

**AMERICA'S IMMIGRATION SYSTEM: OPPORTUNITIES FOR LEGAL IMMIGRATION AND ENFORCEMENT OF LAWS AGAINST ILLEGAL IMMIGRATION**

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**HEARING**

BEFORE THE

**COMMITTEE ON THE JUDICIARY  
HOUSE OF REPRESENTATIVES**

ONE HUNDRED THIRTEENTH CONGRESS

FIRST SESSION

—————  
FEBRUARY 5, 2013  
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**Serial No. 113-1**

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Printed for the use of the Committee on the Judiciary



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OFFICIAL HEARING RECORD

MATERIAL SUBMITTED FOR THE HEARING RECORD BUT NOT REPRINTED

Report of the Migration Policy Institute (MPI) titled Immigration Enforcement in the United States, the Rise of a Formidable Machinery, by Dorris Meissner, Donald M. Kerwin, Muzaffar Chishti, and Claire Bergeron, submitted by Muzaffar A. Chishti, Director, Migration Policy Institute's Office, New York University Law School. The report is available at the Committee and can also be accessed at:  
<http://www.migrationpolicy.org/pubs/enforcementpillars.pdf>.

**AMERICA'S IMMIGRATION SYSTEM: OPPORTUNITIES FOR LEGAL IMMIGRATION AND ENFORCEMENT OF LAWS AGAINST ILLEGAL IMMIGRATION**

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**TUESDAY, FEBRUARY 5, 2013**

HOUSE OF REPRESENTATIVES  
COMMITTEE ON THE JUDICIARY  
*Washington, DC.*

The Committee met, pursuant to call, at 10:28 a.m., in room 2141, Rayburn House Office Building, the Honorable Bob Goodlatte (Chairman of the Committee) presiding.

Present: Representatives Goodlatte, Smith, Chabot, Bachus, Issa, Forbes, King, Franks, Gohmert, Jordan, Poe, Chaffetz, Marino, Gowdy, Amodei, Labrador, Farenthold, Holding, Collins, DeSantis, Rothfus, Conyers, Nadler, Watt, Lofgren, Jackson Lee, Johnson, Pierluisi, Chu, Gutierrez, Bass, Richmond, DelBene, Garcia and Jeffries.

Staff Present: (Majority) Shelley Husband, Chief of Staff & General Counsel; Branden Ritchie, Deputy Chief of Staff & Chief Counsel; Allison Halataei, Parliamentarian & General Counsel; George Fishman, Counsel; Kelsey Deterding, Clerk; (Minority) Perry Apfelbaum, Staff Director & Chief Counsel; Danielle Brown, Parliamentarian; and David Shahoulian, Counsel.

Mr. GOODLATTE. Good morning. This hearing of the Committee on the Judiciary on America's Immigration System: Opportunities for Legal Immigration and Enforcement of Laws Against Illegal Immigration will come to order. Today, we hold the first hearing of the Judiciary Committee in the 113th Congress, and I will recognize myself for an opening statement after I welcome the Ranking Member.

This year, Congress will engage in a momentous debate on immigration. This will be a massive undertaking with implications for the future direction of our Nation. As such, we must move forward methodically and evaluate this issue in stages, taking care to fully vet the pros and cons of each piece.

This debate is often emotionally charged. That is because it is not about abstract statistics and concepts, but rather about real people with real problems trying to provide a better life for their families. This holds true for U.S. citizens, for legal residents, and for those unlawfully residing in the United States. I urge the Mem-

bers of this Committee to keep that in mind as we begin our examination.

America is a Nation of immigrants. Everyone among us can go back a few or several generations to our own relatives who came to America in search of a better life for themselves and their families.

But we are also a Nation of laws. I think we can all agree that our Nation's immigration system is in desperate need of repair, and it is not working as efficiently and fairly as it should be. The American people and Members of Congress have a lot of questions about how our legal immigration system should work. They have a lot of questions about why our immigration laws have not always been sufficiently enforced. And they have a lot of questions about how a large-scale legalization program would work, what it would cost, and how it would prevent illegal immigration in the future.

Immigration reform must honor both our foundation of the rule of law and our history as a Nation of immigrants. This issue is too complex and too important to not examine each piece in detail. We can't rush to judgment. That is why the Committee's first hearing will begin to explore ways to fix our broken system. Future hearings will take place in the Immigration and Border Security Subcommittee under the leadership of Chairman Gowdy.

Today we will begin our examination of the U.S. immigration system by evaluating our current legal system and ways to improve it, as well as the history of the enforcement of our immigration laws.

The United States has the most generous legal immigration system in the world—providing permanent residence to over a million immigrants a year. And yet, all is not well. Prospective immigrant workers with approved petitions often have to wait years for green cards to become available. So do their employers. It has gotten so bad that the immigrant scholar, Vivek Wadhwa, who will be testifying before the Committee today, states that “if I were a young immigrant technologist in my mid-thirties, stuck on an H-1B visa in America, and trapped in a middling job, I would probably have decided to return to Australia or India.” What does this foretell for America's continued economic competitiveness?

Furthermore, legal permanent residents of the United States have to endure years of separation before they can be united with their spouses and minor children.

Our laws also erect unnecessary hurdles for farmers who put food on America's tables. Our agriculture guest worker program is simply unworkable and needs to be reformed. At the same time, we allocate many thousands of green cards on the basis of pure luck through the Diversity Visa Lottery Program, and we allocate many thousands of green cards to nonnuclear family members. Some characterize this as “chain migration,” which, former Florida Governor Jeb Bush has recently written, “does not promote the Nation's economic interests.”

It is instructive to note that while America selects about 12 percent of our legal immigrants on the basis of their education and skills, the other main immigrant-receiving countries of Australia, the United Kingdom, and Canada each select over 60 percent of their immigrants on this basis.



These are just a few of the issues plaguing our legal immigration system, not to mention the larger question of how to address the estimated 10 million individuals unlawfully present in the U.S. Whether or not America should become more like our global competitors, we do need to have a serious conversation about the goals of America's legal immigration system.

Today, we will also discuss the extent to which past and present Administrations have enforced our immigration laws, and whether we believe those efforts have been sufficient and effective. This is a crucial question. The year 1986 was the last time Congress passed comprehensive immigration reform. At that time, Congress granted legal status to millions who were unlawfully present in exchange for new laws against the employment of illegal immigrants in order to prevent the need for future amnesties. However, these "employer sanctions" were never seriously implemented or enforced. Even Alan Simpson, the Senate author of the 1986 legislation, has concluded that, despite the best of intentions, the law did not satisfy "its expectations or its promises."

This Committee needs to take the time to learn from the past so that our efforts to reform our immigration laws do not repeat the same mistakes. Regardless of the conclusions of this national conversation, I think we can all agree that America will remain true to our heritage as a Nation of immigrants as well as a Nation of laws.

I look forward to the testimony of all of today's witnesses, and now I turn to our Ranking Member, the gentleman from Michigan, Mr. Conyers.

Mr. CONYERS. Thank you, Chairman Goodlatte. This is an important hearing, and you started off on a very important analysis of where we are. And I am not here to critique your presentation, but to make my own. But I could summarize what I think we are going to be addressing in three phrases: one, comprehensive; two, a path to citizenship; and three, border security more than ever.

Well, let us take the one we can most easily agree on is border security. It is improving. Well, there is always somebody that is going to get through, but I think that we have a general consensus about the ways that we may do a better job, and I would like to just throw out that there may be a few Members of the House Judiciary Committee that would like to go to the border and examine this and talk with those who are responsible for it. And I propose with the Chairman that we continue this discussion as these hearings proceed.

Now, the notion of comprehensive immigration reform has been pushed around and bandied about, but the fact of the matter is that this is one big challenge that I don't think we can handle on a piecemeal basis. I mean, my experience with this subject tells me that with 10-11 million undocumented people living among us, we have got to approach this in terms of a more holistic way.

Now, I think that there must be an earned legalization process that is fair, but firm, and that is not—that is not subject to a lot of manipulation. And, you know, to my colleagues, there is in some quarters among our citizens more agreement than there is sometimes in this body. And I am hoping, and I believe that it can be done, that this Committee will rise above our political instincts and

try to serve the Nation and these American citizens in a very important way.

I hope no one uses the term “illegal immigrants” here today. The people in this country are not illegal. They are out of status, they are new Americans that are immigrants, and I think that we can forge a path to citizenship that will be able to pass muster. We have got a Senatorial bipartisan support working very nicely thus far. And if it pleases the Chairman, I would like to yield the rest of my limited time—little time I have left to the gentleman Mr. Luis Gutierrez, who is now back on the Committee, and who I celebrate.

Mr. GUTIERREZ. Thank you.

Mr. GOODLATTE. Mr. Conyers, the time has expired, but in recognition of the return of Mr. Gutierrez and your generosity, we will yield him 1 minute to close your remarks.

Mr. CONYERS. Thank you, sir.

Mr. GUTIERREZ. Thank you so much, Mr. Conyers, Congressman Conyers, and Chairman Goodlatte. I expressed to Chairman Goodlatte that I had come back to the Committee, giving up 20 years of seniority on Financial Services, because I believe that this Committee is that important. The Chairman said to me, don't put too much pressure on me.

I just wanted to share that I didn't come here to undermine anyone's work and to challenge anybody's work, but to work in a collaborative spirit with you, Chairman Goodlatte, with my colleagues here, to frame a comprehensive immigration solution to our broken immigration system.

I want to welcome the witnesses that are here today and just to share with everyone this issue is important to me. And I didn't come here with an engineering degree, with a Ph.D. My mom had a sixth-grade education, my dad didn't graduate from high school, but I think they did pretty well with their son.

And I have come here simply to say that while I don't hold any of these prestigious degrees either, that immigrants have come here to do and to sweat and to toil in this country, and that if we could just part from the premise, and that is, as Gandhi might have said today, right, let us have politics with principles, because the absence of one really leads us down a very treacherous road that I don't think America wants to live in.

So I thank you, Chairman Goodlatte, and I really look forward to working with all of my wonderful colleagues here, and especially Zoe Lofgren and Mr. Gowdy. I am looking forward to that Subcommittee experience with the both of you. Thank you so much for allowing me to express myself here this morning.

Mr. GOODLATTE. We are glad to have you back, Mr. Gutierrez.

And now it is my pleasure to recognize the Chairman of the Immigration Subcommittee, the gentleman from South Carolina Mr. Gowdy, for his opening statement.

Mr. GOWDY. Thank you, Mr. Chairman.

A couple of years ago, a young African author spoke at a high school in South Carolina. Mr. Chairman, she was a beautiful, talented young woman, and when she looked at her arm to brush away the hair from her eyes, I saw something I have never seen

before, at least not in this country, which was someone's hands that had been cut off with a machete.

When she was 12 years old living in Sierra Leone, rebel soldiers came to her village during the civil war. She tried to run. She tried to hide. She asked God to let her die. But the soldiers found her, and they cut off her hands and mockingly told her to go to the President and ask for another pair. And that 12-year-old girl, Mr. Chairman, remembered thinking to herself, what is a President?

Collectively, Mr. Chairman, we all understand why people want to come to this country to escape persecution, to taste freedom and liberty, to know that hard work and education and a level playing field can combine forces to transform lives. Escaping conflict and hardship is one thing, Mr. Chairman; picking a new home is another. And America is picked because we are a country that embraces justice. We reward fairness. We are an a Nation of laws. The poorest of the poor has the same standing in court as the richest of the rich. We believe in the even application of the law because law provides order, structure, predictability, and security.

What we cannot become is a Nation where the law is enforced selectively or not at all. What we cannot become, Mr. Chairman, is a country where the laws apply to some of the people some of the time.

The President from time to time, Mr. Chairman, says that he wants a country where everyone plays by the same rules. With respect, they aren't called rules in this country, they are called laws, and each of us takes an oath to enforce them, including those with which we may disagree, because when the law is ignored or applied in an uneven way, we begin to see the erosion of the very foundation upon which this Republic was built. And make no mistake, Mr. Chairman, as surely as today one may benefit from the noncompliance or nonenforcement of a law, that same person will be clamoring to have the law enforced in another capacity.

So we seek to harmonize two foundational precepts, Mr. Chairman. Number one is humanity, and number two is the respect for the rule of law. And history is whispering, as you noted, Mr. Chairman, that we have traveled this road before. In 1986, we were told that immigration had been settled once at for all. We were told that in exchange for secure borders and employment verification, those who entered the country illegally would not suffer the full panoply of legal consequences. In the minds of many, Mr. Chairman, the country got amnesty, but is still waiting 25 years later on the border security and the employment verification.

So here we are back again, asking our fellow citizens to trust us, and many, despite ourselves, Mr. Chairman, remain open to legislative expressions of humanity and grace, but they will be watching skeptically to see if we are serious about enforcing the rule of law. Are we serious about ending the insidious practice of human trafficking? Are we serious about punishing those who prey on folks with false promises and fraudulent documents? Are we serious about border security and employment verification? Are we serious about making this the last last time we have this conversation, or are we simply playing political games with people's lives and undercutting the respect for the rule of law, which ironically is the

very reason they seek to come to this country in the first place? We shall see.

I yield back.

Mr. GOODLATTE. I thank the gentleman.

And it is now my pleasure to recognize the gentlewoman from California, Ms. Lofgren, the Ranking Member of the Immigration Subcommittee.

Ms. LOFGREN. Thank you.

Mr. Chairman, I congratulate you on holding this hearing, our Committee's first hearing, on our broken immigration system. I appreciate that gesture, as I do your recent public statement that you are open to reform, and that America does not need a "trail of tears" to the border.

I congratulate Mr. Gowdy as well on his chairmanship, and I look forward to working with him to find that balance between respect for the rule of law as well as our morality and humanity. I look forward to working with both of you in a bipartisan manner on these reform efforts.

But as we move forward, we need to recognize that our broken system does immeasurable harm every day that it goes unreformed. A trail of tears to the border is not that far off from the system we currently have. Every day our system tears families apart, husbands from their wives, parents from their children. If we want a moral and humane system, we have a lot of work to do. America is ready for us to do that work.

I participated in the immigration debate during my 18 years in Congress and long before that as an immigration attorney and law professor teaching immigration law. Today the country is past the point of debating whether we need reform. They are simply counting on us to get it done. And the growing bipartisan consensus means, I think, that we can get it done. Conservative leaders from Jeb Bush and Karl Rove to Sean Hannity and Bill O'Reilly have signaled support for comprehensive reform efforts including a path for undocumented immigrants. Even Rush Limbaugh told Senator Marco Rubio that his efforts for immigration reform are admirable and noteworthy and recognize reality.

We have also seen Members in both parties in the House and Senate voice strong support for immigration reform, we know, with the bipartisan Blueprint for Immigration Reform released last week by eight Senators, and there are similar bipartisan discussions in the House. It will take such bipartisanship to solve this problem, and I am hopeful that this is the year we finally enact top-to-bottom reform of our immigration laws.

As we will hear today, our current system is dysfunctional in many ways, keeping families apart for decades and hindering economic growth and American global competitiveness. Designing a sensible, legal immigration system is critical to preserving the rule of law. We need a legal immigration system that works so that workers and families who want to come here are able to go through that system rather than around it.

Yet, despite the incredible need to reform the system, all we have done is enforce the heck out of it, especially over the last several years. We are now removing record numbers of undocumented immigrants each year, while attempted border crossings are at their

lowest levels in more than 40 years. According to experts, net flight migration from Mexico is now zero and likely lower than that.

Every year we spend more money on immigration enforcement, nearly \$18 billion per year, than on all other Federal law enforcement combined. All of this enforcement hasn't solved the problem, and it should not be used to delay top-to-bottom reform of our laws.

What needs to be done is not that complicated. We know a reform bill must include additional border enforcement as well as employment eligibility verification to secure the workforce. We need to reform our employment visa system so that tech companies, farmers, and other U.S. businesses have access to needed workers. And we need to reform the family system to help keep families together. We also need to provide a way for 10- or 11 million undocumented immigrants to come out of the shadows, get right with the law in a way that is fair and practical.

A few words of caution. First, partial legalization as some are suggesting is a dangerous path. We need only to look at France and Germany to see how unwise it is to create a permanent underclass. What makes America special is that people come here, assimilate, and become American with all of the rights and responsibilities that citizenship bestows. With the exception of slavery and the Chinese Exclusion Act, our laws have never barred persons from becoming citizens, and we should not start now.

Second, we must not fall into the trap of calling for piecemeal reform. As Governor Jeb Bush recently wrote in the Wall Street Journal, Congress should avoid such quick fixes and commit itself instead to comprehensive immigration reform. Immigration, as he points out, is a system, and it needs systematic overhaul.

Finally, we must make it easier to keep critical workers who can keep America competitive and grow our economy, but we should not do so by closing the door on family-based immigrants. Family unity has been the bedrock of our immigration system since the Immigration and Nationality Act was enacted in 1952.

In addition to strengthening American families, family-based immigration plays an important role in bolstering our economy. Research shows that immigrants, most of whom come here through the family system, are twice as likely to start businesses in the U.S. as native-born people, and immigrant businesses, including small non-tech businesses, have grown at 2.5 times the national average.

I often say I am glad that Google is in Mountain View rather than Moscow. Like Intel and Yahoo!, Google was founded by an immigrant, but it is worth noting that none of the founders of these companies came to the United States because of their skills. Sergey Brin, Jerry Yang, Andy Grove all came here through our family-based system or because they were refugees or the children of refugees. What made these founders special were the traits they share with immigrants of all kinds: entrepreneurship, risk taking, a desire for a better life. These are among the most admired values in our country, as it should be, because it is the secret sauce that makes America great.

From Alexander Hamilton to Andrew Carnegie to Albert Einstein, we are a Nation forged by immigrants. It is time we fully embrace that immigration is good for our country. It is time we do

our part to devise a way for the people who have enough get-up-and-go to get up and go and come to our shores, and bring their talent and contributions to our society and to our economy, and to become Americans with us.

Thank you very much, Mr. Chairman, and I yield back.

Mr. GOODLATE. I thank the gentlewoman.

Without objection, all other Members' opening statements will be made a part of the record.

[The prepared statement of Mr. Bachus follows:]

**OPENING STATEMENT OF THE HON. SPENCER BACHUS ON “AMERICA’S  
IMMIGRATION SYSTEM”**

Chairman Goodlatte, thank you for calling this hearing and let me say that I am pleased to resume my service on the Judiciary Committee.

America is a land of immigrants. In fact, the story of America cannot be told without telling the stories of immigrants from all over the world who have come here to pursue their individual dreams. Their successes have enriched our nation throughout countless generations.

