motorola and the Motorola Foundation

MOTOROLA IS KNOWN AROUND THE WORLD FOR innovation in communications. The company develops technologies, products and services that make mobile experiences possible. Its portfolio includes communications infrastructure, enterprise mobility solutions, digital set-tops, cable modems, mobile devices and Bluetooth accessories. Motorola is committed to delivering next generation communication solutions to people, businesses and governments. A Fortune 100 company with global presence and impact, Motorola had sales of \$36.6 billion in 2007.

Today, Motorola comprises three business units: Enterprise Mobility Solutions, Home & Networks Mobility, and Mobile Devices.

Enterprise Mobility Solutions includes the mission-critical communications offered by our government and public safety sectors and our enterprise mobility business, including analog and digital two-way radio as well as voice and data communications products and systems. Motorola delivers mobile computing, advanced data capture, wireless infrastructure and RFID solutions not only to clients in the public sector, but also to retail, manufacturing, wholesale distribution, healthcare, travel and transportation customers worldwide.

Home & Networks Mobility provides integrated, end-to-end systems that seamlessly and

reliably enable uninterrupted access to digital entertainment, information and communications services over a variety of wired and wireless solutions. Motorola provides digital video system solutions and interactive set-top devices, voice and data modems for digital subscriber line and cable networks, and broadband access systems (including cellular infrastructure systems) for cable and satellite television operators, wireline carriers and wireless service providers.

Mobile Devices has transformed the cell phone into an icon of personal technology—an integral part of daily communications, data management and mobile entertainment. Motorola offers innovative product handset and accessory designs that deliver “must have” experiences, such as mobile music and video—enabling seamless connectivity at work or at play.

The Motorola Foundation is the independent charitable and philanthropic arm of Motorola. With employees located around the globe, Motorola seeks to benefit the communities where it operates. The company achieves this by making strategic grants, forging strong community partnerships, fostering innovation and engaging stakeholders. Motorola Foundation focuses its funding on education, especially science, technology, engineering and math programming.

**For more information go to [www.motorola.com](http://www.motorola.com).**

**Testimony of Eliseo Medina****Senate Judiciary Subcommittee on Immigration  
Thursday, April 30, 2009**

Thank you, Mr. Chairman. My name is Eliseo Medina and I am a very proud immigrant today. To address a US Senate subcommittee is a great honor and I thank you for the opportunity. My family and I came to this country in the 50s. We worked in the fields harvesting grapes, oranges and other crops. We worked long days, without breaks, for very low wages and terrible working conditions. To ask for better treatment was asking to be fired on the spot. But, as difficult as the work was, we also knew that if we worked hard we had an opportunity to claim our own little piece of the American Dream. Because of my history, the issue of immigration reform is very personal to me.

Today, I am an executive vice president of the Service Employees International Union, one of the largest unions in America. I am honored to be here today to represent the 2 million homecare, janitors, security officers and other SEIU members who live and work throughout the United States, many of them immigrants who came to this country from all over the world.

Regardless of where we came from, we wake up and go to work every day with the same goal - to work hard, contribute to society and achieve our own American Dream.

I believe that to achieve that dream, we have to finally address our broken immigration system. The status quo is simply unacceptable and works only to the benefit of those who break the rules.

That is why the two largest workers organizations in the country – the Change to Win federation and the AFL-CIO – have come together around a unified proposal for comprehensive immigration reform that consists of five components, each of which depends on the others for success:

- Rational control of the border;
- A secure and effective worker authorization mechanism;
- Adjustment of status of the current undocumented population;
- Improvement, not expansion of temporary worker programs; and
- An independent commission to assess and manage future flows, based on labor market shortages that are determined on the basis of actual need

This proposal will allow millions of undocumented workers to come out of the shadows, relieving them of the fear of arrest and deportation and of leaving behind their families and dreams. It will stop unscrupulous employers from taking

advantage of their lack of legal status to exploit them and violate existing wage and hour and health and safety laws. Guest workers fare no better because they are tied to their sponsoring employer, with no effective redress because to complain is to lose your visa and be deported.

I saw this system firsthand with my father and brother and later as an adult working with sugar cane cutters in Florida under the H2A program. These workers are not treated as "guests" in our country but more like indentured servants.

The current broken system has given rise to a three-tier caste worker system in America - citizens, guest workers and undocumented workers. This onerous system depresses wages for all workers because, unfortunately, too many employers seek out the cheapest, most vulnerable workers in order to gain a competitive advantage. This helps no one, not American workers, not immigrants, not businesses that play by the rules and certainly not taxpayers who wind up paying for an ineffective enforcement system focused on arresting nannies, farm workers and gardeners instead of stopping drug smugglers, gang members or other larger threats to our national security.

Real reform will allow us to focus our resources on our priorities instead of our prejudices. It will solve many problems at one time instead of the current band-aid approach.

Since we unveiled our proposal, the portion that has received the most attention—and been the most misunderstood—has been the independent Commission. The men and women of the labor movement have long believed that our current system for bringing in permanent and temporary workers simply does not work effectively.

The key to designing a sustainable workplace immigration system is that the flow of future workers must be rationally based on the always-evolving labor market needs of the United States.

The Commission would act in two phases. First, it would examine the impact of immigration on the economy, wages, the workforce and business to recommend to Congress a new flexible system for meeting our labor needs and set the number of employment visas. Next, the Commission would set and continuously adjust future numbers based on a congressionally approved method.

We believe our proposal will give all stakeholders a seat at the table to build a system that works for the long term that is based on sound public policy not politics, and will have lasting political support.

We hope you will give it your consideration. Thank you.

# The Labor Movement's Framework for Comprehensive Immigration Reform

## AFL-CIO and Change to Win

APRIL 2009

**IMMIGRATION REFORM** is a component of a shared prosperity agenda that focuses on improving productivity and quality; limiting wage competition; strengthening labor standards, especially the freedom of workers to form unions and bargain collectively; and providing social safety nets and high-quality lifelong education and training for workers and their families. To achieve this goal, immigration reform must fully protect U.S. workers, reduce the exploitation of immigrant workers and reduce employers' incentive to hire undocumented workers rather than U.S. workers. The most effective way to do that is for all workers—immigrant and native-born—to have full and complete access to the protection of labor, health and safety and other laws. Comprehensive immigration reform must complement a strong, well-resourced and effective labor standards enforcement initiative that prioritizes workers' rights and workplace protections. This approach will ensure that immigration does not depress wages and working conditions or encourage marginal low-wage industries that depend heavily on substandard wages, benefits and working conditions.

This approach to immigration reform has five major interconnected pieces:

1. An independent commission to assess and manage future flows, based on labor market shortages that are determined on the basis of actual need;
2. A secure and effective worker authorization mechanism;
3. Rational operational control of the border;
4. Adjustment of status for the current undocumented population; and
5. Improvement, not expansion, of temporary worker programs, limited to temporary or seasonal, not permanent, jobs.

Family reunification is an important goal of immigration policy and it is in the national interest for it to remain that way. First, families strongly influence individual and national welfare. Families historically have facilitated the assimilation of immigrants into American life. Second, the failure to allow family reunification creates strong pressures for unauthorized immigration, as happened with the IRCA's amnesty provisions. Third, families are the most basic learning institutions, teaching children values as well as skills to succeed in school, society and at work. Finally, families are important economic units that provide valuable sources of entrepreneurship, job training, support for members who are unemployed and information and networking for better labor market information.

The long-term solution to uncontrolled immigration is to stop promoting failed globalization policies and encourage just and humane economic integration, which will eliminate the enormous social and economic inequalities at both national and international levels. U.S. immigration policy should consider the effects of immigration reforms on immigrant source countries, especially Mexico. It is in our national interest for Mexico to be a prosperous and democratic country able to provide good jobs for most of its adult population, thereby ameliorating strong pressures for emigration. Much of the emigration from Mexico in recent years resulted from the disruption caused by NAFTA, which displaced millions of Mexicans from subsistence agriculture and enterprises that could not compete in a global market. Thus, an essential component of the long-term solution is a fair trade and globalization model that uplifts all workers, promotes the creation of free trade unions around the world, ensures the enforcement of labor rights and guarantees core labor protections for all workers.

1

**Future Flow**

One of the great failures of our current employment-based immigration system is that the level of legal work-based immigration is set arbitrarily by Congress as a product of political compromise—without regard to real labor market needs—and it is rarely updated to reflect changing circumstances or conditions. This failure has allowed unscrupulous employers to manipulate the system to the detriment of workers and reputable employers alike. The system for allocating employment visas—both temporary and permanent—should be depoliticized and placed in the hands of an independent commission that can assess labor market needs on an ongoing basis and—based on a methodology approved by Congress—determine the number of foreign workers to be admitted for employment purposes, based on labor market needs. In designing the new system, and establishing the methodology to be used for assessing labor shortages, the commission will be required to examine the impact of immigration on the economy, wages, the workforce and business.

**Worker Authorization Mechanism**

The current system of regulating the employment of unauthorized workers is defunct, ineffective and has failed to curtail illegal immigration. A secure and effective worker authorization mechanism is one that determines employment authorization accurately while providing maximum protection for workers, contains sufficient due process and privacy protections and prevents discrimination. The verification process must be taken out of the hands of employers, and the mechanism must rely on secure identification methodology. Employers that fail to use the system properly must face strict liability, including significant fines and penalties regardless of the immigration status of their workers.

**Rational Operational Control of Borders**

A new immigration system must include rational control of our borders. Border security is clearly very important, but not sufficient, since 40 to 45 percent of unauthorized immigrants did not cross the border unlawfully but overstayed visas. Border controls, therefore, must be supplemented by effective work authorization and other components of this framework. An “enforcement-only” policy will not work. Practical border controls balance border enforcement with the other components of this framework and with the

reality that more than 30 million valid visitors cross our borders each year. Enforcement, therefore, should respect the dignity and rights of our visitors, as well as residents in border communities. In addition, enforcement authorities must understand that they need cooperation from communities along the border. Border enforcement is likely to be most effective when it focuses on criminal elements and engages immigrants and border community residents in the enforcement effort. Similarly, border enforcement is most effective when it is left to trained professional border patrol agents and not vigilantes or local law enforcement officials—who require cooperation from immigrants to enforce state and local laws.

**Adjustment of Status for the Current Undocumented Population**

Immigration reform must include adjustment of status for the current undocumented population. Rounding up and deporting the 12 million or more immigrants who are unlawfully present in the United States may make for a good sound bite, but it is not a realistic solution. And if these immigrants are not given adequate incentive to “come out of the shadows” to adjust their status, we will continue to have a large pool of unauthorized workers whom employers will continue to exploit to drive down wages and other standards to the detriment of *all* workers. Having access to a large undocumented workforce has allowed employers to create an underground economy, without the basic protections afforded to U.S. citizens and lawful permanent residents, and in which employers often misclassify workers as independent contractors, thus evading payroll taxes and depriving federal, state and local governments of additional revenue. An inclusive, practical and swift adjustment-of-status program will raise labor standards for all workers. The adjustment process must be rational, reasonable and accessible, and it must be designed to ensure it will not encourage future illegal immigration.

**Improvement, Not Expansion, of Temporary Worker Programs**

The United States must improve the administration of existing temporary worker programs, but should not adopt a new “indentured” or “guest worker” initiative. Our country has long recognized that it is not good policy for a democracy to admit large numbers of workers with limited civil and employment rights.



**Testimony of**

**Doris Meissner**  
**Director, U.S. Immigration Policy Program**  
**Migration Policy Institute**

**Hearing on**  
**“Comprehensive Immigration Reform in 2009,**  
**Can We Do It and How?”**

**Before the**  
**Committee on the Judiciary**  
**Subcommittee on Immigration, Border Security and Citizenship**  
**U.S. Senate**  
**Washington, D.C.**

**April 30, 2009**

Mister Chairman and Members of the Subcommittee,

Thank you for inviting me to testify at this hearing on “Comprehensive Immigration Reform in 2009: Can We Do It and How?” My name is Doris Meissner and I am a Senior Fellow and Director of the U.S. Immigration Policy Program at the Migration Policy Institute (MPI) in Washington, D.C. MPI is a non-partisan, non-governmental think tank that studies migration and the management of migration systems worldwide. One of our primary areas of research, analysis and policy recommendations is U.S. immigration policy.

### Introduction

To answer questions about the “when” and “how” of immigration reform, it is important to have clear understandings about the “what.” What we know regarding immigration in the life of the nation today is important in informing how we move forward. In that connection, my statement will posit answers to four pressing questions:

- What is the relationship between the current recession and immigration?
- What must be key drivers of the nation’s longer-term immigration policy interests?
- What security, law enforcement and administrative considerations are relevant to comprehensive immigration reform?
- What makes legalization during a recession central to longer-term solutions?

My statement draws heavily on three important MPI publications. First is an analysis of the relationship between the current economic crisis and immigration, published in January 2009.<sup>1</sup> Next is a February 2009 report that looks at the Department of Homeland Security (DHS) and how it is carrying out its immigration mission and mandates.<sup>2</sup> Finally, I refer to work of the Independent Task Force on Immigration and America’s Future whose 2006 report, *Immigration and America’s Future: A New Chapter*, proposes policy ideas that I hope will be of particular interest to the committee at this time.<sup>3</sup> The Task Force was convened by MPI and co-chaired by former U.S. Senator Spencer Abraham (R-Mich.) and former Congressman Lee Hamilton, (D-Ind.). Its report provides an excellent overview of the failings of today’s immigration system and how they might best be addressed. In addition, MPI produces a wealth of resource material and information that inform my statement and bear on issues associated with today’s inquiry.

<sup>1</sup> Demetrios G. Papademetriou and Aaron Terrazas, *Immigrants and the Current Economic Crisis* (Washington, D.C.: Migration Policy Institute, 2009), [www.migrationpolicy.org/pubs/lmj\\_recessionJan09.pdf](http://www.migrationpolicy.org/pubs/lmj_recessionJan09.pdf).

<sup>2</sup> Doris Meissner and Donald Kerwin, *DHS and Immigration: Taking Stock and Correcting Course* (Washington, D.C.: Migration Policy Institute, 2009), [www.migrationpolicy.org/pubs/DHS\\_Feb09.pdf](http://www.migrationpolicy.org/pubs/DHS_Feb09.pdf).

<sup>3</sup> Independent Task Force on Immigration and America’s Future, *Immigration and America’s Future: A New Chapter* (Washington, D.C.: Migration Policy Institute, 2006), [www.migrationpolicy.org/ITFIAF/index.php](http://www.migrationpolicy.org/ITFIAF/index.php).

### **I. What Is the Relationship Between the Current Recession and Immigration?**

Issues about the economy loom above all others at this time. On December 1, 2008 the National Bureau of Economic Research (NBER) officially declared the United States in recession, and estimated that it began in December 2007.<sup>4</sup> This makes the current U.S. recession already longer than all but two since World War II. It is still unclear how deep, wide and long this recession will be. But one thing seems certain: the recent period of unparalleled economic growth and prosperity has come to an end, both in the United States and in most of the world, a fact that massive governmental interventions might mitigate but are not likely to reverse — at least not in the next year.

Before 2007, the U.S. economy had grown in 23 of the past 25 years. During this period of sustained economic growth the United States attracted record numbers of new immigrants.<sup>5</sup> The U.S. foreign-born population quadrupled from 9.6 million in 1970 to about 38.1 million in 2007. For much of the past decade, more than 1 million immigrants have entered the United States legally each year, and about another half a million have settled illegally.

The economic crisis raises fundamental questions about how immigrants will fare and how they might respond to the economic downturn. No one can answer the full range of questions that arise from the complex relationship between immigration flows and business-cycle fluctuations. However, a) careful analysis of the most recent data; b) evidence about prior recessions and their effects on immigration; and c) an understanding of America's immigration history and the motivations and behavior of immigrants make it possible to make some informed judgments.

The key judgments about the impacts of economic crises on immigration flows and immigrants in the labor market are as follows:

- The growth in the U.S. foreign-born population has slowed since the recession began. Several factors taken together — the growing anti-immigrant animus of the past few years; increasingly strict federal, state and local immigration enforcement policies; more robust border enforcement; improving economic and political conditions in some migrant-sending countries; and the worsening U.S. economic climate — have contributed to a measurable slowdown in the historic growth in overall immigration.
- Much of the slowdown can be attributed to the fact that there has been no significant growth in the unauthorized population since 2006. This is a meaningful shift because the size of the unauthorized population had been growing by up to 500,000 per year before 2006.

<sup>4</sup> The National Bureau of Economic Research (NBER) is the official body responsible for deciding when the U.S. economy has entered a recession. NBER defines a recession as a "significant decline in economic activity spread across the economy, lasting more than a few months, normally visible in real gross domestic product (GDP), real income, employment, industrial production and wholesale-retail sales."

<sup>5</sup> We use the terms "immigrant" and "foreign born" interchangeably.

- Stalled growth in the size of the unauthorized population is not the same as return migration. Although anecdotal evidence suggests that return migration to some countries, including Mexico, appears to have increased in the last two years, data do not at this time substantiate such reports. There is no definitive trend so far of returns that can be tied to U.S. economic conditions. And apart from removals, which have averaged slightly over 250,000 a year for the last five years or barely 2 percent of the 11 to 12 million unauthorized immigrants living in the United States, it appears to be premature to tie immigrants' decisions to leave the United States to the substantial increases in interior immigration enforcement in recent years.
- In general, return migration is correlated more closely with economic, social and political developments in countries of origin — along with ease of circularity — than with economic conditions in receiving countries such as the United States. For example, sustained economic improvements in Eastern Europe — along with the guarantee of continued labor market access — are widely thought to have facilitated the large-scale return migration of Poles and certain other Eastern Europeans after the British and Irish economies began to slow in 2007. Thus, projected downturns in Mexico and Central America associated with the current economic crisis do not bode well for robust return migration of unauthorized immigrants within the United States.
- Legal immigration appears least tied to U.S. economic conditions because most legal immigrants arrive on family-based visas that, in many cases, took years to secure. Employment-based immigration accounts for a relatively small share of overall legal immigration and the pent-up demand that exists for employer-sponsored visas should continue to drive employment-based immigration, at least for the near term. Generally, all social and humanitarian legal flows (family unification, diversity, refugee and asylum flows) can be expected to behave without regard to the economic cycle for the foreseeable future. Illegal immigration flows appear to be most highly responsive to the U.S. economy.

The question then becomes one of how immigrants – legal and unauthorized – are faring and likely to be affected in the period ahead by the recession.

- On average, most immigrants share the demographic characteristics of the workers who are most vulnerable during recessions, including relative youth, lower levels of education and recent entry into the labor force.
- Immigrants are also highly overrepresented in many of the most vulnerable industries — including construction, many sectors in low value-added manufacturing, leisure and hospitality, and support and personal services — and in many of the most vulnerable jobs within those industries. Immigrants from Mexico and Central America are even more concentrated in many of these industries, and as a result, bear a disproportionate share of the downturn's consequences.
- At the same time, immigrants (and especially recent immigrants) are generally able to adjust more quickly to changing labor market conditions than native-born workers because they are more amenable to changing jobs and their places of residence for work-related reasons.

- Public policies — such as the lack of access to the social safety net for unauthorized immigrants and many recently arrived legal immigrants — may increase immigrants' vulnerability to severe poverty if they become long-term unemployed. Consequently, the probability that some immigrants may eventually choose to return to their countries of origin increases over time.
- Deeply felt family obligations (including the need to send remittances to relatives in the country of origin) and lack of access to the federal social safety net often lead immigrant workers to go to extraordinary lengths to remain employed or find new employment quickly. While such flexibility and determination are laudable at the individual level, they may have negative broader consequences, such as pushing immigrant workers into dangerous working conditions or informal work.

Thus, the picture is not rosy at either the individual or the broader social policy level. Moreover, even when recovery resumes, job growth has historically taken longer to return — by up to a year or more — than other positive economic activities.

At the same time, a period of pause in immigration increases — particularly in the levels of illegal immigration — offers policymakers an historic opportunity to address the chronic disconnect between the U.S. immigration system and its labor market. We should recognize that the crisis contains within it a wake-up call to make urgently needed reforms in our immigration laws and governance, so that when growth begins again, the nation can manage immigration in ways that contribute positively to the well-being of both the new economy and the nation overall.

## **II. What Must Be Key Drivers of the Nation's Longer-Term Immigration Policy Interests?**

It has become a cliché in the immigration policy debate to state that the “system is broken.” Cliché or not, analysts on all sides agree that the current system fails to align labor market immigration with actual U.S. economic needs. Perhaps the most dramatic manifestation of the misalignment is the large population — more than 11 million — of unauthorized immigrants.

Along with illegal immigration, non-immigrant (temporary) visa programs constitute the primary ways immigration has adapted to meet new conditions and labor market demands. So-called temporary visa programs, such as the H-1B program, have increasingly been used as a step to permanent immigration. Taken together, illegal immigration has been meeting the nation's low-skill demands, and temporary visa programs in the legal immigration system have been the vehicle for high-skilled immigration.

As a result, perhaps the most broken element of the nation's immigration system is its inability to anticipate, adjust to or meet future labor market needs so that the United States can continue to harness the comparative advantage immigration has historically represented for our economic and social well-being. This deficiency has many

explanations, but among the most salient for today's debates was the failure of the Immigration Reform and Control Act of 1986 (IRCA) to understand and address the need for future flows as an inherent piece of the solution to the problem of illegal immigration. We must remember and heed that lesson to avert history repeating itself.

***Meeting future labor market needs***

In fact, misalignment should not be surprising since the broad parameters of the current immigration system were defined over 40 years ago, and most of the detailed provisions that guide today's selection of immigrants date back almost 20 years to the Immigration Act of 1990. Despite dramatic changes in the economy, Congress historically has only infrequently modified the visa admissions system because the issues are complex and politically charged. Yet, the questions of whom and how many immigrants we should welcome define our national identity and demographic future.

However, in a period of rapid economic restructuring, demographic change and globalization, ongoing labor market evolutions place a premium on a flexible, responsive immigration system. MPI's Independent Task Force in its 2006 report, *Immigration and America's Future: A New Chapter*, proposed an institutional solution that addresses America's rigid and outdated immigrant selection system: a Standing Commission on Immigration and Labor Markets that would provide timely, evidence-based and impartial analysis to inform and make regular recommendations for adjusting levels of labor market immigration to the president and Congress

Establishing a Standing Commission on Immigration and Labor Markets should be treated as a key element of comprehensive immigration reform. Many people seek admission to the United States, and demand for visas exceeds supply in each of the four streams for selecting immigrants: refugee, family reunification, labor market and diversity.

As a result, how Congress allocates visas among and within these four streams fundamentally defines future American economic and demographic circumstances. The Standing Commission's focus would be on one of these streams — labor market immigration (both immigrant and non-immigrant labor market visas) — and on the effects of immigration on U.S. labor markets, bringing the immigration system into better sync with the U.S. economy.

a) *The need for flexibility:* The current economic crisis brings into stark relief the inflexibility of the U.S. immigration system in comparison with the highly dynamic and constantly evolving global economy. Now, more than ever, the United States needs an immigration system that better serves U.S. economic and social interests by being sensitive to economic fluctuations, both up and down. Immigration admissions levels should reflect labor market needs, employment and unemployment patterns, and shifting economic and demographic trends if immigration is to effectively contribute to the nation's longer-term growth and competitiveness needs.

*b) Labor market impacts:* Such effects are complex. On one hand, labor market immigration makes a contribution to the U.S. economy by permitting an inflow of high- and low-skilled workers. At the high-skilled end, foreign-born students, workers and entrepreneurs have been at the heart of American innovation and productivity for decades.

About a third of America's 20th century Nobel Prize winners, for example, were immigrants, a number which increases to almost half when the count includes the children of immigrants.<sup>6</sup> More recently, immigrants have been founders or co-founders of a quarter of all new engineering and technology companies formed in the United States between 1995 and 2005, and were also inventors or co-inventors of a quarter of America's patents in 2006 (up from 7 percent in 1998).<sup>7</sup> Seven out of 16 inductees in 2009 into the National Inventors Hall of Fame — reserved for U.S. patent holders — were also immigrants.<sup>8</sup>

Low-skilled migrants have also played an important role in fueling American productivity. Although the current recession makes any claims about labor market needs unwise in the short term, foreign-born workers as a group have been disproportionately concentrated in high-growth sectors of the economy.<sup>9</sup> More broadly, immigrants were responsible for 58 percent of population growth<sup>10</sup> over 25 years — 1980 to 2005 — a period during which slowing U.S. fertility levels have made immigration a key source of growth in the prime-age (25-55) labor force.<sup>11</sup> The looming retirement of the baby boom generation will only exacerbate this trend.

Yet immigration is not unambiguously beneficial. At a minimum, labor inflows have distributive consequences. While economists remain divided about the details, most agree that for at least some Americans, their relative wages fall as a result of immigration. In particular, low-skilled native-born workers (those without a high school degree), recent immigrants and workers with poor language skills are most likely to suffer wage losses from immigration.<sup>12</sup> And even college-educated immigrants may depress U.S. wages if

<sup>6</sup> James P. Smith and Barry Edmonston, *The New Americans: Economic, Demographic and Fiscal Effects of Immigration*, (Washington, D.C.: National Academy Press, 1997).

<sup>7</sup> Vivek Wadhwa, AnnaLee Saxenian, Ben Rissing and Gary Gereffi, *America's New Immigrant Entrepreneurs* (Berkeley, Calif.: University of California Berkeley School of Information, 2007).

<sup>8</sup> ImmigrationProf Blog, "Inventors Hall of Fame Inducts Seven Immigrants," Law Professor Blogs, LLC, April 3, 2009, <http://lawprofessors.typepad.com/immigration/2009/04/inventors-hall-of-fame-inducts-seven-immigrants.html>.

<sup>9</sup> Lindsey Lowell, Julia Gelatt and Jeanne Batalova, *Immigrants and Labor Force Trends: The Future, Past and Present*, Task Force Insight No. 17 (Washington, D.C.: Migration Policy Institute, 2006), [www.migrationpolicy.org/ITF/IAF/TF17\\_Lowell.pdf](http://www.migrationpolicy.org/ITF/IAF/TF17_Lowell.pdf).

<sup>10</sup> Jeffrey S. Passel and D'Vera Cohn, *U.S. Population Projections: 2005-2050* (Washington, D.C.: Pew Hispanic Center, 2008), <http://pewhispanic.org/files/reports/85.pdf>.

<sup>11</sup> Aspen Institute, *Grow Faster Together Or Grow Slowly Apart. How Will America Work in the 21<sup>st</sup> Century?* (Washington, D.C.: The Aspen Institute Domestic Strategy Group, 2002), <http://www.pwib.org/downloads/GrowFast.pdf>.

<sup>12</sup> George Borjas, "The Labor Demand Curve is Downward Sloping: Reexamining the Impact of Immigration on the Labor Market," *The Quarterly Journal of Economics*, 118, no. 4 (2003):1335-1374, <http://ksghome.harvard.edu/~GBorjas/Papers/QJE2003.pdf>; David Card, "How Immigration Affects U.S. Cities," Centre for Research and Analysis of Migration, (Discussion paper no. 11/07, Department of

employers use high-skilled immigration as an explicit strategy to reduce their payroll costs.

An immigration system that is unable to consider specific economic needs also risks admitting immigrants who will not fare well in the U.S. labor market, suffering long periods of unemployment and poor economic — and hence social — integration. As a rule, immigrants who fare best in the U.S. labor market work in areas of high labor demand or have the entrepreneurial skills to create successful businesses. Such immigrants are also likely to make the greatest economic contribution without creating negative impacts on native workers.

U.S. labor market immigration policies are poorly designed to resolve these tensions. Labor market immigration should be viewed as a strategic resource which supports economic growth and competitiveness and which must be carefully managed. Immigration policies should maximize opportunities to admit workers with needed or valued skills — those that best complement native workers — and should support growing and competitive sectors of the U.S. economy across the skills spectrum. At the same time, labor inflows must not come at the expense of native workers or allow employers to avoid wage increases they would otherwise provide.