Many countries have struggled with the concept of “E Pluribus Unum” – out of many, one – and are plagued by bitter societal divisions. The American experience has always been unique in a way that the words of President Theodore Roosevelt captured very well.

“Americanism is a question of principle, of purpose, of idealism, of character,” said Teddy Roosevelt, “not a matter of birthplace, or creed, or line of descent.”

If we are to honor this tradition, we must have an immigration system that works both for hopeful immigrants and for our existing citizens. Unfortunately, because of illegal immigration, that is not the case right now. In turn, the failures of our current federal immigration system have put states in very difficult positions.

Illegal immigration has a number of adverse consequences, including reducing support for lawful immigration. Having conducted a tour of the U.S.-Mexico border myself, I have seen the burdens that illegal immigration place on states and communities as well as the dangers posed by a border that is not fully controlled. That is why I have been a strong supporter of legislation to secure our borders and why I consider it the most important element of any immigration reform initiative.

Among many other issues, we need to review the way that work visas and permits are allocated. The STEM Act that this House passed last session with my support represented one such thoughtful solution to improving the immigration processing system and promoting economic growth in the U.S.

There will be many issues raised during any review of our nation’s immigration policy. In fact, I will enter into the record an article by Jonathan Last from this weekend’s Wall Street Journal for my colleagues’ consideration. It is understandable that the debate will likely invoke strong emotions. The committee process offers a forum for productive dialogue. We start off knowing that America is a land of great compassion, but that we must be a nation firmly based on the rule of law and respect for the law.

Mr. Chairman, thank you again for convening this hearing and I look forward to hearing from today’s witnesses.

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[The prepared statement of Mr. Collins follows:]

**Judiciary Committee Hearing on: America's Immigration System: Opportunities  
for Legal Immigration and Enforcement of Laws against Illegal Immigration  
Statement for the Record  
Congressman Doug Collins (GA-09)**

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I am pleased that Chairman Goodlatte has chosen to hold this hearing to address the important and timely topic of immigration reform. As we assess the needs of our border communities, high-tech businesses, our agriculture communities, and the American taxpayer, we cannot neglect the past. In 1986, comprehensive immigration reform legislation was passed, providing a path to citizenship for illegal immigrants and stronger border enforcement. Advocates of the legislation claimed that this reform would effectively end the problem of illegal immigration. Unfortunately, the 1986 reforms only exacerbated the flaws in our immigration system.

In 1986, there were an estimated 5 million illegal immigrants. That number has skyrocketed to over 11 million today. In the state of Georgia, \$2.4 billion dollars is spent on illegal immigration every year, costing Georgian families an estimated \$743 dollars annually. The current administration claims to understand the negative impact that illegal immigration has on our economy, yet their policies have been ones of de facto amnesty. As we move forward with discussions and debate over reforms to our immigration system, I am concerned that we will enact many of the same failed policies of the 1986 legislation, and expect different results.

This year alone, the administration has weakened the Secure Communities program—even halting roll-out of the program in some states; closed over 1,600 deportable cases; reduced screening for visa applicants; created a public advocate



position to lobby for illegal immigrants; pulled National Guard troops from the border; made plans to close nine Border Patrol stations; sued states who attempted to enforce immigration laws currently on the books; and moved to defund the 287(g) program.

While we are a country founded by immigrants, we are also founded on a fundamental respect for the rule of law. America has a generous legal immigration system. We understand and appreciate the ideas, talent and innovation that immigrants bring to America. But rewarding those who break our laws by granting amnesty does a disservice to those who entered our country legally. As we discuss potential reforms for the nation's immigration policy, let us not blur the distinction between immigration and *illegal* immigration.

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Mr. GOODLATTE. And we will turn now to our very distinguished first panel of witnesses. And I will begin by introducing that first panel.

Our first witness on this panel is Mr. Vivek Wadhwa, a visiting scholar at the University of California-Berkeley, a senior research associate at Harvard Law School, and Director of Research at the Center for Entrepreneurship and Research Commercialization at Duke University. He is also a faculty member and advisor at Sin-

gularity University, and writes a regular column for both The Washington Post and Bloomberg BusinessWeek.

Last year, his book, *The Immigrant Exodus: Why America is Losing the Global Race to Capture Entrepreneurial Talent*, was named a "Book of the Year" by The Economist magazine.

Mr. Wadhwa received his Bachelor's degree from the University of Canberra in Australia, and received his M.B.A. from New York University's Stern School of Business, and we thank him for coming today.

Our next witness is Mr. Michael Teitelbaum, who currently serves as the Senior Director of the Alfred P. Sloan Foundation. From 1980 to 1990, he served as 1 of 12 Commissioners of the U.S. Commission for the Study of International Migration and Cooperative Economic Development. Prior to this he served as a Commissioner of the U.S. Commission on Immigration Reform, which completed its work in December 1997.

Mr. Teitelbaum received his Bachelor's degree from Reed College, and subsequently earned his Ph.D. in Demography from Oxford University, where he was a Rhodes Scholar. We are glad to have him joining us today.

The third member of this first panel is Dr. Puneet Arora, currently serving as the Vice President for Immigration Voice, a coalition of 75,000 highly skilled foreign professionals. He also serves as the Medical Director for Genentech, a biotech firm in San Francisco, California. Dr. Arora joined Amgen in 2008 as Clinical Research Medical Director, then Genentech in 2011. He has been a volunteer with Immigration Voice since 2006, and leads the Physician's chapter as well as the Minnesota and Southern California chapters.

Dr. Arora received his medical degree from the All India Institute of Medical Sciences in 1994. He completed his residency training in Internal Medicine at Southern Illinois School of Medicine in 1999, and received fellowship training in Endocrinology, Diabetes, and Metabolism at New York University School of Medicine. He practiced in a medically underserved area and was subsequently granted a National Interest Waiver for permanent residence in the United States by USCIS. We thank Dr. Arora for serving as a witness today as well.

Our final witness is the Honorable Julián Castro, mayor of San Antonio, Texas. First elected in 2009 and reelected in 2011, Mayor Castro earned his undergraduate degree from Stanford University with honors and distinction in 1996, and a juris doctorate from Harvard Law School in 2000. In 2001, at the age of 26, Castro became the youngest elected city councilman at that time in San Antonio history. Mayor Castro's brother, Joaquin, serves in the U.S. House of Representatives.

We are pleased to have the mayor with us today, and I will turn to the gentlewoman from Texas Ms. Jackson Lee for 15 seconds of additional welcome to the mayor.

Ms. JACKSON LEE. Thank you, Mr. Chairman. Thank you very much.

Mayor Castro is particularly well placed and unique for this role as a witness today. I would like to welcome his as a fellow Texan. I know that his brother, a Congressperson, Member of the U.S.

House of Representatives, has already done so, but as a mayor of one of the world's international cities, who sees people coming from all backgrounds, you are well placed to understand what immigration and the opportunities and contributions that immigrants and those who come to this country for better opportunity can contribute, and I thank you so very much for your leadership of your city and your presence here today. Welcome, fellow Texan.

I yield back, Mr. Chairman.

Mr. GOODLATTE. Thank you, Ms. Jackson Lee. And I now turn to the former Chairman of the Committee and the gentleman from San Antonio, Texas, Mr. Smith for a comparably calculated 15 seconds of welcome.

Mr. SMITH. Thank you, Mr. Chairman. I will try to stick to the 15.

I, too, wanted to welcome the mayor of my hometown, San Antonio. Mayor, as we both know, San Antonio is a wonderfully livable, tricultural city, and you have done a great job representing us in so many ways. So welcome today. And also I want to say to you that I enjoy serving with your brother in Congress, who is sitting behind you as well. And we will talk more and look forward to your testimony as well.

Mr. GOODLATTE. Welcome to all of our witnesses, and we will begin with Mr. Wadhwa.

**TESTIMONY OF VIVEK WADHWA, DIRECTOR OF RESEARCH,  
PRATT SCHOOL OF ENGINEERING, DUKE UNIVERSITY**

Mr. WADHWA. Chairman Goodlatte, Members of the House Committee, thank you for giving me a chance to speak to you.

You know, being here in D.C., it is very easy to be pessimistic. Everything about here, we worry about China, whether they are going to rule the future. We worry about shortages. We worry about everything in the world. And when you are worried about a lack of resources, shortages, and you worry about countries like China taking over the world, you become very pessimistic. You begin to wonder if there are shortages of engineers or a glut of engineers. In fact, some of the debates we will have is are we graduating too many scientists?

All of this is based on a perspective of yesterday. You know, the United States has a way of reinventing itself. Every 30 or 40 years we get really, really worried about ourselves, and we start developing an inferiority complex, wondering why the rest of the world is better than we are. And then we wake up and realize that, hey, we are ahead again.

The United States is in the middle of another reinvention right now. As we speak, we are in the middle of the next major rebound. Technology is changing the entire landscape and giving America its edge back, so much so that—let us start with manufacturing. I will give you a crash course in exponential technologies.

You know, just like we saw oil being something we worried about, we worried about running out of oil, now you have newspapers writing about “Saudi America.” Fracking came along. Within 5 years it changed our entire perspective of oil. That is just one small thing.

Look at computing. Five years ago none of you would ever have used smartphones or been on Twitter or social media. Now all of us do that. Well, practically all of us do that. But the point is that we carry in our pockets more computing power than existed the day we were born. Think about it. Thirty years ago we would have banned this device because it was more powerful than a Cray supercomputer. Today it sits in our pocket waiting for us to check emails. That is how fast computing has advanced.

The same thing is happening in manufacturing. If you look at the advances in robotics, in artificial intelligence, and 3D printing, within the next 5 to 7 years, my prediction is that China's manufacturing industry will be toast; that it will start coming back to America like we never imagined before.

You know, we have debates about health care. We worry about multitrillion-dollar deficits and our system becoming bankrupt. Health care is advancing like you can't imagine. Between digital medicine and genomics, there are major advances happening. There is the quantified self. For example, I am a heart patient. My iPhone case is an EKG machine. I hope none of you have ever had heart problems or never had to get an EKG done. They are really painful. I attach the two leads on my iPhone. It does a complete EKG for me. I can email that EKG to my cardiologist. The way technology is going, 2 or 3 years from now I won't need a cardiologist to be read my EKG. It will be read by a computer on the cloud.

This same type of technology is being built in many other areas, which means we have preventative medicine. We will be able to save, you know, tremendous amounts of money on curing disease because we will prevent it. This is happening regardless of what we do. This is happening at light speed.

We also have advances happening in other fields. For example, in California, we have the Google self-driving car. By the time it is released later in this decade, it is going to change the face of cities. A third of the land use in cities is for parking. We get stuck in traffic jams; 30,000 highway deaths. All of these things can be eliminated by one new invention. Also, 90 percent of the energy we use on transportation can be used by automated self-driving vehicles.

There are major advances happening in education. These type of technologies are still expensive right now. In India they are going to be giving kids in school and teachers tablets which are bigger than this, as sophisticated as the iPhone 1 was for \$20. Within the next 5 years, you are going to have another 3 billion people coming on the Internet worldwide.

Look at the revolution that telephones and then social media created in the Middle East. In China, the government is quaking because its people are connected, they can talk to each other. Imagine what happens over the 5 or 7 years when the entire world comes online with technology.

These are the sort of Earth-changing things that are happening, and it is all because of technology. And who is driving technology? Skilled immigrants are. People like me, engineers, scientists. It is a whole assortment of people that are driving these changes. And guess what? Until recently, 52 percent of the start-ups in Silicon Valley, the most innovative place on this planet, were immigrants.

So the people who were driving this boom I am talking about, this technology which is reinventing America, are skilled immigrants.

Representative Gutierrez, I understand what you said about your parents not having been educated and the fact that things were very different. In an era in which, you know, skilled labor didn't have as much value as today, it made sense that we definitely need the unskilled workers. There is no doubt about that. But in this new era, it is all about skill. The people who are making this happen are engineers, scientists, doctors, most importantly entrepreneurs.

So we have a choice right now. We can either trip up the entrepreneurs who are going to reinvent America and save the world, or we can fix this problem instantly and create a better world, because we have the ability right now to solve humanity's grand challenges. We can create unlimited energy, unlimited water, unlimited food. We can create security which protects us from threats. We can do all of this and maybe things right now, the new technology, and all within the next 5 or 7 years.

I can almost guarantee that 5 years from now we are going to be debating how do we distribute some of the abundance we are creating? Because just like we are talking about oil being abundant, we are going to be talking about many other things becoming abundant. We will have different debates over here.

But it is imperative that we, you know, allow Silicon Valley, our entrepreneurs, our technologists to do their magic and to save us. A strong America is important for the world. We can solve the world's grand challenges, and immigration is one of the keys to making it happen.

Thank you.

Mr. GOODLATTE. Thank you, Mr. Wadhwa.

[The prepared statement of Mr. Wadhwa follows:]

**Testimony of Vivek Wadhwa**  
**To the U.S. House of Representatives**  
**Full Judiciary Committee Hearing**  
**“America’s Immigration System: Opportunities for Legal Immigration and**  
**Enforcement of Laws against Illegal Immigration”**  
**February 5, 2013**

Chairman Bob Goodlatte and members of the Judiciary Committee, I want to thank you for the opportunity to submit my testimony and share my thoughts on the importance of immigration reform.

Being in Washington DC, it is very easy to be pessimistic. We worry about our competitiveness and wonder whether the future does indeed belong to China, as some people say. We fear that America will stop innovating and that its economy will stagnate; that we will be fighting for limited resources. We therefore debate whether there are shortages of engineers or a glut. In our dark moments, we try to raise trade barriers and keep foreigners out.

I am here to tell you that these fears are largely unfounded and that the future is ours to lose. America has a way of constantly reinventing itself and reaching new heights. This is what is happening now; America is in the midst of its next great rebound. Its scientists and entrepreneurs are setting the wheels in motion to solve humanity’s grand challenges—in areas such as health, energy, food, education, water, and security. This will be the most innovative decade in human history—when we begin to go from worrying about shortages to worrying about how to share the abundance that we are create.

The decisions we make on immigration will either facilitate this rebound or trip up the entrepreneurs who are working to make it happen. Let me briefly explain the advances I am talking about so that you understand the increasing importance of a skilled workforce.

We have seen how computers are becoming more powerful year by year as prices drop. In the technology industry, this advance is known as Moore’s Law. It’s not just in computer hardware; the same exponential growth is happening in an assortment of other technologies.

Take the manufacturing industry. Advances in robotics, artificial intelligence, and 3D printing are dramatically reducing the costs of manufacturing and making it possible to create new types of products. These technologies are rapidly eroding China’s cost advantage. It is very likely that, within a few years, we will reach the tipping point when it becomes cheaper to manufacture in the U.S. than in China. Note how fracking technology

has rejuvenated America's oil industry. We are about to see an even greater rejuvenation in American manufacturing.

Advances in digital medicine and genomics are also transforming the health-care industry.

Inexpensive sensor-based devices are allowing us to start monitoring our health so that we can prevent disease and dramatically reduce health-care costs. Entrepreneurs are building iPhone apps that act like medical assistants and detect disease; smart pills that we swallow in order to monitor our internals; and body sensors that monitor heart, brain, and body activity. These new devices empower the patient to monitor and improve their own health. I am a heart patient, and carry an AliveCor heart monitor that can perform an instant EKG if I ever need it, for example.

Advances in DNA sequencing are opening up new possibilities for advancing health care. Full human-genome sequencing cost billions of dollars a decade ago. It now costs thousands of dollars, and will come to cost less than a blood test. Scientists and engineers are discovering the correlations between disease, lifestyle, and genome. In the future it will be possible for doctors to prescribe the most patient-appropriate medicines based on a person's DNA.

This is just the tip of the iceberg. There are similar advances happening in other fields where technology can be applied. Google is developing an Artificial Intelligence-based self-driving car that can change the face of cities by eliminating the need for parking spots, eliminate highway fatalities and traffic congestion, and dramatically reduce fuel consumption. New education technologies are changing the way we can teach and bring knowledge to the masses. Advances in nanotechnology are allowing us to develop new types of lighter and stronger materials such as carbon nanotubes, ceramic-matrix nanocomposites, and new carbon fibers.

All of these advances are being made by entrepreneurs working hand in hand with engineers, scientists, physicians, and researchers. Foreign-born workers are leading the charge in all of these fields.

In the era of exponential technologies that we are entering, education and skill matter more than ever. Small teams of people can do what was once possible only for governments and large corporations—solving grand problems. Diversity in background, in field of knowledge, and in thinking are great assets. We need the world's best and brightest more than ever before. Yet, as the research of my team at Stanford, Duke, and UC-Berkeley has shown, our visa policies are doing the opposite: chasing away this talent.

Our earlier research had determined that from 1995 to 2005—the time of the Internet boom—52% of Silicon Valley's startups were founded by people born abroad—people like

me. When we updated our research recently, we found that this proportion had dropped to 44%. This was historically unprecedented.

Foreign students graduating from American colleges have difficulty in finding jobs because employers have difficulty in getting H1-B visas. Those graduates who are lucky enough to get a job and a visa and who decide to make the U.S. their permanent home find that it can take years—sometimes more than a decade—to get a green card. If they have ideas for building world-changing technologies and want to start a company, they are usually out of luck, because it is not usually possible for people on H1-B visas to work for the companies they might start.

The families of would-be immigrants are also held hostage to the visa-holder's immigration status. The spouses of H1-B workers are not allowed to work, and, depending on the state in which they live, they may not even be able to get a driver's license or open a bank account. They are forced to live as second-class citizens.

Not surprisingly, many are getting frustrated and returning home. We must stop this brain drain and do all we can to bring more engineers and scientists here. Contrary to what anti-immigrants groups say, these people expand the economy and create jobs for Americans.

In my book *The Immigrant Exodus*, I prescribed seven fixes to stem the tide and to attract the world's best and brightest to America:

1. Increase the numbers of green cards available to H-1B holders
2. Allow spouses of H-1B visa holders to work
3. Target immigration based on required skills
4. Allow H-1B Holders to change jobs without requiring sponsorship renewal
5. Extend the term of OPT for foreign students from one to four years
6. Institute the Startup Visa
7. Remove the country caps on green-card applications.

The bottom line is that Congress needs to double down and pass legislation which ensures that the supply of employment-based green cards matches the demands of a knowledge economy. Needless to say that at the same time, we need to improve U.S. education and ensure U.S. workers have the right skills and experience for the new era of technology and rapidly changing and competitive global economy.

As I concluded in my book, we need to do all this because a vibrant United States that opens its doors to skilled immigrants will provide a greater benefit to the rest of the world than a closed, shriveling United States because the rules by which the US practices the game of economic development, job formation and intellectual capital formation grow the global economic pie. And the ethos that drives America's entrepreneurs and inventors, and has



driven US policy until very recently, is critically important for the continued development of the global economy. Not only will these entrepreneurs better the U.S., but they will better humanity, they will solve our Grand Challenges.

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Mr. GOODLATTE. Mr. Teitelbaum, welcome.

**TESTIMONY OF MICHAEL S. TEITELBAUM, SENIOR ADVISOR,  
ALFRED P. SLOAN FOUNDATION, WERTHEIM FELLOW, HAR-  
VARD LAW SCHOOL**

Mr. TEITELBAUM. Thank you, Mr. Chairman, Ranking Member Conyers, Members of the Judiciary Committee. Thank you for in-

viting me to report on the recommendations of the U.S. Commission on Immigration Reform. It was a Commission established by the Immigration Act of 1990, and it is often called the Jordan Commission after its chair, Barbara Jordan, Congresswoman Jordan, who was, of course, a distinguished Member of this very Committee. Eight of the members of the Commission were appointed by the House and Senate majority and minority leadership, and the chair was appointed by the President. The mandate was very broad and you have in your written testimony from me a copy of the executive summary of the Commission report, the final report, which includes the mandate. So I won't repeat that given the time.

Now, as the Chair has said, these are contentious and emotional disagreements on these issues, so I want to tell you that the nine members of this Commission included among them almost all perspectives on immigration and refugee issues. And I told my wife there was little chance that this Commission was going to be able to reach any substantial majority agreement on anything. Ultimately that Commission, all of its recommendations, which you have before you in the written testimony, all of them were unanimous, or unanimous less one.

Since we are focusing on legal immigration today, let me try to very quickly in the time I have summarize the Commission recommendations on that part of its mandate. The Commission was a strong supporter for a properly regulated legal immigration system that serves the national interest, and it decried hostility and discrimination against immigrants as antithetical to the traditions and interests of the United States. It said that a well-regulated immigration system enhances the potential benefits of immigration, but if it were not well regulated, it would not.

The Commission said that there was a need to set priorities in immigration because there was much more demand than there was available visas. It should set priorities, and it should deliver on those priorities.

With respect to the national interest, it said these were three priorities: unification of immediate or nuclear families, as one of the Members has already spoken to; admission of those highly skilled workers who are legitimately needed to support the international competitiveness of the U.S. workforce, as the previous witness has just mentioned; and refugee admissions, which haven't yet been mentioned a great deal—refugee admissions and other actions that affirm U.S. commitments to provide refuge to the persecuted. The number of visas should flow from those priorities.

The third point was from the Commission, the third recommendation and finding, was that the policies that it was reviewing in the 1990's were broadly consistent with these three priorities, but they included elements among them that were creating serious problems in the 1990's and that needed thoughtful attention.

A fourth recommendation was that priorities in the family category should be established, and the Commission concluded that the priority should be placed on the expeditious admission of immediate or nuclear family members in this order: spouses and minor children of U.S. citizens, number one; parents of U.S. citizens, number two; and spouses and minor children of legal permanent

immigrants, number three. And it therefore recommended a re-allocation of the visas in the family-based system from lower priority categories outside of those priorities. Those were the adult children and adult siblings of U.S. citizens, and the so-called diversity visas to the highest-priority categories that I just listed.

The problem with the lower priority categories is they have never been given very many visas, and there was enormous demand and therefore very large backlogs in those categories. So the recommendation there was that we should stop trying to manage immigration by backlog—in effect we are making promises that we can't keep—and instead focus on prompt admission of the highest-priority categories. And had that been done, all of those categories would have been admitted very promptly, within 1 year of application. But, of course, it didn't happen, and in the absence of such actions, these backlogs have actually become longer and more extensive.

The fifth recommendation was that a well-regulated admission system for skilled immigrants is in the national interest, and we already heard Vivek Wadhwa talk about that. So I won't say a lot about it, but it is consistent with what he said. When needed, they contribute to the global competitiveness of the U.S. workforce. And then there is a second point which is that we want immigrants to do well in the United States. We want them to prosper, and if they are skilled, they are more likely to prosper than if they are not.

However, this was a bit of a controversial recommendation the Commission found that the labor certification process for this category did not protect U.S. workers from unfair employment competition and does not serve the national interest, so it advocated a new and more market-driven approach for selection among those categories.

The sixth recommendation was that admission of low-skilled and unskilled workers is not in the national interest. It recommended against the continuation of the small number of employment-based visas for low-skilled and unskilled workers. It could find no compelling evidence that employers who offer adequate remuneration would face difficulties in hiring from the large pools of low-skilled and unskilled workers in the U.S. workforce. And, of course, large numbers of such workers would be continuing to flow—much larger than the number of visas in this category—continue to flow under the family and refugee visa categories.

Seventh, that admission of large numbers of temporary or guest workers in agriculture or other fields, the Commission said, would be a grievous mistake. The Commission found that such programs lead to particularly harmful effects. Guest workers are vulnerable to exploitation, and their presence in large numbers depresses the wages and working conditions of U.S. workers, which, by the way, includes recent immigrants.

Mr. GOODLATTE. If you want to go ahead and just summarize each of the last two points, because I know you do want to get all nine in, but we are out of time.

Mr. TEITELBAUM. I mentioned the refugee thing, and the Commission recommended a well-regulated resettlement program.

And finally, it recommended more flexibility and adaptability of immigration policies needed as circumstances changed. So in my

testimony you will see an example of another country with quite a lot of similarities to the U.S. in which they have come up with a way to have a more flexible system that is based on rigorous analysis of where the needed employment-based visas might be.

And I will suspend at that point, Mr. Chairman.

Mr. GOODLATTE. Thank you. And what country is that?

Mr. TEITELBAUM. That is the United Kingdom.

Mr. GOODLATTE. Thank you.

[The prepared statement of Mr. Teitelbaum follows:]

TESTIMONY BEFORE THE COMMITTEE ON THE JUDICIARY  
U.S. HOUSE OF REPRESENTATIVES  
HEARING ON

“America’s Immigration System: Opportunities for Legal Immigration and Enforcement of Laws against Illegal Immigration”

Room 2141, Rayburn House Office Building  
February 5, 2013

Michael S. Teitelbaum<sup>1</sup>  
Commissioner and Vice Chair  
U.S. Commission on Immigration Reform (1991-1997)

Chairman Goodlatte, Ranking Member Conyers, Members of the Judiciary Committee, Ladies and Gentlemen:

I am pleased to appear before you, at your invitation and in my personal professional capacity, to report on the recommendations of the U.S. Commission on Immigration Reform (“the Commission”). The Commission was established by Public Law 101-649, the Immigration Act of 1990, and is often called the Jordan Commission after its Chair, the late Congresswoman Barbara Jordan (D-TX), who of course was a distinguished former member of this very Committee. Eight of the members of the Commission were appointed by the House and Senate majority and minority leadership, while the Chair was appointed by the President. It began its work in late 1992 and released three interim reports in 1994, 1995 and 1997, followed by its final report in September 1997. After Congresswoman Jordan’s untimely death in 1996 the Commission was ably chaired by Shirley M. Hufstедler, former Secretary of Education and Circuit Judge on the U.S. Court of Appeals for the Ninth Circuit. I served as a Vice Chair (and Acting Co-Chair for a number of months following Barbara Jordan’s death), and I am proud to have been part of this Commission’s work.

The Commission’s mandate from the Congress was very broad -- to report to the Congress and the President on:

the impact of immigration on: the need for labor and skills; employment and other economic conditions; social, demographic, and environmental impacts of immigration; and impact of immigrants on the foreign policy and national security interests of the United States.<sup>2</sup>

<sup>1</sup> Current affiliations, provided for identification purposes only: Wertheim Fellow, Labor and Worklife Program, Harvard Law School; and Senior Advisor, Alfred P. Sloan Foundation [ms1900@yahoo.com](mailto:ms1900@yahoo.com)

<sup>2</sup> U.S. Commission on Immigration Reform, *Becoming an American: Immigration and Immigrant*

In response to this mandate the Commission provided analyses and recommendations about legal immigration, migration enforcement, integration of immigrants, and reform ideas for the agencies dealing with these issues. Its work was ably supported by a highly professional staff, made even stronger by contributions from knowledgeable professionals detailed by the Departments of Justice, Labor, State, Education, and Health and Human Services. The Commission's analyses and recommendations were based upon extensive analysis of the immigration literature, more than 40 public hearings, consultations with many individuals in government and the private-sector, expert roundtables, and site visits and hearings throughout the country including CA, TX, FL, NY, MA, IL, AZ, WA, KS, VA, and PR. To better understand the issues of refugee policy, several members of the Commission visited Bosnia, Croatia, Germany, and Kenya and held meetings with the U.N. High Commissioner for Refugees and the International Organization for Migration in Geneva.

I have included in this written submission a copy of the Executive Summary of the Commission's 1997 Final Report. A copy of the full Final Report and executive summaries of the Commission's three interim reports (1994, 1995, 1997) are available online at: <http://www.utexas.edu/lbj/uscir/>

As you know many of these issues are subjects of contentious and often emotional disagreements. Hence it is important to point out here that the members appointed to this Commission included a remarkably wide range of perspectives, so wide that I must say that in 1992 I was quite doubtful that there could be much agreement reached. However, ultimately all of the Commission's recommendations were unanimous or unanimous-less-one.

My understanding is that this hearing is focused on the legal immigration system, so I will focus my summary on Commission recommendations about that part of its mandate. Here is a summary of the Commission's key findings and recommendations:

**1. The Commission expressed strong support for a properly-regulated system of legal immigration that serves the national interest.**

In the first page of its first report, submitted to Congress and the President in 1994, the Commission began by stating that it decries hostility and discrimination against immigrants as antithetical to the traditions and interests of the country. At the same time, we disagree with those who would label efforts to control immigration as being inherently anti-immigrant. Rather, it is both a right and a responsibility of a democratic society to manage immigration so that it serves the national interest.<sup>3</sup>

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*Policy*, Final Report, 1997, p. ii. <http://www.utexas.edu/lbj/uscir/>

<sup>3</sup> U.S. Commission on Immigration Reform, *U.S. Immigration Policy: Restoring Credibility*, September 1994, p. 1.

A well-regulated immigration system enhances the potential benefits of immigration while protecting against the harms of a poorly-regulated system. However, the Commission found that there were (and still are) many dysfunctional aspects of the current legal immigration system that required reform if it were to continue to serve the national interest. It also found that illegal/undocumented/unauthorized migration served no *national* interest, and threatened public support for continuing the long U.S. tradition of legal immigration.

**2. The need both to set priorities, and to deliver on them.**

The Commission pointed to three immigration priorities in the national interest:

- unification of immediate or “nuclear” families
- admission of those highly-skilled workers legitimately needed to support the international competitiveness of the U.S. workforce, and
- refugee admissions and other actions that reaffirm longstanding U.S. commitments to provide refuge to the persecuted.

The number of visas made available for permanent immigrants should flow from these priorities.

**3. While the overall structure of immigration policies in the 1990s was broadly consistent with these three priorities, it included elements that were creating serious problems and needed thoughtful attention.**

In particular, the Commission found that even though very large numbers of permanent visas were available and had been increasing rapidly over the prior decade, there were not enough visas available to meet the three highest priorities because substantial numbers of these visas were being allocated to lower-priority categories (see below). The result was an immigration system that was being managed by backlog rather than by priority.

**4. Priorities should be established for family-based immigration.**

The Commission concluded that priority should be placed on the expeditious admission of immediate or “nuclear” family members, in this order:

- spouses and minor children of U.S. citizens
- parents of U.S. citizens
- spouses and minor children of legal permanent residents.

For this and other reasons the Commission recommended a reallocation of visas from lower-priority categories outside the immediate family -- adult children and adult siblings of U.S. citizens, and so-called “diversity visas” -- to the highest priority categories, with the goal of reducing the large backlogs in some of the

highest-priority categories. These lower-priority categories (i.e. outside of the immediate family) had always been accorded lower importance and hence limited visa numbers, and yet they had been producing enormous numbers of petitions and therefore backlogs that were stretching out over many years.

The Commission recommended that the U.S. should no longer manage immigration by backlogs, in effect making promises that cannot be kept, and instead focus on prompt admission of the highest-priority categories. With reallocation of visas from lower- to higher-priority family categories, the Commission estimated that all eligible family immigrants could be admitted within one year of application. The primary beneficiaries would be spouses and minor children of legal permanent immigrants who have not yet naturalized to U.S. citizenship, given that naturalization can take 5 or more years after admission for permanent residence. Under the Commission's proposals, the large backlogs and waiting times that had emerged in this category (reportedly 4½ years at the time of the final report, although later evidence suggested it was even longer) would have been eliminated entirely. In the absence of such actions, long backlogs continue to this day.

**5. Well-regulated admission of skilled immigrants is in the national interest.**

The Commission concluded that there is a national interest in permanent visas for substantial numbers of well-educated and skilled immigrants, for two reasons: First, to contribute to the global competitiveness of the U.S. workforce. Second because it is in the interest of all that immigrants prosper in the U.S., and for this to happen education and skills now are critical (unlike the U.S. economy during the large wave of immigration a century ago, when skills and education were less essential to immigrant success.)

However the Commission found that the longstanding process of labor certification does *not* protect U.S. workers from unfair employment competition and does *not* serve the national interest. It suggested that applications from employers for employment-based visas should require proof of credible steps to hire U.S. workers, remuneration levels at least as high as the prevailing wage for comparable positions and skills, and compliance with all other labor standards. In addition it recommended leveling the playing field by requiring such employers to pay a fee per worker that is large enough to eliminate any financial incentive to prefer foreign workers over qualified U.S. workers.

**6. Admission of low-skilled and unskilled workers is not in the national interest.**

The Commission recommended against continuation of employment-based visas for low-skilled and unskilled workers, though it recognized that large numbers of

such workers would continue to enter under the family and refugee categories. The Commission could find no credible evidence that employers who offer adequate remuneration would face difficulties in hiring from the large numbers of low-skilled and unskilled workers already in the U.S. domestic workforce. Moreover, in the late 1990s when the Commission was concluding its work, welfare and other reforms were underway that would further expand the availability for employment of low- and unskilled workers, citizen and noncitizen alike.

**7. Admission of large numbers of temporary workers in agriculture and other fields would be “a grievous mistake”.**

The Commission offered some of its strongest recommendations against proposals then (and still) being promoted by some employer groups for large “temporary” or “guest” worker programs. The Commission’s investigations (and those by a predecessor Federal commission, the U.S. Commission on Agricultural Workers) found that such programs exert particularly harmful effects on the United States. Such guestworkers are vulnerable to exploitation, and their presence in large numbers depresses the wages and working conditions of U.S. workers including recent immigrants. Meanwhile they impose substantial costs (for education, health care, housing, social services, and basic infrastructure) that are borne mainly by the public rather than by their employers. Despite the claims of proponents, temporary worker programs also fail to reduce unauthorized migration; if anything they may actually stimulate it, by creating networks of labor recruiters and families that persist long after the programs end. The Commission reported in its 1995 report that such programs would not be “in the national interest and strongly agrees that such a program would be a grievous mistake.”<sup>4</sup>

The Commission also recommended that the large number and complexity of the non-immigrant visa categories be simplified. Since 1997 these have become even more numerous and complicated.

**8. Substantial but well-regulated resettlement of refugees is in the U.S. national interest, as is continuing support for international efforts to protect refugees for whom resettlement is neither appropriate nor practical.**

The Commission concluded that such policies sustain U.S. humanitarian commitments, support foreign policy goals of promoting human rights, and

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<sup>4</sup>Commission on Immigration Reform, *Legal Immigration: Setting Priorities*, 1995, p. 172, and *Becoming an American: Immigration and Immigrant Policy*, Final Report, 1997, pp. 94-95. Available online at <http://www.utexas.edu/lbj/uscir/>



encourage other countries to resettle persons who need rescue or durable solutions.

**9. More flexibility and adaptability of immigration policies are needed as circumstances change.**

The Commission recognized that any immigration policies should be flexible and able to respond to changing economic and other circumstances. To this end it recommended that the issues be revisited every 3-5 years by an appropriate and objective mechanism that would propose any needed changes to the Congress.

**What notable changes have occurred since publication of the Commission's reports?**

The above is a very brief summary of key recommendations from the work of the Commission on Immigration Reform. As noted, full copies of the Commission's recommendations are readily available online at <http://www.utexas.edu/lbj/uscir/>

Since more than 15 years have passed since the Commission's final report, I thought I should include some personal comments about notable changes that have occurred since. In view of the short time available to prepare for this Hearing, I have not been able to consult with all of the other six members of the Commission on Immigration Reform (two of the nine members have passed away since 1997). However, if Judiciary Committee Members or staff are interested, I am prepared to canvass all former Commissioners who are available and ask them to provide their own comments on this question. Here are some of my thoughts on this matter:

**Student visa system**

The Commission did not assess the large student visa system, nor did it consider whether weaknesses in that system could be used to import terrorists into the U.S. I am sure we would have done so had we known that 3 of the 19 hijackers who carried out the September 11, 2001 terrorist attacks on New York and Washington would use this poorly-regulated visa to enter and stay in the U.S.<sup>5</sup> Regulation of student visas has been improved since 2001, but according to a 2012 GAO report there remain some real weaknesses and risks that still need to be addressed.<sup>6</sup>

<sup>5</sup> For an illuminating piece of investigative journalism on this episode, see Nicholas Confessore, "Borderline Insanity: President Bush wants the INS to stop granting visas to terrorists. The biggest obstacle? His own administration," *Washington Monthly*, May 2002. <http://www.washingtonmonthly.com/features/2001/0205.confessore.html>

<sup>6</sup> GAO, Student and Exchange Visitor Program: DHS needs to assess risks and strengthen oversight functions (Washington, DC: GAO, June 2012), <http://www.gao.gov/assets/600/591668.pdf> For GAO testimony before Subcommittee on Immigration, Refugees, and Border Security, US Senate Committee on the Judiciary, July 24, 2012, see <http://www.gao.gov/assets/600/592888.pdf>

### **Supporting successful integration of immigrants**

The Commission was convinced that successful integration of immigrants is important to the national interest, to immigrants, and to public support for continuing substantial legal immigration. To these ends it provided a number of recommendations designed to facilitate the integration of legal immigrants, including a welcome guide for new immigrants, orientation materials and information clearinghouses, and facilitating access to adult education in civics and English.<sup>7</sup> I was pleased to learn only recently that many of these recommendations have been implemented after the Office of Citizenship was created as part of U.S. Citizenship and Immigration Services in the Department of Homeland Security.<sup>8</sup>

### **Employment verification**

The Commission concluded in 1997 that “the most promising option for secure, nondiscriminatory verification is a computerized registry using data provided by the Social Security Administration [SSA] and the INS” and recommended that pilots of such a system be tested. The INS is no longer in existence, but the E-Verify system has been successfully developed from such pilot tests, though not yet widely implemented.