***The Case for a Standing Commission on Immigration and Labor Markets***

Getting immigration policy right, therefore, has important implications for the economy. Three problems stand out:

- Reliable information about immigration and U.S. labor markets is not systematically gathered and produced;
- Immigration laws are inflexible and not designed to be responsive to shifts in labor market needs; and
- Congress does not have a process to regularly address labor market immigration trends and issues as the basis for updating visa allocations for the labor market immigration stream.

The impact of different types and levels of immigration on U.S. labor markets is complex and disputed, even among professional economists. Creating a Standing Commission would establish a body charged with carrying out research and analysis that is not now available and that is vital for informed policymaking.

Data on immigration and wages are tracked by separate government agencies (DHS and the Bureau of Labor Statistics, for example); and data to measure directly the effects of

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Economics, University College London, London, 2007), [http://www.econ.ucl.ac.uk/cream/pages/CDP/CDP\\_11\\_07.pdf](http://www.econ.ucl.ac.uk/cream/pages/CDP/CDP_11_07.pdf); Pia M. Orrenius and Madeline Zavodny, "Does Immigration Affect Wages? A Look at Occupation-Level Evidence" (discussion paper No. 2481, Institute for the Study of Labor, Bonn, 2006); and Gianmarco Ottaviano and Giovanni Peri, "Immigration and National Wages: Clarifying the Empirics" (Centre for Economic Policy Research Discussion Paper 6916, London, 2008), [http://www.econ.ucdavis.edu/faculty/gperi/Papers/OP\\_redux\\_july\\_2008.pdf](http://www.econ.ucdavis.edu/faculty/gperi/Papers/OP_redux_july_2008.pdf).

immigration on U.S. labor markets do not exist at this time. Such data must be collected over time across a wide range of sectors and regions in cooperation with government agencies. Such a project requires a government mandate to accomplish.

In contrast with one-time “blue ribbon panels” like the Hesburgh and Jordan Commissions, an expert commission would constitute a resource and mechanism for periodic and ongoing review by Congress of labor market immigration. In this way, greater flexibility could be introduced into the system. A Standing Commission is likely also to raise the level of discourse and knowledge within Congress and the executive branch, as well as among the range of stakeholders engaged in immigration policy debates, as has been observed in other countries that have established similar bodies (c.g. the United Kingdom).

***What Would a Standing Commission Do (and Not Do)?***

Congress would retain the responsibility to decide U.S. immigration policy, including setting overall immigration levels; allocating visas among non-immigrant and immigrant employment-, family- and refugee-admission categories; and establishing preference and non-immigrant visa criteria.

Immigration is not, and never will be, a purely technical issue. Thus, even if our knowledge of its economic impacts were greatly improved, there would still be critical policy choices to make. Nonetheless, while decisions about immigration policy will inevitably transcend economic costs and benefits and touch upon deeper questions of how immigration defines us as a nation, many issues *can* be quantified.

The mandate of a Standing Commission should be to analyze the labor market impacts of immigration and propose adjustments in immigration levels that *promote America’s economic growth and competitiveness while maintaining low unemployment and preventing wage depression*. Judgments can be made about immigrants’ overall contributions, their progress in the labor market and the impacts on native workers.

**III. What Security, Enforcement and Administrative Considerations Are Relevant to Comprehensive Immigration Reform?**

The imperatives of a post 9/11 world and the need for an immigration regime that serves the nation’s longer-term economic interests demand immigration enforcement and administrative capabilities that cannot be properly established absent comprehensive new immigration legislation. The failure of reform legislation in 2006 and 2007 has ushered in a period of federal enforcement-only policies and unprecedented state and local measures that illustrate the limitations of current laws and administrative actions to adequately address the problems in the immigration system.

Although no one has the right to break the law, in our global economy, the mismatch between 21<sup>st</sup> century immigration dynamics and the outdated laws that purport to govern

them cannot be reconciled by more walls, prosecutions, removals and lengthy backlogs alone. The central goal must be to restore the rule of law by creating a system that serves the nation's economic, security and humanitarian interests and values.

### ***Security***

Securing the borders of the United States, preventing terrorists and terrorist weapons from entering the country and facilitating legal trade and travel are fundamental mandates for government immigration and security agencies. Despite the billions of dollars Congress has allocated for strengthened border controls, such efforts are compromised as long as immigration reform is delayed.

The crisis of narco-violence in Mexico illustrates a dramatic case in point. Border enforcement and cooperation between the United States and Mexico are essential to thwart such threats, but tough enforcement is hampered as long as there are inadequate legal pathways for people to come to the United States. The resulting illegal immigration at and between ports of entry complicates the ability of border control personnel to focus their resources and expertise on true threats, such as narcotics and illegal trafficking of firearms.

In addition to greater opportunities for legal entry for those whom the economy demands, border security would be substantially strengthened by a complementary interior enforcement regime that provides for true accountability for exploitive employers and others who profit from the employment of unauthorized workers. Although DHS agencies have made aggressive efforts in recent years to ramp up such enforcement, employer and worksite enforcement will never achieve their promise without new laws.

That is because the existing employer sanctions laws enacted in IRCA in 1986 are weak and difficult to enforce. Without a legislative mandate requiring universal electronic verification and secure identification documents to verify new hires, the ability of employers to comply with the law can have only limited success. By addressing supply-side problems and establishing effective electronic eligibility verification, border enforcement and security would be strengthened.

### ***Worksite Enforcement***

The goal of effective worksite enforcement should be to create the conditions for good-faith employers to meaningfully comply with the country's immigration laws, and to deter criminality and the exploitation of immigrants by bad-faith employers. Achieving that goal requires legislation.

Most employers will comply with immigration laws, just as they customarily comply with tax, minimum wage and workplace safety laws, on two conditions:

- Employers must be able to verify the identity of prospective employees and their eligibility to work. This requires fraud-resistant identification and work-eligibility cards or some other system of identification covering all foreign- and native-born Americans, and a reliable, simple way for employers to validate work eligibility.

- Employers must understand the legal requirements and know that the law will be enforced. The first requires training and compliance-review mechanisms. The second requires U.S. Immigration and Customs Enforcement (ICE) to use employer sanctions and worksite actions (raids) strategically.

*a) Employer verification:* Of all the forms of immigration enforcement, employer verification has the potential to be the most effective and humane. A sound verification system mitigates the more dangerous, restrictive and expensive types of enforcement at the borders and through detention and removals. Verification enlists employers as a force multiplier in the effort to reduce and combat illegal immigration. No government agency will be able to police all of the nation's 7.6 million business establishments, nor remove all unauthorized workers.<sup>13</sup>

Were customary compliance with the law to be established, ICE would be able to direct its resources squarely at the criminal infrastructure that facilitates illegal hiring and employment, and at employers whose business model depends on the exploitation of unauthorized employment to the detriment of hiring U.S. workers. A reliable universal electronic verification system is the most pressing enforcement challenge in immigration policymaking at this time. Without it, other reforms — including border enforcement — cannot succeed.

*b) The IRCA experience:* The verification process initiated by IRCA requires employers to review employee documents from a list establishing identity or work eligibility, or both. Employers must attest that they have examined the appropriate documents and that they appear, on their face, to be genuine.<sup>14</sup> Employers who make a good-faith attempt to complete the I-9 verification form are deemed to have complied with the law.<sup>15</sup>

To fortify the I-9 process, Congress directed DHS in 1996 to develop a voluntary electronic verification program that would allow employers to match information from an employee's I-9 form with DHS and Social Security Administration (SSA) databases.<sup>16</sup> Congress subsequently reauthorized that program, known as Basic Pilot and renamed it E-Verify in August 2007.<sup>17</sup> As of January 2009, more than 100,000 employers had enrolled in the E-Verify pilot.

*c) Identification documents and reliable verification databases:* E-Verify is vulnerable to identity fraud or the use by unauthorized immigrants of identity data belonging to other work-authorized individuals. As a result, the system has not solved the significant problem of "false positives" (persons who appear work-eligible but who are not), as has been illustrated by worksite enforcement actions at businesses participating in the program. The system also continues to wrongly non-confirm too many U.S. citizens and

<sup>13</sup> United States Census Bureau, *Number of Firms, Number of Establishments, Employment and Annual Payroll by Employment Size of the Enterprise for the United States and States, Totals-2006* (Washington, D.C.: U.S. Census Bureau, 2006), <http://www2.census.gov/csd/susb/2006/usst06.xls>.

<sup>14</sup> Immigration and Nationality Act (INA) § 274A(b)(1) [US Code 8 § 1324a].

<sup>15</sup> INA § 274A(a)(3) [US Code 8 § 1324a].

<sup>16</sup> P.L. No. 104-208.

<sup>17</sup> P.L. No. 108-156.

legal immigrants, a problem of “false negatives” which is costly to American businesses and workers. The success of electronic verification, therefore, depends on establishing a reliable system of employee identification, and a simple and accurate way for employers to verify the eligibility of new workers.

In the absence of a secure system to match workers with their identity data, E-Verify confronts the same systemic challenges as the I-9 system: employers must make judgment calls about workers’ identity, leaving workers vulnerable to discrimination and exploitation where employers misuse or abuse the system, and threatening DHS’s ability to obtain convictions for the *knowing* employment of unauthorized immigrants.

Thus, new legislation should include due-process protections and other measures to address E-Verify’s known shortcomings and should require the development of a more reliable identification system, including continued exploration to determine the best approach and platform for electronic verification. Both require legislation and both are essential for enforcement agencies to truly enforce immigration laws in ways that are effective but also humane.

***Administrative adjudications processes***

Many qualified immigrants must wait years or even decades for a green card — a clear sign of a deeply troubled system and a disservice to families and employers who play by the rules. There are broad, pressing policy reasons that make it imperative that Congress take steps that would enable U.S. Immigration and Citizenship Services (USCIS) in DHS to be better able to administer its legal immigration mandates.

- Legal immigration processes merit greater support so that those who seek to play by the rules can do so. The vast majority of applications that USCIS adjudicates are filed by U.S. citizens, lawful permanent residents and U.S. institutions and employers seeking benefits for which they are eligible under the nation’s immigration laws. Collectively, their applications represent flows of family members, skilled and unskilled workers, and various other categories of immigrants and non-immigrants whose admission to the country has been deemed by Congress to be in the national interest. The agency’s failings frustrate not only individuals but seriously hamper legitimate, lawful immigration. Incentivizing legal immigration when avenues are in place for it is especially important in the face of widespread illegal immigration, some of which occurs because individuals and employers will not wait for, or cannot gauge, the time or steps required to play by the rules.
- USCIS must also aggressively combat benefit fraud. Applicants who misuse the immigration system by filing fraudulent applications can pose dangers to their communities or to the nation. As immigration enforcement becomes more effective at the borders and in the workplace, misuse of legal immigration processes is likely to intensify.
- Most immigration reform proposals have included variants of four principal ideas: strong border control; employer accountability through mandatory verification of new hires; provisions for future flows of needed workers; and legal status

eligibility for the unauthorized population residing in the United States. Three of the four (border control is the exception) would be the responsibility of USCIS to implement. Reform legislation would entail sweeping new mandates that would generate volumes of work far larger than any the agency — or the immigration system — has handled before. Thus, it is essential that USCIS be supported in modernizing and building capacity if it is to be equipped to implement ambitious new policies.

***The “Why” of Backlogs***

The reasons underlying backlogs are both statutory and administrative. Backlogs are generated by statutory limits on the number of visas which can be issued in a given year within particular categories and to immigrants from particular source countries. Administrative reasons for backlogs are a function of resources, productivity and the volume of applications.

Backlogs have posed an intractable problem that not only hampers USCIS operations, effectiveness, and image, but also represent personal hardships for countless immigrants and non-immigrants, their family members and employers. Beyond their human and institutional consequences, backlogs and uneven levels of processing also impede legal immigration overall. Legal immigration levels have varied by as much as 400,000 to 500,000 annually because of administrative delays.

In a period of peak immigration flows and public anger over high levels of illegal immigration, the national interest is poorly served by a system and practices that fail to allow legal immigration to the full extent permitted by immigration laws, and that result in such a high level of year-to-year variation in legal immigration independent of statutory limits set by Congress.

***The Fee Model***

In 1988, Congress mandated that immigration applicant fee revenues be returned to the Immigration and Naturalization Service (INS) budget to support its immigration services mission. An improvement at the time, fee funding for immigration services has proven in practice to have some serious limitations.

Because of large numbers of pending cases, backlogs, extended processing times, unpredictable variations in caseload volumes and lags in calculating and collecting fee increases, fee receipts will always be imperfectly aligned with actual processing costs. So underfunding is systemic.

The deeper problem is that fees have been calculated on the basis of processing costs, but have been required to also fund infrastructure investment. INS and USCIS have suffered for many years from outdated technology and practices. When vital infrastructure investments have been made, they have been funded with monies that would otherwise support processing.

As a result, processing has perpetually been shortchanged because only a portion of the fees applicants pay actually supports processing. Similarly, infrastructure investment is also consistently shortchanged because the fee-revenue model has not generated sufficient capital to build a modern, robust technology infrastructure for delivering immigration services.

The USCIS funding model must be redesigned to direct applicant fees to legitimate application processing costs and to develop additional revenue sources to support critical infrastructure investments. The effective, timely management of the nation's legal immigration processes and system is an important governmental and national interest. A funding model that enables a sound, modern USCIS infrastructure constitutes a public good that can best be realized by immigration reform legislation.

#### **IV. What Makes Legalization During a Recession Central to Longer-Term Solutions?**

Survey after survey shows that most Americans want those who have entered the country illegally penalized, but that they also recognize it is inhumane and impractical to remove millions of people from the country. Bringing the unauthorized out of the shadows without condoning illegal entry necessitates a practical program that requires those lacking legal status to register with the government, pay fines and undergo thorough criminal background checks. Those with serious criminal records or who represent security threats must be identified and removed. Others should be granted provisional legal status and go to the back of the line for the chance to earn their way to a green card and U.S. citizenship.

The case for and against legalization is emotional and deeply felt. It is instructive to step back, however, and examine legalization in light of the nation's longer-term, post-recession interests.

##### ***Legalization and economic recovery***

The benefits of immigration decrease markedly when immigrants lack legal status. Unauthorized immigrants earn lower wages, placing downward pressure on native wages, and are more likely to work off the books. These negative effects compound over time. Legalization would contribute to stimulating the economy by raising wages and increasing immigrant spending, both short- and long-term. And legalization would also increase immigrants' payments to the tax base.

*a) Higher wages:* In general, immigration raises U.S. wages because immigrant skill profiles complement those of natives. Ninety percent of U.S. workers experience wage increases as a result of immigration, with wage increases of \$30-80 billion a year (or 0.7 – 3.4 percent) for native workers with at least a high school degree. Only natives without a high school degree, about 10 percent of the workforce, experience wage declines, and

they are more modest (about 1.1 percent).<sup>18</sup> Other studies indicate that migration has not caused a decline in low-skilled native wages relative to skilled natives.<sup>19</sup>

The wage benefits of immigration are minimized — and the harmful wage effects of migration on low-skilled workers increase — when workers are unauthorized. Although IRCA's employer sanctions have failed to deter illegal employment, employers have internalized the risk of workplace fines by lowering wages. On average, unauthorized immigrants are paid 10 to 55 percent less than legal workers with similar skills and experience, depending on the industry and the study.<sup>20</sup>

Because employers are uncertain about workers' status, the unauthorized wage penalty also affects legal immigrant and native-born Latinos, whose wages fell 6 to 7 percent relative to non-Latino wages as a result of "defensive hiring" after 1986.

Legalization of unauthorized immigrants would result in wage increases to reduce or eliminate the existing unauthorized wage penalty. Wages increased by 11 to 20 percent for legalized workers in the years after IRCA.<sup>21</sup>

A new legalization program could be expected to produce wage gains of at least this magnitude, because the wage penalty is higher today than it was prior to IRCA, and because legalization likely would be combined with an expanded and improved electronic eligibility verification system, minimizing defensive hiring. Evidence suggests that IRCA did not result in a significant flow of newly legalized workers into different jobs or result in the displacement of native workers, though it is possible that IRCA's agricultural worker program contributed to additional illegal immigration.<sup>22</sup>

<sup>18</sup> Gianmarco I.P. Ottaviano and Giovanni Peri, "Rethinking the Effect of Immigration on Wages" (National Bureau of Economic Research Working Paper # 12497, 2006); White House Council of Economic Advisors, *Economic Report of the President*, Chapter 9, "Immigration," (Washington D.C.: U.S. Government Printing Office, 2007) <http://www.whitehouse.gov/cea/ch9-erp07.pdf>.

<sup>19</sup> David Card, "Is the New Immigration Really So Bad?" (National Bureau of Economic Research Working Paper 11547, 2005) <http://www.nber.org/papers/w11547>.

<sup>20</sup> Julie A. Philips and Douglas S. Massey, "The New Labor Market: Immigrants and Wages after IRCA," *Demography* 36, no. 2 (May 1999): 233-246; Cynthia Bansak and Steven Raphael, "Immigration Reform and Earnings of Latino Workers: Do Employer Sanctions Cause Discrimination?," *Industrial and Labor Relations Review*, 54, no. 2 (January 2001): 275-295; Jorge Durand, Douglas S. Massey and Emilio A. Parrado, "The New Era of Mexican Migration to the United States," *Journal of American History* 86, no. 2 (September 1999), Chirag Mehta, Nik Theodore, Iliana Mora and Jennifer Wade, "Chicago's Undocumented Immigrants: An Analysis of Wages, Working Conditions and Economic Contributions," (Chicago: University of Illinois at Chicago Center for Urban Economic Development, February, 2002) [http://www.uic.edu/cuppa/uicued/publications/recent/undoc\\_full.pdf](http://www.uic.edu/cuppa/uicued/publications/recent/undoc_full.pdf); Francisco L. Rivera-Batiz, "Undocumented Workers in the Labor Market: An Analysis of the Earnings of Legal and Illegal Mexican Immigrants in the United States," *Journal of Population Economics* 12, no. 1 Special Issue on Illegal Migration (Feb 1999): pp. 91-116; Sherrie A. Kossoudji and Deborah A. Cobb-Clark, "Coming out of the Shadows: Learning about Legal Status and Wages from the Legalized Population," *Journal of Labor Economics* 20, no. 3 (July 2002): pp. 598-628.

<sup>21</sup> Rivera-Batiz. 1999; S. Ise and J.M. Perloff, "Legal Status and Earnings of Agricultural Workers," *American Journal of Agricultural Economics* 77 (May 1995): pp. 375-386; Kossoudji and Cobb-Clark, 2002.

<sup>22</sup> Lien H. Tran and M. Perloff, "Turnover in U.S. Agricultural Labor Markets," *American Journal of Agricultural Economics* 84, no. 2 (May 2002): pp. 427-437; J. Edward Taylor and D. Thilmany, Turnover,

Legalization would also boost wages by making it possible for unauthorized workers to meet their full economic potential. About a quarter of college-educated immigrants (1.3 million workers) are unemployed or under-employed in low-skilled jobs. Lack of legal status is one of several factors (along with limited English language skills and the absence of reciprocity in credentialing) which limits the earning power and economic contribution of these workers.<sup>23</sup>

Illegal status is a major barrier to obtaining higher education. Illegal status also limits workers' incentives to obtain education and job skills by blocking traditional paths for career advancement.<sup>24</sup> Lack of legal status is the primary barrier to higher education for over 360,000 existing high school graduates and looms as a barrier for over 700,000 additional unauthorized school-aged youth.<sup>25</sup> While quantifying the effect of legalization on migrants' educational and career trajectories is difficult, over time these effects would be large, with broad social and cultural implications far beyond the economic balance sheet.<sup>26</sup>

b) *Tax contributions:* Immigrants pay \$20,000 to \$80,000 more in taxes than they consume in government services over the course of their lifetimes, some earlier research has concluded.<sup>27</sup> The estimates of lifetime net fiscal effects of migration are out of date, but no newer definite study exists. Fiscal benefits of migration have likely increased since the study's completion as migrants have been excluded from most federal welfare spending since 1996. Unauthorized immigrants also pay taxes, including through payroll tax and Social Security deductions (about \$8.5 billion a year), property taxes (directly, or

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farm labour contractors, and IRCA's Impact on the California Farm Labour Market," *American Journal of Agricultural Economics* 75, no. 2 (1993): pp. 350-360; Kossoudji and Cobb-Clark 2002.

<sup>23</sup> Jeanne Batalova and Michael Fix, *Uneven Progress: The Employment Pathways of Skilled Immigrants in the United States* (Washington, D.C.: Migration Policy Institute, National Center on Immigrant Integration Policy, 2008), [www.migrationpolicy.org/pubs/BrainWasteOct08.pdf](http://www.migrationpolicy.org/pubs/BrainWasteOct08.pdf); also see Aaditya Mattoo and Deepak Mishra, "Foreign Professionals and Domestic Regulation," The World Bank Development Research Group (Policy Research Working Paper 4782, 2008).

<sup>24</sup> Durand et al. 1999; Gordon Hanson, Kenneth Scheve, Matthew Slaughter and Antonio Spilimbergo, "Immigration and the U.S. Economy: Labor Market Impacts, Illegal Entry and Policy Choices" (Report to Fondazione Rodolfo De Benedetti, 2001).

<sup>25</sup> MPI Backgrounder, *New Estimates of Unauthorized Youth Eligible for Legal Status Under the DREAM Act*, (Washington, D.C.: Migration Policy Institute, 2006), [www.migrationpolicy.org/pubs/Backgrounder1\\_Dream\\_Act.pdf](http://www.migrationpolicy.org/pubs/Backgrounder1_Dream_Act.pdf).

<sup>26</sup> Earnings for college graduates were twice as high as for those with just a high school degree in 2006; and the unemployment rate for college graduates was one third that for high school graduates; see Roberto G. Gonzalez, "Wasted Talent and Broken Dreams: The Lost Potential of Undocumented Students," *Immigration Policy in Focus* 5, no. 12 (October 2007). Legal immigrants would also have greater access to health insurance and health care, further boosting productivity; see Robert J. Mills and Shalish Bhandari, "Health Coverage in the United States: 2002," U.S. Census Bureau Consumer Income Report (Census Bureau, 2003): pp. 60-223.

<sup>27</sup> James P. Smith and Barry Edmonston, eds, *The New Americans: Economic, Demographic and Fiscal Effects of Immigration* (Washington, D.C.: National Academy Press, 1997).

as part of rental payments) and sales taxes. The Internal Revenue Service estimates that unauthorized immigrants paid almost \$50 billion in federal taxes 1996-2003.<sup>28</sup>

Nonetheless, about 40 percent of unauthorized immigrants work off the books, compared to fewer than 10 percent of legal immigrants. Immigrants going through the legalization process would also be required to pay processing fees, and would likely be fined, with those revenues going into an immigration service account or the U.S. general fund. For these reasons, even when taking account of increased benefits spending (mostly Social Security and Medicare), legalizing most unauthorized immigrants in the United States would increase net federal revenues by about \$65 billion dollars in the first 10 years of a legalization program.<sup>29</sup>

*c) Increased spending:* Immigrants already make a significant contribution to the U.S. economy as producers and consumers. Immigrants earned about \$530 billion dollars in 2003, about 5 percent of U.S. GDP.<sup>30</sup> Because immigrants are younger and earn lower incomes than natives, they also spend a higher proportion of their incomes. Altogether, Latino and Asian buying power in 2008 (including native-born) exceeded \$1.46 trillion.<sup>31</sup> And 84 percent of unauthorized immigrants are in their prime spending years (18 to 44 years old), as compared with 60 percent of legal residents.<sup>32</sup>

Legalization would boost spending by migrants and their families in two ways:

- Unauthorized immigrants are likely to make purchases which have been deferred as a function of their illegal status. Short-term travel to Mexico and other countries of origin, for example, would likely be at the top of this list, along with spending for durable goods (cars, appliances), education and other big-ticket items.
- Legalization would give unauthorized immigrants greater access to credit, further encouraging major purchases, business investment and home ownership, by improving access to credit and resolving identification problems associated with unauthorized status (inability to document employment, incomplete rental records, etc.)

Unauthorized immigrants are active participants in the U.S. economy. They and their typically mixed-status families are responsible for hundreds of billions of dollars of annual spending that would only increase with legalization. Along with other more well-known reasons that argue for legalization as an essential element of comprehensive

<sup>28</sup> Testimony of Mark W. Everson, Commissioner of the Internal Revenue Service, before the U.S. House Committee on Ways and Means, July 26, 2006, <http://waysandmeans.house.gov/hearings.asp?forummode=printfriendly&id=5171>.

<sup>29</sup> Congressional Budget Office, *Cost Estimate: S. 2611, Comprehensive Immigration Reform Act of 2006* (Washington, D.C.: Congressional Budget Office, 2006), [www.cbo.gov/ftpdocs/72xx/doc7208/s2611.pdf](http://www.cbo.gov/ftpdocs/72xx/doc7208/s2611.pdf).

<sup>30</sup> White House Council of Economic Advisors, 2007.

<sup>31</sup> Jeffrey Humphreys "The Multicultural Economy 2008," University of Georgia Terry College of Business Selig Center for Economic Growth, 2008. [http://media.terry.uga.edu/documents/selig/buying\\_power\\_2008.pdf](http://media.terry.uga.edu/documents/selig/buying_power_2008.pdf).

<sup>32</sup> *Business Week*, "Embracing Illegals: Companies Are Getting Hooked on the Buying Power of 11 Million Undocumented Immigrants," July 18, 2005.

immigration reform, legalization would also generate increased wage and spending effects that would contribute positively to economic recovery.

#### **V. Conclusion**

For the reasons I have outlined and many more, comprehensive immigration reform is urgent. Because increases in immigration overall have slowed, and rising levels of illegal immigration have abated, the recession offers an historic opportunity to craft reform legislation that would make it possible to manage the nation's immigration system effectively during both the economic recovery and the longer-term future. Immigration is the oldest and newest story of the American experience. However, only with true reform of the nation's immigration laws and system will we be able to harness the considerable advantages immigration provides for the nation's economic and social well-being.

Thank you.

**Testimony of Jeff Moseley, President and CEO, Greater Houston Partnership,  
before the Senate Judiciary Committee  
Subcommittee on Immigration, Border Security and Citizenship**

Thursday, April 30, 2009 \* 2:00 PM  
226 Dirksen Senate Office Building

*Hearing to discuss "Comprehensive Immigration Reform in 2009,  
Can We Do It and How?"*

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Chairman Schumer, Senator Cornyn, members of the Subcommittee, thank you for your leadership and for your commitment to reforming America's immigration laws. My name is Jeff Moseley and I serve as President and CEO of the Greater Houston Partnership. Please allow me to begin my remarks by thanking my friend and my Senator, John Cornyn, for inviting me to testify before you today. Even though each of us may not agree on specific legislative proposals – today or tomorrow – I am most grateful to the members of this Committee for helping us continue our conversation with the American people.

The Greater Houston Partnership seeks to represent a reasonable voice for business and industry in this dialogue – one we know has been missing from this debate. We have witnessed the failures of the past to find resolution to this issue – and perhaps our community bears some responsibility for its failure to engage in this discussion.

America's immigration system is broken and any solution will require bipartisan action by the Congress to reform our nation's immigration laws. America will be strengthened with a rational and sensible approach toward this issue. Finding resolution in a strict "enforcement only" approach will not settle the issue wisely and adherence to a fractured, existing "rule of law" will not allow us to confront reality. Those approaches, which do not recognize market realities and labor demands, are doomed to failure. We must move beyond the rhetoric on immigration and most importantly, we have an obligation to know the facts.

Not too far from here, in what would at one point be America's Capitol City one of our earliest public debates over our immigration policy began. This particular debate took place back in the 1750s while we were still part of the British Empire. Pennsylvania was a British colony, but German immigrants were arriving in droves, to the indignation and alarm of the English-speaking locals. The Germans were forming their own communities, where they spoke their own language exclusively. They had their own schools and houses of worship – and even their own printing presses which produced German-language newspapers and other publications.

This was too much for Americans of British stock to tolerate. Even someone as moderate and reasonable as Benjamin Franklin was positively undone over the German newcomers. He called them "Palatine Boors," and warned that if English-speaking

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Pennsylvanians did not take drastic steps to preserve their language and culture, they would soon find themselves submerged by a Teutonic tide. Franklin said this: "Why should Pennsylvania, founded by the English, become a Colony of Aliens, who will shortly be so numerous as to Germanize *us* instead of us Anglifying *them*, and will never adopt our Language or our Customs, any more than they can acquire our Complexion."