### **“Shortages” in the STEM workforce**

Since the time of the Commission there have been claims about general “shortages” of scientists and engineers. There also has been a lot of research completed on this topic by independent groups such as the RAND Corporation, Bureau of Labor Statistics, Commission on Professionals in Science and Technology, and by a growing number of respected university researchers. Almost all have concluded that the evidence does not support claims of generalized shortages of STEM workers in the US workforce. Yet I would add that shortages can and do appear in some particular STEM fields, at particular times and in particular places.<sup>9</sup> To me this means that proposals to expand the number of visas for STEM fields should focus carefully and flexibly on those fields that can be shown to be experiencing excess demand relative to supply in the U.S. labor market. (See discussion below on how the United Kingdom’s Migration Advisory Committee addresses this.)

### **Backlogs in the permanent visa system generated by the temporary visa system.**

<sup>7</sup> U.S. Commission on Immigration Reform, *Becoming an American: Immigration and Immigrant Policy*, September 1997, pp. 25-58. <http://www.utexas.edu/lbj/uscir/becoming/full-report.pdf>

<sup>8</sup> See materials now available at [www.uscis.gov](http://www.uscis.gov) and also [www.citizenshiptoolkits.gov](http://www.citizenshiptoolkits.gov)

<sup>9</sup> I am in the final stages of writing a book on the U.S. science and engineering workforce, to be published by Princeton University Press, so I have been immersed in this topic. If Members or staff are interested in looking at this manuscript in advance of publication, I believe this could be arranged.

As noted, the Commission concluded that well-regulated permanent immigration is in the national interest but that temporary worker programs are not.<sup>10</sup> Since 1997 there has been major growth in the numbers working in the U.S. on “temporary” but multi-year H-1B visas (and similar visas such as the L-1), especially in the IT industry. Their numbers may have reached as many as 500-600,000 by now,<sup>11</sup> an expansion the Commission could not have anticipated under the law in the mid-1990s. This growth in temporary visaholders since 1997 was not balanced with the number of permanent visas available for the same kinds of migrants, and this imbalance has created another area of immigration management by backlog because the numbers of temporary visaholders greatly exceed the employment-based permanent visas available.

There are many criticisms of these temporary visas as they have evolved since 1997, including concerns about wage suppression, indentured workers, and use of such visas to promote offshore outsourcing. I believe this Committee will be holding hearings on such matters in the future, so I will not offer comments here other than to say it would be desirable to see the end of incorrect statements in the press that all employers seeking H-1B visas must show that they have first tried to attract U.S. workers for these positions. This is true for most permanent employment-based visas, but it is not true for most temporary visas for employment.

#### **Models for increasing flexibility to respond to changing conditions**

The Commission recommended Congress consider mechanisms that would provide more flexibility in adjusting visa ceilings every few years as conditions change. In recent years proposals have been made for an “independent commission” to assess if there are labor needs that that should be met by visa increases. In principle such an independent commission is a good idea, but there would be challenges to sustain a truly independent commission since interest groups would be strongly motivated to capture effective control of such a commission.

<sup>10</sup>There is an extensive literature on this topic. The evidence about past temporary worker programs – based on more than a half-century of U.S. and international experience – is overwhelmingly clear. Temporary worker programs almost never turn out to be temporary. Instead they are a recipe for mutual dependence for employers (whose business decisions assume continuing access to temporary workers) and for workers from low-income countries (whose U.S. wages are higher than those available in their home countries). For a concise summary, see Philip L. Martin and Michael S. Teitelbaum, “The Mirage of Mexican Guest Workers,” *Foreign Affairs*, 80 (6), November/December 2001, pp. 117-131.

<sup>11</sup>One estimate for 1999 put the number at about 360,000, another at 650,000 in 2009. Those who attempt such estimates honorably emphasize that they are uncertain due to unavailability of data. For reasons unknown to me, estimates of the H-1B population do not appear to have been released by DHS. A request by a Member of this Committee might encourage DHS to make this information available, which presumably would be useful to you as you consider proposals for new legislation. B. Lindsay Lowell, “The Foreign Temporary (H-1b) Workforce and Shortages in Information Technology” in Wayne Cornelius (ed.), *The International Migration of the Highly Skilled: Demand, Supply, and Development Consequences in Sending and Receiving Countries* (San Diego: University of California, 2001), pp. 131-162; David North, “Estimating the size of the H-1B population,” <http://www.cis.org/estimating-h1b-population-2-11>

Since 2007 an alternative model has emerged in the United Kingdom to obtain independent and objective assessment of claims about labor shortages – the Migration Advisory Committee (“MAC”). This Committee was established in 2007 by the then-Labour government, but was continued with no change when the current Conservative coalition government took office in 2010.<sup>12</sup> Upon request from the Government, the MAC assesses claims of labor shortage in a given skilled occupation under three broad “S” criteria: First it determines if the occupation is actually “Skilled”. If so, the MAC collects all the available evidence, both quantitative and qualitative, and assesses whether it justifies the claim of a “Shortage”. If so, it determines finally whether immigration is a “Sensible” response compared to other alternatives such as expanded training. The MAC, and parallel efforts in other major countries of immigration such as Canada and Australia, provide ongoing experiments for more flexibility in visa allocations in countries with many political and economic similarities to the U.S., and as such may warrant some examination by this Committee.

### **Diversity visas**

Since 1997 this visa alone has been generating many millions of applications each year – I believe the last round received some 8 million. This means that fewer than 1 of every 100 people who complete the visa application process can hope to receive such a visa from the 55,000 available. These visas are allocated by a computer-generated random lottery system after the State Department receives and processes these millions of “entries” each year. We have learned that this visa and its lottery process have generated serious administrative burdens and some very embarrassing mistakes at the State Department, and there is reason to wonder if this visa may also stimulate abuse of other visas by those who do not win the diversity visa lottery. Most observers have concluded that the diversity visa program has long outlived its purpose. The Commission said as much in its 1995 and 1997 reports, but the visa has its defenders and has persisted for another 17 years now.

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE:

Thank you for your interest in the findings and recommendations of the U.S. Commission on Immigration Reform.

I would be happy to respond in oral or written form to any questions from Committee Members or staff.

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<sup>12</sup>For more details on the structure, procedures and impacts of the UK’s Migration Advisory Committee, see Ray Marshall, *Value-Added Immigration: Lessons for the United States from Canada, Australia and the United Kingdom* (Washington, D.C.: Economic Policy Institute, 2011), Chapter 4. Also see Philip Martin and Martin Ruhs, “Labor Shortages and U.S. Immigration Reform: Promises and Perils of an Independent Commission,” *International Migration Review*, 45(1), Spring 2011, pp. 174-187.

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**Michael S. Teitelbaum** is Wertheim Fellow in the Labor and Worklife Program at Harvard Law School, and Senior Advisor to the Alfred P. Sloan Foundation in New York, where until 2010 he was Vice President. He is a demographer with research interests that include the causes and consequences of very low fertility rates; the processes and implications of international migration; and patterns and trends in science and engineering labor markets in the U.S. and elsewhere. He is the author or editor of 10 books and a large number of articles on these subjects. Previously he was a faculty member at Princeton University and Oxford University. Among other roles he has been Staff Director of the Select Committee on Population of the U.S. House of Representatives, and Vice Chair and Acting Chair of the U.S. Commission on Immigration Reform. He was educated at Reed College and at Oxford University, where he was a Rhodes Scholar.

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Mr. GOODLATTE. Dr. Arora, thank you.

**TESTIMONY OF PUNEET ARORA, M.D., M.S., F.A.C.E.,  
VICE PRESIDENT, IMMIGRATION VOICE**

Dr. ARORA. Thank you.

Mr. GOODLATTE. You should hit the button on your microphone and pull it close to you. Pull it close. Pull the microphone close to you.

Mr. ARORA. Distinguished Chairman Goodlatte, Ranking Member Conyers and Members of this Committee, on behalf of Immigration Voice and the many highly skilled professionals and their families waiting for permanent resident status to the United States, I thank you for this opportunity to contribute my views toward immigration reform.

Immigration Voice is a grassroots organization of highly skilled foreign men and women that have come together to advocate for a change in the employment-based green card system. Today I would like to talk to you about the problems faced by 1 million highly skilled foreign professionals and their families, future Americans, most of whom have been gainfully employed in the United States for a decade or more, but find themselves in lines for a green card.

Our community is invested in America through our diligence, innovation, and productivity. Our children are Americans. This is our home.

My journey through the employment-based backlog began in 1996 with a medical residency program at the Southern Illinois University School of Medicine in Springfield; followed by a fellowship in endocrinology, diabetes, and metabolism at the New York University School of Medicine; and then to the Mayo Clinic in Rochester, Minnesota, for a fellowship in advanced diabetes.

In 2003, I joined the clinical practice with the Health Partners Medical Group in St. Paul, Minnesota, and as assistant professor of medicine at the University of Minnesota Medical School. My practice was in a medically underserved area with a substantial population of indigent patients. Even so, my national interest waiver was significantly delayed.

In 2008, I was offered the position of clinical research medical director of Amgen, the world's largest biotechnology company. I was able to accept this offer only because of a small window of relief offered in July of 2007 that allowed me to gain work authorization. Many of my colleagues in Immigration Voice were not so fortunate, and still, today they continue to lack the ability to change jobs without losing their place in the green card line.

I now work for Genentech as medical director for early development, and at the end of 2011, my green card application was finally approved after more than 15 years of life in the United States. And as I continue toward citizenship, I count myself as fortunate. Today USCIS is just now adjudicating applications for applicants like me from the year 2004.

Spending a decade or more for permanent residency takes its toll on professionals and on their families. Children age out, and they have to secure their own visas to go to college. Traveling abroad or just maintaining legal status takes an infusion of time and money to renew documents. Scientists often cannot get grants, and, sadly, even motivated parents cannot adopt children.

These problems all generally arise from what we term the double backlogs, the green cards shortage backlog and the per country backlog. And I want to make a few brief points on both of these.

We have the largest and the fastest-growing highly skilled economy in the world. It is America's fastest-growing export. We are fighting over green card numbers here for highly educated people, each of whom is a net job creator according to the American Enter-

prise Institute, while America is bleeding some of the best minds from its borders, many of whom were trained in U.S. schools.

As parents of American children, we see firsthand that America is struggling to produce qualified students in STEM, and I worry as a father of two wonderful girls. We have heard proposals for increased fees to pay for STEM programs in the States, and we support that. It can only help, and all help in this matter is welcome.

On the second part of the double backlog, I want to start by thanking this Committee, and especially Representatives Chaffetz, Smith and Lofgren, for their amazing bipartisan work on poor country elimination. We fell short in the Senate on process in spite of overwhelming support. Regardless, we know that just changing the poor country quota alone will not fix the overall shortage of green cards, but it will help to alleviate some of the burden for America's most experienced, highly skilled green card applicants. And again, we sincerely appreciate your efforts in this regard.

Mr. GOODLATTE. Thank you, Dr. Arora.

[The prepared statement of Dr. Arora follows:]



**Congressional Testimony**

**House Judiciary Committee**

**“America's Immigration System: Opportunities  
for Legal Immigration and Enforcement of  
Laws against Illegal Immigration”**

**Written Statement of Dr. Puneet Arora**

**Vice President, Immigration Voice**

Delivered on February 5, 2013 at 10:15 AM

Rayburn House Office Building

Washington DC



### Introduction and Thanks

Chairman Goodlatte, Ranking Member Conyers, and distinguished members of the United States House Judiciary Committee, my name is Dr. Puneet Arora, and I am honored to provide the following testimony on behalf of Immigration Voice and the roughly half million highly skilled foreign professionals and their families waiting for permanent residence in America. I thank you deeply for your time and attention to the issue of US immigration, not just for me and those like me, but for our American economy, our domestic workforce, and our current and future U.S. business owners.

Immigration Voice is a national grassroots non-profit organization of over 70,000 active, highly skilled foreign professionals living in America. In December of 2005, Immigration Voice was founded by Aman Kapoor with a simple goal in mind: create awareness around highly skilled immigration and the benefits to the United States of expanded and accelerated opportunities for permanent residence. To that end, Immigration Voice has met with countless legislators, agency personnel, and administration officials in Washington, DC and around the country in an effort to both educate and better understand the system we utilize for green cards. I became involved with Immigration Voice in 2006 and I am now Vice President. Our membership has grown significantly to include highly skilled foreign professionals across the spectrum of countries and specialties, most of whom are still in the process of receiving their green cards, with the rest lawful permanent residents or U.S. citizens who are motivated from their own experiences to help others.

A single concept connects all the members of our coalition: we view ourselves as future Americans. We want nothing more than to participate in the U.S. economy freely—to start businesses and change jobs without the fear of harassment or punitive measures, such as starting over in the green card line. Above all else, we want the roots we have laid in America to take hold permanently. All of us already live and work in the United States. Many of us have children that are American citizens by birth. We earn good salaries, and we pay our taxes. We create opportunities for employment and invent valuable products for U.S. companies to sell in America and around the world. We are not asking for thanks. We simply want a real place in America—a permanent place that allows us to live and invest freely, obtain a driver's license in a reasonable time, apply for insurance, and qualify for a mortgage based on our merits as applicants. We want our children to have the opportunities they deserve and not to have to start from scratch in the immigration line.

Describing life in the employment-based green card backlog is my primary purpose in testifying before you today, but I also want to help you better understand what motivates highly skilled foreign professionals who choose the US as their home—the personal goals and ambitions of a group of future Americans you commonly refer to by nonimmigrant terms like H-1bs, Ls, NIWs, and TNs. We are more than letters, numbers, job titles, and prized economic statistics. We are dedicated individuals with real lives, real families, and a real desire to be of value, economically and morally, to this country. We are job creators for our American colleagues—according to the American Enterprise Institute, each of us who are U.S. educated in STEM create an average of 2.6 American jobs, and foreign-born professionals generally are 30% more likely to start a U.S. business than are our native-born counterparts.

Foreign born workers are a cornerstone of nation's health and economic security. A study by the Partnership for a New American Economy found that 40% of the Fortune 500 companies were founded in whole or in part by immigrants to America or their children. These immigrants came from all walks of life, but they share one thing in common. Not one of them could have started their business today without a green card or the help from a U.S. citizen. This is the great opportunity cost we face. Every day that highly skilled foreign professionals live without green cards is one more day they are not starting new companies, creating new jobs, or building permanent roots in their communities through home ownership and local investments. In describing the half-life lived by those in the employment-based backlog, I hope to shed an important light on the highly skilled foreign professionals who have already given a large portion of their adult existence to the U.S. economy and who continue to wait for their turn to fully live the American dream.

#### My American Story

I was born in New Delhi, India in 1972. My home town was a large metropolitan national capital city. From the earliest memories I can recall, I always had an interest in science. Through my years in school, I participated in science symposia and won awards on numerous occasions for my presentations, including a prestigious young astronomer award. As a teenager, I was recognized with a gold medal by the Department of Biotechnology for the Government of India and given a 3 year scholarship for ranking among the top 10 biology students in the country. In 1989, I was awarded a rare perfect score on the biology portion of the national high school exit examinations.

India was a growing economy even then, but the opportunities for advancement were very limited by U.S. standards. Placement at top Universities was extremely competitive. Entrance to medical school meant taking extensive and rigorous examinations with very low rates of acceptance. My only option was to study hard, and through dedicated efforts, I was accepted to India's flagship medical college, the All India Institute of Medical Sciences in New Delhi, the top medical college in the country every single year since surveys have existed in India. Admission was based on an entrance test that is now taken by nearly 100,000 candidates, all competing then for 34 positions open to all comers, an acceptance rate of less than 0.01%.

After obtaining my medical degree, I reached a crossroads. I knew I would continue to post graduate residency training in Internal Medicine, but I did not know where. Driven by a desire to see the world and obtain advanced medical training in the West, I applied for graduate positions in the United States. In 1996, I was fortunate to be accepted to a post graduate medical residency program at the Southern Illinois University School of Medicine in Springfield and thus began my journey to America and through the odyssey known generally as the highly skilled immigration system.

I entered the U.S. immigration system on a J-1 exchange visa, which is commonly used for post graduate medical training. It seems appropriate at this point to clarify that highly skilled immigrants enter the U.S. directly on many types of visas. My colleagues at Immigration Voice almost all began their journey to green card on educational and/or temporary employment visas such as the H-1b. As the name suggests, these visas are meant to be used for short periods of time, and with that in mind, certain

important restrictions apply to the employment of immigrants on these visas. These restrictions and regulations are the heart of the problem for highly skilled immigrants seeking permanent residence, and because of “Per Country Limits” (an issue with which this committee is very familiar). This is especially true for those immigrants from India, China, South Korea, the Philippines, and Mexico, the countries that supply the vast majority of our highly skilled, highly educated foreign talent.

After completing my residency in 1999, I was offered a fellowship in Endocrinology, Diabetes and Metabolism at the New York University School of Medicine, which I gladly accepted, thus moving from the land of Lincoln to one of the world’s greatest cities, where I worked the next 2 years at Bellevue Hospital and the VA Medical Center. In 2003 I began a fellowship in Advanced Diabetes at the Mayo Clinic and Graduate School in Rochester, MN, the greatest center for Endocrinology in the country and perhaps the world. This was a dream come true. My educational journey ended with my second American Board certification in Endocrinology in 2001—my first had been in Internal Medicine in 1999. For good measure, I also certified as a physician nutrition specialist and earned a Masters of Biomedical Sciences in Clinical Research from the Mayo Graduate School in 2005.

From 1996 to 2003, I remained on a J-1 visa. Although I have heard far worse stories from my colleagues at Immigration Voice, my own experience on the J-1 was mostly uneventful barring the constant need to renew my the visa and obtain a special stamp on every visit to my native country. Despite its common use by students in advanced medical programs of 2 to 3 years in duration, the J-1 visa is designed by law to expire annually. The underlying condition of the visa stipulated that I must either return to my home country for a period of 2 years after my training or obtain a waiver based on service for a period of 3 years in a medically underserved area of the United States or its territories. From a visa perspective, I was fortunate that my medical interest aligned with the latter of the two options. As an endocrinologist and diabetologist, my area of professional interest encompasses a growing and emergent public health problem with a current and projected shortage of trained medical professionals. I was thus able to qualify for a waiver.

Not every foreign STEM student is so fortunate. Under both F-1 and J-1 visas, foreign students being trained in our top universities are told that they cannot at any time declare their intent to remain in the U.S. beyond their education—in immigration speak, this is called a prohibition on “dual intent”. I clearly remember thinking at the time that I am getting the best education in the world at the best U.S. Universities; half the people in my classes are foreign born and are also receiving top training; when we graduate, the fastest growing industries in America will eagerly recruit us, because they cannot find all the workers they need domestically—and the U.S. government is telling us to tell these U.S. employers we plan to use our skills somewhere other than America.

My professional life began in 2003, when I entered clinical practice with Health Partners Medical Group in St. Paul, MN, at the Regions Hospital, formerly Ramsey County Medical Center, and its adjoining clinics, having obtained a J-1 waiver and an H-1b visa with the support of the State of Minnesota under the Conrad 30 program. Regions Hospital being a major teaching hospital for the University of Minnesota Medical School, I took up significant teaching and mentoring responsibilities in addition to my regular physician duties and was appointed Assistant Professor of Medicine.

As a practicing physician in a medically underserved area with a substantial population of indigent patients, I qualified for a National Interest Waiver, putting me on a clear path towards a green card. I was elated. My dream of permanent residency seemed on track and within reach in a few years. However, I soon learned that USCIS had adopted an excessively restrictive interpretation of the 2001 NIW statute that prohibited favorable consideration of my application. It took a lawsuit brought by other immigrants and their benefactors to overturn the agency decision in 2007, finally breaking the logjam and allowing me to file for and receive the National Interest Waiver for which I should have qualified years before.

In late 2008, I was offered an opportunity to return to my clinical research roots as a Clinical Research Medical Director at Amgen, the world's largest biotechnology company that discovers, develops, manufactures, and delivers innovative human therapeutics and is dedicated to helping people fight serious illness. Even with my National Interest Waiver, I was only able to accept this offer again due to fortunate circumstances. Because of a quirk in the visa bulletin posted July of 2007, the Department of State kindly allowed all those in line for a green card to file for adjustment of status for a limited window of 1 month. This adjustment provided me with the opportunity to gain work authorization, without which the restrictions on transferring my H-1b work visa would have meant a year's wait before I could accept Amgen's offer—assuming I was lucky enough to be selected in the H-1b lottery, and assuming they were willing to wait that long. Without this very brief window of relief, it is doubtful my employer and I would have been able to come together to our mutual benefit.

As for my family, people often overlook the fact that many highly skilled immigrants are accompanied to America by highly educated spouses. Over the last decade and a half, my wife completed both a MEd and PhD in Education from Vanderbilt University and the University of Minnesota respectively. She has taught at the Mayo High School in Rochester, MN, and worked with Oxfam on grassroots education initiatives. She has contributed toward writing, updating, and revising a textbook for teacher education, volunteered significant time to the local public schools and consulted for educational technology start-ups.

Another commonly overlooked fact is that because highly skilled immigrants typically live in the U.S. on nonimmigrant visas for years—over a decade if you happen to be from India and China—many of our children are born U.S. citizens even while we are not. We now have 2 young daughters, both born in the United States. We have lived here for nearly 17 years, and call America our home. My green card application meanwhile collected dust somewhere deep in bowels of the U.S. immigration system, where it was swallowed up years ago only to emerge about a year ago for approval—then too due to a temporary move forward in adjustment dates brought about by the weak economy. Those dates have since gone significantly backwards by several years and had I not been fortunate in 2011, I would still be waiting for my turn. I will dedicate the rest of my testimony to explaining in greater detail why this was the case for me and remains the case for so many other immigrants waiting in the employment-based backlog—and what this committee can do to improve our immigration system to the benefit of all current and future Americans.

### Employment-based Green Cards are Not H-1bs

Before we discuss numbers, the key issue in the employment-based backlog, I want to address a point of confusion among many of your colleagues that persists to this day. For many years, whenever Members of Congress spoke of highly skilled immigrants, they often used the term “H-1b” interchangeably—in much the same way a person might ask for a Kleenex when they mean a tissue or a Coke when they mean a soft drink. Very few policymakers in DC seemed to know anything about the employment-based visa system, and even fewer still could say with any certainty the difference between an H-1b visa and an employment-based green card.

There are probably many reasons for this confusion. During the 1990s tech boom, the U.S. highly skilled industries were growing so fast that U.S. technology companies could hardly keep pace with demand. The decline in STEM education in the U.S. had been well documented since the early 1990s, but the spike in demand for qualified technologists created by the growth of companies like Microsoft, Intel, and Oracle brought home the problem in new ways. The emerging U.S. technology sector needed quick access to tens of thousands of highly skilled immigrants to meet labor shortages in real time. The H-1b, a visa that was designed to respond to fluctuating labor demands in shortage occupations, became the workhorse of this effort and has been closely identified with the emergence of the highly skilled economy and foreign technologists ever since.

The tragic side effect of this generalization is that little attention has been paid to the continuing needs of highly skilled immigrants, primarily employment-based green card applicants. America’s STEM shortage has proved to be anything but temporary. In the early days of the H-1b program, many highly skilled immigrants were kept in their temporary status for several years, as there seemed to be a persistent belief that growth would drive demand for STEM education among U.S. students and foreign workers would no longer be needed. Today, most major U.S. employers file for employment-based green cards for their highly skilled immigrants immediately upon hiring. This is especially pronounced for my colleagues on H-1bs.

The truth is the H-1b program for many highly skilled immigrants—especially from India and China—is a sore subject. My colleagues do not blame the visa. An H-1b was meant to be a temporary work visa, not a placeholder in the green card line. The visa does allow many Immigration Voice members to live and work in America, but the restrictions exact a heavy toll professionally and personally on these immigrants overtime. If there is blame to be placed, it belongs to a singular chokepoint in the green card system, the result primarily in a double backlog due to inadequate numbers and a poorly conceived policy known as per country limits. This committee and the House of Representatives more broadly saw fit to end the per country limits on employment-based green cards in November of 2011 by a vote of 389-15. We are talking today about addressing both aspects of the backlog—the shortage of green cards and per country limits—and that is critical if we are to fully capture the potential of our country’s highly skilled foreign professionals.

I would offer one final thought on misperceptions about our highly skilled immigration system. Even in the early Wild West days of the U.S. tech boom, there was a deep disconnect between what

policymakers believed about highly skilled immigrants and what highly skilled immigrants believed about themselves. For some policymakers, every highly skilled immigrant was Albert Einstein—this I can tell you from personal experience is not true. Others seemed to view all highly skilled immigrants as foreign versions of Bill Gates—strictly interested in making sure “spellcheck” continues to work as you type away on your computer. As you can see from my testimony, I am not a computer scientist or computer engineer. Many highly skilled immigrants are—and for good reason—but a significant number are not. In contrast, highly skilled immigrants see themselves simply as individuals with deeply marketable skills in America’s largest and fastest growing sectors—highly skilled STEM fields. We are well educated, smart, and motivated, but in most cases no more so than our U.S. colleagues. We are not here because we are better than American workers—we are here because there are not enough qualified (a very important distinction) American workers to meet all the specific demands of America’s growing highly skilled industries.

#### H.R. 3012 and Per Country Limits

On the issue of per country, I must start by thanking you, the members of the House Judiciary Committee. In particular, I want to thank Congressman Jason Chaffetz of Utah, Congressman Lamar Smith of Texas, and Congresswoman Zoe Lofgren of California for your bipartisan efforts to eliminate this unfair, and deeply demoralizing policy. While everyone waits through the uncertainty of the process, a little known fact about the employment-based green card system is that some wait significantly longer than others. As this committee knows, the discrepancy arises from an arbitrary policy decision at the time the employment categories were created that limits the total number of green cards issued to individuals born in any one country to 7%. We can find no policy rationale for this cap other than the same limit exists for the family green card system. In the context of family, such a limit seems to make sense, where social diversity is part of the policy rationale for the system. In contrast, the employment system exists solely to serve the needs of the U.S. economy—economic necessity is in fact the first test for whether or not an individual qualifies for an employment-based green card—they don’t limit you by country until after they determine you add value to America.

As this committee recognized by passing on voice vote H.R. 3012, “The Fairness for High-Skilled Immigrants Act,” the only thing this policy serves to limit is America’s economic potential. If per country limits are left in place, highly skilled immigrants from India will quite literally wait decades, most on temporary visas that limit their job mobility and prevent them from starting businesses, buying homes, and earning two incomes. This is an extremely demoralizing prospect for men and women who come to America believing their skills are valued and welcomed. The problem of waiting—and especially waiting longer than others for no other reason than being born in a populous country—is easily the number one cause of attrition and “brain drain” by our friends and foreign professional colleagues to countries that compete with the United States.

There are entrepreneurs like Kunal Bahl, an engineer from the University of Pennsylvania with an MBA from Wharton, who started a company while in college that now sells to thousands of U.S. stores. The problem is that in 2007, when his H-1b visa ran out, Kunal simply gave up on the U.S. immigration system and sought greener pastures back home in India. Kunal’s company now employs more than

1500 people...in India. While we have few hard statistics on these types of opportunity costs, most immigration experts agree the number of foreign-born workers returning to India and China annually is on the rise and in the tens of thousands. The Chinese Ministry of Education estimates the number of emigrants who returned to China last year was a record 134,800, up 25% from 108,000 in 2009. As many have highlighted, Intel, Google, Yahoo and eBay were all founded by immigrants. Knowing what we know today, would we not do whatever it took to keep these innovators in America?

As I have heard Congressman Chaffetz say on several occasions, per country limits have no place in the employment-based system. Talent is talent no matter where an immigrant is from, and the limitations on access to employment-based green cards are best determined by the needs of the market, not an arbitrary cap. The cap in many ways is the antithesis of the market, enforcing a smooth distribution of talent globally that does not match up with reality. On its face, the idea that a country with billions of people should be limited to the same number of employment-based green cards as a country with only millions is absurd. Again, we thank Mr. Chaffetz, Mr. Smith, and Mrs. Lofgren, as well as the House Judiciary Committee and the full U.S. House of Representatives for recognizing this absurdity and for doing your part to put an end to this unfair policy by passing H.R. 3012 last year. We hope you will take up this bill again early this year.

#### Green Cards: There's No Getting Around the Numbers

No matter how you approach the problem, if you are for capturing the economic potential stored in the green card backlog—currently trapping hundreds of thousands of America's top highly skilled foreign professionals—the answer is clear: you must increase supply to meet demand. The U.S. immigration system provides 140,000 green cards for employment-based immigrants every year. This accounts for approximately 16% of all green cards awarded annually, a significant number until you look more closely. The reality is many temporary visas, like the H-1b, which is capped at 85,000 visas a year, allow immigrants to enter the country with whole families. However, when the time comes for permanent residence, each member of the family must also receive an employment-based green card. In short, we estimate that more than half of the 140,000 employment-based green cards go to family members. For countries impacted by per country limits like India, China, South Korea, the Philippines, and Mexico, the visa usage by family members does nothing but compound the already extremely long waits, at times causing backlogged individuals to actually move backwards in line—something commonly known in immigration circles as retrogression.

What we find more frustrating is that of the 140,000 green cards provided by Congress annually to the employment-based categories, a significant number have often gone unused despite the excessive demand in the system. We believe this is primarily the result of inefficiencies in the application process which continues to be excessively reliant on paper-based methods. Regardless of the cause, if USCIS and the agencies responsible for overseeing the green card system fail to process applications in time, the allotment of visas expire and are lost. The USCIS ombudsman estimates that between the family and employment-based categories, over 300,000 green cards have been wasted in this manner. We believe this number to be higher and that up to 325,000 thousand have been left unprocessed in the employment-based categories alone. The deeply frustrating aspect of the loss of visas due to

inefficiency is that after years of waiting, the government should have little doubt as to who is next in line (yet another negative consequence of per country limits). Highly skilled immigrants plan their life around the green card process. It should not be too much to ask that the agency take time to plan for effective and efficient green card processing as well.

I cannot repeat it enough. When it comes to the issues in the employment-based system, green card numbers are the single biggest challenge for highly skilled foreign professionals. Combined with per country limits, the inadequate supply of green cards represents a major hurdle to job mobility, professional growth, career advancement, promotions and even the education of our children if not born in the United States. In some cases, young children become adults by the time green cards are available to an applicant's family. In these cases, the adult child is no longer eligible and may find themselves separated from their families for an extended period or even permanently, due to having to start an immigration process of their own, from scratch, despite having lived most of their lives in the United States.

#### The Path Forward is Open and the Time is Now

Whether you were born in New York or New Delhi, it is easy to see that times are changing with respect to the debate on immigration reform. I have observed since I last visited Congress, that a new energy exists around taking on the issues of our immigration system from a wider scope of interests. There are legitimate views on all sides of the issue, and I know that it will be a difficult task to reach consensus. I can only speak to my experiences and to my knowledge of the system as one who has lived through it. I am not here to advocate for more than what my knowledge tells me are problems common to the experience of all highly skilled foreign professionals in the green backlog. I can say that Immigration voice will continue to support any and all efforts to pass legislation containing much needed improvements to the employment-based green card system that make life in the backlog so difficult for so many of our best foreign professionals.

Whether it is the recently introduced "Immigration Innovation Act of 2013" in the Senate, which we wholeheartedly support, a future highly skilled immigration bill yet to be introduced in the House, or a comprehensive immigration bill containing like provisions, our coalition of more than 70,000 highly skilled foreign professionals will stand firmly behind all efforts that include the following reforms:

1. Eliminate per country limits—as previously discussed, this is as much an issue of fairness as it is an issue of reducing wait times. Currently, highly skilled immigrants from the largest countries in the world bear the full burden of this negative externality. Removal of these caps will distribute wait times among all immigrants, making the system fair as a "first come, first serve" process and alleviating market distorting pressures on Indian and Chinese immigrants stuck for years on temporary visas. This change is a simple, technical fix requiring no additional green card numbers be issued.
2. Recapture previously authorized but unused green card numbers—also, discussed above, recapturing previously authorized but unused green cards will allow Congress to help clear the



employment-based backlog without authorizing any additional visas. These visas were already provided by law, but due in many cases to bureaucratic inefficiencies, they were lost. Recapturing is an option that requires no major changes to the immigration system.

3. Raise the employment-based green card cap to 290,000 visas per year—raising the cap on employment-based green cards is the most obvious solution to the employment-based problem. While this option may be the least politically acceptable to some in Congress, it is also the simplest with clear and absolute caps.
4. Allow for job portability, without losing the worker's place in the green card line, on the filing of an application for labor certification—this issue is also touched upon above. Highly skilled immigrants waiting for green cards are trapped on temporary visas. Even though the law allows for certain temporary visa holders, such as H-1bs, to change jobs, many immigrants opt not to do so for a simple reason: changing employers under the current system means starting over in the green card line. For highly skilled immigrants deeply impacted by per country limits, the incentives to remain with their current employer at any cost are high. Allowing highly skilled immigrants to change jobs once they have filed for green cards without losing their place in line will empower these workers to pursue their maximum employment potential, adding greatly to morale and further protecting these immigrants from potential abuses. Allowing opportunities to compete for market based wages and career advancement opportunities ensures a robust labor market that benefits native and foreign born workers alike.
5. Exempt certain categories from the employment-based caps—as noted in my testimony already, family members use up a significant portion of employment-based green cards. Other categories of highly skilled immigrants may also deserve special consideration when applying for employment-based green cards. To this end, I recommend exempting from the employment-based caps individuals who meet the following criteria:
  - STEM degree holders with an advanced degree from a U.S. university
  - Spouses and children of employment-based immigrant visa recipients
  - National Interest Waiver recipients designated to have exceptional ability
  - Physicians that provide designated services in medically underserved areas

These are but a few examples of the creative ways in which our green card system can provide additional numbers by incentivizing positive behaviors that benefit the country and/or address the intended spirit of the law.

6. Provide for the roll-over of unused immigrant visa numbers to the following fiscal year—given the loss of visas due to bureaucratic inefficiencies on an annual basis, rolling visas forward is the best way to ensure that recapture is an embedded principle of the employment-based system.

On the question of enforcement, I want to clarify our position. Some argue that the employment-based immigration system should “rollout the red carpet” for every well-educated foreign professional willing to live and work in America. My fellow highly skilled immigrants and I appreciate the sentiment, but we do not expect celebrity treatment. We know there must be reasonable restrictions on the flow of immigrants to America. We know that reasonable protections must be in place to make sure that U.S. workers are not displaced unknowingly by those seeking permanent residency in the United States. Any appearance of fraud in the system hurts us as much as anyone else. We know these restrictions and protections add time to our wait for green cards, and we accept this process as the price for entry on a permanent basis to the U.S. We are future Americans, and we share an interest in making sure that foreign workers coming to the U.S. are truly needed.

The backlog begins once these reasonable processes have concluded. That is what my fellow immigrants find so deeply frustrating about the wait for green cards. We are not held in limbo for years to ensure that jobs that should go to Americans are protected. On the contrary, for countries impacted by per country limits, most of the highly skilled immigrants waiting for green cards have long since been deemed additive to the U.S. economy through a rigorous market test known as “labor certification”. Inadequate numbers are the primary delay in the system, and because highly skilled immigrants are forced to wait on temporary visas, many of the negative externalities raised by critics, such as incentives to pay low wages and fear of leaving abusive employers lest you be removed from the country, are amplified by the backlog itself. Abuse is a rare exception, but for those concerned about it, fighting the expansion of employment-based green cards is fully counterproductive to their goals.

#### A Closing Thought on Temporary Visas

People must trust a system to believe in it. The actions of a few bad actors have not only eroded the reputation of the H-1b visa program, their actions have undermined trust in highly skilled immigrants themselves. To rebuild this trust, we must eliminate the bad actors. The law provides for ample enforcement in nonimmigrant programs—I urge you to use that power to restore faith in a highly skilled immigration system that can and will continue to benefit the U.S. economy and the American workforce. Our excessive reliance on temporary visas from a lack of green cards is of course largely to blame for the enforcement issues within the programs. Adopting the employment-based green card reforms I have outlined above is the surest way to refocus the attention of immigration officials on the relatively small but very damaging problem of temporary visa fraud.

People are not perfectly substitutable, and empirical studies will never explain fully what qualifies one worker over another. What we do know is that there is no prize for second place in the global economy, and there is no place for good enough in cutting edge technology. When a company determines it wants the best person for a job regardless of where they are from, that company in many cases is doing so as an alternative to moving jobs overseas. As we are future Americans, we are tied to the success of the US economy and the jobs that are created here. America’s continued prosperity and the availability of jobs in the future, especially for our children, are of enormous importance to us. We know the vast majority of highly skilled foreign professionals add far more value than they take from our economy. All

we ask for in return is the opportunity to make permanent our place in the country where we work, raise our children, and call our home.