Franklin actually endorsed a series of proposals designed to check the German advance. In particular, he agreed that no one should be appointed to public office who could not speak English properly, and that all deeds, contracts and legal documents be drawn up in English only. He further agreed that German immigrants should be encouraged to settle in other colonies, rather than Pennsylvania.

Does any of this have a familiar ring for 21<sup>st</sup> Century Americans?

I share this little-known episode from our history to help us put the issue of immigration in perspective. You and I know that immigration is not a new issue. It was around even before we became a nation. Even the very language used to frame the public debate on immigration has scarcely changed since Franklin's day. We have been warned again and again throughout our history that uncontrolled immigration will make us strangers in our own land.

Americans have always been ambivalent about immigration. On the one hand, we look with pride on the Statue of Liberty, lifting her lamp beside the golden door ... extending an open invitation to the world's "huddled masses yearning to breathe free." On the other hand, we have had recurring nightmares that a too liberal immigration policy might cause us to be overwhelmed by people unlike ourselves: people who would refuse to assimilate; who would not respect our laws, our language and our democratic way of life.

Periodically, these nightmares have produced outbursts of ugly, radioactive rhetoric. Franklin fretted about the Germans. Later generations of Americans fretted about the Irish and, after them, waves of immigrants from southern and eastern Europe.

In 1882, Congress passed a law to exclude the Chinese. In the mid-1890s – when the percentage of foreign-born residents of this country was actually higher than it is now – one of the arguments advanced in favor of women's suffrage was that giving women the vote would keep native-born Americans from being outvoted by immigrants.

In 1924, the National Origins Quota Act dramatically reduced immigration by restricting immigrants almost entirely to the "Nordics" of Western Europe. This was the law until 1965, when the Hart-Celler Act was passed. Under Hart-Celler, preference was based primarily on family reunification, professional skills or refugee status. This led to the arrival, for the first time in our history, of large numbers of non-Europeans to these shores.

Now it is time to update our immigration laws once again. Our current system simply cannot accommodate the millions of undocumented immigrants who have come to find

work. Our system is broken. We have to look the facts squarely in the face and find a better way.

The 1986 Immigration Control and Reform Act, which is widely labeled a failure, was intended to impose upon employers the responsibility for verifying that all new hires are authorized workers under immigration laws. The concept that employers would no longer hire any individual that was not authorized to work in the United States was compelling and logically should have removed the powerful incentive that continues to attract foreign workers to the United States outside of any legal system.

However, as was recognized in testimony before this Committee at the time, the current system by which employers determine worker authorization is no better than the documentation that the employer must rely upon, in this case the Social Security card, which is still printed on a low cost basis and has not been upgraded in any fashion since the inception of Social Security in the 1930's.

Just about every form of identification from a Passport to driver's licenses to credit cards have been technologically improved and yet the one document that employers must rely upon to determine who is authorized to work, is still so easy to forge that fraudulent Social Security cards are easily available and better in quality than the national Social Security card.

The other problem with the 1986 Act is that there was no provision for any legal basis upon which workers, particularly in low-skilled positions, could effectively enter the United States as evidenced by the fact that initially there was going to be zero-quota for low-skilled workers – a figure capped at 10,000 and subsequently reduced to 5,000 per year. The fact that the economy has absorbed as many as 12 million workers in the interim, primarily during times of unprecedented economic growth, shows how totally unrealistic an annual figure of 5,000 per year is.

Because I represent the Greater Houston Partnership, I believe that I bring a unique perspective to the issue of immigration.

Houston is one of the most diverse metropolitan areas in the country. We are home to more than 3,000 international businesses, government offices and nonprofit organizations. 26 Fortune 500 companies are headquartered in Houston and more than half of the 100 largest non-U.S. corporations in the world have operations in our region. Some 88 foreign countries maintain consular offices in Houston. These are supported by a multitude of foreign trade and commercial offices, and by chambers of commerce and trade associations.

There is no true ethnic majority in the Houston region, as no one group constitutes more than 50 percent of the population. More than one million Houstonians are foreign-born, with one in ten identifying Mexico as their country of origin. If you want to see what America will look like in the year 2060, according to the Census Bureau, look at Houston

today. Every fifteen minutes, another immigrant arrives in the Houston area, ready to contribute to our economy.

When you consider our economy, undocumented workers contribute an estimated \$27.3 billion to our Gross Regional Product. That's more than 8 percent of total GRP. Undocumented workers contribute significantly to 16 different sectors of the Houston area's economy – including high-growth areas like construction, professional services, accommodation and food services and health care. Statewide, the Comptroller's office estimates that without these workers, the Texas labor force would shrink by 6.1 percent.

We tend to think of the immigration issue in terms of undocumented workers from Mexico coming North to take unskilled jobs at low wages. But the issue is actually bigger than that. It includes the problem of visa shortages for highly-educated workers in white-collar professions like engineering.

The visa shortage hampers Houston companies that depend on engineers, because significantly more foreign-born students than Americans are completing higher degrees in engineering. According to the American Society of Engineering Education, foreigners account for half of all masters-level engineering students in the United States, and nearly two-thirds of all PhDs. However, as we have witnessed over a period of years during high economic growth, the shortage of H-1B visas prevents a greater number of them from finding long-term employment in the United States.

As a result, these trained engineers take their education from our country and return to their homelands. There, they find jobs with companies competing with the U.S. in the global market. In effect, we are training our competitors' work force.

Moreover, as members of the baby-boom generation retire in increasing numbers, taking their expertise with them, we are likely to need foreign-born workers with advanced degrees even more than we do now.

Speaking of the baby boomers retiring, the Bureau of Labor Statistics estimates that the number of people in work force aged 25 to 34 will increase by only three million between 2002 and 2012. During this same period, those workers aged 55 and older will increase by 18 million before leaving the work force for retirement. Even in today's economic climate, our workers are retiring faster than we can replace them, unless we hire immigrants.

Whether we are talking about unskilled or highly skilled workers, the fact is that Houston depends on immigrants, and so does this country as a whole. If we get this issue wrong, we are going to pay a steep price for our mistake. We must strike a balance between securing our borders and safeguarding our prosperity.

The Greater Houston Partnership recognizes the need to secure our borders. We also support immigration reform that will allow employers, through an efficient temporary worker program, to recruit skilled and unskilled immigrant workers when there is a

shortage of domestic workers. We also need a process to provide legal status for qualified, screened undocumented migrant workers now in the country.

The Partnership further believes that employers should be responsible for verifying the legal status of those they hire. Toward this end, we support the creation of a fast, reliable employment verification system. However, we oppose laws that would increase civil and criminal penalties on employers without providing viable legal options for hiring skilled and semi-skilled workers.

Because Houston's economy relies so heavily on immigrants, the Greater Houston Partnership saw the need for immigration reform – particularly following the collapse of legislative proposals in past years. The Partnership's task force on this issue led to the creation of a non-profit organization called Americans for Immigration Reform – or AIR.

The purpose of AIR is to build a broad national coalition in favor of immigration reform. This coalition cuts across ideological, social, economic and party lines; it includes employers, unions, academics, minority rights organizations, professional associations, free market advocates and concerned individuals. To date, over three dozen Chambers of Commerce, nationwide, have joined Americans for Immigration Reform and our support continues to increase.

AIR has sponsored research on immigration issues. The organization provides reliable information to lawmakers, the media and the public. Last year, AIR commissioned a major study on the economic impact of undocumented workers on business activity in the U.S. The study was prepared by the Perryman Group, an independent economic and financial analysis firm based in Waco, Texas. The 70-page study was released in April 2008, and it documents the enormous contribution made by immigrants to our economy. This study can be found on the Web at [www.americansforimmigrationreform.org](http://www.americansforimmigrationreform.org).

The latest census data indicates that one out of every seven people living in the United States is an immigrant; approximately one-third of these are undocumented. The Perryman study estimated that there were currently about 8.1 million undocumented workers in the U.S. economy. More recently, the Pew Hispanic Center placed that figure at 8.3 million. If these workers were removed from the work force, the effects would ripple through many industries, and ultimate job losses would be even higher. The economy would also lose the enormous spending power of these millions of undocumented workers.

These conclusions fly in the face of the most popular arguments in favor of sending undocumented workers home. Popular rhetoric says that illegal aliens take jobs from Americans; depress wages; and burden taxpayers because they take advantage of free public education and social welfare programs – or else they commit crimes.

In fact, says the Perryman study, undocumented workers are major contributors to our nation's economy. Perryman found that as the domestic work force becomes older, more stable in number and better educated, the U.S. economy increasingly requires low-skilled

workers. Immigrants and undocumented workers fill a number of important jobs in the U.S. – particularly in the services sector, construction and farming.

If all undocumented workers were removed from the work force, a number of industries would face an immediate and substantial shortage of workers. These shortages could be met only by paying wages sufficient to entice American citizens to take jobs far below their current educational and skill level. This would not be productive.

Even in today's economic climate, you and I recognize that if every single unemployed U.S. worker were to seek jobs in agriculture, hospitality, construction and other industries that utilize low-skilled workers, it would still be impossible to fill all of those positions even today with growing unemployment. Furthermore, that assumes that all jobs are fungible and that an unemployed worker in New York's financial sector would be willing to relocate to do agricultural work in California or construction work in Houston in spite of our mild weather.

A 2006 study by the University of California, Davis, reports that because immigrant workers tend to "complement" rather than compete with native workers for jobs, they contribute to productivity. That, in turn, means higher wages for native workers. This study is confirmed by a finding by the White House Council of Economic Advisors. A year after the University of California study, the Council of Economic Advisors concluded that roughly 90-percent of native-born workers experience wage gains from immigration – and these wage gains total between \$30 billion and \$80 billion a year.

The fact is that immigrants have always boosted the living standards of those who came before. Here, I'm reminded of a story about the wife of a college professor who complained to her husband, "If we lived a hundred years ago, we would have no problem getting servants." To which her husband wisely replied, "If we lived a hundred years ago, we would have been the servants."

The increase in enforcement that the Department of Homeland Security initiated in the last Administration, with continued appropriations from Congress, has worked. It has ended circular migration that worked informally in Texas and along our nation's southwest border for decades. Not too long ago Mexican workers would enter our country, work, remain close enough to our border and return home for the holidays. Today, those days are long gone. The rise of border enforcement has ironically caused the growth of a professional smuggling industry with high rates for human trafficking because we have fenced undocumented workers inside the United States.

As for the argument that immigrants are a burden on taxpayers, it is more likely that immigrants are net contributors to our tax base. The Perryman study cites evidence to the effect that between 50 and 75 percent of undocumented immigrants pay federal, state and local taxes. Their Social Security and Medicare payments directly support older Americans, while eligibility restrictions prevent the undocumented workers from enrolling in these and most other social programs. Undocumented workers also pay sales taxes and real estate taxes – either as homeowners or, indirectly, as renters.

It is true that the undocumented may turn up for medical care at hospital emergency rooms or free clinics. And it is true that if they have children, their children may attend public schools. The Perryman study acknowledges that many state and local public entities may experience a net deficit, depending on the specific services they offer. However, the report goes on to say that the present policies encourage the undocumented to work off the books – as part of the underground economy – resulting in them not paying their full share of taxes.

The answer is not to send these workers home, but to give them recognized legal status so that their contributions to the economy can be recorded, and they can be taxed for public services like every other member of the community.

Finally, recent studies of incarceration rates reveal that undocumented immigrants are actually less likely to commit crimes than the native-born. So the argument that they increase the crime rate has little foundation.

What is the bottom line, then?

You think subprime mortgages, the freezing of credit markets, and high priced energy have had a chilling effect on the economy? The Perryman study concluded that if all undocumented workers were removed from the U.S. economy, the immediate effect would be the loss of some 8.1 million jobs. Even if the economy adjusted, job losses would still exceed 2.8 million. Moreover, our economy would lose \$1.76 trillion in annual spending, and \$651.5 billion in annual output. So even if we had the resources to round up and deport every undocumented worker in the country – which we don't – the consequences to our economy would be staggering. I am certain that this is not a policy anyone supports with today's economic climate.

Our current immigration system clearly does not work; we have to find a better way. And the theory that these workers should somehow take their place at the back of the line and enter this country legally defies logic. Because our current system only allows for 5,000 new unskilled applicants each year, at this rate, it would take 2,400 years just to facilitate the re-entry of the estimated 12 million undocumented residents of this country.

Let's be clear: While border states – Texas, California, New Mexico and Arizona – immediately feel the ramifications of our nation's slow response on immigration reform, this is not a regional issue. Americans for Immigration Reform advocates much the same package of solutions advocated by the Greater Houston Partnership: securing our borders; creating an efficient and effective program for temporary workers; establishing a fast, reliable employment verification system; holding employers accountable for hiring employees with legal status; and developing a realistic policy for illegal immigrants already here. We seek an end to illegal immigration and a balance to our system of legal immigration which on one hand says "keep out" along our borders, yet a few miles inward our businesses have "help wanted" signs posted in their doorways.

And so today we encourage you to reform America's immigration laws. Beto Cardenas, executive counsel to Americans for Immigration Reform is here with me today and like many of you here, he worked tirelessly as general counsel to one of your colleagues, Senator Kay Bailey Hutchison, as Congress sought to address this issue in the 109<sup>th</sup> and 110<sup>th</sup> Congress. America must address the legal and economic aspects of the immigration issue and balance a resolution with a moral dimension as well.

We are political realists. We know that a careful balanced bill cannot pass Congress unless it has strong support from both political parties and the American public. No political party will want to pass this legislation to get all of the credit, or for that matter all of the blame, by itself. Getting this right is in the national interest. It is in our economic interest and it is the right thing to do.

As Americans, we profess to be a nation of equal justice under law. Our present immigration system is unjust. Because we don't have the means to deport all undocumented workers, it means that immigration officials cannot help but enforce the law arbitrarily, through sporadic raids and sweeps that catch some undocumented workers in the net and miss others. This is more than unfair. Often it causes real hardship, such as when the children of undocumented workers come home from school to discover that their parents have been deported.

Last year, the Greater Houston Partnership held a dialogue on immigration. One of the speakers was His Eminence Daniel Cardinal DiNardo, himself the son of an immigrant father. Cardinal DiNardo brought home the moral dimension of the immigration issue with a quotation from the Bible. In Exodus 20, verse 22, God tells the Israelites: "You shall not molest or oppress an alien, for you were once aliens yourselves in the land of Egypt."

America is a nation of immigrants. Except for the Native Americans, every one of us here today is either an immigrant, or a descendent of immigrants. Some of us may have heard tales from our parents or grandparents about their struggles to make new lives for themselves here in America.

And yet, we are a nation today. Assimilation works. Why?

The English writer G.K. Chesterton once said that America is the only country ever founded on a creed.

What is that creed? Look at our Declaration of Independence:

"We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain inalienable Rights, that among these are Life, Liberty and the pursuit of Happiness ..."

Immigrants have always been drawn to this country by the promise of freedom and the opportunity to work hard and build a better life for themselves and their children. America is a nation today because of the enthusiasm with which our newcomers have embraced our creed. In effect, they have added their own signatures to the Declaration of Independence as they arrived.

It has been so from the beginning. And if good sense and good will prevail in our handling of the immigration issue today, it will remain so for the future as well.

What the business community requires, what the religious community wants, what Americans for Immigration Reform needs is less rhetoric and a common sense solution that both parties can support. We all want leaders that are willing to share that truth rather than having the primary source of information be the entertainment industry that inflames, rather than explains, the reality and complexity of the immigration issue.

Again, thank you Mr. Chairman for holding this hearing today. If we fail to reform our immigration laws, we will find ourselves overwhelmed with the economic consequences I have outlined.

I am happy to answer any questions you may have.

**IMMIGRATION REFORM FOR ASIAN AMERICANS**

**Testimony submitted to U.S. Senate Committee on the Judiciary  
Subcommittee on Immigration, Refugees and Border Security**

**Hearing: "Comprehensive Immigration Reform in 2009: Can We Do It and How?"**

**April 30, 2009**

**Statement of Karen K. Narasaki, President and Executive Director of Asian  
American Justice Center**

The Asian American Justice Center (AAJC) is a national organization that seeks to advance the human rights and civil rights of Asian Americans. Our affiliates are the Asian Pacific American Legal Center, Asian American Institute and Asian Law Caucus. AAJC has worked on immigration and immigrant rights issues since its incorporation in 1991.

We commend Senator Charles Schumer for his leadership on spearheading this conversation on comprehensive immigration reform.

AAJC is an expert on immigration and immigrant rights issues, particularly as they pertain to the Asian American and Pacific Islander communities. AAJC co-chairs the immigration task force of the Leadership Conference on Civil Rights, the nation's largest civil rights coalition. AAJC also chairs the Family Coalition, a group which consists of a broad partnership of faith-based organizations, national ethnic organizations, and immigrant rights organizations that advocates for positive reforms to the family-based immigration system. AAJC also co-chairs the immigration committee for the National Council of Asian Pacific Americans, a coalition of over two dozen national Asian Pacific American organizations.

Finally, as Chair of the Rights Working Group Steering Committee, a group dedicated to addressing due process issues, we are working to ensure that due process issues and policy priorities related to post-9/11 backlash are addressed in an immigration reform bill. AAJC has also organized the small business community through our Asian American Contractor Empowerment Program (AACEP), and we understand the challenges the immigration system also poses to Asian American small business owners.

Given AAJC's expertise, we believe that common sense immigration reform should include the following principles:

- Legalize unauthorized individuals in a workable and realistic manner;
- Resolve and fix the family immigration backlogs without making cuts to the current family immigration system;

- Ensure that all individuals have the protection of our civil rights laws and human rights when our immigration laws are enforced;
- Ensure prospective flows of immigrant workers have the full protection of our labor laws and civil rights laws;
- Ensure our citizenship process is accessible for everyone, especially elderly, disabled and child immigrants; and
- Ensure that new Americans are able to access English classes, integrate and participate fully in American civic life.

A comprehensive bill that encompasses the above provisions is not only good policy, but good economics. AAJC is sensitive to the current economic climate, and we believe there is a strong economic case to be made for this reform.

Asian buying power totaled \$509.1 billion in 2008 and is expected to increase to \$752.3 billion by 2013.<sup>1</sup> Since 1990, Asian buying power has increased by 337 percent, according to the Selig Center for Economic Growth at the University of Georgia.<sup>2</sup> One-point-one million Asian-owned firms provided jobs to 2.2 million employees, had receipts of \$326.4 billion and generated payroll of \$56 billion, according to the U.S. Census Bureau.<sup>3</sup>

Even during hard times, Americans progress as a nation by welcoming immigrants under an orderly and sensible system. Immigrant families pool funds to open businesses, buy homes, send children to schools and provide safety nets for each other.

#### **Background on Asian Americans**

This hearing for immigration reform is happening at a significant time: The month of May is Asian Pacific American Heritage Month. It is a time to celebrate the contributions Asian American and Pacific Islanders have made and continue to make to communities across America.

The Asian American community is extremely diverse. There were an estimated 15.2 million Asian Americans living in the United States as of July 2007.<sup>4</sup> Sixty-one percent of Asian Americans are foreign born.<sup>5</sup> Asians continue to immigrate as asylum seekers, refugees, family members, and high- and low-skilled workers.

As an immigrant community, Asian Americans are disproportionately undermined by the pressures on our family immigration system, which imposes protracted waits on their close family members. Last year, family members from Asia used 74,955 immediate relative family visas and 83,561 family preference family visas.<sup>6</sup> The State Department has also estimated that several Asian countries are in the top ten countries constituting the family immigration backlog (i.e., the numbers of individuals waiting abroad to join family members in the United States)<sup>7</sup>:

Philippines	401,849
China	132,325

India	115,394
Vietnam	109,910
Bangladesh	50,275

The most backlogged Asian countries, including the Philippines, China and India, also are the countries of origin for a large number of unauthorized Asians in the United States. Correspondingly, the numbers of Mexican families in the family immigration backlog abroad and waiting in the United States are the largest of all. As long as we have inhumane family immigration backlogs, we will also have individuals choosing to stay with their families in the United States rather than face a long and lonely separation.

In 2008, the Department of Homeland Security (DHS) estimated that 1.2 million unauthorized individuals were from Asian countries.<sup>8</sup> Out of this undocumented population, 300,000 were born in the Philippines, 240,000 were born in Korea, 220,000 were born in China and 160,000 were born in India.<sup>9</sup>

Congress and DHS must also prepare for any legalization program by resolving the family immigration backlogs. In addition, once unauthorized persons attain legal status, many will also need to reunite with close family members. The family immigration system has not been substantially updated in over twenty years. This is unfortunate since this system consists of hundreds of thousands of individuals who are trying very hard to abide by our laws and immigrate to America legally.

Without complete reform of our family system, close family members of legalized individuals will still have to endure inhumane waits to join family in the United States because their loved ones would have to join the backlogs at the end of the line. Congress needs to ensure that in ten years we do not have another unauthorized population that, understandably, cannot bear to wait ten to twenty years to reunite with a spouse or other close family member.

#### **Reuniting Asian American Families**

The family immigration system has been a cornerstone of the post-Exclusionary era since 1965. For more than a hundred years, siblings and other close family members had been able to join family members under a first-in-line system. Congress and our government recognized family reunification as a core national interest even before the family immigration system was created. Even during times when America was feeling hostile to foreign workers, siblings, parents and adult children counted as close family members because we recognized that sometimes many of these family members provide critical and valuable support to immigrants.

In the family immigration system, a family member who is a U.S. citizen or a lawful permanent resident (green card holder) may sponsor the immigration of a close family member abroad. Qualifying relationships are grouped into two main categories—*immediate relatives* and *family preference*. Immediate relatives are the spouses, unmarried minor children and parents of U.S. citizens. Relatives in the family preference

category are the unmarried or married adult children of citizens, spouses and unmarried children of lawful permanent residents or the siblings of citizens. Neither citizens nor lawful permanent residents may sponsor more distant family members such as aunts, uncles and cousins. The annual ceiling for all family-based immigration is 480,000 individuals per year. However, there is no numerical limit on immediate relative visas, and family preference visas are capped at 226,000 per year. In addition, each country is limited to seven percent of the total family immigration visas. A combination of the visa ceilings and the per-country cap contributes to long wait times for reunification of immigrant families.

Immigrant families need a reasonable process to come here legally and join their family members in the United States. Most individuals abroad are willing to wait patiently to rejoin family members within a reasonable time frame. The current estimated wait of seven to 10 years for spouses of green card holders or 10 to 20 for adult children (depending on country of origin and category) is not reasonable. Nor is it healthy for the communities in which they live. Delays in family unity undermine integration and decrease the capacity of immigrants waiting for their loved ones to invest in homes and businesses.

We need to reform our outdated family immigration policies, which have not been truly fixed for over forty years. Senator Robert Menendez (D-NJ) and Congressman Mike Honda (D-Calif.) have both been stalwart champions of this issue and introduced stand-alone legislation, the Reuniting Families Act,<sup>10</sup> last fall that contains an array of legislative tools that would begin to reform our outdated family immigration policies. Some of the key proposals within this bill include:

- Recapturing unused and unclaimed family-based and employment-based visas, placing them in a pool of usable visas, and creating a “roll-over” mechanism in future years for future unclaimed visas;
- Re-classifying lawful permanent resident spouses and children as immediate relatives and exempting them from overall family numerical caps;
- Increasing the per country share of family visas from seven percent to 10 percent;
- Removing bars to family unity by broadening judicial discretion to waive bars to reentry in cases where the beneficiary is in removal proceedings and has a pending legal visa application;
- Allowing widows, widowers and orphans to immigrate despite the death of a petitioner;
- Adjusting status and preventing age-out for children of fiancé visa holders; and
- Exempting children of certain Filipino World War II veterans from overall family-based caps.

Many of the key provisions of the Reuniting Families Act would make common sense reforms to our arcane family immigration system. The proposal to re-classify green card holder spouses and children and exempt them from overall family numerical caps would be a policy calibration that effectively resolves a large portion of the family immigration backlog.

Asian Americans around the nation who are caught up in the broken family immigration system send stories to AAJC and its affiliate offices every day to illustrate how desperately they need immigration reform. The following heart-wrenching stories about families from India and the Philippines show how the broken family immigration system has broken up marriages and has kept loved ones apart for so long that many died before they could reunite:

**Salim** was working in the United States and separated from his wife in India. His wife's visa application took over three years to process, even though the average time for a spouse visa is eight months. During that time, his wife was unable to visit him because spouses with pending visa applications are unable to get a visitor's visa. As a result, Salim was forced to make the expensive journey to India multiple times. By the time that his wife's visa was finally approved and she was cleared to immigrate to the United States, the couple had divorced.<sup>11</sup>

**Anne** (pseudonym used) immigrated with her parents to the United States from the Philippines in 1973. In 1990, Anne's grandmother, who was then 67, arrived. Her grandmother became a U.S. citizen and petitioned for her four sons to join the family in America. Eight years later, her grandmother finally received an approval letter from the INS stating that her sons' petitions had been approved. However, the family waited year after year and nothing happened. Growing impatient, Anne helped her grandmother by calling INS, and they discovered that there was a 10-year wait before they could be reunited with their family members. Tragedy struck in 2004 when Anne's now-80-year-old grandmother was diagnosed with ovarian cancer. INS informed Anne that there was nothing they could do to speed up the reunification process. Additionally, they informed Anne that if her grandmother died before her sons' approved petitions were processed, the petitions would no longer be valid. After waiting 15 years, Anne's grandmother died in March 2005 without ever seeing her children.<sup>12</sup>

#### *Employment-based Immigration and Asian American Families*

Lawmakers resolving the family immigration backlogs should also understand the visa backlogs for employment-based visa holders. The very same constraints on the family-based immigration system impact individuals seeking green cards through the employment based system. Many individuals initially come through temporary work visas sponsored by corporations, and they cannot bring spouses until green cards for their spouses are available. Per country limits and employment visa quotas also apply to these visa applications. Spouses and children of Indian and Chinese visa holders often remain separated from their family members in America for years because of green card backlogs for these countries. The current wait times for spouses of Chinese and Indian employment visa holders are four and five years, respectively.<sup>13</sup>

AAJC has an interest in ensuring that Asian American families coming to America through employment-based immigration are not exploited and are able to stay together. A study by Harvard professor Vivek Wadhwa released in March 2009 indicates that the United States is actually suffering from the growing numbers of educated, highly skilled immigrants who are returning to their home countries.<sup>14</sup> The shift is, in effect, causing a reverse “brain drain.” Through a survey of 1,203 Indian and Chinese immigrants who had worked or received their education in the United States and returned to their home country, the study found the following trends:

- The majority (89.8 percent of Indians and 72.4 percent of Chinese) were male, and most (72.7 percent of Indians and 67.1 percent of Chinese) were married.
- A third (32.2 percent) of the Chinese respondents entered the United States on student visas, in comparison with about a fifth (20.2 percent) of Indians. Of the Chinese respondents, 19.8 percent were on temporary work visas. Of the Indian respondents, 48 percent were on temporary work visas.

AAJC supports resolving the family backlogs for these workers’ families. AAJC also supports measures that will broaden the ability of the government to enforce labor laws violated by unscrupulous employers and investigate abuses of the employment-based immigration programs.

#### **Legalizing Asian Americans**

Asian Americans have a considerable stake in legalizing the status of unauthorized individuals who remain in the shadows and are an indefinitely exploitable class of individuals. More than 1.2 million unauthorized individuals are from Asian countries.<sup>15</sup> AAJC advocates for a streamlined, practical and workable system that will require individuals to pay a reasonable fine, pay their taxes and apply to DHS for status. As part of a legalization provision, unauthorized students should be able to attain legal status if they attend high school and college in the United States.