Conclusion

Thank you again for the privilege of testifying before you today. I am truly honored to have this opportunity to share my story and my views as a newly minted green card holder. I am also honored to testify on behalf of my fellow Immigration Voice friends and colleagues, all of whom are future Americans if they aren't already. Everyone could tell a different story of how they got here, but our coalition comes together because we share a deep desire to make America our permanent home. I believe America is the greatest country on earth. We have freedom. We have opportunity, and today we have the advantage in emerging industries. With a serious commitment to reforming our employment-based green card system, I believe highly skilled immigrants can help America return to prosperity, creating jobs and growing our economy through innovation. I hope you will consider the recommendations I have made today, and I'll look forward to our continued work together.

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Mr. GOODLATTE. Mayor Castro, we are pleased to have you with us.

**TESTIMONY OF THE HONORABLE JULIÁN CASTRO,  
MAYOR OF SAN ANTONIO, TX**

Mr. CASTRO. Thank you very much, Chairman Goodlatte, and, of course, to Representative Jackson Lee, and my hometown Rep-

representative Smith. Thank you for having me to the Ranking Member Conyers, as well as to the Members of the Committee.

I come to you today as many things: as an American, as an optimist, the grandson of an immigrant orphan from Mexico who found opportunity in our great country, and as mayor of the Nation's seventh largest city, a community that looks like the Texas and the America of tomorrow.

Immigration for all of us is more than a political issue. It is who we are as Americans. From Plymouth Rock to Ellis Island and Galveston, Texas, to the sandy shores of Florida and the rocky coast of California, immigrants have made ours the greatest country in the world.

Today, however, our immigration system is badly broken, but there is hope. This hearing and, more importantly, the bipartisan legislation that I believe can be enacted because of it shows that we are on the cusp of real progress.

The President and a growing number of bipartisan lawmakers have laid the framework for what Americans support: comprehensive, commonsense reform. We must do at least three things: further strengthen border security, streamline the legal immigration process so that law-abiding companies can get the workers they need in this 21st century global economy, and create a path to citizenship to bring the estimated 11 million undocumented immigrants in this country out of the shadows and into the full light of the American dream.

In Texas we know firsthand that this Administration has put more boots on the ground along the border than at any other time in our history, which has led to unprecedented success in removing dangerous individuals with criminal records. But Democrats and Republicans can agree that the work to ensure America's safety and security is ongoing and should be a part of any future legislative agenda.

The reforms that you have on the table are also profamily, and probusiness. Outdated visa allocations that separate husbands and wives, mothers and children, and brothers and sisters for years and sometimes decades make no sense. It also makes no sense that while some employers choose to flout the rule of law and exploit employees, other companies who want to play by the rules are handcuffed by rigid employment ceilings and burdensome regulations.

Every year, as competition increases across the globe, America companies throw up their hands and watch engineers, nurses and entrepreneurs who are trained at American universities leave in frustration only to invent new products, heal the sick, and innovate in other countries.

What Americans deserve is a system that works; a system that is efficient, that is accountable, that in our Nation's best interest puts the undocumented immigrants already here on a road to earn citizenship. Those immigrants take on many faces from Virginia, to North Carolina, to Utah.

In San Antonio, those faces include students like Benita Veliz. Benita, like so many so-called DREAMers, was brought to this country as a child from Mexico. She learned English, played by the rules, and achieved astounding academic success, even became a

valedictorian of my alma mater, Thomas Jefferson High School in San Antonio. She was a National Merit scholar, and Benita earned a bachelor's degree by the time she was 20 years old.

By any measure Benita is an American success story, but under current immigration law she is in limbo. America is her home in every single sense of the word except under our broken immigration system.

Since the signing of the Declaration of Independence, America has distinguished itself as the land of opportunity, the place where the human spirit is free to reach its full potential. In this 21st century global economy, we need Benita and immigrants like her to be competitive. But we all know that as one generation of Americans has passed on to the next, this great Nation has drawn tremendous strength from immigrants, whether they came from Germany, or Italy, or India, or Mexico.

A hearing is a great start, but a hearing is not enough. Let us rise above the political fray. Let us once again show that no challenge is too big for America. Ladies and gentlemen, America is watching. Let us get this done. Thank you.

Mr. GOODLATTE. Thank you, Mayor Castro.

[The prepared statement of Mr. Castro follows:]

**Prepared Statement of Julián Castro, Mayor, San Antonio, TX**

Thank you Chairman Goodlatte, Ranking Member Conyers, Members of the Committee . . .

I come to you today as many things—an American, an optimist, the grandson of an immigrant orphan from Mexico who found opportunity in this great country, and as Mayor of the nation's seventh-largest city, a community that looks like the Texas and America of tomorrow.

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In Texas, we know first-hand that this Administration has put more boots on the ground along the border than at any time in our history, which has led to unprecedented success in removing dangerous individuals with criminal records. But Democrats and Republicans can agree that the work to ensure America's safety and security is ongoing, and should be part of the legislative agenda going forward.

The reforms that you have on the table are also pro-family and pro-business. Outdated visa allocations that separate husbands and wives, mothers and children, and brothers and sisters for years and sometimes decades make no sense.

It also makes no sense that, while some employers choose to flout the rule of law and exploit employees, other companies who want to play by the rules are handcuffed by rigid employment ceilings and burdensome regulations.

Every year, as competition increases across the globe, American companies throw up their hands and watch engineers, nurses and entrepreneurs, who were trained in American universities, leave in frustration only to invent new products, heal the sick and bring new innovations to other countries.

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Those immigrants take on many faces from Virginia to North Carolina to Utah. In San Antonio, those faces include students like Benita Veliz.

Benita, like many so-called DREAMers, was brought to this country as a child from Mexico. She learned English, played by the rules and achieved astounding academic success—even becoming valedictorian of my alma mater, Thomas Jefferson High School.

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As each generation of Americans has passed on to the next, this great nation has drawn tremendous strength from immigrants, whether they came from Germany, Italy, India or Mexico.

But we all know that a hearing is not enough. Let's rise above the political fray. Let's once again show that no challenge is too big for America.

Ladies and Gentlemen, America is watching. Let's get this done.

Thank you.

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Mr. GOODLATTE. Dr. Arora, you gave an excellent statement, and I thought it was full and complete, but apparently I called you before your time was expired and maybe before your statement was finished. Did you want to summarize your statement?

Mr. ARORA. Thank you. I just have a little bit left, so I am just going to complete it.

The benefits of removing poor country limits will accrue to only one Nation in this world, the United States of America. Ultimately we do not care how you fix the system. We just want it fixed not in 5 years, not in 10 years; now, this year.

On that note, there are so many proposals out there for broader high-skilled immigration reform. They include recapturing unused visas, providing additional U.S. STEM visas, exemptions for spouses and children, early filing, exemptions for physicians who provide service in underserved areas, and we support all of these.

We are extremely encouraged by the introduction of the Immigration and Innovation Act of 2013 in the Senate, and we really hope that a similar bipartisan bill will be introduced the House. This innovation economy is global, and the ripe export markets and the foreign professionals in America creating products for these markets will not wait forever.

Our futures are tied to the United States, as are those of our children. The growth of America's economy and the availability of jobs for Americans are of great significance to us and our families. We want nothing more than to see America prosper and grow while still remaining the most welcoming Nation on the face of this Earth.

On behalf of Immigration Voice, again, my sincerest gratitude for this opportunity and the very patient hearing you have given me today. Thank you.

Mr. GOODLATTE. Thank you, Dr. Arora.

And I will begin the questioning with you, Mr. Wadhwa. Which do you believe is a greater factor in encouraging foreign students and workers on temporary visas to return home, difficulties receiving green cards in the U.S. or expanding opportunities in their home countries?

Mr. WADHWA. They are both. In fact, when we surveyed several hundred returnees, they said it was greater opportunities. But I know in dealing with my students what happens is that they look for jobs because they want to stay here for 2 or 3 years after they graduate. They can't get jobs because companies can't get H-1B visas, or they are worried about hiring foreigners because of the backlash.

Mr. GOODLATTE. I have got another question for you, and I am going to go quickly because I have several I want to ask in a short period of time.

As I noted in my opening statement, other primary immigrant-receiving countries like the U.K., and Canada, and Australia select over 60 percent of their immigrants based on their education and skills, while the United States selects a little more than 10 percent on this basis. Which type of immigration system do you think makes the most sense for America?

Mr. WADHWA. We need both because you have to have families as well, but right now we need more skilled.

Mr. GOODLATTE. Talking about ratios here, percentage.

Mr. WADHWA. I would increase the ratio of skilled immigrants dramatically.

Mr. GOODLATTE. Great. Okay, thank you.

Next, Mr. Teitelbaum, I see that the Jordan Commission recommended eliminating the Diversity Lottery Program. Since the Jordan Commission's recommendations were issued, somewhere in the magnitude of 800,000 diversity green cards have been issued. Can these green cards have been better utilized for another higher priority?

Mr. TEITELBAUM. That was indeed the recommendation, that it should be used for higher-priority categories.

Mr. GOODLATTE. And then to approach the second question I asked Mr. Wadhwa from a different vantage point, the Jordan Commission also stated that, quote, "Unless there is a compelling national interest to do otherwise, immigrants should be chosen on the basis of the skills they contribute to the U.S. economy. The Commission believes that the admission of nuclear family members and refugees provide such a compelling national interest, where unification of adult children and siblings of adult citizens solely because of their family relationship is not as compelling."

Isn't this what some refer to as chain migration, and isn't it true that over 2.5 million siblings of U.S. citizens are now on a waiting list for green cards, and some will have to wait over two decades? What does this say about the credibility of that aspect of our immigration system?

Mr. TEITELBAUM. Yes, that is true. That is what we referred to as management by backlogs, in which you make promises that cannot be fulfilled, and you get these enormous and very long backlogs that are built up. So our recommendation was that those visa numbers be reallocated to the high-priority, higher-priority categories that we mentioned, and then there would be immediate admission of those people and no backlogs in those categories.

Mr. GOODLATTE. Thank you.

And, Mayor Castro, you state that comprehensive immigration reform should do three things: secure the border, streamline the legal immigration process, and provide a path to citizenship for 11 million illegal immigrants.

Do you think that interior enforcement should play a role to discourage future immigration by those not documented by making jobs to them unavailable? Should that be a part of that comprehensive immigration reform?

Mr. CASTRO. Yeah, that is a great question. I do believe that enforcement, both in terms of active enforcement on our borders and under this Administration there has been tremendous progress with regard to enforcement. In fact, the triggers in the 2007 proposal have just about all been met. But going forward, of course, enforcement is part of the conversation.

Mr. GOODLATTE. And one of the aspects of enforcement that doesn't get as much attention here, although it does get attention in some of the States which have attempted to do things about it, is the fact that a large percentage of people who are not lawfully in the United States entered legally, on student visas, visitors' visas, business visas, and overstayed their visas, and so the border and securing the border is not a component in dealing with that aspect of unlawful immigration. It has to be done in the interior of the country with verification programs, with regard to employment, with cooperation amongst various law enforcement authorities, and so on. Do you think that should be part of the process?

Mr. CASTRO. Yeah, I think we agree that we can make the system work better for everyone, including for employers, including at our airports, in each and every way. Both in terms of border security and interior security, comprehensive immigration reform gives us the opportunity to make this work better at every single juncture.

Mr. GOODLATTE. And I want to give you an opportunity to answer the question of the day, and that is this: Are there options that we should consider between the extremes of mass deportation and a pathway to citizenship for those not lawfully present in the United States?

Mr. CASTRO. Well, let me say that I do believe that a pathway to citizenship should be the option that the Congress selects. I don't see that as an extreme option. In fact, as one of the Representatives pointed out, if we look at our history, generally what we found is that Congress over time has chosen that option, that path to citizenship. I would disagree with the characterization of that as the extreme.

The extreme, I would say, just to fill that out, would be open borders. Nobody agrees with open borders. Everyone agrees that we



need to secure our border; that the United States needs to improve its—

Mr. GOODLATTE. I think we agree on that, but the question is what to do about the 10 million or more people who are not lawfully here. Are you and, do you think, others open to finding some ground between a pathway to citizenship and the current law, which would be to require deportation in many circumstances, whether that is being enforced today or not?

Mr. CASTRO. I believe that, as the President has pointed out, as the Senators who have worked on this have pointed out from both parties, that a path to citizenship is the best option.

Now, I also understand that, in terms of getting at what you may be thinking about, a guest worker program in the future has also been put out there. I know that there are some concerns about how you would set that up, but I think if you want to deal with issues going forward, that may be one way to do it. However, in terms of the 11 million folks who are here, certainly putting them on a path to citizenship, ensuring that after they pay taxes, they pay a fine, they learn English, they get to the back of the line, that is the best option.

Mr. GOODLATTE. I thank you.

The gentleman from Michigan is recognized.

Mr. CONYERS. Thank you, Chairman Goodlatte. And I want to thank all the witnesses on the first panel. You have done a good job. We may not have settled much, but that is the way these things start out, isn't it?

I just wanted to see if we could get a little more agreement on Chairman Goodlatte's last question: What do we do with 11 million people that are already here? Are there any of you that still have reservations about a path to citizenship that is firm and fair? We are not going to jail them or send them back. Can we hit a small chord of agreement on that one question? What do you think, Dr. Arora?

Dr. ARORA. We believe that a balanced approach to this is really important, one that is fair and is a win-win situation for everyone. Like I said before, we tend to be focused on issues that we are very familiar with, having been through the employment-based immigration system, but certainly we would like to see a situation where Congress comes together and agrees on something that can go and get passed by the Senate and signed by the President and actually solve some of these problems in a balanced program. We would like to not view immigration as a zero-sum game, and I think we all agree that it doesn't have to be that way.

Mr. CONYERS. Mr. Wadhwa, do you think that reasonable people with strong differing views can come up with elements of a path to citizenship that would get us through this very difficult problem?

Mr. WADHWA. You know, I think the low-hanging fruit here is the children. I don't believe any decent human being would argue that those children should be deported. We should give them citizenship immediately without thinking twice.

And then the issue is about the law. I mean, that is a very strong point that Representative Gowdy made. Maybe what you do is you give them indefinite permanent resident status instead of citizenship. There is other ways of slicing this. They want to be here, they

want to raise their children. You know, we don't have to discuss deporting them; we just should legalize them so they can pay taxes, participate as regular U.S. citizens do without calling them citizens. There is a way.

Mr. CONYERS. Mayor Castro, I and, I know, some of my colleagues are a little reluctant about permanent indefinite status. You know, this is one of the things that makes this country great. You can become a citizen; you are either born here, or you earn your way in as an American. And we are all citizens equally, and so I have just a little bit of reluctance about having somebody here, an immigrant, permanently.

Mr. CASTRO. To my mind, it would be unprecedented for us to create a class of folks who are stuck in this kind of limbo, who are not allowed to become citizens, but almost everything up to that line. We draw our strength as Americans from citizenship. That is the essence of who we are. Throughout the history of this Nation, the biggest challenges we have faced have been when we created second-class citizens, much less second-class noncitizens, and so I believe that a path to citizenship is the best option.

Mr. CONYERS. Mr. Teitelbaum, have we reached a state where, in terms of border security, I got the impression we are doing a little better, the rates are going down, fewer people are coming over. We are spending tons of money. What do you see in that area that we might want to look at if Chairman Goodlatte agrees that we should send some Judiciary Committee Members down for a serious examination after having talked with security people here before we go there?

Mr. TEITELBAUM. Are you asking me to speak on behalf of the Commission on Immigration Reform, or what do I—

Mr. CONYERS. Your personal views, sir.

Mr. TEITELBAUM. Well, I have traveled along that border many times. There is no such thing as the average border situation along that border. There are huge variations across that border as to what is happening. And my impression is, from the data I have seen, that the number of attempted crossings has declined. There are more boots on the ground, as someone else said. There is also a deep, deep recession in the United States since 2008 and more rapid economic growth south of the border.

So you have got competing explanations of what is going on there, and I don't think we can actually answer your question, Mr. Ranking Minority Member, as to whether the enforcement efforts are the primary cause of that trend.

Mr. CONYERS. Can you give them a good grade so far?

Mr. TEITELBAUM. Can I do what?

Mr. CONYERS. Can you give them a fair grade so far?

Mr. TEITELBAUM. A fair grade?

Mr. CONYERS. Yes.

Mr. TEITELBAUM. I think there have been serious efforts, increased efforts, along the border. I don't think there have been serious efforts in the interior. As one of the other Members mentioned, if you don't have interior enforcement, it really doesn't matter how good your border enforcement is, people will find a way around the barrier if they can find work easily in the United States.

Mr. CONYERS. Thank you, sir.

Thanks, Chairman.

Mr. GOODLATTE. Thank you, gentlemen.

It is now my pleasure to recognize the gentleman from Texas Mr. Smith.

Mr. SMITH. Thank you, Mr. Chairman. And, Mr. Chairman, thank you, too, for your thoughtful approach to the subject at hand.

One thing that I think all Members can agree upon, and I assume all panelists as well, is that immigrants work hard, they create jobs, and they set a daily example of how to achieve the American dream. Immigration, in fact, has made our country great.

As the Chairman pointed out a minute ago, America is the most generous country in the world. We admit 1 million legal immigrants every year. That is about as many as every other country combined, so there is not even a close second when it comes to our generosity. I do think that generosity gives us the credibility to say that we need to devise an immigration system that is in the best interests of America and Americans.

One way, in my view, to improve our legal immigration system, and that is the subject at hand, is to admit more immigrants on the basis of their skills that America needs today. We admit only about 6 percent of the legal immigrants now on the basis of their skills. That happens to be, I think, the lowest percentage of any industrialized country in the world. So I would like to get us back to where we emphasize and encourage immigrants who have the skills that America needs, but we need to do so in a way that does not jeopardize the jobs of Americans who are in this country who are working, either citizens or legal immigrants. We don't want to jeopardize their jobs or depress their wages.

So my question for Mr. Wadhwa, and maybe Mr. Teitelbaum, is this: How do we admit skilled immigrants without hurting American workers?

Mr. WADHWA. First of all, if you look at all the data, every single study that has been done, it shows that when you bring skilled immigrants in, they create jobs. And right now we are in an innovation economy. Skilled immigrants are more important than ever, not only to create jobs, but to make us innovative and to help us solve major problems. So bring the right people in, and you will make the pie bigger for everyone. And we can bring in more unskilled as well, because we will have a bigger economy. We need them. The population of America will decline unless we keep immigration going at least at the pace that it is now.

Mr. SMITH. Thank you. I am not sure Mr. Teitelbaum is going to agree with you on the low-skilled, but Mr. Teitelbaum?