The American public has been bombarded by the media with myths about how individuals become and remain undocumented. AAJC and its affiliates have received countless stories from families who became undocumented because DHS lost their files, from unknowing individuals who paid “notarios” posing as attorneys to legalize, and from others who became caught up in our nation’s bureaucratic maze of immigration laws. Here are some of the stories from our community:

**Dr. Pedro and Salvacion Servanos** came legally to the United States from the Philippines in the 1980s. They settled in Pennsylvania and became fixtures in their community—Dr. Servanos completed a second residency and became a community doctor, while Mrs. Servanos opened a store. They had four American-born children. The Servanos, who have not even visited the Philippines since they left, face possible deportation. The Servanos each came to the United States as unmarried children under the sponsorship of both their mothers, who were legal

permanent residents. However, in the years between the time the visas were requested and when they were issued, the Servanos, hoping to escape conflicting parental demands, secretly married in the Philippines. They had no idea their marriage would violate the terms of their visas. In 1991, the Servanos applied for naturalization without seeking a lawyer. Immigration reviewing their records accused the Servanos of lying during the visa application process more than two decades ago. The Servanos were ordered deported. They spent years filing appeals. A community outcry led DHS to temporarily suspend the deportation, and the Servanos continue to pursue legal options to stay in the community they have embraced as home.<sup>16</sup>

**Mr. Alex Chen** (pseudonym used) is an undocumented immigrant from China. He immigrated to the United States in 1990 to escape political pressure from the Chinese government due to his participation in the Tiananmen Square protests in 1989. After a New York judge denied his asylum case in 1997, Mr. Chen began demonstrating symptoms of psychological disorder. Over the decades, he has suffered from enormous mental and emotional stress because of his legal status. The fear of deportation from the United States and of the potential severe punishment he faces under the Chinese authority, combined with the painful separation from his three-month-old daughter whom he sent back to China, led to a series of breakdowns for Mr. Chen. He continues to battle the emotional and psychological trauma and is currently seeking counseling. In his own words, "President Obama's speech about 'change' echoes my dreams for the future. I genuinely hope that the immigration system of the U.S. can sympathize with an undocumented immigrant's intense desires for a better life."

**The Vang family**, Guy, Genevieve, Caroline and Melanie, are Hmong Americans (an ethnic minority in Southeast Asia who fought with the United States against Communist forces in Laos). After having been resettled in France as refugees, they came to America through the Visa Waiver pilot program in 1989. They hoped to reunite with Guy's parents who were believed to have been killed by Lao communists in the midst of the Vietnam War. Due to restrictions in the pilot program, the family experienced extreme difficulty filing for asylum, and due to bureaucratic delay, did not receive any responses to their asylum application despite frequent contact with then-INS. On May 31, 2007, the Sixth Circuit Court of Appeals denied the family's case to remain in the United States and ordered them removed. The family has paid taxes for all of the years they have been in the United States, and they own a successful restaurant, Bangkok 96, in Dearborn, Michigan. They have two U.S. citizen children and would face extreme hardship if deported to a country they barely remember.

#### **A Fair Immigration System for Asian Americans**

A complete immigration reform package must also include serious revisions to the way the United States enforces its immigration laws, often sidestepping due process protections and human rights principles. AAJC would like to highlight failed

enforcement, judicial review and detention policies that have ensnared Asian American and Asian individuals, especially families and individuals trapped by the Bush Administration's post-9/11 policies. In 2007, there were 7,066 people from Asian countries who were removed.<sup>17</sup> Of those deported, 4,352 did not have a criminal immigration charge.<sup>18</sup> The Asian countries with highest number of deportable individuals in 2007 included as follows: China (864), India (832), Philippines (697), Pakistan (545), Indonesia (434) and Korea (617).<sup>19</sup> Overall, a total of 49,973 individuals from Asian countries were removed from the United States from 1998 to 2007, and 38,064 were removed on non-criminal charges.<sup>20</sup>

The U.S. Constitution guarantees certain rights for all individuals within the United States, yet our current immigration enforcement system fails to fully reflect our nation's commitment to human rights and due process. Asian Americans are painfully acquainted with the impact of targeted law enforcement and immigration detentions of members of selected groups within the Asian American community. The treatment of South Asians and Muslims since September 11 brings forth disturbing reminders of the experience of Japanese Americans during World War II. After the bombing of Pearl Harbor, 120,000 Japanese Americans—nearly two-thirds of whom were U.S. citizens—were forcibly relocated from the West Coast and interned under the rationale of military necessity. Yet no Japanese Americans were subsequently convicted of military espionage, underscoring the danger of targeting entire ethnic communities to suspicion and scrutiny.

Any reform of the immigration laws must fully incorporate the American tradition of respecting and protecting the rights of individuals to due process. The immigration detention system must operate in a humane way, providing detainees timely and appropriate health services, access to attorneys and religious counsel, and professional interpretation and translation services for limited English proficient individuals. In court, immigrants must be able to have fair proceedings that include meaningful review of individual cases, language interpretation and translation assistance, and qualified and impartial judges.

#### *Post 9/11 Backlash*

In the aftermath of September 11, members of the Asian American community—particularly South Asians and Muslims—have experienced profound backlash by not only the public, but also by the government. There are more than 2.7 million South Asians in the United States. In addition, 2.3 million Muslims live in America, with 18 percent of them being from South Asia.<sup>21</sup> The federal government's deliberate and misguided reliance on racial, ethnic, religious and national origin has created a climate of fear and suspicion. Federal and local law enforcement have worked together to target people on streets, in cars and at airports based solely on their ethnic or religious appearance.

AAJC's affiliate in San Francisco, the Asian Law Caucus, has received more than 40 complaints since 2007 from individuals—mostly U.S. citizens and legal permanent residents who are Muslim or of South Asian or Middle Eastern descent—who have been

subjected to lengthy detentions and invasive questioning and searches at U.S. land borders and international airports. A groundbreaking report released in April 2009<sup>22</sup> reveals the disturbing extent to which U.S. Customs and Border Protection (CBP) has interrogated these individuals about their political and religious beliefs, volunteer activities and associations without first establishing any basis for suspecting these individuals of violating the law. Professors, religious and community leaders, attorneys and entrepreneurs have been among those whose laptop computers, digital cameras, cell phones, books and personal papers have been turned inside out for evidence of wrongdoing. The accounts shared with the Asian Law Caucus corroborate reports from other civil rights groups across the country and indicate a pattern of profiling and discrimination at U.S. borders against those particularly of Muslim, South Asian or Middle Eastern origin. The following is one such story:

**Anila Ali**, a middle school teacher from outside Los Angeles, is a naturalized U.S. citizen originally from Pakistan. In recent years, Ali has been pulled for questioning and searches five times when returning to the United States from travel abroad—all on account of her name and country of origin. In the most recent incident, when Ali protested to the CBP agent that she was a U.S. citizen, the agent responded that her citizenship did not matter: “It’s where you were born.”<sup>23</sup>

The practice of racial, ethnic, religious or national origin profiling fails to make America safer. Indeed, discriminatory targeting and overbroad questioning of individuals from Muslim, Arab and South Asian communities diverts law enforcement from their charge to investigate and eliminate actual security threats.

Civil liberties must be restored and respected. The broad authority that DHS officials have invoked under the Homeland Security Act to engage in invasive questioning and searches lacks transparency and oversight. Congressional action is necessary to delineate boundaries for law enforcement conduct and establish accountability.

AAJC recommends that Congress include the Travelers’ Privacy Protection Act in a comprehensive immigration reform bill to address profiling of post-9/11 affected communities. Inclusion of the Travelers’ Privacy Protection Act would establish standards for border searches of electronic devices. Such standards must include the requirement that the government have reasonable suspicion that an individual is violating the law.

#### *Asian Americans in Detention*

On any given day, more than 30,000 people may be held in any of the nation’s more than 300 immigration detention facilities.<sup>24</sup> During fiscal year 2007, more than 311,000 people were detained in total.<sup>25</sup> Immigrants from China comprised the largest group in detention from Asia, with more than 6,200 detained in fiscal year 2007.<sup>26</sup>

The necessity of immigration detention reform is perhaps most underscored by alarming reports of detainee abuse and medical negligence that have become all too frequent. Since 2003, when the Bureau of Immigration and Customs Enforcement was formed, at least 90 people have died while in immigration custody.<sup>27</sup> Asians are among those numbers. These tragic deaths should not have happened.

The New York Times last year did prominent features of Korean and Hong Kong nationals who died in U.S. custody and highlighted the critical need for ensuring we hold DHS accountable:

**Young Sook Kim**, an elderly Korean cook, was caught in a worksite raid and detained for a month at a county prison in New Mexico. With each day, Kim's health worsened. Fellow detainees repeatedly pleaded with authorities to examine her. The authorities were not responsive to the requests, and they did not send Kim to a hospital until after her eyes had completely yellowed and she had stopped eating. By the time Kim received basic medical care, it was too late. She died of pancreatic cancer while in U.S. custody on September 11, 2006, the day after she was taken to a hospital. Until other detainees reported it, there was no record of the death for two years.<sup>28</sup>

**Hiu Lui "Jason" Ng** came to the United States from Hong Kong at the age of 17 and eventually became a computer engineer living in New York City. Mr. Ng married a U.S. citizen and had two sons. He was arrested in 2007 for having overstayed his original tourist visa. While in ICE custody for over a year, Mr. Ng began to complain of excruciating pain but was denied access to medical care because officers assumed his complaints were false. Mr. Ng died in ICE custody on August 6, 2008 at the age of 34. A medical examination conducted days before he died found Mr. Ng had been suffering from a fractured spine and terminal cancer.<sup>29</sup>

AAJC recommends that Congress codify detention standards and medical standards as part of a complete immigration reform package. Codification that includes specific language about language assistance is especially necessary for the Asian American community, which communicates in multiple languages.

#### **Identity Verification of Asian American Workers**

Congress should resist pressure to mandate employment eligibility of workers through universal biometrics and through the current flawed verification system that cross-checks worker status with the Social Security Administration. This system should also not be imposed upon government contractors. This is one of the few issues that will impact every single Asian American worker, whether he or she is unauthorized, a legal resident or a citizen. The enforcement of labor laws and civil rights laws are paramount, and the government should not overly rely on a verification system. Due to cultural name conventions (some countries reverse the first name and last name) and government bureaucracy, Asian Americans have experienced incredible challenges in verifying their

citizenship and legal status. Future verification policies should include due process protections so that Asian American workers can contest government determinations of status and retain employment while they do so. Without such measures in place, the jobs and prosperity of every American worker are endangered.

The following is a story of a Filipina citizen who discovered that DHS had lost her file and who was subsequently unable to find employment:

**Violeta Cabanatuan** (name changed to protect her privacy) immigrated legally to the United States from the Philippines as a nine-year-old child in 1964. Forty years later, after serving honorably in the U.S. Army during the Vietnam War and working for decades in other jobs, she was laid off from work. Unable to locate her 40-year-old green card, she was barred from applying for unemployment benefits and was told she could not renew her driver's license. When she met with an immigration officer, she was shocked to discover that her immigration file had been lost during the federal government's transfer to a computer-based record system many years earlier. Despite being a legal immigrant and a U.S. military veteran, she was unable to get a new job, claim the unemployment benefits she had paid for during years of working, or move on with her life for the five months it took to locate her immigration record and provide her with a replacement green card.<sup>30</sup>

### **Asian Americans Learning English and Naturalizing**

#### *Barriers to Naturalization*

AAJC has worked on the rights of language minorities and on citizenship and civic engagement issues for the Asian American community since its founding. Although the Asian American community's rate of naturalization has typically been high (with approximately 60 to 70 percent of Asian American lawful permanent residents who arrived from 1973 to 1995 becoming naturalized<sup>31</sup>), a number of factors have led to a decrease in naturalization. Naturalizations of people born in Asia decreased from 36.2 percent of all naturalizations in 2007 to 30.9 percent in 2008.<sup>32</sup>

AAJC believes the decrease is in large part due to drastic changes that the DHS of the previous administration made to fee structures, the citizenship exam, and to policies affecting disabled and elderly immigrants. In 2007 and 2008, DHS changed the citizenship exam to include more material which it considered more meaningful, but it also made many missteps in soliciting input from the immigrant advocacy community. In 2007, DHS also increased the fee for the naturalization application from \$400 to \$675. According to a report by the Illinois Coalition for Immigrant and Refugee Rights, the price of naturalization has increased by 610 percent in the last 10 years.<sup>33</sup> The report also notes that it would take at least eight weekly paychecks to cover the cost of citizenship for a family of four.<sup>34</sup> USCIS currently has no transparent process or a form by which families can apply for a fee waiver, making it difficult for poor families to apply for naturalization. A Government Accountability Office report released earlier this year

revealed that a great many user fees paid by immigrants went to enforcement activities such as the Notice to Appear unit (which is charged with asking removable individuals to appear before an immigrant judge) and the fraud unit.<sup>35</sup> These unconscionable practices must end.

Finally, DHS policy changes in the last few years have caused elderly, disabled and refugee Asian Americans to endure rigorous challenges to their requests to waive the English and civic portions of the exam due to age or physical or mental disability. For example, last year DHS issued a new form N-648—a form that allows an individual to apply for a waiver of the English and civic portion of the exam due to a mental or physical disability that renders him or her unable to learn English—and sent advocacy groups a notice of change of regulation without including the actual new form. The individuals affected by these policy changes often lose access to Social Security Income disability benefits—often their only living income—as a result due to naturalization requirements. These changes impact our most vulnerable community members desperate to learn English, earn citizenship, and become full and taxpaying citizens of our country.

The story of one elderly Vietnamese American individual successfully applying for citizenship demonstrates the challenges that elderly immigrants encounter as they work towards full integration:

**Thai Ban** (pseudonym used) immigrated in the 1990s after being held in a Vietnamese communist labor camp for almost a decade. Ban applied for citizenship in 2004. By then, he had lost his social security income due to harsh changes in the law. Suffering from damaging head injuries and severe Post-Traumatic Stress Disorder, Ban was emotionally and mentally broken from his years of torture in the labor camp. It took him nearly one year to receive a waiver of the English and history test. In the process, he lost his social security disability income, his only source of income. However, he faced another one-year wait for an FBI background check to clear his name because the system was so backlogged after the attacks of 9/11. Ban finally took his oath of naturalization in 2007. “It was a long wait, but my family and I are happy that it is over and I am now part of this country,” he said.<sup>36</sup>

AAJC recommends that the following legislative provisions (many of which were included in the previously introduced Citizenship Promotion Act<sup>37</sup>) be included in a complete immigration reform package in order for immigrants to access the naturalization process in a fair manner:

- Require DHS to rigorously consult with Congress and stakeholders prior to changing fees or changing the citizenship exam;
- Require DHS to create a fee waiver form that will make the fee waiver process more transparent and accountable;
- Require DHS to codify fair policies that allow elderly and disabled immigrants to waive the English and civic portions of the exam; and
- Disconnect disability benefits completely from the naturalization process.

*Barriers to Learning English*

In order to ensure that Asian Americans can effectively integrate, retain jobs, prosper, and naturalize, our government must devote more attention and resources to those learning English. English language learning is important for maintaining an educated and skilled workforce in this 21st century economy.

The substantial limited-English proficient and immigrant population within the Asian American community creates a demand for English language and citizenship classes. However, a majority of English Language Learner (ELL) programs have waiting lists. Among 176 providers surveyed in a recent report by the National Association of Latino Elected and Appointed Officials Educational Fund (NALEO), 57.4 percent reported that they had a waiting list. Waiting times range from a few weeks to more than three years.<sup>38</sup> In the metropolitan New York City region, where Asian Americans have the highest rate of limited-English proficiency among racial groups, and a near majority of Asian Americans city-wide have some difficulty speaking English, the need for adult ELL classes in the region is estimated to be one million.<sup>39</sup> However, in 2005, only 41,347 adults were able to enroll because of the lack of programs.<sup>40</sup> Most adult ELL programs in New York City no longer keep waiting lists because of the extreme demand, and instead use lottery systems in which at least three out of every four adults are turned away.<sup>41</sup>

AAJC recommends an increase in Workforce Investment Act appropriations to address adult education and vocational programs to help immigrants integrate. In addition, integration legislation should be incorporated into a complete immigration reform package with provisions supporting local and state programs that bring various stakeholders together to create state-customized integration strategies like those already existing in Illinois, Massachusetts, Washington State and Maryland.

**Conclusion**

AAJC believes that immigration reform must address the full panoply of issues that have made our immigration system broken. Solutions include expediting the reunification of families by significantly decreasing the family immigration backlogs, legalizing the undocumented, promoting a fair immigration system for all, rolling back draconian post-9/11 policies, promoting due process in our system, fully enforcing civil rights and labor laws, ensuring our citizenship process is accessible and fair, and helping new Americans learn English and integrate into our society.

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- <sup>2</sup> *Id.*
- <sup>3</sup> U.S. CENSUS BUREAU, *Statistics for Asian-Owned Firms by Kind of Business and Detailed Group: 2002*, in 2002 SURVEY OF BUSINESS OWNERS: COMPANY STATISTICS SERIES (2002), available at [http://factfinder.census.gov/servlet/EconSectorServlet?caller=dataset&sv\\_name=2002+Survey+of+Business+Owners&\\_SectorId=\\*&ds\\_name=EC0200A1](http://factfinder.census.gov/servlet/EconSectorServlet?caller=dataset&sv_name=2002+Survey+of+Business+Owners&_SectorId=*&ds_name=EC0200A1)
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- <sup>6</sup> U.S. DEPT. OF STATE, REPORT OF THE VISA OFFICE FOR 2008, TABLE III: IMMIGRANT VISAS ISSUED (BY FOREIGN STATE OF CHARGEABILITY OR PLACE OF BIRTH) FISCAL YEAR 2008, (2008), available at <http://www.travel.state.gov/pdf/FY08-AR-TableIII.pdf>.
- <sup>7</sup> U.S. DEPT. OF STATE, IMMIGRANT WAITING LIST, 2009.
- <sup>8</sup> MICHAEL HOFER, NANCY RYTINA, AND BRYAN C. BAKER, U.S. DEPT. OF HOMELAND SECURITY, ESTIMATES OF THE UNAUTHORIZED IMMIGRATION POPULATION RESIDING IN THE UNITED STATES: JANUARY 2008 4 (2009), available at [http://www.dhs.gov/xlibrary/assets/statistics/publications/ois\\_ill\\_pe\\_2008.pdf](http://www.dhs.gov/xlibrary/assets/statistics/publications/ois_ill_pe_2008.pdf).
- <sup>9</sup> *Id.*
- <sup>10</sup> Reuniting Families Act, H.R. 6938, 110<sup>th</sup> Cong. (2008); Reuniting Families Act, S. 3514, 110<sup>th</sup> Cong. (2008).
- <sup>11</sup> Statement by Salim to the Asian Am. Inst., in Chicago, Ill. (2008).
- <sup>12</sup> Statement by Anne to the Asian Am. Inst., in Chicago, Ill. (2006).
- <sup>13</sup> RUTH ELLEN WASEM, U.S. IMMIGRATION POLICY ON PERMANENT ADMISSIONS: CRS REPORT FOR CONGRESS, RL 32235, at 13 (2006).
- <sup>14</sup> GARY GEREFFI, BEN RISSING, ANNALEE SAXENIAN & VIVEK WADHWA, AMERICA'S NEW IMMIGRANT ENTREPRENEURS (2007).
- <sup>15</sup> MICHAEL HOFER, NANCY RYTINA, AND BRYAN C. BAKER, U.S. DEPT. OF HOMELAND SECURITY, ESTIMATES OF THE UNAUTHORIZED IMMIGRATION POPULATION RESIDING IN THE UNITED STATES: JANUARY 2008 4 (2009), available at [http://www.dhs.gov/xlibrary/assets/statistics/publications/ois\\_ill\\_pe\\_2008.pdf](http://www.dhs.gov/xlibrary/assets/statistics/publications/ois_ill_pe_2008.pdf).
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- <sup>20</sup> *Id.*
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- <sup>23</sup> *Id.* at 25.
- <sup>24</sup> *Statement of Dora Schriro: Hearing on Health Services for Detainees in U.S. Immigration & Customs Enforcement Custody Before the Subcomm. on Homeland Security of the H. Comm. on Appropriations*, 111<sup>th</sup> Cong. 4 (2009) (statement of Dora Schriro, Special Advisor to Secretary Janet Napolitano, U.S. Dept. of Homeland Security).

<sup>25</sup> U.S. DEPT. OF HOMELAND SECURITY, *Immigration Enforcement Actions: 2007*, in 2007 YEARBOOK OF IMMIGRATION STATISTICS (2008), available at

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<sup>26</sup> *Id.*

<sup>27</sup> *Statement of Dora Schriro: Hearing on Health Services for Detainees in U.S. Immigration & Customs Enforcement Custody Before the Subcomm. on Homeland Security of the H. Comm. on Appropriations*, 111<sup>th</sup> Cong. 4 (2009) (statement of Dora Schriro, Special Advisor to Secretary Janet Napolitano, U.S. Dept. of Homeland Security).

<sup>28</sup> Nina Bernstein, *Federal Report Recommends Improvements in Reporting Deaths of Immigrant Detainees*, N.Y. TIMES, July 3, 2008.

<sup>29</sup> Nina Bernstein, *Ill and in Pain, Detainee Dies in U.S. Hands*, N.Y. TIMES, Aug. 13, 2008, at A1.

<sup>30</sup> Statement by Violeta Cabanatuan to the Asian Law Caucus, in San Francisco, CA (no date for this statement is available as the speaker wishes to remain anonymous).

<sup>31</sup> BRYAN BAKER, U.S. DEPT. OF HOMELAND SECURITY, TRENDS IN NATURALIZATION RATES, 2 (2007), available at [http://www.dhs.gov/xlibrary/assets/statistics/publications/ntz\\_rates508.pdf](http://www.dhs.gov/xlibrary/assets/statistics/publications/ntz_rates508.pdf).

<sup>32</sup> *Id.*

<sup>33</sup> FLAVIA JIMENEZ, ILL. COALITION FOR IMMIGRANT AND REFUGEE RIGHTS, PRICED OUT: U.S. CITIZENSHIP A PRIVILEGE FOR THE RICH AND WELL EDUCATED?, at 2 (2008), available at <http://icirr.org/sites/default/files/Priced-Out.pdf>.

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<sup>35</sup> GOV'T ACCOUNTABILITY OFFICE, GAO-09-180, ADDITIONAL ANALYSES AND TIMELY REVIEWS COULD IMPROVE IMMIGRATION AND NATURALIZATION USER FEE DESIGN AND USCIS OPERATIONS (2009).

<sup>36</sup> Statement by Thai Ban to Boat People SOS, in Falls Church, VA (no date for this statement is available as the speaker wishes to remain anonymous).

<sup>37</sup> Citizenship Promotion Act of 2007, H.R. 1379, 110<sup>th</sup> Cong. (2007); Citizenship Promotion Act of 2007, S. 795, 110<sup>th</sup> Cong. (2007).

<sup>38</sup> JAMES THOMAS TUCKER, WAITING TIMES FOR ADULT ESL CLASSES AND THE IMPACT ON ENGLISH LEARNERS, at 13 (2006).

<sup>39</sup> *Id.*

<sup>40</sup> *Id.* at 22.

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



**PROPOSALS TO EXPAND THE IMMIGRATION  
AUTHORITY OF STATE AND LOCAL POLICE**  
**Dangerous Public Policy According to Law Enforcement,  
Governments, Opinion Leaders, and Communities**

*September 18, 2006*

**LAW ENFORCEMENT ASSOCIATIONS AND DEPARTMENTS**

**International Association of Chiefs of Police, President Joseph Estey**

"Many leaders in the law enforcement community have serious concerns about the chilling effect any measure of this nature would have on legal and illegal aliens reporting criminal activity or assisting police in criminal investigations. This lack of cooperation could diminish the ability of law enforcement agencies to police effectively their communities and protect the public they serve."  
 (IACP press release, 12/1/2004)

**International Association of Chiefs of Police, Legislative Counsel Gene Voegtlin**

"A key concern is that state and local enforcement involvement in immigration can have a chilling effect on the relationship with the immigrant community in their jurisdiction."  
 ("Cities and States Take on Difficult Duty of Handling Undocumented Workers," *The Wall Street Journal*, 2/2/2006)

**Major Cities Chiefs Association**

"Such a divide between the local police and immigrant groups would result in increased crime against immigrants and in the broader community, create a class of silent victims and eliminate the potential for assistance from immigrants in solving crimes or preventing future terroristic acts."  
 (Immigration Committee Recommendations for Enforcement of Immigration Laws By Local Police Agencies, adopted June 2006)

**California State Sheriffs' Association, President Bruce Mix**

"CSSA is concerned that the proposed CLEAR Act will undermine our primary mission of protecting the public. In order for local and state law enforcement associations to be effective partners with their communities, we believe it is imperative that they not be placed in the role of detaining and arresting individuals based solely on a change in their immigration status."  
 (letter to Senator Feinstein, 3/10/2004)

**California Police Chiefs' Association, President Rick TerBorch**

"It is the strong opinion of the California Police Chiefs' Association that in order for local and state law enforcement organizations to be effective partners with their communities, it is imperative that they not be placed in the role of detaining and arresting individuals based solely on a change in their immigration status."  
 (letter to Senator Feinstein, 9/19/2003)

**Connecticut Police Chiefs' Association, President James Strillacci**

"We rely on people's cooperation as we enforce the law in those communities. With this [legislation], there's no protection for them."  
 ("Mayor asks for federal help," *Danbury News-Times*, 3/26/2004)

**El Paso (TX) Municipal Police Officers' Association, President Chris McGill**

"From a law-enforcement point of view, I don't know how productive it would be to have police officers ask for green cards. It's more important that people feel confident calling the police."  
 ("Immigration proposal puts burden on police," *El Paso Times*, 10/9/2003)

**Virginia Association of Chiefs of Police, Executive Director Dana Schrad**

"There's a real concern among [the immigrant community] that [a new Virginia law] means police are going to sweep through neighborhoods and pick up anyone with immigration violations and deport them; that isn't true. We are concerned we'll lose cooperation of law-abiding residents who have helped solve crimes."  
 ("Some Immigrants Can Be Held For Up To Three Days," *Daily News-Record*, 6/30/2004)

**Hispanic American Police Command Officers Association, National President Elvin Crespo**

"The CLEAR Act jeopardizes public safety, it undermines local police roles in enhancing national security, it undermines federal law Enforcement priorities, it piles more onto state and local police officers' already full platters, it bullies and burdens state and local governments, it is unnecessary law-making and most significantly, it forgets the important fact that you can't tell by looking who is legal and who isn't."  
 (letter to National Council of La Raza, 10/21/2003)

**National Latino Peace Officers Association, Founder Vicente Calderon**

"The role of police is to protect and serve. Clear Law Enforcement for Criminal Alien Removal [CLEAR Act] will greatly contribute toward hindering police from accomplishing these goals."  
 (letter to National Council of La Raza, 10/16/2003)

**Federal Hispanic Law Enforcement Officers Association, National President Sandalio Gonzalez**

"The CLEAR Act bullies and burdens State and Local governments by coercing them into participating, even though it means burdensome new reporting and custody requirements, because failure to do so means further loss of already scarce federal dollars."  
 (letter to President Bush and Congress, 9/30/2003)

**Costa Mesa (CA) Police Department, Chief John Hensley**

"We're not going to be doing sweeps. We're not going to be squeezing employers. We do not want to be the enemy of the immigrant community."  
 ("City puts itself on immigration watch," *USA Today*, 1/26/2006)

**West Palm Beach (FL) Police Department, Officer Freddy Naranjo**

"The major thing is to come out and report these crimes, not hold back."  
 ("Here Illegally, Guatemalans Are Prime Targets of Crime," *New York Times*, 8/27/2006)

**Phoenix (AZ) Police Department, Sergeant Andy Hill**

"As we move out deeper into the community, especially with reaching out to the Spanish-speaking community, we believe there may be other victims out there that haven't come forward," Hill said. "We want that information. We need that information. There will not be sanctions to victims who come forward as far as their status in this community other than the fact that they are victims."  
 ("Police want Spanish speakers' help in serial killer search," *Associated Press*, 7/27/2006)

**Phoenix (AZ) Police Department, Chief Jack Harris**

"There are a lot of folks here in the Valley that may have limited English skills, and they can still very much be witnesses or know something about these crimes, so we want to step forward and go out to that community and seek their assistance."

("Police want Spanish speakers' help in serial killer search," *Associated Press*, 7/27/2006)

**Fresno (CA) Police Department, Captain Pat Farmer**

"Sometimes folks are here illegally, and they're the victim of a crime. We want them to call us. If someone is a witness, we want them to trust us. [A month earlier, after a shooting outside a convenience store] there were numerous witnesses, a lot of folks who were probably illegal. It was critical that they talk to our detectives."

("Shift Work: Should policing illegal immigration fall to nurses and teachers?" *Washington Monthly*, April 2006)

**Fairfax County (VA) Police Department, Spokesman Jon Fleischman**

"Our job is to protect people. And I'm concerned that people who are victims of a crime, whether citizens or not, are not calling us because they're afraid we're going to check [legal] status only."

("Va. Police Back off Immigration Enforcement," *Washington Post*, 6/6/2005)

**Gilroy (CA) Police Department, Assistant Chief Lanny Brown**

"We're not going out and doing sweeps for illegal immigrants or anything like that, because we don't believe that's the right thing to do. But it sure makes sense to us if people are here – committing crimes, convicted of crimes, and are here illegally – to turn them over to ICE so they can be deported."

("Immigration Officials Ask for Police Assistance," *The Gilroy Dispatch (CA)*, 9/12/2005)

**Princeton (NJ) Police Department, Chief Anthony V. Federico**

"Local police agencies depend on the cooperation of immigrants, legal and illegal, in solving all sorts of crimes and in the maintenance of public order. Without assurances that they will not be subject to an immigration investigation and possible deportation, many immigrants with critical information would not come forward, even when heinous crimes are committed against them or their families."

("State orders cops to help U.S. immigration agents," *The Record*, 9/20/2005)

**El Paso (TX) Police Department, Chief Richard Wiles**

"There is no way that we would be able to take any time away from an officer's busy day to enforce immigration laws."

("EP chief opposes bill to let police go after immigrants," *El Paso Times*, 10/6/2005)

**San Diego (CA) Police Department, Chief William Lansdowne**

"The only time we work with the Border Patrol is if there is a criminal nexus."

(Police Chief William Lansdowne, "Local Police, U.S. Agents Differ on Raids," *Los Angeles Times*, 6/6/2005)

**Muscatine (IA) Police Department, Chief Gary Coderoni**

"These proposals are unnecessary, and counterproductive to the public safety of our city residents. They will place an added burden in our department and instill fear and non-cooperation in the community."

(letter to Congress, 6/2004)

**Nashville (TN) Metropolitan Police Department, Chief Ronal Serpas**

"With great respect and deference to our federal partners, we are not the INS (Immigration and Naturalization Service). As long as I am chief of the Nashville police department, I'm going to be steadfastly against police being INS agents. It's just not our job."  
 ("Hispanics press police for more help," *Tennessean*, 2/24/2004)

**Boston (MA) Police Department, Commissioner Paul Evans**

"The Boston Police Department, as well as state and local police departments across the nation have worked diligently to gain the trust of immigrant residents and convince them that it is safe to contact and work with police. By turning all police officers into immigration agents, the CLEAR Act will discourage immigrants from coming forward to report crimes and suspicious activity, making our streets less safe as a result."  
 (letter to Senator Kennedy, 9/30/2003)

**Arlington County (VA) Police Department, Spokesman Matt Martin**

"[A] very likely outcome of [local enforcement of immigration laws is] an entire segment of the population shutting down because they are afraid of you. And what you create is a group of people who's ripe for additional victimization."  
 ("Some Laborers Arrested In Va. Face Deportation," *Washington Post*, 10/27/2004)

**Dearborn (MI) Police Department, Chief Timothy Strutz**

"In my opinion, the best way to fight criminals of all types, including terrorists, would be to have an excellent, trusting, working relationship with the community, with them being your eyes and ears. I think much of that important information would be stifled [if the CLEAR Act passed]."  
 ("Metro police balk at plan to hunt illegal immigrants," *Detroit News*, 5/11/2004)

**Seattle (WA) Police Department, Chief R. Gil Kerlikowske**

"Traditionally we have seen that reporting of crime is much lower in immigrant communities because many are leaving countries where the police cannot be trusted for good reason. Adding the fear of arrest or deportation to this could have a tremendous impact on the rate of reporting. At a time when trusting relationships between immigrant communities and the police are vital, the CLEAR Act would have just the opposite effect."  
 (letter, 3/4/2004)

**Clearwater (FL) Police Department, Chief Sid Klein**

"It doesn't take very long for that open door of communication to be slammed shut. Then we in local law enforcement (pay the price)."  
 ("Immigration duty a burden, police say," *St. Petersburg Times*, 7/19/2004)

**Los Angeles County Sheriff's Department, Sheriff Leroy Baca**

"I am responsible for the safety of one of the largest immigrant communities in this country. My Department prides itself in having a cooperative and open relationship with our immigrant community. [The CLEAR] act would undermine this relationship."  
 (letter to Los Angeles County Neighborhood Legal Services, 10/6/2003)

**Kansas City (KS) Police Department, Chief Ronald Miller**

"Our Police Department has taken the lead in establishing a meaningful relationship with our minority communities, especially the Hispanic community. If the CLEAR Act becomes law, it will have a devastating effect on how we provide law enforcement/police service."  
(letter to Senators Brownback and Roberts, 11/19/2003)

**Hillsborough (FL) Sheriff's Office, Spokesman Rod Reeder**

"We obviously need [immigrants] to trust us. Our main focus is on the crime itself. We're not immigration experts."  
(*"Immigration duty a burden, police say," St. Petersburg Times, 7/19/2004*)

**Montgomery County (MD) Police Department, Captain John Fitzgerald**

"We absolutely do not enforce any immigration law. We encourage our residents to trust their police department regardless of their immigration status. We want them to know that if they are victims, we'll help them, and if they're witnesses, we need their help."  
(*"Groups Fret Over Giving Police Immigration Control," Fox News Channel, 10/29/2003*)

**Tampa Police Department, Officer Brenda Canino-Fumero**

"[If the CLEAR Act passes], (immigrants) are not going to come to police and report anything."  
(*"Immigration duty a burden, police say," St. Petersburg Times, 7/19/2004*)

**Lowell (MA) Police Department, Police Superintendent Edward Davis III**

"If the CLEAR Act were passed into law, residents would be less likely to approach local law enforcement for fear of exposing themselves or their immigrant family members to deportation. This would make state and local law enforcement officers' jobs nearly impossible."  
(letter to Senator Kennedy, 3/9/2004)

**Dearborn (MI) Police Department, Corporal Daniel Saab**

"[If the CLEAR Act passed] people would not work with us. It would make it very hard for us to do our job."  
(*"Metro police balk at plan to hunt illegal immigrants," Detroit News, 5/11/2004*)

**Ann Arbor (MI) Police Department, Chief Dan Oates**

"I have a great deal of concern about altering hard-won relationships with immigrant communities. Having those communities think we are agents of the federal government—that can do real harm."  
(*"Police could get more power," Detroit Free Press, 6/1/2004*)

**San Jose Police Department, Chief Rob Davis**

"We have been fortunate enough to solve some terrible cases because of the willingness of illegal immigrants to step forward, and if they saw us as part of the immigration services, I just don't know if they'd do that anymore. That would affect our mission, which I thought was to protect and serve our community."  
(*"CLEAR Act puts cuffs on police; Giving them another duty, immigration enforcement, would make us all less safe," San Jose Mercury News editorial, 4/15/2004*)

**Hamtramck (MI) Police Department, Chief Jim Doyle**

"It is important that people learn to trust us without looking over their shoulders and thinking, These are the guys that are going to deport us."

("Metro police balk at plan to hunt illegal immigrants," *Detroit News*, 5/11/2004)

**Orange County (CA) Sheriff's Office, Assistant Sheriff George Jaramillo**

"We wouldn't be interested in pulling people over and trying to figure out what their status is."

("Police May Join Hunt for Illegal Migrants; Advocates see a way to boost enforcement, but officers and civil rights groups fear abuses," *Los Angeles Times*, 11/11/2003)

**Bexar County (TX) Sheriff's Office, Sheriff Ralph Lopez**

"I'm totally against [the CLEAR Act]. It plays the race card, and from that perspective it is just a bad act. We will not go out and create probable cause just because we think this person, who is dark-complected or speaks with an accent or dresses different, should be automatically questioned about their legal status. That is a total violation of due process."

("Politicians are using fear to push through the CLEAR Act, one of the most sinister changes in immigration policy," *The San Antonio Current*, 12/11/2003)

**Overland Park (KS) Police Department, Chief John Douglass**

"The CLEAR Act would be a detriment to all who live, work, and visit Overland Park. We want all to know that the police are available to protect them no matter whom they are or where they come from."

(letter to Representative Moore, 10/29/2003)

**Portland (ME) Police Department, Chief Michael Chitwood**

"As Police Chief of Portland, Maine and someone who has been involved in law enforcement for nearly forty years, I can tell you with certainty that the CLEAR Act is a bad idea."

(letter to Congress, 11/11/2003)

**St. Paul (MN) Police Department, Chief William Finney**

"How am I supposed to decide as a police officer who I should ask for papers? 'Well can't you look at them and tell you should be asking them for papers?' No, I can't! . . . So I'd just have to ask everybody. All the 'real Americans' would be very offended, because they've got First Amendment rights. But people that are brand new here don't. Well, that's not what the Constitution says; everybody in this country's got First Amendment rights."

("This is your ministry," *Minnesota Spokesman-Recorder*, 12/11/2003)

**Los Angeles Police Commission, President David S. Cunningham III**

"There are safety mechanisms in place for deporting people who are criminally inclined. In the end, the policy position on Special Order 40 is that we are a nation of immigrants and we don't want to dissuade them from having contact with police."

("Is L.A. soft on illegals?" *Los Angeles Daily News*, 11/15/2003)

**Lenexa (KS) Police Department, Chief Ellen T. Hanson**

"We are, like many jurisdictions across the country, short on resources and manpower and struggling to meet our citizen's service demands. This mandate will magnify that problem and force us to make cuts in other areas to comply with the CLEAR Act. . . . The most troubling aspect of this act is that it would cause members of certain groups to not report crimes or come forward with information about crimes for fear of being deported."

(letter to Representative Moore, 8/26/2003)

**South Tucson (AZ) Police Department, Chief Sixto Molina**

"We don't have the time and the personnel to be immigration agents. Murderers, rapists, robbers, thieves and drug dealers present a much bigger threat than any illegal immigrant."

(Tucson Citizen editorial, "Immigration role not for local police," 10/15/2003)

**Des Moines (IA) Police Department, Chief William McCarthy**

"When we don't acknowledge the reality of who is here, we create our own problems, and we are a better society than that, frankly. They (illegal immigrants) are family-oriented people and underpin our churches and society in many ways. Plus they are human beings. They are here. And we ought to deal with them as human beings."

("Cops shouldn't be INS agents," *Des Moines Register* editorial, 10/13/2003)

**Newark (CA) Police Department, Chief Ray Samuels**

"Police agencies in California have worked very hard over the years to gain the confidence of their diverse population. We deal with immigrants from all over the world, many who are steeped in beliefs and practices that alienate them from law enforcement. . . . By turning police into immigration agents, all of our agency's efforts to gain the trust of immigrants—both legal and illegal—would be undermined as immigrants would be discouraged from coming forward to report crimes and suspicious activity."

(letter to Representative Stark, 9/17/2003)

**Cumberland County (ME), Sheriff Mark Dion**

"[E]xtending [immigration] enforcement responsibility to local officials will only act to instill divisive and conflicted emotions among our constituencies. The perceived and actual chilling effect of a local immigration enforcement strategy will unnecessarily complicate police service to our immigrant population and ultimately reduce *their* public safety."

(letter to Senator Collins, 11/12/2003)

**Santa Cruz County (AZ), Sheriff Tony Estrada**

"We will assist all law-enforcement agencies if someone has been identified as being wanted, but we won't go out and look for these people who are here illegally."

("Immigration proposal has many fearing racial profiling," *El Paso Times*, 10/9/2003)

**Philadelphia (PA) Police Department, Lieutenant Denny Graeber**

"If they are otherwise law-abiding, we will not tell the federal government of their status. We were afraid immigrants were not reporting crimes."

("U.S. agents limit scrutiny of illegal-immigrant arrests," *The Philadelphia Inquirer*, 9/9/2003)

**Washington, DC Metropolitan Police Department, Chief Charles H. Ramsey**

"The Metropolitan Police Department is not in the business of inquiring about the residency status of the people we serve, and we are not in the business of enforcing civil immigration laws. We are in the business of serving and protecting the people of Washington, DC—fairly, equally and without regard to their national origin, citizenship, or residency or immigration status."  
(statement, 7/28/2003)

**Alabama Department of Public Safety, Colonel Mike Coppage**

"We don't envision ourselves being involved in task forces to go out and raid chicken plants and Wal-Marts."  
("Police May Join Hunt for Illegal Migrants; Advocates see a way to boost enforcement, but officers and civil rights groups fear abuses," *Los Angeles Times*, 11/11/2003)

**Salinas (CA) Police Department, Chief Daniel Ortega**

"Norwood from Georgia, either he just doesn't care or know about the issues we have. We're trying to gain the trust of the community."  
("Proposal has cops arresting migrants; Police contend they don't have the resources," *San Diego Union-Tribune*, 11/29/2003)

**Dane County (WI) Sheriff's Department, Sheriff Gary Hamblin**

"[A local resolution] dispel[s] some fears. There's a perception out here that people who are here illegally and become victims of crime are reluctant to report the crime because of fears of the immigration service coming for them. Nobody wants to see anybody victimized, so this goes in the direction of letting people know it's in the county's policy that you will not be reported."  
("County may stiff the feds: On information about immigrants," *The Capital Times*, 12/18/2003)

**High Point (NC) Police Department, Chief Jim Fealy**

"The philosophy of the High Point Police Department as long as I'm here is that I have no concern with anyone's immigration status. If you're the victim of a crime, you will be treated as a victim and not as a criminal yourself."  
("High Point chief: Hispanics shouldn't fear police," *Associated Press*, 8/18/2003)

**Yuma County (AZ) Sheriff Ralph Ogden**

"[The CLEAR Act is] counterproductive. We each [federal and local law enforcement agencies] have our own jobs to do."  
("Bill would morph local police into INS agents," National Association of Counties membership newsletter, 10/2003)

**Durango (CO) Police Department, Sgt. Tony Archuleta**

"The only time we're concerned [about immigration status] is if we arrest them. We try to show we are here to help, no matter where they're from or if they've been a victim of a crime; we provide the best police service we can to everyone."  
("Council adopts immigrant policy," *Durango Herald*, 7/7/2004)

**Bernalillo County Sheriff Darren White**

"It didn't take me long to realize that we need to stand up against this legislation. This would jeopardize our ability to provide public safety to everyone in our community. We enforce criminal laws, not civil immigration laws."

("Plan finds many foes," *Albuquerque Tribune*, 6/8/2004)

**Chicago Police Department, Officer Kevin Crocker**

"I don't know how anyone would expect me to say, 'Oh, you don't have your papers? Come with me.' It would absolutely be a huge step backward after all the work we've done."

("Bill imperils immigrants' fragile trust in police," *Chicago Tribune*, 3/31/2004)

**Pawtucket (RI) Police Department, Chief George Kelley III**

"If a person is in this country illegally, they may think twice before coming forward if they suspect their legal residence was found out during the trial. That would be a concern for us. You look to get the trust of the community."

("Immigrant testifies, faces deportation. Danny Sigui helped prosecutors win a conviction in a criminal case. Two days later, he was arrested by immigration officials," *Providence Journal*, 7/31/2003)

**Hammonton (PA) Police Department, Chief Frank Ingemi**

"If there is a [traffic] violation and [undocumented immigrants are] stopped, they're issued a summons and that's it. Immigrants . . . do serve a purpose here by picking crops. They're willing to do that, and they're hired and they're good workers."

("U.S. agents limit scrutiny of illegal-immigrant arrests," *The Philadelphia Inquirer*, 9/9/2003)

**Houston (TX) Police Department, Spokesperson Silva Trevino**

"The INS handles immigration. We handle crime."

("Local police may get role in immigrant law," *Baltimore Sun*, 7/9/2003)

**Los Angeles (CA) Police Department, Spokesperson Sandra Escalante**

"We don't arrest people because of their status."

("Police May Join Hunt for Illegal Migrants; Advocates see a way to boost enforcement, but officers and civil rights groups fear abuses," *Los Angeles Times*, 11/11/2003)

**Bensalem (PA) Department of Public Safety, Deputy Director Frederick Harran**

"They put so much burden now on law enforcement with this whole 9/11 thing. And they've given us no resources."

("U.S. agents limit scrutiny of illegal-immigrant arrests," *The Philadelphia Inquirer*, 9/9/2003)

**Garland (TX) Police Department, Officer Steve Dye**

"Even if they're here illegally, they still have rights. They should call the police and report [crimes]. They are residents. We serve them like any other residents."

("Non-English speakers may face questionable business dealings," *Dallas Morning News*, 8/27/2003)

**Lewisville (TX) Police Department, Officer Richard Douglass**

"Our Police Department is open to help you. We'll take reports from any of you, regardless of where you're from."

("Police seek to ease crime victims' fear of being deported," *Dallas Morning News*, 12/11/2003)

**Phoenix Police Department, Detective Tony Morales**

"We've always been opposed to [local enforcement of immigration laws]."  
 ("Plan to have police enforce immigration law is delayed," *Arizona Republic*, 4/9/2004)

**Marin County Sheriff Robert Doyle**

"There are overcrowded jails in some counties. We don't have people who commit crimes in our communities (in jails) and now we're going to start being an INS lockup?"  
 ("Police, feds may work in tandem," *Sacramento Bee*, 5/14/2004)

**Sacramento Police Department, Chief Albert Nájera**

"We can't afford to have victims out there who won't call us because they're afraid they're going to be deported. People need to be able to call the police and have trust in us, without regard for their immigration status."  
 ("Police, feds may work in tandem," *Sacramento Bee*, 5/14/2004)

**National City (CA) Police Department, Chief Penu Pauu**

"We just clarified [our policy] so our people have a clear understanding of what we do out there. And that is that we're not out there to enforce federal immigration laws."  
 ("National City forum on police relations," *San Diego Union-Tribune*, 5/12/2004)

**OTHER GOVERNMENT OFFICIALS****National Association of Counties**

"Counties are facing a serious budget crisis. 'Counties in Crisis,' a report issued by NACo in February showed that 72 percent of counties are facing budget shortfalls. The report further showed that jails and corrections were among the most affected by state cutbacks. In addition to enforcing civil immigration laws, states and counties would have new and onerous reporting requirements in a field that is neither our responsibility nor our expertise. Additional responsibilities placed on our sheriffs and police departments would only exacerbate the crisis. We have already shouldered substantial costs associated with other aspects of homeland security."  
 (letter to Representative Sensenbrenner, 9/30/2003)

**National League of Cities**

"[T]he National League of Cities opposes the CLEAR Act because it would divert local personnel from their primary duties and constitute a cost shift onto local governments."  
 (Resolution # 2004-39)

**National Conference of State Legislatures**

"This legislation would undermine the states' ability to address local immigration situations in a manner that is suitable for the individual states. If passed, this legislation would amount to a huge unfunded federal mandate and open the door to costly state litigation if a perceived violation of federal law occurs."  
 (resolution adopted by the NCSL Standing Committee on Law and Criminal Justice, December 2003)

**United States/Mexico Border Counties Coalition**

“We believe the solution to apprehending undocumented immigrants is for Congress to enforce federal immigration law by hiring more Border Patrol agents rather than imposing the burden on financially strapped local governments that lack the expertise to enforce these laws.”  
(letter to Congress, 11/6/2003)

**The United States Conference of Mayors**

“[T]he enforcement of federal civil immigration law will distract local and state law enforcement from their primary mission of ensuring public safety and preventing crime in our community by having them focus on the apprehension of immigrants instead of criminals . . . . The United States Conference of Mayors opposes committing local resources to un-funded federal mandates and affirms that the Clear [sic] Act as written does not achieve the purpose of protecting local citizens against terrorism.”  
(resolution, adopted at the USCM 2004 Annual Meeting)

**54 members of the California Legislature**

“If passed, the CLEAR Act would make state and local law enforcement officers’ job nearly impossible and move us further from the goal we all share of making our communities safer.”  
(letter to Congress, 9/12/2003)

**Governor Bill Richardson**

“I am concerned with the potential negative consequences of [the CLEAR Act and HSEA], should it become law. . . . [t]he proposed CLEAR Act runs counter to President Bush’s efforts.”  
(letter to Congress, 3/2/2004)

**New York City, Mayor Michael Bloomberg (R)**

“New York City cooperates fully with the Federal government when an illegal immigrant commits a criminal act, but our City’s social-services, health, and education policies are not designed to facilitate the deportation of otherwise law-abiding residents. Do we really want people who could have information about criminals – including potential terrorists – to be afraid to go the police? Do we really want people with contagious diseases not to seek medical treatment? Do we really want people not to get vaccinated against communicable diseases?”  
(testimony before the Senate Judiciary Committee, 7/5/2006)

**Los Angeles County Board of Supervisors**

“The CLEAR Act suggested requiring states and local law enforcement to enforce Federal immigration laws, including civil laws, as a condition for receipt of SCAAP funds. The County Sheriff’s resources already are stretched far too thin in trying to meet its state and local responsibilities and to improve homeland security. Sheriff’s deputies should not be required to act as Federal immigration agents, especially at the expense of their ability to maintain the trust of the communities they serve.”  
(successful motion, 10/21/2003)

**Lorain County (OH) Board of Supervisors**

“[The CLEAR Act] would be another unfunded mandate and would have a corrosive effect on community policing efforts.”  
(resolution 03-836 opposing the CLEAR Act, adopted 11/6/2003)

**Oregon Attorney General Hardy Myers**

"[T]he effort to interdict foreign terrorists necessarily depends on the cooperation of persons who may themselves fear entanglement with federal immigration laws. . . . Section 102 of S. 1906 will make it less likely that friends, acquaintances, and family members of suspected foreign terrorists will cooperate with law enforcement officials in terrorism investigations. In short, it may have the unintended consequences of making us less safe."

(letter to Senator Smith, 1/21/2004)

**Maine Executive Order (Signed by Governor John Baldacci)**

"All State agencies with law enforcement, investigative, or prosecutorial authority shall not inquire about a person's immigration status unless investigating or prosecuting illegal activity other than mere status as an undocumented alien . . . . It shall be the policy of all State agencies with law enforcement, investigative, or prosecutorial authority not to inquire about the immigration status of crime victims, witnesses, or others who call or approach these agencies seeking assistance."

(Executive Order, 4/9/2004)

**Jaffrey/Peterborough District Court (NH), Judge L. Phillips Runyon III**

"Am I going to determine whether someone is here legally or not? Isn't that what the federal immigration system is for? Is it for part-time district court judges like me who know nothing about immigration and arguably nothing much about anything else either?"

("Town Uses Trespass Law to Fight Illegal Immigrants," *The New York Times*, 7/13/2005)

**Alamance County (NC), Interim County Manager David Smith**

"We're not going to be picking up Hispanics because they are Hispanic."

("Feds agree to immigration pact," *Times-News*, 9/6/2006)

**Danbury (CT), Public Safety Commissioner Leonard Boyle**

"In short, given the extensive amount of training necessary to deputize state officers and the absence of any meaningful deportation process for illegal aliens who have not committed felony offenses, deputization would not seem to be a wise use of state resources."

("Connecticut cops say no to immigration enforcement," *World Net Daily*, 6/18/2006)

**Texas State Representative Norma Chavez (D-El Paso)**

"We are still failing to address the fundamental issue here, and that is true immigration reform and enhanced border security."

("EP chief opposes bill to let police go after immigrants," *El Paso Times*, 10/6/2005)

**Fresno (CA), Mayor Mayor Alan Autry (D)**

"I don't believe we'll ever make a dent in the problem by approaching the symptoms."

("Shift Work: Should policing illegal immigration fall to nurses and teachers?" *Washington Monthly*, April 2006)

**Chicago (IL) City Council, Finance Committee Chairman Edward M. Burke (14<sup>th</sup>)**

"The roundup and deportation of undocumented workers in our country is neither fair nor intelligent... Our nation desperately needs an intelligent and humane policy of immigration... We cannot permit the resources of the City of Chicago to reflect the narrowness and punitive nature of present U.S. immigration law."

("City takes stand against immigration bill," *Chicago Sun-Times*, 3/30/2006)

**Albuquerque (NM) City Council**

"The City opposes the enactment of the CLEAR Act and HSEA and any other legislation encouraging or compelling local law enforcement to enforce federal civil immigration laws."

(resolution, 6/2004)

**Montgomery County (MD), County Executive Doug Duncan**

"This legislation would be another unfunded mandate and would have a corrosive effect on our community policing efforts."

("Bill would morph local police into INS agents," National Association of Counties membership newsletter, 10/2003)

**Baltimore (MD), Mayor Martin O'Malley**

"The CLEAR Act poses many dangers to the safety of our communities by asking local police to juggle their more pressing missions and take on civil immigration law enforcement. . . . Baltimore City's Police Commissioner Kevin Clark has expressed to me his opposition to the CLEAR Act, and I agree with the many state and local law enforcement officials around the country who have indicated that enforcing civil immigration laws actually jeopardizes their ability to enhance public safety."

(letter to Congress, 11/4/2003)

**Danbury (CT), Mayor Mark Boughton**

"The federal government needs to do its job, not create more work for police."

("Mayor asks for federal help," *Danbury News-Times*, 3/26/2004)

**Maine Department of Public Safety, Commissioner Michael Cantara**

"The Department of Public Safety is here to protect the people of Maine, whether you've been here 200 years or 20 minutes."

("Baldacci order bars questions by state on immigration status," *Portland Press Herald*, 4/10/2004)

**New Mexico Office of Victim Advocacy, Director Tammi Lambert**

"This act further decreases the number of women who are going to be reporting domestic violence and assault. It is creating a possible increase of crime against immigrant women."

("Plan finds many foes," *Albuquerque Tribune*, 6/8/2004)

**Los Angeles City Council Member Ed Reyes**

"The bottom line is we have people, families, who are being abused by their landlords, by gang members, by vultures taking advantage of them. They are told that if they complain, they will be deported."

("City opposes immigration enforcement," *Los Angeles Daily News*, 9/17/2003)

**Los Angeles City Council Member Greig Smith**

"The federal government has no business telling us how we should police our city."  
 ("City opposes immigration enforcement," *Los Angeles Daily News*, 9/17/2003)

**Houston, Mayor Pro Tem Gordon Quan**

"The American public wants us to find effective tools to combat terrorism. I submit that the most effective tools are not preemption, unfunded mandates, deteriorated community policing, and racial profiling [as in CLEAR]; rather, our most effective tools to fight terrorism are improved coordination, planning, technology, training, and funding."  
 (testimony before the House Immigration Subcommittee, 10/1/2003)

**Dearborn (MI), Mayor Michael Guido**

"The CLEAR Act is a bad piece of legislation on every front. It is not funded by the federal government. It burdens our already hard working police force with tedious reporting requirements, and it doesn't prepare our officers to deal with the complexities of immigration law. Most importantly, it threatens to destroy the positive relationships that the Dearborn Police Department has fostered with our residents."  
 (press release, "Mayor Guido opposes CLEAR Act," 4/22/2004)

**Durham (NC), Mayor Bill Bell**

"[Immigration law enforcement] isn't what we're about, and I don't think that's what the Police Department is about."  
 ("City Council to discuss policy on migrants, Patriot Act," *Durham Herald-Sun*, 10/18/2003)

**National City (CA), Mayor Nick Inzunza**

"It's important that our local law enforcement officers enforce the law locally, not federally."  
 ("2 deported after police stop in store," *San Diego Union-Tribune*, 11/20/2003)

**Washington, DC, City Council Member Adrian Fenty**

"[E]nforcement of the CLEAR Act invites racial profiling and other infringements on the civil liberties of those who merely 'look' or 'sound like' immigrants. The Constitution extends its protections to all people in the United States, regardless of how they arrived here, as I think it should."  
 (statement on City policy, 9/2003)

**Albuquerque (NM), Mayor Martin Chavez**

"This would discourage people from reporting crime and make this a less safe place. We want people in the immigrant community to report crime."  
 ("Plan finds many foes," *Albuquerque Tribune*, 6/8/2004)

**Los Angeles City Council Member Dennis Zine**

"[CLEAR] doesn't do much for our relationship with the diverse people we have in Los Angeles. It will turn our local law enforcement officers into immigration officers. What will that do to our efforts on community policing?"  
 ("City opposes immigration enforcement," *Los Angeles Daily News*, 9/17/2003)

**St. Paul City Council Member Pat Harris**

"We think the police officers have enough to do in our city right now that they don't need to do the work of INS. Once again, a higher level of government is pushing a duty on local governments and not attaching the dollars to do it."