Mr. TEITELBAUM. Yes. I will say in answer to your question, one way is not to admit larger numbers as temporary admissions than you have visas for permanent admissions or you will negatively influence the U.S. workforce. And the second is a much more effective means of assessing the effects of admissions of skilled workers in particular areas on U.S. workers, so you don't want to, I would say—this is a personal statement, not for the Commission—you don't want to admit all STEM workers, because the tight labor markets are in some parts of STEM, but definitely not in other parts of STEM, and this Committee has actually reflected that in, I guess, it was your bill, Mr. Chairman—

Mr. SMITH. Yes.

Mr. TEITELBAUM [continuing]. That was passed one time or two times in reflecting that difference at the Ph.D. level. That was very smart of you.

Mr. SMITH. Okay. Thank you, Mr. Teitelbaum.

And, Dr. Arora, any comments on that?

Dr. ARORA. Yes. Thank you, Mr. Smith.

I think that there is a couple of really important things here. You brought up a very good point, and it is important to protect American workers and at the same time have a robust immigration system where skilled immigrants can come in and fill real needs.

And one of the problems that we have today is that we have restricted the mobility of the skilled workers that come into the country. They get trapped in jobs for long periods, where promotions can be denied, where they have no way of going to another employer that is willing to offer a market wage or advancement as based on the experience that they have gained over a period of time and toward the skills that are really required by the demands of the job is. And I think that these long periods of limbos, and the restrictions on job mobility, and this lack of reliance on the market to tell us what the demand is is a problem.

Mr. SMITH. Okay. Thank you, Dr. Arora.

Mayor Castro, let me follow up with a question that the Chairman was asking you a minute ago. Do you see any compromise area between the current status quo and a path to citizenship for virtually all the 11 million or more illegal immigrants in the country today?

Mr. CASTRO. I see the compromise as a recognition that a path to citizenship will be earned citizenship; in other words, that they will have to—

Mr. SMITH. But you don't—

Mr. CASTRO [continuing]. Pay a fine.

Mr. SMITH. In other words, a path to citizenship regardless, one way or the other.

Mr. CASTRO. Well, I believe that it is the best option. I think history has borne out that that has served the United States best.

Mr. SMITH. Okay. Let me ask all panelists this question, and maybe since my time is almost up, I will say this: Is there any witness today who does not agree that we ought to have a system that requires employers to check to make sure that they are hiring legal workers? Is there anyone who would disagree with that system?

Mr. TEITELBAUM. It was a recommendation of the U.S. Commission on Immigration Reform.

Mr. SMITH. Mr. Teitelbaum, you and I worked together to try to implement the Commission's recommendations, and we came awfully close until the Clinton administration reversed their endorsement.

But everybody agrees that with some kind of a system to make sure that employers only hire legal workers; is that right?

Okay. Thank you.

Thank you, Mr. Chairman.

Mr. GOODLATTE. I thank the gentlemen.

The gentleman from New York Mr. Nadler is recognized for 5 minutes.

Mr. NADLER. Thank you, Mr. Chairman.

Mayor Castro, your testimony said that we must do at least three things in immigration reform: further strengthen border security, streamline the legal immigration process that law-abiding companies can get the workers they need, and create a path to citizenship for the estimated 11 million undocumented immigrants.

It seems to me that there is one further thing that any good immigration reform should do, and that is to eliminate unjustified, invidious discrimination that is present in the system. And one such discrimination is certainly the fact that people other than gay and lesbian people can sponsor their spouses for immigration into the United States so that you don't keep them separated, whereas under our laws, of course, gay and lesbian people cannot marry other gay and lesbian people—at least the Federal Government won't recognize it, a few States will—so that the laws work a—what I would call a cruelty on people, an unnecessary cruelty, because under our laws it may be that the lover or partner of an American citizen can't be here, and under the laws of the foreign country, it may be that the American can't go there, and you are keeping people apart.

Now, there is legislation called the United American Families Act which would establish an equivalency so that, the question of gay marriage apart, which is really a separate question, we will not have the cruelty of keeping loving couples apart by allowing a gay person or a lesbian person to sponsor his or her partner for immigration. We are reintroducing that bill today, by the way. It has broad bipartisan support; it has the support of Republicans as well as Democrats, church leaders, members of the Hispanic Caucus, and now recently the President of the United States.

Do you think this is a good or essential piece of comprehensive immigration reform?

Mr. CASTRO. I believe that it would be a good piece for comprehensive immigration reform, and, as you suggest, I believe that there would be significant support for that. I myself support marriage equality, but even for folks that support, for instance, only civil unions and certain rights that partners would have, I believe that this is right in that vein and that it makes sense.

Mr. NADLER. Thank you. And I just want to make clear that this is not—not the question of gay marriage. If we had gay marriage, you wouldn't—it would be moot. But this is a question of enabling people to be together who otherwise cannot be for no purpose at all, purposeless cruelty, which the United States should never engage in.

I have a second question for you, and that you note in your testimony the immigration laws are broken across the board, harming businesses and separating families. There are some who support the idea of increasing the number of green cards in the employment-based system, we have heard that, but only if a commensurate number of green cards are eliminated from the family-based system.

Do you buy into this zero-sum approach, and can we be a Nation that supports both business groups and keeping families together?

Mr. CASTRO. Thank you for the question, Representative. I agree with Dr. Arora that this is not a zero-sum game. There is no reason

that we need to choose between these. I believe that we should have both employment-based and continue our family-based allocation as well as, of course, addressing the issue of high-skilled immigrants and other skilled immigrants.

I would also, frankly, suggest that being able to pick crops in the sun, under the hot sun, for 12, 14 hours a day, to do back-breaking work, is a kind of skill; maybe not one we would call a high skill, but certainly a skill that many, many folks either do not or cannot do. And so to answer your question, I believe that that is a false dichotomy.

Mr. NADLER. Thank you.

And, finally, I have one question for Mr. Teitelbaum. Mr. Teitelbaum, you say that some of the Commission's strongest recommendations were against temporary worker programs, noting that admitting large numbers of temporary workers in agriculture and other fields would be, quote, "a grievous mistake."

I must say I am very ambivalent about this. On the one hand I worry about guest worker programs bidding down U.S. wages for American workers; on the other hand, the share of the native-born workforce without a high school diploma was around 50 percent in the 1940's and 1950's, and it is now down to about 6 percent. And as the native-born have grown better educated, U.S. workers have been less willing to engage in farm work, but the demand for farm work has not decreased.

So my question is if we still have a need for on-the-farm labor, but a giant reduction of population of native workers likely to look for work in the sector, do we have a need for a guest worker program? Is it naive to think that if we cut out foreign workers, that these jobs would just be filled by American workers? And is such a program, in fact, cutting down on American—you know, bidding down American wages?

Mr. TEITELBAUM. Again, this is going to be my thoughts, not the Commission. The Commission was recommending against large-scale temporary worker programs for the reasons I indicated. I agreed with that recommendation. I believe it still to be true.

There is a very large population in the United States of low- and unskilled workers, many of whom are unemployed and relatively unemployable. The conditions of work offered in some of the jobs you are talking about are really not very attractive compared to their alternative sources of income as citizens, and, therefore, I think you have a situation in which the market disposes toward dependence upon unauthorized migrants.

In addition, you have decisions made by employers as to where to invest or where to plant and what plants to plant, are they labor-intensive plants or not labor-intensive plants, based upon the assumption of continued access to this kind of labor. So you get a kind of mutual dependency, if you will. A situation in which it is correct, as the growers might say, that if you took away my workforce now, all my plants, all my crops would rot in the field. But if they were pretty certain they weren't going to have that future workforce in the future, they would make different decisions about what crops to grow and where to grow them. But why should they if they assume they are going to have that workforce?

Mr. GOODLATTE. The time of the gentleman has expired.

The Chair recognizes the gentleman from Alabama Mr. Bachus for 5 minutes.

Mr. BACHUS. Thank you.

Let me ask each one of you for a yes or no answer if you can give it. If you can't, I will permit you to pass.

Mr. TEITELBAUM. Yes or no?

Mr. BACHUS. If you can. If you want to pass, you know, can't answer it.

Do you think our immigration policies ought to be based on our own national interests; in other words, what is best for America?

Mr. WADHWA. Yes.

Mr. TEITELBAUM. Yes.

Dr. ARORA. Yes.

Mr. CASTRO. Absolutely. Sure.

Mr. BACHUS. So we all agree on that.

Now, do we all agree that attracting high-skilled legal immigrants is in our best interests? You know, the Chairman mentioned Australia and Canada. And obviously high-skilled workers in mathematics, sciences, technology, they have actually created jobs in those countries. They have created jobs for native Australians, native Canadians. It has brought down their unemployment rate. But do all of you agree that that is in our best interest, and there is less contentious issues with our highly skilled workers?

Mr. WADHWA. Double yes.

Mr. TEITELBAUM. In principle, yes, but you must be careful not to deter American kids from going into those fields by taking that action.

Mr. BACHUS. Oh, absolutely.

Mr. TEITELBAUM. So you just have to do it right.

Mr. BACHUS. Right. But it is less contentious than with our undocumented, unskilled workers, I think. Would you agree?

Mr. TEITELBAUM. Yes.

Dr. ARORA. Yes, it is.

Mr. BACHUS. So yes?

Dr. ARORA. Yes.

Mr. BACHUS. And Mayor.

Mr. CASTRO. Yes, I agree to the need to encourage high-skilled immigration, sure.

Mr. BACHUS. Now, the Chairman mentioned that some countries, and these are countries all of which have significantly lower unemployment rates than America, are actually attempting to attract entrepreneurs, engineers, mathematicians, scientists, people skilled in technology. And I think we all agree we have all seen cases of these people being trained, some of them at University of Alabama Birmingham, and then going back to India, some going back to China, and starting jobs which compete and take jobs away from our people, and that that is really a tragedy; and that Germany doesn't do that, Chile doesn't do that, Australia doesn't do that, Canada doesn't do that. So should we design a system that prioritizes—not excludes other, but prioritizes those individuals?

Mr. WADHWA. Yes.

Mr. TEITELBAUM. Once again, as long as it does not deter U.S. kids from going into those fields.

Mr. BACHUS. Oh, and let me say that with those caveats, and also in certain areas where if there are Americans that can fill those positions.

Mr. TEITELBAUM. The general point, Congressman, is you might end up with fewer people net if you discourage the inflow of people from the largest source of those occupations who are American citizens.

Mr. BACHUS. Sure. Okay.

Dr. ARORA. We believe, yes, that there is a need to reform the way highly skilled immigration is done today.

Mr. BACHUS. All right. Mayor?

Mr. CASTRO. I believe there is a need to reform highly—immigration for highly skilled workers—

Mr. BACHUS. Yes.

Mr. CASTRO [continuing]. But I also believe there is a need to reform the entire system.

Mr. BACHUS. Oh, absolutely. We all agree, but I think that my point is, and I think each of you would agree, it is going to be a much easier lift to solve the problem with highly skilled workers. This House has passed on one occasion, could have on two occasions, a bill which would address that. And the present system for our highly skilled entrepreneurs is diametrically opposed to what is done in Canada, Australia with great success and created hundreds of thousands of jobs there, and actually has put Americans out of work because we refuse to do that here. And Ms. Lofgren and I agree on that, I think, 99 percent or 100 percent. I think that the gentleman from Michigan, the former Chair, and I agree, and I think we could pass a bill which would take that off the table.

When you take comprehensive, then we are dealing with certain issues like full citizenship, and whatever else we disagree on, I think we would agree on that that is a more toxic, contentious issue, granting full amnesty. And I would hope that by comprehensive we could address those on two different paths, because we can pass something and solve the problem which is putting Americans out of work and is enabling other countries to compete successfully and take jobs away from us. And I would just hope that you all would all agree with that, that let us not let the more contentious issues and this idea of comprehensive reform prevent us from this year, this month, you know, in the next 2 or 3 months passing something to address what is a horrible situation in this country, and that is we are training people to go back to their countries and compete against us.

And we have mentioned Google, Intel, eBay, Microsoft. All of those companies, the CEOs say for every one of those people I hire or keep in America, I can hire three Americans, too.

Mr. WADHWA. We can agree on the Dream Act quite easily. That there is widespread agreement on.

Mr. BACHUS. Okay.

Mr. GOODLATTE. The time of the gentleman has expired.

The Chair recognizes the gentleman from North Carolina Mr. Watt.

Mr. WATT. Thank you, Mr. Chairman.

Let me say at the outset so that nobody is misled I am a strong supporter of a system that encourages high-skilled workers, but the



composition of this panel may leave the impression that I hope is not the one that we intend to leave, that that is all that immigration reform is about.

And so I want to be clear that Google, Yahoo!, Intel, eBay were all founded and run by immigrants, but none of them came here under a skilled worker visa program. They came here as family-based immigrants, refugees or children of refugees.

And so just to be absolutely clear on this, this emphasis that seems to be being placed on high-skilled visas and reform just—are we clear that that is not to the exclusion of other kinds of immigration reform and encouragement of other immigrants? And if I can get clarity on that from all four witnesses, I just want that on the record so that we are not misled.

Mr. WADHWA. I completely agree with that. We can't lose time on the skilled, because right now the U.S.'s economy is in a slump. We are in the middle of a major reinvention. Our competitors are rising. Immigrants are fleeing. I wrote an entire book about the immigrant exodus.

So we have to fix the immediate problem of skilled immigrants, the million skilled immigrants legally here waiting for green cards. We don't talk about them. We need to fix that ASAP, and we need to do the other things we are talking about without doubt. But we can't wait on the million, because they are leaving, and America is bleeding talent right now.

Mr. WATT. If we are doing all of this immediately, I don't want to do that to the exclusion of doing the rest of immigration reform. That is the point I want.

And, Mr. Teitelbaum, just to be clear, you all's recommendation, I guess, that you are not encouraging low-skilled or unskilled workers, that is not—that recommendation was not about eliminating other kinds of non-skill-based immigration either, was it?

Mr. TEITELBAUM. No. You may remember the main recommendation on family-based immigration recommended establishment of these priorities and the rapid admission of people in these priority groups, and that is by far the biggest category of legal immigrants.

Mr. WATT. And, Dr. Arora and Mayor Castro, if I can get you all to be as clear. And I am just trying to document a record here so nobody comes back later and says this hearing was only about high-skilled visas, high-skilled worker admissions to the country. I mean, I think that would be a gross misperception of what we should be coming away with. So, Dr. Arora and Mr. Castro, if you can help me clarify the record, I would be appreciative to you.

Dr. ARORA. Congressman, we are a grassroots organization, and we supported a comprehensive bill in the past, and if Congress is to come up with a doable bill that you can all agree on, we would be very happy to back it and support it.

In the end we would like to see these problems solved. Whether you decide to do them in steps and individual bills, or you take an approach that everything can be done together, we leave up to your judgment, but we realize that it is a complex problem, and there are many parts to this.

Mr. WATT. Mr. Castro?

Mr. CASTRO. Well, I absolutely believe that this issue of immigration reform should be addressed comprehensively. And I would also

add that even though it might seem, as was said, easy to do just one part of this, the STEM bill, which was supposed to be easy, did not get through the Senate, probably the better option is to address this comprehensively at one time that will impact the entire system in a positive way.

Mr. WATT. All right. Thank you. I appreciate the clarification.

And with that, Mr. Chairman, I won't even go to another question, because my time is about to expire.

Mr. GOODLATTE. We appreciate the diligence of the gentleman from North Carolina and commend that to all the Members.

And we turn now to the gentleman from Virginia Mr. Forbes for 5 minutes.

Mr. FORBES. Thanks, Mr. Chairman.

Thank all of you for your testimony. I only have 5 minutes, so I am going to try to be succinct and ask you in your answers to do so as well.

And, Mayor, I know you have studied this issue a lot, you prepared for this hearing, or you wouldn't be here. And let me just ask you, if I gave you this pen and asked you to go back and take as long as you needed and draft this comprehensive piece of legislation, you brought it back before us, and we passed it out of here, and we passed it out of the Senate, and the President signed it into law, we all know that there will be some people that disagree with portions of it, some people who try to circumvent it, some people who break it.

I want you to fast-forward now. You are a young man, and 10 years from now we ask you to come back and testify before us, and we found that the people that circumvented that law were either 10 or 10 million. Should we be prepared to draft a new path of citizenship for those 10 million people that circumvented the law that you wrote?

Mr. CASTRO. Thank you very much for the question. And I know that this has been a concern with regard to the 1986 law. And, in fact, I am very pleased that the bipartisan effort so far, what has been proposed by the President and the Senate, includes stronger interior enforcement.

Mr. FORBES. Yeah. And I don't want to interrupt you, you can put all you want on the record, but I am saying you have written a law, we do everything we can. Despite our best efforts there will be people who break that law and circumvent them. It may not be 10 million, it may be a million, but for those individuals should we be expected to 10 years from now write a new path of citizenship for those individuals however many there might be?

Mr. CASTRO. With all due respect, Representative, I just don't think that that is a question that can be answered right now. It is such a hypothetical question. I believe that if the Congress does an excellent job now—

Mr. FORBES. Mayor, are you saying that you don't believe that there will be any people that circumvent the law no matter how well we write it? Is that your testimony?

Mr. CASTRO. No, I wouldn't disagree with you that there may be folks who circumvent it.

Mr. FORBES. And as to those individuals, should we be prepared at some point in time, 10 years down the road or whenever, to be prepared to write a new path of citizenship for them?

Mr. CASTRO. I believe that that is a question hopefully that won't have to be answered in any significant measure by a Congress in the future if you do the job right this time.

Mr. FORBES. So you believe if we do the job right, there will not be individuals who circumvent that law down the road? And the reason I say it, Mayor, is we have got to ask these tough questions. It is easy to talk about comprehensive reform if we don't ask and answer those tough questions.

Let me give you another one. The Ranking Member said there is so much that we agree on, and I agree with that comprehensively, but we can't just take a concept like comprehensive and not look at the detail, because sometimes the devil is in the details.

When you talk about a lot of individuals who are here and not documented, or here not legal, or illegally, one of the things for us, most of them are hard-working, good people, you would attest to that, but not all of them. For example, testimony we have had before this Committee of the rise in gang activity that we have had in the country, we had testimony that 85 percent of one gang, the individuals here were here illegally.

Now, as to just that group, I want to ask you this question: If we have someone here who is here illegally, and not one of those hard-working people, but someone who is a member of a violent criminal gang, should we be prepared to deport them before they commit a criminal act, or should they also have a path to citizenship?

Mr. CASTRO. Thanks for the question. I think there is an agreement across the board that if someone has committed a violent crime—

Mr. FORBES. No, no. Before they have committed a violent criminal act, they are here illegally, and they are a member of a violent criminal gang, should we be able to deport them before they commit that violent criminal act, or should they also be able to have a path to citizenship?