("Measure targets immigrants' fears," *Pioneer Press*, 12/27/2003)

**Albuquerque (NM) City Councilor Eric Griego**

"This legislation is misguided. The last thing we want is for someone not to report a crime because of their immigration status."

("Plan finds many foes," *Albuquerque Tribune*, 6/8/2004)

**Seattle City Council Resolution**

"H.R. 2671, the Clear Law Enforcement for Criminal Alien Removal (CLEAR) Act, and S. 1906, the Homeland Security and Enhancement Act (HSEA), while purporting to enhance homeland security by requiring the country's over 600,000 state and local police to operate as immigrant agents, would burden police with enforcement of technical civil immigration statutes, diverting them from priority tasks of public safety."

(Resolution 30672, passed 4/19/2004)

**Durham (NC) Assistant City Manager Ted Voorhees**

"What we wouldn't want to happen is for persons from other countries to feel like they can't readily communicate with the Police Department on matters of public safety for fear that the conversation could switch to their immigration status."

("Durham resolution galvanizes advocates," *Raleigh News and Observer*, 10/22/2003)

**Chicago City Council Alderman George Cardenas, 12<sup>th</sup> Ward**

"[T]he CLEAR Act would destroy the relationships that city agencies have built with our newcomers, to everyone's detriment. Chicago would be less safe, less secure, and further stretched in our city resources."

(letter to Rep. Luis Gutierrez, 2/2/2004)

**Chicago City Council Alderman Thomas Tunney, 44<sup>th</sup> Ward**

"[The CLEAR Act] would have a dire impact on public safety and would undermine the strides that the Chicago Police Department and other city agencies have made in building trust in our city's immigrant communities."

(letter to Rep. Luis Gutierrez, 2/2/2004)

**Washington, DC City Council Member Jim Graham**

"Our local police department has its hands full. It is best to leave immigration matters in the hands of those who are trained and qualified to handle those tasks."

(statement on City policy, 7/28/2003)

**Philadelphia City Solicitor Nelson Diaz**

"Individuals should know that they may seek and obtain the assistance of city agencies . . . without negative consequences to their personal lives."

(memorandum on City policy, 10/10/2003)

**Arlington County (VA) Board Member Walter Tejada**

"We are all for tightening security and keeping terrorists out. [But police enforcement of immigration laws would mean] millions of hard-working immigrants who support the service industry will be targeted based on their looks. The last I heard, that is against the law."  
 ("Illegals policy angers leaders," *Washington Times*, 4/27/2004)

**Dane County Board of Supervisors Member Scott McDonell**

"We've had incidents where victims of crime are unwilling to talk to law enforcement because they fear they'll be deported. We want to assure people they don't have to be afraid to come forward."  
 ("County may stiff the feds: On information about immigrants," *The Capital Times*, 12/18/2003)

**FEDERAL GOVERNMENT****President George W. Bush (R)**

*(In calling on Congress to give temporary legal status to undocumented immigrants)*

"Law enforcement will face fewer problems with undocumented workers, and will be better able to focus on the true threats to our nation from criminals and terrorists. . . . Temporary workers will be able to establish their identities by obtaining the legal documents we all take for granted. And they will be able to talk openly to authorities, to report crimes when they are harmed, without the fear of being deported."  
 (public address, 1/7/2004)

**Senator Joe Lieberman (D-CT)**

"I don't know whose bright idea [the CLEAR Act] was, but this bulb ought to be turned off."  
 ("Lieberman blasts immigration bill," *Atlanta Journal-Constitution*, 10/25/2003)

**Department of Homeland Security, Bureau of Immigration and Customs Enforcement (BICE) Spokesperson Paula Grenier**

"The enforcement of immigration laws is the responsibility of [federal immigration] officers. The police are not mandated to do that. We coordinate with them. They are an invaluable resource. But as far as arresting people for immigration violations, that's the function of our agency."  
 ("Life in the shadows: Illegal immigrant works three jobs, all the time fearing arrest or deportation," *Milford (MA) Daily News*, 10/26/2003)

**Congressional Hispanic Caucus Leadership**

"Under [the CLEAR Act], first responders would have to use precious national and local security resources scrutinizing immigrants instead of doing the police work needed to keep criminals off the streets, terrorists out of the country and Americans safe in their communities."  
 (Dear Colleague letter, 9/30/2003)

**Immigration and Customs Enforcement Spokesperson Sue Brown**

"[L]ocal officers aren't trained to recognize or deal with fraudulent documents. That's something for immigration officers to handle."  
 ("Immigration status not a local matter, police say," *Atlanta Journal-Constitution*, 5/16/2004)

**Representative Howard Berman (D-CA)**

"[The CLEAR Act] is essentially creating a national police to try to search out, find and deport some 8 million people, with all the human, economic and political consequences."

("Police May Join Hunt for Illegal Migrants; Advocates see a way to boost enforcement, but officers and civil rights groups fear abuses," *Los Angeles Times*, 11/11/2003)

**Representative Heather Wilson (R-NM)**

"Albuquerque law enforcement officers I've spoken to are concerned that this law could strain our already overburdened police force. I agree. And there's also the concern that this will reduce the likelihood that victims of crime, or potential witnesses, will come forward because of a fear of law enforcement. This makes an already tough situation that much harder for investigators and for victims of crime. This would roll back the amazing progress Albuquerque law enforcers have made with community policing."

(press release, "Heather Wilson Expresses Concern about bill's effect on NM Immigrants [sic]," 5/26/2005)

**Representative Sheila Jackson Lee (D-TX), Ranking Member, House Immigration Subcommittee**

"We need to develop police forces that are strengthening community relationships, not driving a wedge further into them."

(statement, 10/1/2003)

**Representative Zoe Lofgren (D-CA)**

"[A]s a member of the Select Committee on Homeland Security, I am very concerned that the Department of Homeland Security will become so bogged down in answering calls from local law enforcement about non-criminal immigrants that they will be diverted from their primary mission—protecting us from terrorism."

(statement, 10/1/2003)

**Representative Luis Gutierrez (D-IL)**

"Since 9/11, first responders have taken on significant new duties in the face of dwindling resources. In fact, we have heard resoundingly from state and local police throughout the nation that they stand strongly against such initiatives [that make them either enforce immigration laws or lose funding] because cutting their resources would make their work more dangerous and our communities less safe."

(Dear Colleague letter, 6/16/2004)

**Representative Lloyd Doggett (D-TX)**

"If undocumented workers, who are too often the victims of crime, hesitate to report crime because they fear the police, then our entire community loses."

(House floor speech, 6/17/2004)

**Representative Ciro Rodriguez (D-TX)**

"[The CLEAR Act and Senate counterpart are] dangerous pieces of legislation that place the safety of Americans in jeopardy by overburdening officers and should not be allowed to see the light of day."

("Bill would let local police enforce immigration law," *Gannett News Service*, 11/21/2003)

**Representative Linda Sanchez (D-CA)**

“The result of this legislation will be to set back years of community policing efforts and attempts by law enforcement agencies to build good will in the community. It makes communities less safe, not more safe.”

(House Immigration Subcommittee hearing, 10/1/2003)

**Representative Joseph Crowley (D-NY)**

“State and local police are often our first responders in times of terrorist attacks. Their jobs are already incredibly difficult and incredibly critical. To threaten them with reduced resources is not only offensive to the work that they do, it is also dangerous to the communities that they strive to protect.”

(House floor speech, 6/17/2004)

**Representative Karen McCarthy (D-MO)**

“Another harmful bill, the worst of all, is the CLEAR Act.”

(“Harmful’ laws and a Congressional medal to Cesar Chavez occupy Rep. Karen McCarthy’s time,” *Kansas City Dos Mundos*, 6/9/2004)

**EDITORIAL BOARDS AND COLUMNISTS****Houston Chronicle**

“Houston Police Chief Harold Hurtt says his officers are already well-trained in handling lawbreakers who are here illegally, and that additional requirements to enforce immigration laws would ‘stretch our manpower to the point where we could not provide the services that the citizens expect from us.’ He points out that federal funds to local law enforcement agencies have been drastically reduced over the past five years, and homeland security money can’t be used to hire police or emergency workers.”

(“A question of priorities / Houston’s police can’t enforce immigration laws without being diverted from their primary mission of public safety and crime prevention,” 7/31/2005)

**The Lowell (MA) Sun**

“It’s time for Washington lawmakers to conduct a comprehensive review on the issue and stop forcing local officials to deal with the nation’s illegal-immigration problem on their own.”

(“Local concern, national crisis,” 6/12/2005)

**Athens (GA) Banner-Herald**

“While the idea of states and cities being drafted to complete a federal task is unpleasant, we are most concerned about the burden [the CLEAR Act] could place on community police departments. Not only would officers have to be trained regularly in the dizzying intricacies of federal immigration law, but the day-to-day search for illegal aliens also would take time away from normal policing duties. It’s important to remember that not all crimes are equal. When it comes to solving a murder, responding to a domestic violence report or catching a thief versus snagging someone who has overstayed his or her visa, the priority for communities and their law enforcement officers should be clear.”

(“Feds shouldn’t unload immigration burden on state, local police,” 11/6/2003)

**Boston Globe**

"Police are needed to focus on preventing and fighting crime. If they are forced to become immigration agents, they could lose a crucial tool: conversation. Communities that are willing to work with police can provide tips and information."  
 ("A misuse of local police," 3/19/2004)

**Los Angeles Times**

"Most police agencies in Southern California long ago dropped the idea of doing the job of federal immigration authorities. If victims won't report crimes because they're afraid of being deported, how can investigators find out about crimes, much less solve them? The Orange County Sheriff's Department would be stepping back a quarter of a century if it carried through on a plan to gain the powers to enforce immigration laws, despite its declared intent to use those powers only to go after criminals, not to sweep up illegal residents. The department already can go after criminals, regardless of their legal status."  
 ("Let Uncle Sam's Cops Do It," 11/1/2003)

**Des Moines Register**

"Iowa is home to immigrants who come to work in meat-packing plants, poultry operations and other back-breaking jobs. Some of them live in Des Moines, where Police Chief William McCarthy strongly opposes Norwood's bill. It would compromise the investigation of local crimes, McCarthy said, by making people reluctant to cooperate. It would also generate additional red tape."  
 ("Cops shouldn't be INS agents," 10/13/2003)

**Tucson Citizen**

"In addition to imposing an onerous additional burden on police officers, there is another concern. Illegal immigrants who now report crimes would refuse to do so, fearing deportation. That would leave criminals free to victimize others."  
 ("Immigration role not for local police," 10/15/2003)

**Minneapolis Star Tribune**

"[Undocumented immigrants] live here; they work here; they raise families here. Further heightening their innate fear of local police makes the community less safe, not more. It also puts illegals further at risk of unethical employers, landlords and others who use fear of deportation to silence complaints about economic exploitation, unsafe conditions in the workplace and inhumane conditions at home."  
 ("Illegal immigrants/Pawlenty's off base, again," 9/2/2004)

**San Jose Mercury News**

"Sept. 11 pointed out the need for better immigration enforcement, but roping local police into the job isn't the way to do it. The reasons to kill this bill go on and on – there are funding reasons and extraordinarily dangerous civil rights reasons – but the best reason comes from local police chiefs, who understand the importance of building trust in a diverse community like San Jose."  
 ("CLEAR Act puts cuffs on police; Giving them another duty, immigration enforcement, would make us all less safe," 4/15/2004)

**The Miami Herald**

“Ultimately, turning local police into deportation agents would destroy the trust on which community policing depends. Victims of domestic abuse and other crimes won’t come forward if they fear that they or a family member might be deported. Ditto for witnesses or informants. The Miami Police Department, for example, battled that fear during its hunt for a serial rapist in the Little Havana area. Police continually had to reassure residents that they wouldn’t ask about immigration status.”

(“When police become immigration agents,” 9/25/2003)

**Houston Chronicle**

“Should a charter change overturn police policy on illegal immigrants, it could lead to the opposite of its intent. Illegal immigrants would avoid police, letting crimes go unreported and dangerous criminals go unhunted. Instead of keeping foreign criminals from being loosed onto the street, the charter change could increase the number of crooks never apprehended.”

(“No Sanctuary: Houston doesn’t protect illegal immigrants from arrest, prosecution or deportation,” 4/10/2006)

**El Paso Times**

“If more Border Patrol agents are needed, then hire and train more Border Patrol agents. It would be a better use of money.”

(“Bill could encourage racial profiling,” 10/13/2003)

**Palm Springs Desert Sun**

“[The CLEAR Act] turns police officers into immigration officers and swings a wrecking ball toward all of the community policing efforts local law enforcement agencies have made toward building goodwill. . . . The proposed CLEAR Act is as its acronym implies: clear. Clearly wrong. Congress should not try to solve the undocumented immigration problem on the backs of local law enforcement.”

(“CLEAR Act could prompt racial profiling by police officers; Republican legislation signals growing lack of concern for immigrants,” 10/19/2003)

**Los Angeles Times**

“Local police cannot and should not enforce federal immigration laws. Otherwise, no one fearing deportation would be likely to report or testify against criminal activity, from domestic abuse to gang violence. Local government also can’t carry the fiscal burden of enforcing federal immigration laws.”

(“Broken Immigration Policy,” 4/23/2004)

**St. Petersburg (FL) Times**

“Local law enforcement officials say they need an open-door policy with people in the immigrant community if offers are to battle issues such as human trafficking and abusive work environments. This trust is tested when people in the immigrant community see local police officers being used to send their neighbors to jail and then out of the country.”

(“Piling it on the police,” 8/6/2004)

**San Diego Union-Tribune**

"If police are suddenly seen as la migra in these communities, they will receive hostility, not cooperation. They may round up a few more illegal immigrants, but it won't help the fight against violent crime and property crime. Immigrants who fear deportation won't come forward to report crimes or assist police."

("Catching illegals; Local police should not join federal effort," 11/16/2003)

**Ft. Worth Star-Telegram**

"Enforcement of the nation's immigration laws is the responsibility of the federal government. Not local police officers."

("Diagnosis: bad idea," 12/3/2003)

**The Miami Herald**

"As it is, counter-terrorism measures have turned into anti-immigrant sweeps, secret detentions and other policies that propagate fear in immigrant communities. As a result, the people who could provide leads on foreign terrorists are driven to hide from authority. Now the proposed Clear Act would turn local law-enforcement agencies into immigration agents, as if police already don't have enough to do. Congress should stop that bill."

("Freedom riders push for immigrant rights," 10/3/2003)

**Columnist O. Ricardo Pimentel, Arizona Republic**

"It's difficult to imagine a more short-sighted piece of legislation. . . . There's a reason that many local law enforcement officers nationwide have lined up to oppose this legislation. They know it's difficult just to gain enough trust in the immigrant community so that crimes get reported. But local departments have tried hard to build that trust, upping the number of officers and support folks who speak Spanish and also launching tip programs. And they've made inroads. The CLEAR Act, as it's been coined, threatens to undo all that."

("A 'Clear' end to immigrants' trust in the law," 12/2/2003)

**Columnist Domenico Maceri, HispanicVista.com**

"Fear of being arrested is a serious disincentive for undocumented workers to report crimes or serve as witnesses."

("The GOP: Bashing Immigrants with Stones and Words," 12/9/2003)

**DIVERSE ALLIES****Professor Robert J. Sampson**

"[O]ur study found that immigrants appear in general to be less violent than people born in America, particularly when they live in neighborhoods with high numbers of other immigrants... In today's world, then, it is no longer tenable to assume that immigration automatically leads to chaos and crime. New York is a magnet for immigration, yet it has for a decade ranked as one of America's safest cities. Border cities like El Paso and San Diego have made similar gains against crime. Perhaps the lesson is that if we want to continue to crack down on crime, closing the nation's doors is not the answer."

("Open Doors Don't Invite Criminals," *The New York Times*, 3/11/2006)

**Victoria Fahlberg, Executive Director of ONE Lowell (MA)**

“Aren’t there enough real criminals that we should be concerned about? This is a total waste of taxpayer money.”

(“Hudson chief in the middle of immigration fight,” *Lowell Sun*, 5/26/2005)

**Reverend Luis Cortes, Jr., President and CEO of Esperanza USA, a national network of Hispanic Christians, churches, and ministries**

“In our zealotry to be secure, however, we urge that enforcement of federal immigration statutes remain a federal responsibility. It is especially critical that 9-1-1 emergency first responders and local law enforcement and police have no enforcement or reporting responsibilities in illegal immigration enforcement. Giving state and local law enforcement authority, even partial reporting responsibility, for federal immigration law enforcement would, quite simply, endanger the health and safety of Hispanic and non-Hispanic communities, reverse and disintegrate years of progress in community programs and transform what is today a close, cooperative and productive relationship between Hispanic clergy and state and local law enforcement into an adversarial one.”

(testimony before Senate Judiciary Committee, 7/5/2006)

**Over 200 organizations, including: domestic violence prevention advocates; faith-based groups; civil rights, civil liberties, and human rights watchdogs; immigrants’ rights groups; legal services providers and law firms; refugee advocates; health care providers; workers’ advocates; labor unions; businesses; counselors; financial services providers; and police**

“[E]xamples show how criminals are not apprehended when immigrants begin to fear contact with local police, and stop reporting crimes or information. A Pakistani immigrant from Brooklyn, NY was stabbed in the foyer of his building in January 2003. To avoid having to make a police report (because he was undocumented and feared the consequences), he told paramedics that he had stabbed himself.”

(letter to Congress, 9/16/2003)

**Over 80 organizations that work with victims of domestic violence, trafficking, and other crimes**

“*The chilling effect that the CLEAR Act will have on the reporting of crime by immigrant victims and witnesses will be immediate and severe.* Domestic violence victims will once more be forced to make an impossible choice between deportation – and the abrupt separation from and danger to their children that this could entail— and continued abuse. The CLEAR Act thus very effectively enhances the power of the batterer and strengthens the weapons in his arsenal.”

(letter to Congress, 9/30/2003)

**Americans for Tax Reform, American Conservative Union, and American Conservative Union Foundation**

“We are convinced that should the CLEAR Act become law, it will set a dangerous precedent with regard to the authority of state and local law enforcement agencies to enforce civil violations of many federal laws.”

(Grover Norquist, David Keene, and Bob Barr, letter to President Bush and Congress, 9/22/2003)

**Bruce Schneier, security expert and CTO of Counterpane Internet Security**

"The CLEAR Act and HSEA will certainly result in more people being arrested for immigration violations but will probably have zero effect on terrorism. Some of the Sept. 11, 2001, terrorists were in the country legally. Others were easily able to keep their heads down. It's not as if terrorists are waiting to be arrested, if only the police have sufficient information about their immigration status. It's a nice theory, but it's just not true."

(op-ed, "CLEARly muddying the fight against terror," *News.com*, 6/16/2004)

**Legal Momentum**

"Congress has sought to encourage immigrant victims to report crimes without fear of deportation. It created visas for victims of violent crimes and trafficking to both encourage cooperation with the criminal justice system and provide humanitarian relief for victims of crimes. If the HSEA becomes law, immigrant victims and witnesses of sexual assault and other crimes will be afraid to come forward and report these crimes."

(statement, "Legal Momentum Opposes the Homeland Security Enhancement Act, 4/2004)

**American Civil Liberties Union**

"It makes no sense for the neighborhood police to be checking up on whether someone filed a visa waiver form in time."

("Groups Fret Over Giving Police Immigration Control," *Fox News Channel*, 10/29/2003)

**James Jay Carafano, fellow at the Heritage Foundation**

"Congress must not establish a sweeping mandate that tries to force state and local law enforcement to do the federal government's job. A broad mandate would: Represent a large, unfunded federal mandate; Shift police priorities so that officers spend their time tracking down immigration violations instead of solving and preventing crimes within their communities; Hinder law enforcement by undermining the usefulness of the FBI's National Criminal Information Center (NCIC) database. NCIC entries for immigrants with minor violations and whose statuses change frequently will make it hard to keep the database current. Filling the database with records of immigration-law violators could also distract or impede police officers using the database to obtain information about violent criminals and terrorists."

("Build on Section 287(g) of the Immigration and Nationality Act to Boost State and Local Immigration Enforcement," Heritage Foundation policy paper, 9/14/2006)

**Family Violence Prevention Fund**

"An immigrant woman might have to choose between her safety and her fear of deportation. We have worked so hard for immigrant communities to trust law enforcement, and I think we've made headway."

(managing director Leni Marin, in "Police, feds may work in tandem," *Sacramento Bee*, 5/14/2004)

**Colorado Coalition Against Domestic Violence and 60 member agencies**

"In eight town hall and community meetings held by CCADV last year all over Colorado, fear of INS was consistently found to be one of the greatest barriers to providing services to victims of domestic violence. . . . [W]e agree with the statements of law enforcement across the country that for every case where a victim's immigration status is questioned, entire communities get the message that it is not safe to call the police for help."

(letter to Representative Udall, 9/2/2003)

**Iowa Coalition Against Domestic Violence, Iowa Coalition Against Sexual Assault, and 31 related projects in Iowa**

“The CLEAR Act would eviscerate the public policy interests of VAWA and VAWA II and erase hard-won gains by law enforcement of the trust of immigrant communities. Already, our colleagues across the country have witnessed the damage that opportunistic batterers can do in the current anti-immigrant environment. In a number of recent cases, even women whose self-petitions under VAWA have been approved have nonetheless been deported, and many others are fighting deportation, because the wheel set in motion by the batterers who report them to the authorities have moved more swiftly than those offering them relief and protection to which they are legally entitled.”

(letter to Congress, 9/15/2003)

**Kansas Coalition Against Sexual and Domestic Violence**

“[L]ocal law enforcement officers are in [sic] integral part of the front-line web of safety for victims of sexual and domestic violence. Passage of the CLEAR Act would, in effect, eliminate law enforcement as a safety option for undocumented survivors [of domestic violence/sexual assault] and quite likely will be intimidating to survivors whose status is current and legal.”

(letter to Senator Brownback, 2/11/2004)

**NAFSA: Association of International Educators**

“It is chilling to think that students who forget—or don’t understand that they need—permission to drop a course could end up in the NCIC database.”

(letter to Attorney General John Ashcroft and Secretary of State Colin Powell, 12/17/2003)

**Anti-Defamation League**

“Many immigrants have come to the United States to escape from their oppressive governments and police abuse. Any effort to direct local police to both ‘serve and protect’ the community and pursue and detain illegal aliens may undermine the trust necessary for local law enforcement to perform its job effectively within immigrant communities. The League’s long experience with hate crime laws, for example, has proven that close cooperation between local law enforcement and immigrant communities is essential.”

(letter to Congress, 9/17/2003)

**National Council of La Raza**

“Police officers know that their ability to protect our neighborhoods depends on building strong relationships with all members of the community. Community-based policing efforts have been successful. In Latino communities, for example, the Department of Justice found that violent crime against Latinos dropped by 56 percent during the 1990s once such efforts got underway. But if police start enforcing immigration laws—or are perceived to be enforcing immigration laws—trust between law enforcement and the community will erode.”

(“Feds, not the cops, should police immigration,” op-ed, *St. Louis Post-Dispatch*, 10/6/2003)

**World Relief**

"The CLEAR Act purports to enhance homeland security by deputizing state and local police as immigration agents. However, I believe it would have the opposite effect. The CLEAR Act would burden police, who are already overworked, with a new mandate to enforce highly technical civil immigration statutes, diverting them from higher priority tasks, while making their work more difficult."

(letter to Congress, 12/17/2003)

**Human Rights Watch**

"The proposed legislation would create a two-tiered system of justice. Immigrants detained in the federal system would have the right to a hearing, but those arrested by local police would have no guarantees of judicial review. The potential for abuse is rife.:

(press release, "Proposed Laws Would Lead to Abuse of Immigrants," 4/21/2004)

**Detention Watch Network**

"CLEAR does not target real criminals—it targets individuals with minor paperwork violations who pose no danger to society—such as people who have overstayed a temporary visa, or students who have dropped down in course load for a semester. Not only would the detention and processing of these individuals pose a tremendous strain on the system, but it seems unnecessarily cruel given the nature of their violations."

(letter to Representative Sensenbrenner, 10/1/2003)

**James Jay Carafano, fellow at the Heritage Foundation**

"The proposed Clear Law Enforcement for Criminal Alien Removal (CLEAR) Act takes exactly the wrong approach, inappropriately burdening state and local enforcement and providing insufficient protections for civil liberties. Furthermore, it is unnecessary: Adequate authorities already exist."

("No Need for the CLEAR Act: Building Capacity for Immigration Counterterrorism Investigations," Executive Memorandum, 4/21/2004)

**People for the American Way**

"Our concern is finding the proper balance to ensure that individuals' civil rights and liberties are protected and that the safety of our communities is not undermined. We do not believe that the CLEAR Act can guarantee that balance."

(letter to Congress, 10/22/2003)

**Mexican-American Legal Defense and Educational Fund**

"The CLEAR Act would also gut civil rights protections. State and local authorities—who have no training in immigration law—would be exempt from any liability for civil rights violations. This would excuse racial profiling of Latinos by the police. That is why the Houston Police Department, along with many other police departments nationwide, opposes having to enforce federal immigration laws."

(letter to the editor, *Houston Chronicle*, 8/25/2003)

**National Immigration Project of the National Lawyers Guild**

"The flawed idea behind this legislation is that allowing local police to detain people for a broader range of minor offences will make it easier to catch the extremely small percent of undocumented persons who are violent criminals."

("The CLEAR ACT: Ironic title for murky legislation," *The Miami Herald*, 10/2/2003)

**Muslim Public Affairs Council**

“We must remind our representatives that the government was divided into separate agencies with different mandates not by mere coincidence, but due to careful calculations aimed to ensure the least amount of corruption and the greatest amount of security. Legislation that intends to disrupt these divisions will lead to confusion within agencies and misuse of authority.”  
(statement, 9/15/2003)

**Center for Justice, Peace and Environment (CO)**

“When people within a community live with such fear, there is a complete breakdown of trust and cooperation. People are afraid to report crimes as either victims or witnesses. Law enforcement agencies are looked upon as the enemy. Public safety is at great risk.”  
 (“Topic: Human Rights Protection Ordinance, Proposal would foster trust, safety in city;”  
*Coloradoan*, 12/16/2003)

**South Asian Network (CA)**

“There is no demonstrated gain to national security from state and local enforcement of civil immigration laws. In light of the potential for wrongful arrests and civil rights abuses, the chilling effect on police-community relations, and the drain on police resources, the federal government must show a compelling reason to require state and local enforcement of civil immigration law.”  
(letter to Congress, 9/30/2003)

**Lutheran Settlement House (PA)**

“One inevitable consequence of the CLEAR Act is that more abusers will go unpunished and unreported by undocumented victims and their communities for the heinous crimes they commit, which include assault and battery, rape, sexual abuse, reckless endangerment and false imprisonment of their partners and frequently their children.”  
(letter to Senate Judiciary Committee, 11/5/2003)

**Enlace Comunitario (NM)**

“If passed, this legislation would endanger already vulnerable immigrant populations and would particularly have disastrous consequences for immigrant survivors and witnesses of domestic violence, sexual assault, and trafficking. Victims who wish to seek the protection of the police will have to make the agonizing choice between calling the police and risking deportation—which could entail the abrupt separation from and danger to their children—and continued abuse.”  
(press release, “Heather Wilson Expresses Concern about bill’s effect on NM Immigrants [sic],”  
5/26/2005)

**Migrant and Refugee Cultural Support (MIRECS) (MD)**

“We’re all against terrorism. But enough care has to be exercised by police so that they don’t infringe on civil liberties.”  
 (“Groups Fret Over Giving Police Immigration Control,” *Fox News Channel*, 10/29/2003)

**Jewish Community Action (MN)**

“Some folks are here illegally, but many are not. How do we know? Are we going to stop everyone who might be Latino? You don’t have to be Latino to come here illegally.”  
 (“Measure targets immigrants’ fears,” *Pioneer Press*, 12/27/2003)

**El Centro Amistad (CO)**

“This would pretty much devastate the relationship with the police department and the sheriff’s department.”

(“Locals fight immigration law change,” *Boulder County’s Daily Camera*, 12/8/2003)

**Somali Justice Advocacy Center**

“[O]ne reason the state of Minnesota has been successful in the war against terrorism is the tireless effort of the U.S. Attorney’s office to reach out to immigrants because, as the U.S. Attorney puts it, ‘we are all in it together.’”

(“Don’t target immigrants in war on terror,” *St. Paul Pioneer Press*, 9/16/2004)



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**Hearing on "Comprehensive Immigration Reform in 2009"  
4/30/09**

**Subcommittee on Immigration, Border Security, and Refugees  
Committee on the Judiciary  
U.S. Senate**

**Testimony of  
Chung-Wha Hong  
Executive Director  
New York Immigration Coalition**

Chairman Schumer, Ranking Member Conryn, and members of the Subcommittee:  
Thank you for the opportunity to submit testimony for the record regarding today's  
hearing on "Comprehensive Immigration Reform in 2009."

The New York Immigration Coalition (NYIC) is an umbrella policy and advocacy organization for more than 200 groups in New York State that work with immigrants and refugees. Serving one of the largest and most diverse newcomer populations in the United States, the NYIC has become a leading advocate for immigrant communities on the local, state, and national levels. The NYIC's membership includes grassroots community organizations, nonprofit health and human services organizations, religious and academic institutions, labor unions, and legal, social, and economic justice organizations. With its multi-ethnic, multi-racial, and multi-sector base, the NYIC provides both a forum for immigrant groups to share their concerns and a vehicle for collective action to bring about positive social change locally and nationally.

**America's immigration system is broken and is a national shame.** Immigrant workers and families are under siege. Workers are being exploited. Families are being divided. Raids leave immigrants feeling unsafe and vulnerable in their own homes and workplaces. Hundreds of thousands of immigrants are detained each year in awful conditions. The government sets narrow quotas limiting how many immigrants can come to America lawfully—and the result is an estimated 12 million undocumented immigrants living in the shadows, with no protection. The immigration system as it now stands is simply out of step with the nation's needs and values, which makes the continued emphasis over the past many years on enforcement an exercise in futility, cruelty, and squandered resources.



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**The economic crisis is creating additional distress and makes the need for just and humane immigration reform even more urgent in 2009.**

We urge the President and Congress to enact just and humane immigration reform in 2009 because:

- *We need to address the 12 million undocumented people living here*  
Legalizing undocumented workers would improve wages and working conditions for U.S.-born and immigrant workers alike in key industries such as construction, agriculture, restaurant, hotel, and maintenance services. It also would bring millions of current workers into the formal economy and make it easier for everyone to pay taxes, increasing revenues for cash-strapped federal, state, and local governments.
- *We can no longer afford the human and financial costs of taking an "enforcement-only" approach*  
The U.S. government has wasted resources on ineffective and failed attempts at enforcing dysfunctional immigration laws. The outdated immigration system has caused thousands of tragic deaths at our borders and detention centers. Estimates for building and maintaining the southern border fence are reaching the \$60 billion mark, and a recent immigration worksite enforcement raid cost taxpayers \$5.2 million alone—which does not even take into account the costs incurred when families are torn apart, children's parents are detained, communities traumatized, and local economies destroyed.
- *America must decide which workers and family members can come legally in the future*  
Americans are aging and new immigrants are necessary to fill essential jobs and ensure continued economic growth. The native-born workforce will stagnate as waves of baby boomers retire and birthrates slow. Current immigration laws make it difficult or impossible for families to stay together, and they hinder American business's access to the labor force it needs to compete in a global economy. America's high demand for workers—and our values as a nation that recognize that families should be able to stay together—are not reflected in the current immigration quotas. As a result of these dysfunctional immigration policies, immigrants are forced to bear years and decades of separation from their loved ones who are U.S. citizen and lawful permanent resident immediate family members. And without any other options, many overstay visas or enter without visas to stay together as family.
- *The civil rights of native-born and new Americans are routinely violated*  
Congress has added and broadened grounds for deportation, and cut back sharply on the discretion that immigration judges previously had to consider all the circumstances of an immigrant's case. Several discretionary avenues that had enabled immigrants



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facing deportation to stay have either been restricted or abolished altogether. Immigration courts are also more limited in their authority to release or set bond for immigrants, and immigrants are much more constrained in their opportunities to get their cases reviewed on appeal.

Local enforcement of federal immigration laws have caused infractions on the civil liberties of native-born and immigrant Americans. Since it is impossible to ascertain a person's legal status by appearance, accent or name, local immigration enforcement programs have made local police into immigration agents, undermining police-community relations in immigrant communities and leading to racial profiling of Latino, Asian, Muslim and other immigrants and/or citizens.

Just and humane immigration reform must:

- *Provide a path to citizenship*

Undocumented immigrants contribute to our society and economy and are an integral part of communities across the country. Allowing this population the opportunity to become legal residents, and eventually citizens, will restore the rule of law, allow immigrants to pay their fair share of taxes, promote integration rather than fear, and maximize immigrant contributions to our nation.

- *Treat families with respect and dignity*

Family unification brings multiple benefits to our community and to the country as a whole. However, family members are separated for decades because of restrictive visa quotas and lengthy application processes that plague U.S. citizens and lawful permanent residents who seek to unify with immediate relatives. The normalization of visa quotas and elimination of such backlogs will keep families together.

- *Provide worker protections for all*

Immigrant workers are actively recruited by U.S. firms, but lack employment protections, and are afraid to report exploitation by employers. Any employment-based immigration program must include provision for full labor rights; the right to change jobs; and a path to permanent residence and citizenship. The new system must facilitate and enforce equal rights for all workers and minimize the opportunities for abuse by unscrupulous employers.

- *Uphold due process and security*

Current immigration enforcement policies create fear among immigrant and nonimmigrant communities alike, and are ineffectual, as they are attempting to enforce a system that is broken and unworkable. Fair and sensible enforcement practices tied to realistic immigration laws that serve our nation's interest are critical to rebuilding

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TheNewYorkImmigCoalition

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trust among immigrant communities and protecting the security of all. The Constitution guarantees due process for all people in this country. Our government, however, has not fulfilled that guarantee in its treatment of immigrants. Congress must restore basic civil liberties for all individuals in this country and our commitment to core American values of fairness and justice.

Thank you again for the opportunity to express our views regarding today's important hearing. We would be happy to answer any post-hearing follow-up questions you may have.

Statement of

## **The Honorable Charles E. Schumer**

United States Senator  
New York  
April 30, 2009

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**Opening Statement of Chairman Schumer**  
**Comprehensive Immigration Reform In 2009 Can We Do It and How**  
**Subcommittee on Immigration, Refugees and Border Security April 30, 2009**

Before we begin today's business, I'd like to take the opportunity to recognize the remarkable leadership that my predecessor—Senator Kennedy—has provided to this subcommittee.

For the last 46 years, Senator Kennedy has been at the forefront of every major immigration debate in this country as a member, chairman, or ranking member of this subcommittee.

I'm sure I speak for my colleagues when I say that no senator has worked harder and contributed more to the immigration conversation than Senator Kennedy, and we all sincerely thank him for his leadership.

Since I became Chairman of this Subcommittee in February, I am often asked the very questions that we hope to begin to answer today: "Can we achieve significant immigration reform in this session of Congress and, if so, what would this reform look like?"

People only need to pick up a newspaper or turn on their televisions to see many stories quoting Washington insiders and political pundits who say it is bad politics to even discuss immigration reform at a time when America is facing such serious economic challenges.

But these articles do not report what I am hearing in my conversations with the American people. No one is happy with our current system, whether they are left, right, or center. There is recognition in America that the status quo is not working. Indeed, recent polls show that 57% of Americans believe that immigration reform should be a high priority for this Congress. The politics may be hard, but reality is obvious: it is everyone's best interests to change and fix our current immigration system.

And it is therefore my belief that we can and must try to find a way to enact significant improvements to our immigration system now.

So, how do we get from here to there?

From my perspective, it is time to tone down the rhetoric, focus on the facts, and carefully weigh

what it in the best interests of our taxpayers, our economy, our security, and our future.

That is the spirit in which we have called today's hearings, and the spirit in which we can conduct our considerations moving forward.

It is my belief that the American people are pro-legal immigration and anti-illegal immigration. It is my belief that the American people are not afraid of an immigration system that is both tough and fair. They want an immigration system that both faces up to reality and respects the rule of law. They want an immigration system that will stop the flow of illegal immigrants and respect legal immigrants who want to work, pay taxes, remain in this country and become citizens.

That is what I want too, and I believe that is what the majority of my colleagues here in the Senate want.

But make no mistake: we cannot restore confidence in our immigration system until and unless we face up to reality, put ideology aside, and find solutions that will work to address the situation in which we find ourselves today.

I am hopeful that we can find solutions, because a well-functioning immigration system is not only a part of America's legacy – it is also critical to our country's future.

The founding fathers never intended for America to close the door to new Americans, and in each generation since the birth of our country we have accepted the most determined and idealistic people from everywhere in the world.

And we have always been stronger for it.

Because of immigration, Google, Yahoo, Intel, and Ebay are American success stories. In New York, one-quarter of all businesses are immigrant-owned. According to the U.S. Census Bureau, these immigrant-owned New York businesses have combined sales of \$42.7 billion, and employ over 230,000 workers.

Nationally, 40% of patents in the U.S. are awarded to immigrants. And a recent study found that immigrants are 50% likelier to start businesses than native-born citizens. New inventions and start-up businesses are critical to improving our economy and, as the numbers tell us, immigrants play a vital role in both of these areas.

Given the very high stakes in whether and how we move forward on the issue of immigration, we have invited a broad spectrum of our country's finest and most distinguished leaders to share their wisdom and experience.

These individuals come from a broad array of disciplines, and offer vastly diverse perspectives regarding immigration based upon their training and their area of expertise.

These distinguished witnesses will tell us whether they agree that comprehensive immigration

reform is necessary and should be enacted in 2009. They will also help us determine what a reformed system might look like.

As we go forward with this hearing today and with this debate throughout the year, I hope that my colleagues will agree to work together to capitalize on areas of consensus rather than exploit areas of disagreement.

For instance, although my colleague, the distinguished ranking member from Texas, and I, may have some ideological differences, we both approach the immigration conversation from a common starting point: we are both senators from border-states with long and rich histories of welcoming immigrants from all over the world.

In fact, the Texas Seaport at Galveston became known as "the Second Ellis Island."

And that's why our discourse on immigration should take place with the common understanding that even if we all came to America on a different boat (or through some other means), we are all in the same boat now.

So, as Chairman of this subcommittee, I pledge that I will work and work and work and work to strike the right balance and achieve the critical reforms to our immigration system that the American people are asking us to enact. This will be very, very hard to do, make no mistake. But we have to try.

I am confident that our distinguished panel will move us closer toward a pathway to reform, and I look forward with great interest to their testimony.

I now recognize the distinguished ranking member, Senator Cornyn, for an opening statement.  
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**SIREN**  
**SERVICES,**  
**IMMIGRANT**  
**RIGHTS AND**  
**EDUCATION**  
**NETWORK**

April 29, 2009

Subcommittee on Immigration-Refugees and Border Security  
 Committee on the Judiciary  
 United States Senate  
 Washington, DC 20510

**RE: Senate Hearing on Comprehensive Immigration Reform**

Honorable Members of the Immigration Sub-Committee,

The mission of Services, Immigrant Rights and Education Network (SIREN) is to empower low-income immigrants and refugees in Santa Clara County through direct services, community education, leadership development and policy advocacy. We believe that all people, regardless of legal status or nationality, are entitled to essential services, human dignity, basic rights and protections, and access to full participation in society.

Our current U.S. immigration system is in need of reform. It is out of tune and out of synch with the changing environment in our country and does not reflect our demographic or economic reality. Our immigration laws do not incorporate immigrants into U.S. society; they separate family members for extended periods of time and provide no legal pathway for millions of workers to participate in an economy that demands their labor. Our immigration laws need to be reformed in a manner that results in equality for all immigrants and recognizes and values immigrants as essential to our society.

Immigrants are a vibrant force in our culture, economy, and society. They come here to work, to be reunited with family or to avoid persecution. We have an opportunity to reform our broken immigration system in a thoughtful, well-reasoned, and humane manner. The debate on just and humane immigration reform needs to be addressed based on accurate facts, data, and rigorous research, not on rhetoric and fear.

Attached you will find five testimonies from the Latino and Asian communities of Santa Clara County, where there are close to two-hundred-thousand undocumented immigrants. These testimonies illustrate our immediate need for Just and Humane Immigration Reform. The stories and lives of those suffering as a result of our broken immigration system must be heard and respected. We urge you to take into consideration the voices of Maria, Marx, Belen, Angelina and Cristal as you debate the issue of Immigration Reform this week.

Thank you for your efforts to address this imperative issue. We look forward to playing a role in enacting Just and Humane Immigration Reform this year. Feel free to contact me, Vanessa Sandoval, at 408-453-3003 ext 102 if you have any questions or require further information.

Sincerely,

*Vanessa Sandoval*

Vanessa Sandoval  
 Policy Advocacy Program Director

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Immigrant Q & A Line Numbers

Spanish  
 (408) 453-3017

English/Vietnamese  
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**Testimony by Maria, undocumented immigrant and mother of 3 US citizen children, whose family has been affected by indiscriminate ICE operations**

My Name is Maria and I have lived in the United States for over 14 years. I have three US citizen children. On February 07, 2009 my family was traveling to visit relatives in San Marcos, CA. My husband took a wrong turn and ended up at a military check point. The army officers asked him for his license and identification. My 11 year old son has special needs, he is autistic, because of his condition he gets very nervous and scared when he hears loud voices. My husband tried to plead with the officers to have patients with my son because he is ill. They did not care and continued to yell and forcefully remove my husband and children from the truck. The fact that my husband does not have a license was enough for the officers to handcuff him in front of our children. The army called immigration, which came very quickly to arrest my husband and children. Several hours later I received a call from my husband asking for our sons' social security numbers. Thankfully, my children were able to prove their citizenship. I was extremely worried. I had no idea where my children or husband were. I was being eaten away by anguish. Finally, we received a call from an immigration agent. He said you have twenty minutes to pick up the children they are in San Clemente.

My cousin quickly drove to pick up my kids. Unfortunately my husband was not released. We were told he was an illegal alien and would be deported.

A few days later I received a call from my husband. I could hear in his voice that he was tired, sad, and without hope. He told me that the immigration agents had screamed at him, insulted him, and humiliated him. On several occasions they tried to intimidate and trick him into signing his own deportation. They would scream in his face "sign" "sign". My husband remained strong and he will fight his case in court. He cannot give up because our children need him. He was in detention for two months, locked inside jail as if he were a criminal. God knows that he is a good man; his only fault is that he is undocumented.

My children are suffering they are sad, angry and confused. They have been traumatized by witnessing their father placed in shackles. For two months my youngest son would lift the covers of our bed searching for his dad. I am also very worried. I depend on my husband to pay our rent, buy food and clothes for our children. In the blink of an eye I have become a single mother. Now we are paying thousands of dollars to an attorney to keep my husband in the US with his children. We have been told that because our children suffer from autism he be allowed to stay. Though this maybe an opportunity for us, I ask how high is the price for legal status, if your children must be suffering a debilitating disorder, for one to qualify for legal residence in the US.

Immigration has treated us without any kind of respect. They not only jailed my husband but they took all of our belongings from our truck. We cannot allow such injustice to continue. Every human being deserves to be treated with dignity. I ask the President and Congress to pass just and humane immigration reform immediately, so that tranquility can be restored in my family and our community as a whole.

**Testimony by Marx Reyes, US Citizen, living in a mixed status family**

My name is Marx and my family came to live in the United States 14 years ago. I am one of three children and the only one with legal status. The fact that my parents have not been able to get status has caused instability and insecurity in our lives. My father has been struggling for a long time to find a stable job. He has worked as a chef for many years. When the restaurant closed and moved to Sacramento he tried to salvage his employment by commuting to Sacramento. This was a huge burden on our family and he eventually had to quit. Now he does not have a stable job or income for our family. Every time he applies for a job he asks for a license or documentation that he does not have. My mother is a housekeeper. The work is very difficult and labor intensive. She has the skills to be an organizer and help her community, but she lacks status, which has made it impossible to get the job she deserves. Our family is very low income; my older sisters have to work to help with our rent and living expenses. Both of my sisters have to work and go to school. They have had to sacrifice their personal lives and education to help our family. I am only in 11<sup>th</sup> grade and I am already trying to find a job to help contribute to my family.

Emotionally we are struggling. It is very hard for my siblings and me to see our parents work twice as hard and receive less than those who have status. I see my family living day to day. My mother is constantly sorting through bills and having to decide which are most urgent. My father is an excellent chef with more than 20 years experience but because of his lack of green card he has been denied many jobs.

We are constantly struggling with whether or not we should just pack up and leave. After 15 years of living in the United States we still do not feel at home here. We are outsiders still trying to adjust. But Mexico is not home either. I do not speak Spanish well enough to live in Mexico. Returning to a country that we have not seen in over a decade is frightening. Times change and we have no idea how we would get a job or support ourselves. We would be immigrants in what is "supposed" to be our country.

My older sisters have proven themselves to be strong, intelligent young women. They are both students at San Jose State University. My oldest sister Cristina is studying public relations at SJSU she wants to help non-profit organizations and small businesses to promote their services. My sister Anahy is studying sociology with a concentration in community change. Her dream is to be a high school teacher, so that she can affect the lives of youth. She is passionate about promoting the notion that a community working together is the only way to have an impact and create change.

As a citizen of this country I want to see Just and Humane Immigration Reform because my parents deserve to be recognized for the hard working individuals that they are. My sisters are contributing immensely to our economy and society. They deserve recognition for all they have accomplished and given to our community. My families' loyalty to America has been unsurpassed. Yet the insecurity that we live is emotionally and physically draining. My parent's fear some of the most basic actions that others take for granted, like traveling, driving, and applying for a job. My family is waiting for me

to get my license so that we can travel with more security. As I prepare to finish high school and think of my life in the future I am torn by the fact that my family will be left behind and excluded from the rights and privileges of this great country. At times the emotional strain makes me feel like I should just give up. BUT I WILL NOT! I our Congress and President, when will America and our leaders begin to recognize the humanity of my family and the immense contributions that we have made? **The time for Immigration Reform is now!**

Thank You,  
Max Reyes

2

**Testimony by Belen Verduco, US Citizen, who has witnessed her undocumented siblings' dreams crushed by the lack of a functioning Immigration System**

My name is Belen and I am writing on behalf of many undocumented students who have been requesting our Congress to support the Dream Act and pass Just and Humane Immigration Reform.

If the dream Act passes, undocumented student that entered the US as children will have an incentive to pursue higher education, share their accomplishments with the community, and contribute to the economy by being eligible to adjust to lawful status.

My brother and sister would finally be eligible to contribute to our community and nation as a bilingual Doctor and Teacher. Our nation is in demand of bilingual doctors and teachers; however two exceptional students who graduated with honors, and have always given back to the community are not able to fulfill their dreams due to their legal status. It is unfortunate to experience the difference between being a legal student and not having status. In our family the hardships and lack of opportunities for my siblings have been extremely evident. Both Jose and I were able to attend and graduate from Santa Clara University and immediately practice our profession of interest, Engineering. However my sister although accepted 3 times, was not able to attend Santa Clara due to lack of financial support. She still works very hard because her goal is to become a teacher and motivate our youth to pursue their dreams. My brother has been a role model in our community and in our family, he has not only been a mentor to many undocumented students who pursue higher education but he has been an advocate for them. He is compassionate and loves science. He graduated from San Jose State University in spite of the many hardships he faced and we faced as a family. It is heartbreaking to see that is ONLY his lack of legal status that is preventing him from admission to Medical school. Both of my siblings make clear that they do not want handouts, only the opportunity to access higher education and the opportunity to put their knowledge to practice in our communities. They believe in community, they believe in the American Dream, and yet we tend to turn our face and ignore their reality, our national reality. It is ironic that we as Americans claim to be believers and advocates of human rights in our country and abroad, and yet at this moment we are ignoring people who are living next to me, next to you, next to us. It is very difficult to describe how it feels to witness how Jose and I have rights, and our other siblings have none, even though we have grown up together and in the same home, family and country.

It is ironic that my siblings who believe this nation to be their home are not able to adjust to a legal status. The immigration system has impeded my parents and siblings from adjusting to a lawful status in spite of having good citizenship, paying their taxes, and having lived in the US almost 20 years. As a US citizen, I feel that until we make our Congress accountable for Just and Humane Immigration Reform we are losing out by preventing the participation of hardworking hard working individuals in our society. We must stop pretending that we do not have a problem that needs our attention.

**Testimony from Mrs. Angelina Mendoza, a USC citizen who has been separated from her children by the USCIS visa backlog**

*Mrs. Angelina Mendoza – U.S. Citizen*

I am Angelina Mendoza a Filipina and an American Citizen. I was petitioned by my brother, a U.S. citizen, in April 1978. My immigration petition included my husband, and our 3 minor children, all below 18 years of age when our petition was approved. When the visa became available to us, more than 20 years later our children were no longer eligible to immigrate with us as they had "aged out." Though my husband and I appreciate and are thankful for the privilege given to us to be immigrants, and now U.S. citizens, we are devastated by the fact that our children were unable to join us here in the U.S. We find America to be a wonderful place to live in, but being separated from our children and our grandchildren has given us nothing but anxiety and sleepless nights and longing to have our children and our grandchildren with us here. We find communicating with our children very expensive. Traveling by plane to the Philippines is so costly that we have not seen our children in years. Another problem we had was our age. We immigrated when we were already in our twilight years, I was 65 years old and my husband was 69 years of age when we became immigrants due to our long, long, long, long wait for our visa. We had lots of difficulties during our early years here. We found it difficult to get a job, and felt that we were less productive due to our old age. We always worked and love to work hard. That is the American way. But, what is the Child Status Projection Act about? Can this apply to our children? We hope that under President Barack Obama, a compassionate man, our immigration laws could be made more family oriented. We need comprehensive immigration reform. We do pray and hope that we can see the day when our family will be united here in the United States.

Thank you very much.

**Testimony by Cristal Ortiz, undocumented student**

Six years ago my mother decided to immigrate to the United States. Due to our low income, my mother being a single parent and lack of a prosperous future in Mexico, we decided to take the risk of entering this country undocumented- we had no other way to immigrate. My mother wanted to give her five children an opportunity to continue with their education and have a successful future.

I have lived in the United States for six years, and I have accomplished so much. I learned a new language, when I thought I couldn't do it. At the beginning it was difficult trying to cope with a new life. Despite all the struggles, like not having friends because I didn't know the language. I also did not know the city so there were times when I felt imprisoned. Moreover, the fear of not belonging in this country has always been present. I graduated from high school and I was awarded senior of the year. I have never given up even though I have been frustrated at times because of my lack of opportunities, such as, a job and a driver's license. Besides all the barriers I face—including financial aid, I keep my mind focused and last year I earned a college degree. Now I'm at San Jose State University working as hard as I can to accomplish my goal to become a professional and contribute to my community. I'm majoring in hospitality management and Spanish.

I would love to have the opportunity to continue with my education, and once I graduate I want to become a professional and contribute to my community and our economy. That is why I am a member of a student group at San Jose State. I believe in being an active participant in change. This year I will help organize and fight for immigration reform. I call on President Obama and Congress to pass a just and humane immigration reform that includes the Dream Act which would allow my family and me to continue accomplishing our dreams of fully participating in this country—my country.

Thank You.

April 30, 2009

The Honorable Charles Schumer  
Chair  
Senate Immigration Subcommittee  
U.S. Senate, Washington DC

The Honorable John Cornyn  
Ranking Member  
Senate Immigration Subcommittee  
U.S. Senate, Washington DC

Dear Senators Schumer and Cornyn:

We applaud you for holding the important hearing Immigration Subcommittee hearing on immigration reform. For years, the Federal government has failed to deal with the broken immigration system and left our communities to deal with the effects: smugglers who take advantage of desperate workers; criminals who prey on immigrants because they think they won't be reported; millions of individuals who are not criminals but are working with false papers or driving without a license.

This lack of a coherent national immigration policy has created chaos in our communities and made the job of law enforcement much harder. We need to end the abuses of human smugglers and others who profit from our broken immigration system. We need all community members to feel safe reporting crimes and working with the police. We need every driver on our nation's roads to be licensed and insured.

Our Federal government must enact a comprehensive immigration law that secures the borders and legalizes undocumented workers who are not criminals. There should be stringent criteria for who qualifies, and they should go to the back of the line for U.S. citizenship. But from a law enforcement point of view, we need to know how is here in our country, get them documented, weed out the bad apples, and ensure we never face another build-up of illegal immigration again.

We look forward to the Committee's future deliberations over national immigration reform this year, and stand ready to assist in any way.

Respectfully,

Toussaint E. Summers Jr, Chief of Herndon Police Department, Herndon, Virginia

Jon Zumalt, Chief of North Charleston Police Department, North Charleston, South Carolina

Gregory Allen, Chief of El Paso Police Department, El Paso, Texas

Richard Wiles, El Paso County Sheriff, El Paso, Texas

**Statement of John J. Sweeney**  
**President**  
**American Federation of Labor and Congress of Industrial Organizations**  
**Senate Judiciary Subcommittee on Immigration, Refugees and Border Security**  
**Hearing on Immigration Overhaul**

**April 30, 2009**

Chairman Schumer, Ranking Member Cornyn and other members of the committee, I appreciate the opportunity to offer my words of enthusiasm and encouragement at the initiation of hearings tasked with arriving at a plan for the just overhaul of our immigration system. It is particularly appropriate and timely that you are holding these hearings now following the announcement by the Obama Administration that they are ready to get to work on immigration reform.

Immigration reform has been one of the AFL-CIO's priorities for many years. In 2000, our Executive Council adopted a resolution calling for legalization and other important fixes to our badly broken immigration system. Following the resolution, the AFL-CIO sponsored the Immigrant Worker Freedom Ride, which brought together the labor movement, as well as countless communities and advocates around the country. Our joint message during the Freedom Rides was exactly what our message is today: Immigration is a workers' rights issue and we have to work together to fix our broken system.

Workers have faced difficult times in the years after the Freedom Ride. The Bush Administration refused to support any immigration reform proposal that was framed around workers' rights -- which made it impossible for the AFL-CIO to support the types of proposals we saw coming out of the Bush White House. But we knew that there was a great deal of common ground to build upon.

And now we have a President who understands that protecting workers' rights is essential to our nation and who is willing to work with all of us who care about advancing the rights of workers to fix the system. It's a system that's not working for anybody today, not for immigrant workers, who are regularly exploited, and not for U.S.-born workers, who are struggling to maintain job and living standards despite the creation by companies of a cheaper, exploitable "underclass."

As Congress begins the process of crafting a comprehensive immigration reform proposal it must be based on protecting the rights of workers. In anticipation of this moment, about a year ago, I asked former Secretary of Labor Ray Marshall to head an internal AFL-CIO task force to develop a legislative approach to immigration reform. In the course of developing a new framework for reform, Secretary Marshall consulted with many advocates, experts, academics and community groups -- as well as with our own unions and the unions of Change to Win.

The resulting product --- set forth in Secretary Marshall's Report "Immigration for Shared Prosperity -- A Framework for Comprehensive Reform," published this month by the Economic Policy Institute--- calls for a focus on five major interconnected pieces dealing with 1) future flows based on labor market shortages determined on the basis of actual need; 2) a secure and effective worker authorization mechanism; 3) rational operational control of the border; 4) adjustment of status for the current undocumented population; and 5) improvement, but not expansion, of temporary worker programs.

Based on this approach, the Labor Movement issued a framework document, included as an appendix in Secretary Marshall's Report, that is set forth below. The AFL-CIO recognizes, of course, that many critical details covered in the Report, itself, will need to be addressed --- for example, the ongoing role of labor representatives in establishing future flow determinations, requirements for earned adjustment of status, improvement of visa enforcement systems, the impact of family reunification policies on labor market need predictions, and the potential use of biometric data in a workplace authorization system that is effective but also protective of civil rights and civil liberties.

With regard to the latter, the Subcommittee will note that a key component of the labor movement's framework is a secure method for ensuring that employers hire only authorized workers. The current system leaves the determination in the hands of employers and relies on a multitude of documents to show identification. The result has been that too often employers game the system and verify authorization only when workers attempt to organize a union or report a workplace hazard.

The system has also resulted in a multi-million dollar black market for false identification documents. The best way to fix this system is to provide employers a fail-safe mechanism for determining whether someone is authorized, and to hold those employers who do not use the mechanism or use it improperly accountable, which requires eliminating the safe-harbors that current law provides.

The AFL-CIO has been exploring various systems ---investigating the experience of other countries (as well as the European Union) that have developed similar systems --- and to date, the most promising is a system that uses a biometric identifier. We will continue to work with our partners in the immigrant advocacy, privacy, civil liberties, and other communities to ensure a develop proposals for a system that truly promotes workers' rights and protects civil liberties.

Meanwhile, we strongly believe that the Marshall approach represents an enlightened approach to immigration reform --- one that is based on protecting and promoting the rights of all workers -- foreign and U.S.-born --- and respectfully urge the Subcommittee to adopt the approach as its own. The Labor Movement's Framework (attached here) represents a new approach to immigration reform --- one that is based on protecting and promoting workers' rights.

Thank you Chairman Schumer for having the foresight to hold a hearing now on this pressing issue. I assure you that the labor movement is going to be in this fight together --

and I am confident that if we all work together, we will forge a new future that will benefit all workers and our entire nation.

**The Labor Movement's Framework for Comprehensive Immigration Reform**  
**AFL-CIO and Change to Win**

Immigration reform is a component of a shared prosperity agenda that focuses on improving productivity and quality; limiting wage competition; strengthening labor standards, especially the right of workers to organize and bargain collectively; and providing social safety nets and high quality lifelong education and training for workers and their families. To achieve this goal, immigration reform must fully protect U. S. workers, reduce the exploitation of immigrant workers, and reduce the employers' incentive to hire undocumented workers rather than U.S. workers. The most effective way to do that is for all workers—immigrant and native-born—to have full and complete access to the protection of labor, health and safety and other laws. Comprehensive immigration reform must complement a strong, well resourced and effective labor standards enforcement initiative that prioritizes workers' rights and workplace protections. This approach will ensure that immigration does not depress wages and working conditions or encourage marginal low-wage industries that depend heavily on substandard wages, benefits, and working conditions.

This approach to immigration reform has five major interconnected pieces: (1) an independent commission to assess and manage future flows, based on labor market shortages that are determined on the basis of actual need; (2) a secure and effective worker authorization mechanism; (3) rational operational control of the border; (4) adjustment of status for the current undocumented population; and (5) improvement, not expansion, of temporary worker programs, limited to temporary or seasonal, not permanent, jobs.

Family reunification is an important goal of immigration policy and it is the national interest for it to remain that way. First, families strongly influence individual and national welfare. Families have historically facilitated the assimilation of immigrants into American life. Second, the failure to allow family reunification creates strong pressures for unauthorized immigration, as happened with IRCA's amnesty provisions. Third, families are the most basic learning institutions, teaching children values as well as skills to succeed in school, society, and at work. Finally, families are important economic units that provide valuable sources of entrepreneurship, job training, support for members who are unemployed and information and networking for better labor market information.

The long term solution to uncontrolled immigration is to stop promoting failed globalization policies and encourage just and humane economic integration, which will eliminate the enormous social and economic inequalities at both national and international levels. U.S. immigration policy should consider the effects of immigration reforms on immigrant source countries, especially Mexico. It is in our national interest for Mexico to be a prosperous and democratic country able to provide good jobs for most of its adult population, thereby ameliorating strong pressures for emigration.

Much of the emigration from Mexico in recent years resulted from the disruption caused by NAFTA, which displaced millions of Mexicans from subsistence agriculture and enterprises that could not compete in a global market. Thus, an essential component of the long term solution is a fair trade and globalization model that uplifts all workers, promotes the creation of free trade unions around the world, ensures the enforcement of labor rights, and guarantees all workers core labor protections.

### **1. Future Flow**

One of the great failures of our current employment-based immigration system is that the level of legal work-based immigration is set arbitrarily by Congress as a product of political compromise—without regard to real labor market needs—and it is rarely updated to reflect changing circumstances or conditions. This failure has allowed unscrupulous employers to manipulate the system to the detriment of workers and reputable employers alike. The system for allocating employment visas—both temporary and permanent—should be depoliticized and placed in the hands of an independent commission that can assess labor market needs on an ongoing basis and—based on a methodology approved by Congress—determine the number of foreign workers to be admitted for employment purposes, based on labor market needs. In designing the new system, and establishing the methodology to be used for assessing labor shortages, the Commission will be required to examine the impact of immigration on the economy, wages, the workforce and business.

### **2. Worker authorization mechanism**

The current system of regulating the employment of unauthorized workers is defunct, ineffective and has failed to curtail illegal immigration. A secure and effective worker authorization mechanism is one that determines employment authorization accurately while providing maximum protection for workers, contains sufficient due process and privacy protections, and prevents discrimination. The verification process must be taken out of the hands of employers, and the mechanism must rely on secure identification methodology. Employers who fail to properly use the system must face strict liability including significant fines and penalties regardless of the immigration status of their workers.

### **3. Rational Operational Control of the Border**

A new immigration system must include rational control of our borders. Border security is clearly very important, but not sufficient, since 40 to 45 percent of unauthorized immigrants did not cross the border unlawfully, but overstayed visas. Border controls therefore must be supplemented by effective work authorization and other components of this framework. An “enforcement-only” policy will not work. Practical border controls balance border enforcement with the other components of this framework and with the reality that over 30 million valid visitors cross our borders each year. Enforcement therefore should respect the dignity and rights of our visitors, as well as residents in border communities. In addition, enforcement authorities must understand that they need cooperation from communities along the border. Border enforcement is likely to be most

effective when it focuses on criminal elements and engages immigrants and border community residents in the enforcement effort. Similarly, border enforcement is most effective when it is left to trained professional border patrol agents and not vigilantes or local law enforcement officials—who require cooperation from immigrants to enforce state and local laws.

#### **4. Adjustment of Status for the Current Undocumented Population**

Immigration reform must include adjustment of status for the current undocumented population. Rounding up and deporting the 12 million or more immigrants who are unlawfully present in the U.S. may make for a good sound bite, but it is not a realistic solution. And if these immigrants are not given adequate incentive to “come out of the shadows” to adjust their status, we will continue to have a large pool of unauthorized workers whom employers will continue to exploit in order to drive down wages and other standards, to the detriment of all workers. Having access to a large undocumented workforce has allowed employers to create an underground economy, without the basic protections afforded to U.S. citizens and lawful permanent residents, and where employers often misclassify workers as independent contractors, thus evading payroll taxes, which deprives federal, state, and local governments of additional revenue. An inclusive, practical and swift adjustment of status program will raise labor standards for all workers. The adjustment process must be rational, reasonable and accessible and it must be designed to ensure that it will not encourage future illegal immigration.

#### **5. Improvement, not Expansion, of Temporary Worker Programs**

The United States must improve the administration of existing temporary worker programs, but should not adopt a new “indentured” or “guest worker” initiative. Our country has long recognized that it is not good policy for a democracy to admit large numbers of workers with limited civil and employment rights.

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The American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) is a voluntary federation of 56 national and international labor unions, representing 11 million members, including 2.5 million members in Working America, our new community affiliate. Members of our affiliated unions are construction workers, teachers and truck drivers, musicians and miners, firefighters and farm workers, bakers and bottlers, engineers and editors, pilots and public employees, doctors and nurses, painters and laborers – and more. The AFL-CIO was created in 1955 by the merger of the American Federation of Labor and the Congress of Industrial Organizations. Since its founding, the AFL-CIO and its affiliate unions have been the single most effective force in America for enabling working people to build better lives and futures for their families.

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Partnership for New York City

April 28, 2009

Honorable Charles Schumer  
 United States Senate  
 313 Hart Senate Office Building  
 Washington, DC 20510

Dear Senator Schumer:

Per your request, please find enclosed a copy of the Partnership's report, *Winning the Global Race for Talent*, for inclusion in the record of the Senate Judiciary Committee Subcommittee on Immigration, Border Security and Citizenship hearing, "Comprehensive Immigration Reform in 2009, Can We Do It and How?," being held on April 30, 2009.

The report, which was published in March 2008, focuses on the problems businesses face due to the restricted number of high-skilled professional H-1B visas. It finds that job functions (and on occasion entire divisions) of companies are being moved overseas because of the lack of availability of H-1B visas. Far from displacing domestic employment, the evidence suggests that H-1B visa holders may assist in job creation or retention within our borders. In one striking example, the Partnership found that an H-1B visa holder helped keep 900 jobs in the United States.

In an increasingly global economy, our Partners tell us that having a mobile workforce is critical. The Partnership for New York City applauds your efforts to begin to examine the H-1B visa issue and looks forward to working with you and the Committee on this important matter.

Sincerely,

Kathryn Wyldé  
 President and CEO

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## **WINNING THE GLOBAL RACE FOR TALENT**

How U.S. Visa & Immigration Policies Threaten the New York  
Economy & Cost American Jobs — And How We Can Fix It

**March 2008**



**Partnership for New York City**

*“The ability to attract people and talent is the single biggest predictor of a city’s economic success.”*

— *New York City Mayor Michael Bloomberg*

## INTRODUCTION

Employers across all industries are engaged in a high-stakes global race for the best and brightest. As a result, the size, quality and diversity of the talent pool in a city or country are the first criteria of business in determining where to locate jobs.

America's ability to maintain the world's best and most productive workforce in an increasingly competitive environment depends on 1) education and continued training of the domestic workforce, and 2) smart immigration and visa policies that maintain the infusion of top talent from around the world.

The Partnership for New York City recently conducted an unprecedented survey of international companies in its membership that have headquarters or major operations in New York in order to better understand how this city is stacking up in the race for global talent. The results were alarming. Thousands of jobs are being lost or relocated for reasons that New York City and State government can do very little about: America's visa and immigration policies.

Over the past decade, New York and other U.S. employment centers have been put at a severe competitive disadvantage because of increasing restrictions on the movement of foreigners in and out of the United States, whether in their capacity as employees, scholars, or business travelers.

There are concrete public policy measures which could be taken to put New York back on an even-footing in the race for global talent, but those steps are being hampered by what should be a separate issue — the emotional political debate over what to do about the estimated 12 million to 20 million foreigners who reside in the U.S. illegally.

Professional and business travel visas attract highly educated and uniquely skilled workers to America; in turn these workers help U.S. businesses compete and grow.

## PROFESSIONAL EMPLOYEE H-1B — “SMART GROWTH” — VISAS

The most serious problem for New York business is the cap on professional visas, known as H-1Bs. H-1B visas are available for three years (renewable once for a maximum of six years) to foreign nationals who have a job offer in an occupation requiring specialized knowledge, including architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts. There is a national cap of 65,000 H-1B visas annually (with a further 20,000 slots available to graduates of U.S. educational programs). Employers currently apply for an allocation of H-1Bs beginning on April 1 of each year. In 2007, the cap was substantially oversubscribed on the first day applications were open, with more than 150,000 applications received.

The intention of imposing a cap was to discourage employers from hiring foreign workers instead of qualified domestic workers. In 2006, however, new H-1B professionals comprised just 0.07% of the total U.S. labor force, suggesting that this is not a significant source of displacement.<sup>1</sup> Even in the three states with the largest numbers of H-1B visa-holders (CA, NY and NJ in that order)<sup>2</sup>, these professionals make up less than 1% of the total labor force in each state.

There is plenty of evidence that H-1B employees actually contribute to new domestic job creation. One Partnership survey response from a major investment bank drives home the point:

“We are a company that invests significant amounts of money in education and training of current and future U.S. workers. However, these efforts are insufficient to meet our company's immediate needs. The visa cap does not create jobs for Americans;

<sup>1</sup> The Grassley Visa Tax — *Wall Street Journal*, Nov 2, 2007

<sup>2</sup> Department of Labor's Foreign Labor Certification Disclosure Data on H-1Bs

its only effect is to restrict our firm's development within the U.S. and, consequently, push jobs and tax revenues across our borders. The policy helps rival destinations."

Reports one technology company headquartered in the Northeast: "We just hired 1,000 programmers in India. We couldn't get U.S. visas for any of them. Now that we have critical mass there, future hires will go there, not here."

#### THE IMPORTANCE OF H-1B VISAS FOR NEW YORK JOBS

New York is particularly dependent on maintaining open doors to global talent. Businesses in the New York Tri-State Region employ 21 percent of the foreign professionals working in the U.S. with professional H-1B visas, more even than California. Importantly, many of these visa holders do not work for large corporations. The majority of H-1B employers are small professional firms for which a handful of multilingual foreign employees are critical to their ability to connect with global markets and compete on an international playing field.

In January, 2007, Mayor Bloomberg and Senator Charles Schumer released a study prepared by McKinsey & Co. titled *Sustaining New York's and the US' Global Financial Leadership*. Among the important findings was that restrictions on professional and business travel visas are one of the biggest problems to overcome if New York City is to retain its status as the world financial center. London's relative openness to international workers and travelers was flagged as a key competitive advantage.

#### THE PARTNERSHIP FOR NEW YORK CITY EMPLOYERS

More than a year later, conditions have only gotten worse. The Partnership for New York City recently surveyed its membership to define the impact of

visa and immigration issues on key sectors of the New York economy. It secured responses from sixty-three companies, including many of the country's largest employers, as well as foreign headquartered companies doing business here.

Industries ranging from financial and professional services, to energy, travel, and media were covered by the survey responses. In each case, it was clear that companies are no longer off-shoring jobs primarily to reduce labor or real estate costs, as was the case in the manufacturing and technology sectors during the twentieth century. In certain cases, employers are relocating business operations to places that are even more expensive than the U.S., simply to achieve access to the best and brightest employees and to assure their global mobility.

Eighty-five percent of the employers surveyed share the position that U.S. visa policies are a significant and growing problem for the New York economy, resulting in the annual loss of hundreds of jobs. Many of these companies reported that they were unable to hire or retain individuals they wanted for key jobs in New York because of problems securing a visa.

The Partnership found that whole divisions and functions of companies and professional service firms are being relocated overseas to places where there is easy and immediate access to world talent. One bank reported that their New York offices lost 100 new hires in 2007 as a result of the unavailability of appropriate visas. An investment firm located a derivatives operation in London because the Chinese national whom they hired to head it could not get a visa to work in New York.

"U.S. work visa restrictions impair our ability to recruit and hire the best talent in a highly competitive global market," states a response to the survey from a financial services company. "The restrictions put U.S. firms at a disadvantage compared to non-U.S. firms with employees predominantly based in

overseas locations. We believe that these restrictions, if not relaxed, will diminish New York's status as the world's financial capital and hinder NY-based companies' ability to compete globally.<sup>3</sup>

New York-based companies reported organizing international employee and client gatherings in Canada or London because entrée to the U.S. is difficult and unpredictable. Accounting, legal, and management consulting firms are finding it hard to continue traditional practices of rotating foreign associates through the New York office for orientation and training. Businesses that recruited foreign graduates from American universities find that these institutions have lost ground to foreign competitors because of visa policies that discourage enrollment by foreign students. Businesses are investing in state-of-the-art video conferencing equipment in place of international travel because even short-term visas for business purposes are hard to obtain and, for many foreigners, customs procedures have made entering the U.S. unpleasant. The result is a growing skills gap in the U.S. at the same time as international talent is being aggregated in more open locations.

**THE IMPORTANCE OF H-1B VISAS FOR U.S. JOBS**

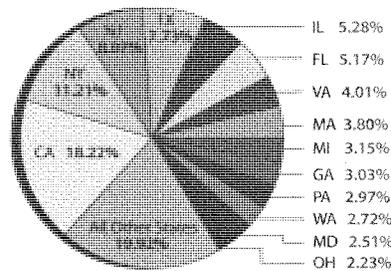
**Demand for Visas Spans the Country, Industry Sectors and Companies of All Sizes**

Historically, America's West Coast high tech community has been the dominant business voice on professional visa issues. However, both the Partnership survey and the Department of Labor's Foreign Labor Certification Disclosure Data on H-1Bs for 2006<sup>3</sup> reveal that limited availability of

<sup>3</sup> A one to one relationship does not exist between the number of workers certified by the Department of Labor (DOL) and the number of work visas issued by the United States Citizenship and Immigration Services (USCIS). DOL Foreign Labor Certification data indicates an interest by U.S. employers to hire foreign workers; it does not provide direct evidence that these employers actually hired the workers. For example, DOL typically

H-1Bs is equally important for employment centers across the country.

States with Highest Usage of H-1B Visas



While California has the highest number of H-1Bs of any state, the New York Tri-State has the largest concentration in the nation:

	H-1B Visa Share
New York Tri-State (NY, NJ, CT)	21.04%
California	18.22%

Of the ten thousand plus employers applying for H-1B visas in New York City, most are small businesses that require foreign talent to connect them to global markets. In 2006, only 11% of the H-1B visas granted in New York City went to employees of the city's Fortune 1000 companies.

A 150-person management consulting firm based in Lower Manhattan employs several H-1B professionals. They provide the following illustration of the role foreign professionals play in their work:

certifies over three times the number of foreign work requests than the number of H-1B visas issued by USCIS.

“One contract last year involved renegotiating supply contracts for a South Carolina-based manufacturer of electronics components. The work involved heavy analytics and intense communication with Chinese vendors — performed by one of our staff members, a native Mandarin-speaking Caltech PhD employed here on an H-1B visa. Our work restored the South Carolina firm to profitability and helped safeguard the employment of its 900 U.S.-based employees.”

A mid-sized design firm expresses similar frustration: “We currently have projects in China, Indonesia, and India, but we do not have a deep enough reservoir of staff with relevant knowledge and language skills to handle the growth opportunities we see in Asia. Our experience with the current system of trying to

employ foreign nationals suggests that this will only change for the worse.

“Add to this the global mobility of the kind of talent we need, and the expected shortage of knowledge workers in the U.S. in the decades ahead. The resulting message is clear: to the extent that our clientele and staff are international, current U.S. policy toward skilled foreign labor poses a significant obstacle to the expansion of our U.S. operations.

“Asia is not a less expensive place to practice, but the operational complexities of having an office in Asia are considerable so once we make an investment in Asia we will have to look for ways to leverage it as much as possible. It will become a magnet attracting more of our future growth and resources, attracting

#### TALENT GOES OVERSEAS — PARTNERSHIP SURVEY RESPONDENT

“This year about 30 members or about 4 percent of our new hires were unable to receive an H-1B visa in last year’s lottery, and they have no other legal visa options that would allow them to remain in the U.S. to work, even though they each have completed a degree in a U.S. university. In fact, for a large portion of these new hires, we will not even file an H-1B visa petition until about 6 months after their start date because they did not yet hold an undergraduate degree in April of this year, which is a prerequisite for filing an H-1B petition. As a result, an increasing number of our new hires will be forced to leave the country for an indefinite period of time pending H-1B visa approval via the lottery system.

“This situation has several costs to our company:

- **“Capacity to serve our U.S. clients** — we cannot deploy these 30 people for up to a year serving our U.S. clients.
- **“Diversity and level of talent** — we have had to encourage potential new hires without a visa to apply to our international offices from the start, decreasing the diversity and arguably the level of talent that we hire into our U.S. offices. We have heard anecdotally that the uncertainty and complications posed by the current immigration situation deter some foreign nationals from even considering U.S.-based employment opportunities.
- **“Retention of talent in North America** — we are not sure that these 30 people, once deployed abroad, will return to serve our U.S. clients.
- **“Mobility costs** — there are several transactional costs to us, including moving expenses and loss of time/productivity as individuals adjust to a new business culture after transferring internationally.”

investment that would otherwise have stayed here in the United States.”

Labor market needs in the U.S. that create such high demand for H-1B visas are not concentrated in any particular sector. Although computer-related applications take the largest share of H-1Bs awarded, there are also significant numbers awarded for administrative specialties, medicine, architecture, education, law, financial, insurance and real estate jobs. The top 20 users of H-1B visas in New York City include banks and investment firms and their technology suppliers as well as two top universities (Columbia and New York University) and two major medical centers (Mount Sinai and Memorial Sloan-Kettering).

#### BEYOND H-1B VISAS — OTHER OBSTACLES TO COMPETITIVENESS POSED BY U.S. VISA POLICY

Many companies responding to the Partnership survey report difficulties throughout the visa and immigration system, well beyond the problem of obtaining H-1B visas. In general, businesses express frustration with the impact of U.S. policies on international mobility that makes the U.S. a less competitive location for recruitment, education, training, meetings and special events. Employers also identify obstacles at every stage of the process involved in the path to citizenship for foreign immigrants to the U.S., regardless of their skill level.

For example, employers look to hire talented foreign students educated at U.S. universities through an employment authorization called **Optional Practical Training (OPT)**. Under this program, foreign students attending U.S. universities can work during their studies or for one year after their graduation. In some cases, current OPT employees are being forced to pursue advanced degrees — at the expense of the employer — simply to maintain their student visa status. But this is a stopgap measure. Employers point to the need to extend the allowable length

of employment under OPT to 29 months, to give students a better chance to obtain an H-1B visa.

Professional services firms with international practices have generated significant job growth in New York over the past decade, partly because New York is where they train, develop and then re-deploy recruits from around the world. But rotation of an international workforce through New York and the U.S. has become problematic under current visa policies for both domestic and foreign international companies that establish operations in the U.S.

The L-1 visa was designed to allow employers to transfer employees from other jurisdictions to their U.S. office, sometimes in significant numbers, under “blanket” petitions. While L-1 visas are not subject to an annual cap, many companies are reporting significant delays in processing them. One multinational financial services firm comments: “Our company’s ability to relocate existing staff into the U.S. for certain positions is severely hampered by the time required to obtain proper immigration permits and restrictions placed on family members or accompanying partners. Therefore, in a very competitive industry, our available talent pool is significantly reduced. This is a primary reason why London is becoming a more competitive financial center at New York’s expense. It is simply much easier to build a team and manage talent mobility abroad than in the U.S.”

The problems associated with L-1 visas threaten to get worse. Proposals have been introduced in Congress to restrict L-1 visa blanket petitions to avoid displacing domestic workers, despite a recent report by the Inspector General in the Department of Homeland Security<sup>4</sup> which concluded this was not a significant national trend.

Short-term visits by foreign nationals are a critical component of international business activity, whether

<sup>4</sup> Review of Vulnerabilities and Potential Abuses of the L-1 Visa Program, DHS OIG January 2006

for investor presentations, closing transactions, conferences or client meetings. Long waiting times in overseas consulates and frequent denials of short-term B-1 visas for unspecified reasons are another significant issue affecting U.S. competitiveness. Some progress was made in 2007 with the passage of legislation that expanded eligibility for a visa-waiver program. This allows nationals of designated countries to enter the U.S. for up to 90 days without applying for a visa before leaving home. For those countries that cannot participate in the visa waiver program, however, long delays continue.

Employment-Based Green Cards offer permanent residency status to non-U.S. citizens based on a job offer from a sponsoring employer. 140,000 Employment-Based Green Cards are available annually. As with other areas of the immigration system, this area is subject to excessive delays and backlogs, with some applications taking over 7 years before a Green Card is granted.<sup>5</sup>

An architecture firm responding to the Partnership survey commented: "We are about to initiate four employment based Green Card applications, all for employees with advanced or professional degrees from top tier U.S. schools. We are playing a very high stakes game with the government in which the rules seem rigged against us. It will be a tremendous waste of our resources and their talent if any of them fail to get approved. Moreover, if any of them are not approved and if they are eventually forced to leave the country, given their U.S. education and experience, they will all be highly desirable employees in whatever country they land. This would put excellent talent, talent that we helped to develop, in the hands of non-U.S. competitors."

Foreign nationals from India, China, Mexico and the Philippines face particularly long backlogs, as each country has a quota of 7% of the available

employment-based green cards. Demand significantly exceeds supply and the unused allocation of visas from other countries is rarely assigned to these four countries.

#### HOW THE FEDERAL GOVERNMENT CAN KEEP AMERICAN BUSINESSES COMPETITIVE

Missing from the national debate over visa policies have been representatives of the cities and metropolitan employment centers across the country with globally linked economies. That is beginning to change. During the past few months, Mayor Bloomberg has come out strongly on this issue, opening his January 2008 State of the City message with the following comment: "New York gives [immigrants] unlimited opportunities and these families help make New York the nation's economic engine, its financial hub, its fashion center, its media mecca, and its cultural capital. And that's one of the messages I've been speaking out on, to those who are wailing against immigration, to those politicians who, all of a sudden, have embraced xenophobia, I say: open your eyes."

Actions that would relieve the visa crisis and help American businesses compete in the global race for talent include:

- Allowing the H-1B visa cap to respond to market demand;
- Enacting an exemption from the H-1B cap for students with higher degrees in Science Technology Engineering and Math (STEM);
- Extending the term of Optional Practical Training visas from 12 months to 29 months;
- Increasing the Employment-Based Green Card cap from 140,000 currently to 290,000;
- Supporting visa policies which facilitate normal international business operations, including the continuation of L-1 visa "blanket" petitions for companies with U.S. subsidiaries or affiliates

<sup>5</sup> Citizenship and Immigration Services Ombudsman - Annual Report to Congress June 2007

with combined sales of \$25 million+ or a U.S. workforce of at least 1000 employees;

- Establishing guidelines and procedures for expedited and/or pre-clearance of temporary business visa applications (B-1 Visas) and the implementation of policies to expedite the processing of business/professional visas for temporary workers.

#### POLITICAL REALITIES: PROFESSIONAL AND TRAVEL VISAS VS. THE BORDER SECURITY DEBATE

The above actions need to be taken quickly so that American companies and cities can compete on a level playing field with other international employment centers and continue to maximize job creation in the U.S.

However, the intense debate in Washington over border security and the millions of foreigners residing illegally in the U.S. threatens to distract from what should be unifying causes — American competitiveness, economic growth and job creation. The Partnership for New York City stands ready to help address the issue of professional and travel visas, as well as play a constructive role in moving the larger, more contentious immigration debate towards reasonable ground — including a path to citizenship for millions who have acted responsibly while living and working in the U.S.

#### CONCLUSIONS

Competitiveness has become even more important in a U.S. economic environment many are describing as recessionary. The Institute for Supply Management published statistics in January 2008 showing the first shrinkage in the U.S. service sector in nearly five years. The full impact of the credit crisis on New York's and the nation's economy has yet to be seen. New York and the nation need to promote a positive business environment where access to talent is not discouraged but facilitated.

Current federal visa policies are hurting key U.S. industries and the cities where they are concentrated. Education and workforce development policies are critical in developing American talent but need to be combined with effective visa and immigration reform in order to have an impact now. Effective visa reform will help both to safeguard American jobs and create opportunities for business expansion at a time when the economy needs it most. The Partnership for New York City intends to join with representatives of other metropolitan business organizations to make the case for federal action on visa and immigration issues. This policy brief is only the first step.

## Partnership for New York City

With a mission to maintain the city's position as a global center of commerce and innovation, the Partnership for New York City is an organization of the leaders of New York City's top corporate, investment, and entrepreneurial firms. They work in partnership with city and state government officials, labor groups, and the nonprofit sector to enhance the economy and culture of the city. The Partnership focuses on research, policy formulation, and issue advocacy at the city, state, and federal levels by leveraging its network of CEO and Corporate partners. Through its affiliate, the New York City Investment Fund, the Partnership directly invests in economic development projects in all five boroughs of the city.

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