Mr. CASTRO. You mean if you determine them guilty before they have committed a crime?

Mr. FORBES. Not guilty. I am saying they are here illegally. They didn't come here legally, and they acknowledge and we prove that they are a member of a violent criminal gang, should we be able to remove them from the country before they commit another—or before they commit a violent criminal act?

Mr. CASTRO. I would just say that I believe that ensuring that America is free of folks who have committed violent crimes, that that is and should be a priority.

With regard to the hypothetical of people who might commit a crime or might not commit a crime, you know, I readily concede that I am not in law enforcement, I am not a technical expert in that regard, but I do believe that folks who have committed a violent crime should be deported.

Mr. FORBES. And, Mayor, the reason I tell you is this exact situation happened in Boston, and a young girl was raped and brutally beaten for individuals that were here illegally, member of a violent

criminal gangs, and temporary protected status protected them. So at some point in time we have got to—we passed legislation, and here the Senate refused to pass it.

And so with that, Mr. Chairman, I see that my time is expired, but, Mayor, they are the kind of questions that we need answers for, and unfortunately that is going to be part of what we have to ferret out over the next several weeks and months. And with that, Mr. Chairman, I yield back.

Mr. GOODLATTE. I thank the gentleman.

The Chair recognizes the gentlewoman from California Ms. Lofgren, for 5 minutes.

Ms. LOFGREN. Thank you, Mr. Chairman.

Before my questions, I would like to ask unanimous consent to place in the record 22 statements from various individuals, including religious organizations, social organizations, labor organizations, as well as an op-ed from The Washington Times today from Mat Staver, the dean of the law school at Liberty University.

Mr. GOODLATTE. Well, seeing as Liberty University is a fine institution in the Sixth Congressional District of Virginia, and I think very highly of Dean Staver, we will admit all of those, without objection, to the record.

Ms. LOFGREN. Thank you very much.

[The information referred to follows:]

AMERICAN CIVIL LIBERTIES UNION



February 4, 2013

The Honorable Robert W. Goodlatte  
Chairman  
U.S. House of Representatives  
Committee on the Judiciary  
2138 Rayburn House Office Building  
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The Honorable John Conyers  
Ranking Member  
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**RE: House Judiciary Committee Hearing on "America's Immigration System: Opportunities for Legal Immigration and Enforcement of Laws against Illegal Immigration"**

Dear Chairman Goodlatte, Ranking Member Conyers, and Members of the Committee:

On behalf of the American Civil Liberties Union (ACLU), we write to offer recommendations for a legislative solution that will further our national interest by creating a more just and humane immigration system true to America's values.

The 2012 elections produced a mandate for true immigration reform, and momentum has been building ever since to find a permanent solution to our nation's flawed immigration system. Both the White House and the Senate have put this issue at the top of their agendas. Last week President Obama and a bipartisan group of Senators each unveiled their broad frameworks for reform, and are crafting legislation. Both proposals would, commendably, provide 11 million aspiring citizens with a roadmap to citizenship.

As you move forward in the House, we urge you to evaluate all legislative proposals carefully to ensure that they not only embrace a generous roadmap to citizenship, but also include systemic reforms to address civil liberties problems that have long plagued the immigration detention and deportation systems. The absence of discretion and consideration of individual equities in the current immigration system, which also deprives most immigrants of legal counsel, leads to cruel results unsupported by traditional American values of family unity and due process. In addition, immigration reform must bring an end to the wasteful, destructive immigration enforcement policies that have torn apart so many families and led to rampant fear in so many communities. Victims and witnesses of crime are scared to call 911, while communities of color are subjected to rampant racial profiling. Progress must not be contingent upon further enforcement measures.

Immigration enforcement, both at the borders and in the interior, is at an all-time high, and it has come at enormous and unnecessary cost to American

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taxpayers. The immigration enforcement price tag since 1986 is \$219 billion in today's dollars.<sup>1</sup> In 2012 alone, the Department of Homeland Security ("DHS") spent nearly \$18 billion on immigration and border enforcement—more than the federal government spent on all principal federal criminal law enforcement agencies combined.<sup>2</sup> At the borders, unprecedented militarization has resulted in human rights violations and seriously threatens the quality of life in border communities. Wasteful programs such as Operation Streamline's costly criminal prosecutions of border-crossers have contributed to an expansion of federal contracting with private prison facilities, caused serious overcrowding, and skewed the inmate population. For the first time, the majority sentenced to federal prison are Hispanic or Latino.<sup>3</sup> House Appropriations Committee Chairman Hal Rogers has correctly said about southwest border spending: "It is a sort of a mini industrial complex syndrome that has set in there. And we're going to have to guard against it every step of the way."<sup>4</sup>

In the first term, this administration deported over 1.5 million people—more than in any other single presidential term.<sup>5</sup> In 2012 alone nearly 410,000 people were deported – an all-time record for annual deportations.<sup>6</sup> Despite the administration's claims that it prioritizes the removal of individuals who pose a risk to public safety, nearly one half of those deported had no criminal record at all, and a significant proportion of the remainder committed no serious offenses threatening public safety.<sup>7</sup> As a result, American families have been separated in devastating numbers: between July 2010 and September 2012, 23 percent of those deported—204,810 individuals—were parents of U.S. citizen children.<sup>8</sup> From a snapshot survey taken in 2011, at least 5,200 children were in foster care as a result of their parents' deportation.<sup>9</sup> Wasteful detention spending of \$2 billion annually<sup>10</sup> led to the incarceration of 429,000 people in 2011—despite the existence of effective and less expensive alternatives to detention.<sup>11</sup>

This enforcement-first and enforcement-only strategy has continued unabated in spite of the fact that apprehensions at the southwest border are at their lowest levels in 40 years, net migration from Mexico is zero, and border communities are among the safest in the nation.<sup>12</sup> American taxpayers can no longer afford to foot the bill for these needless enforcement measures. Any legislative proposal must chart a more reasonable course by creating a welcoming roadmap to citizenship for hardworking aspiring Americans who daily contribute to our communities while often living vulnerably in the shadows of society. Immigration reform must *not* usher in yet more costly, unnecessary enforcement as a precondition of achieving the reform that our country and economy so desperately needs.

Finally, any immigration reform bill must respect the privacy and due process rights of all workers – Americans and immigrants alike – by rejecting a mandatory employment verification system. Such a system does little to solve the real problems driving employers to hire undocumented workers and, according to government reports, catches fewer than half of those workers processed through the system. In fact, the system ensnares ordinary workers in government bureaucracy while those workers try to get database errors corrected. Ultimately, the system leads us inexorably toward the creation of a national ID system.

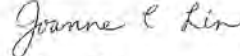
We look forward to working with you to realize immigration reform that not only brings aspiring Americans within the legal embrace of citizenship, but also makes much needed improvements to our immigration detention and deportation systems, including a ban on racial profiling and full

equality for LGBT persons. We have attached the ACLU's 2013 framework for immigration reform, which outlines in more detail the issues that should be addressed in any legislative proposal. Please contact Joanne Lin, ACLU Legislative Counsel, with any questions at 202/675-2317 or [jlin@dcaclu.org](mailto:jlin@dcaclu.org).

Sincerely,



Laura W. Murphy  
Director, Washington Legislative Office



Joanne Lin  
Legislative Counsel

Enclosure: ACLU 2013 framework for immigration reform, "Protecting Civil Liberties in Federal Immigration Reform Legislation"

cc: Members of the Committee

<sup>1</sup> Ted Robbins, *U.S. Grows An Industrial Complex Along The Border*, NPR, Sept. 12, 2012.

<http://www.npr.org/2012/09/12/160758471/u-s-grows-an-industrial-complex-along-the-border>.

<sup>2</sup> In FY 2012, spending for CBP, ICE, and US-VISIT exceeded by 24 percent total spending for the FBI, Drug Enforcement Administration (DEA), Secret Service, US Marshals Service, and Bureau of Alcohol Tobacco, Firearms and Explosives (ATF). *Immigration Enforcement in the United States: The Rise of a Formidable Machinery*, Migration Policy Institute, Jan. 2013, available at <http://www.migrationpolicy.org/pubs/enforcementpillars.pdf#report>.

<sup>3</sup> U.S. Sentencing Commission, 2011 ANNUAL REPORT, Chapter 5, available at

[http://www.ussc.gov/Data\\_and\\_Statistics/Annual\\_Reports\\_and\\_Sourcebooks/2011/2011\\_Annual\\_Report\\_Chap5.pdf](http://www.ussc.gov/Data_and_Statistics/Annual_Reports_and_Sourcebooks/2011/2011_Annual_Report_Chap5.pdf)

<sup>4</sup> Ted Robbins, *U.S. Grows An Industrial Complex Along The Border*, NPR, Sept. 12, 2012.

<http://www.npr.org/2012/09/12/160758471/u-s-grows-an-industrial-complex-along-the-border>.

<sup>5</sup> Corey Dade, *Obama Administration Deported Record 1.5 Million People*, NPR, Dec. 24, 2012, available at <http://www.npr.org/blogs/itsallpolitics/2012/12/24/167970002/obama-administration-deported-record-1-5-million-people>.

<sup>6</sup> News Release, ICE, *FY 2012: ICE announces year-end removal numbers, highlights focus on key priorities and issues new national detainer guidance to further focus resources*, Dec. 21, 2012.

<http://www.ice.gov/news/releases/12/12/121221washingtondc2.htm>

<sup>7</sup> *Id.*

<sup>8</sup> Seth Freed Wessler, *Nearly 205K Deportations of Parents of U.S. Citizens in Just Over Two Years*, COLORLINES, Dec. 17, 2012, available at [http://colorlines.com/archives/2012/12/us\\_deports\\_more\\_than\\_200k\\_parents.html](http://colorlines.com/archives/2012/12/us_deports_more_than_200k_parents.html).

<sup>9</sup> *Shattered Families: The Perilous Intersection of Immigration Enforcement and the Child Welfare System*, Applied Research Center, Nov. 2011, <http://arc.org/shatteredfamilies>.

<sup>10</sup> *The Math of Immigration Detention: Runaway Costs for Immigration Detention Do Not Add Up to Sensible Policies*, National Immigration Forum, Aug. 2012.

<http://www.immigrationforum.org/images/uploads/MathofImmigrationDetention.pdf>

<sup>11</sup> DHS Annual Report, *Immigration Enforcement Actions: 2011*, Sept. 2012, available at

[http://www.dhs.gov/sites/default/files/publications/immigration-statistics/enforcement\\_ar\\_2011.pdf](http://www.dhs.gov/sites/default/files/publications/immigration-statistics/enforcement_ar_2011.pdf).

<sup>12</sup> *Immigration Enforcement in the United States: The Rise of a Formidable Machinery*, Migration Policy Institute, Jan. 2013, available at <http://www.migrationpolicy.org/pubs/enforcementpillars.pdf#report>.



### **Protecting Civil Liberties in Federal Immigration Reform Legislation January 2013**

As President Obama and Congress take up immigration reform, the ACLU urges policymakers to endorse and promote the following priorities for any reform:

- **Immigration reform must create a welcoming roadmap to citizenship for aspiring Americans living in and contributing to the U.S. Fundamental fairness as guaranteed by the Constitution requires that these individuals be brought within the legal embrace of U.S. citizenship.**
  - American history teaches the dire and repugnant consequences of creating an “underclass” of people living without the Constitution’s full protections. The Thirteenth, Fourteenth, and Fifteenth Amendments to the Constitution are offended when aspiring citizens – who are primarily from communities of color – face a lifetime of disadvantage and vulnerability.
  - Aspiring citizens are productive members of their communities who often live in mixed-status families with U.S. citizen relatives. Their enormous contributions to American life are hampered by exploitive employers and they face barriers to trusting law enforcement on critical matters including reporting crimes like domestic violence.
  - The roadmap to citizenship must be just and fair, without exclusions for minor crimes or past removal orders, and unobstructed by prohibitive fees or penalties. Federal courts must guarantee effective oversight through judicial review.
  - Legalization of aspiring citizens will help restore fairness to an immigration system under which 1.5 million people have been deported at staggering cost in the last four years, leaving hundreds of thousands of U.S. citizen children without parents, and tens of thousands in foster care. One in four Latinos surveyed reported that they knew someone deported or detained by the federal government in the preceding year.
  
- **Immigration reform must not create a national ID system or include measures that harm fundamental privacy rights. Error-prone identification systems endanger the rights and livelihood of all Americans in the workplace and in civic life.**
  - E-Verify is an internet-based system that contains identifying information on almost every American, including some drivers’ license information and photos from passports and Department of Homeland Security (DHS) documents. Calls for new and expensive electronic employment-verification systems and biometric worker identification are thinly-disguised national ID requirements – permission slips from the government that employees would need in order to work. Social Security numbers were never meant to be used for identification; now it is almost impossible to function in America without one. E-Verify would likely be similarly expanded if it becomes mandatory. This could lead to unwarranted harassment and denial of access to TSA checkpoints, voting booths, and gun





- permits, or other harmful uses not yet envisioned. Some proposals have called for American workers to be fingerprinted or photographed in order to work.
- The intrusive verification regimes that have been proposed would rely on massive and inaccurate databases. According to estimates of the E-Verify error rate drawn directly from DHS's own reports, at least 80,000 American workers lost out on a new job last year because of mistakes in the government database. By extrapolation, if E-Verify becomes mandatory nationwide, at least 1.2 million workers would have to go to DHS or to the Social Security Administration (SSA) to correct their records. Many are newly naturalized citizens.
  - E-Verify will lead to discrimination against those perceived to look or sound "foreign," when instead immigration reform should reinforce anti-discrimination principles in employment law. Under E-Verify, employers would avoid hiring individuals they fear will be ensnared in the error-prone system. E-Verify does not prevent hiring undocumented workers because it lacks reliability in its core function of identifying non-work-eligible individuals. According to a DHS-funded study, E-Verify fails to identify undocumented workers 54% of the time. Further, unscrupulous employers can still bypass E-Verify by hiring illegally.
  - E-Verify increases the risk of data breaches and identity theft by making personal information on every American more widely accessible. Experts note that the system as currently configured remains vulnerable to identity theft and employer fraud, and may serve as a valuable tool for identity fraudsters. At least one major data breach of E-Verify has already occurred.
- **Immigration reform must end state and local intrusions into immigration policy and enforcement, as well as ban racial profiling at all levels of government.**
    - Immigration reform should recognize that state and local governments cannot interfere with or usurp federal immigration authority or violate constitutional rights in the name of immigration enforcement.
    - State and local involvement in immigration enforcement has led to racial discrimination in policing practices. Racial profiling distances communities from state and local police, and thereby undermines community policing efforts that have reduced violent crime by building trust with victims and witnesses. State and local police are trained to protect the public and solve crimes, not to be immigration enforcement agents.
    - Federal immigration enforcement programs like Secure Communities and 287(g) that involve state and local police, and lead to pretextual arrests, should be terminated. In those communities where state and local police engage in racial profiling and unconstitutional arrests and detentions, these federal programs systematically facilitate civil rights violations. They also undermine federal enforcement priorities by imposing detention and removal proceedings on individuals who pose no threat to public safety.
    - Immigration reform should include a ban on racial profiling by all federal, state, and local law enforcement agencies, as well as robust training and data collection requirements to ensure the ban's efficacy. Profiling now affects U.S. citizens – especially people of color – as well as immigrants, with numerous examples



throughout the country of illegal traffic stops and detentions for immigration investigation purposes.

- **Immigration reform must address systemic due process problems with immigration detention and deportation.**
  - Immigration reform must end the unnecessary and unconstitutional overreliance on costly and inhumane immigration detention, which led to 429,000 people being detained administratively in the last fiscal year (almost twice as many as in the entire federal prison system), at a wasteful cost of \$2 billion.
  - No one should be in immigration detention without a constitutionally adequate bond hearing where the government bears the burden of showing that detention is necessary to protect against danger to the community or flight risk, and that no alternative release conditions would suffice.
  - Immigration reform must eliminate mandatory and disproportionate deportation laws that needlessly separate families, by restoring discretion to consider the equities in every individual's case. Reform should also ensure access to counsel in immigration proceedings (more than half of individuals in immigration court proceedings are unrepresented, including 84% of those in detention) as well as effective judicial review as integral components of due process.
- **Immigration reform must transform border enforcement, which has grown wastefully and abusively without regard to genuine public safety needs.**
  - Immigration reform must end the abuses committed by U.S. Customs and Border Protection (CBP), both at the border and in interior areas, by creating accountability within CBP, establishing robust and independent external oversight, and ending CBP immigration enforcement efforts removed from the border. Reform must include downsizing the "mini industrial complex" at the borders – which exists despite border communities' exceptional safety and a 40-year low in migrant apprehensions. It should also contain measures to ensure CBP's full compliance with national and international legal standards.
- **Immigration reform must address immigration enforcement's contribution to America's mass incarceration problem.**
  - Immigration reform should include no new criminal provisions, and must end wasteful and inhumane overreliance on criminal prosecutions. DHS now refers more cases for federal prosecution than the Department of Justice's law enforcement agencies. Federal prisons are already 40% over capacity, due in large part to indiscriminate prosecution of individuals for crossing the border without authorization, often to rejoin their families. The majority of those sentenced to federal prison last year were Hispanics and Latinos, who constitute 16% of the population.
  - The pipeline of migrant criminalization and mass incarceration must be closed by ending Operation Streamline and drastically reducing reliance on Criminal Alien Requirement (CAR) detention beds which funnel taxpayers' money into private prison companies' coffers.



- **Immigration reform must include the ability of committed and loving couples in same-sex relationships to sponsor their spouse or permanent-partner in the same way opposite-sex couples have long been able to under current immigration law.**
  - The discriminatory and unconstitutional so-called Defense of Marriage Act has caused these LGBT immigrant families to live in the shadows with the fear of separation and deportation for far too long. Family unity - including for those who are LGBT - is a critical component of any reform proposal.

Statement for the  
American Federation of Labor-Congress of Industrial Organizations (AFL-CIO)

For the Hearing on:  
"America's Immigration System: Opportunities for Legal Immigration and  
Enforcement of Laws against Illegal Immigration"

Before the  
House Committee on the Judiciary  
Subcommittee on Immigration Policy and Enforcement

February 5, 2013

The AFL-CIO is a democratic organization that works to improve the lives of workers on a federal, state and local level. It is in this spirit that the AFL-CIO advocates for comprehensive immigration reform.

The AFL-CIO is governed by a quadrennial convention at which all AFL-CIO members are represented by delegates elected by their fellow union members. These delegates set broad policies and goals for the union movement, as well as our Constitution, and every four years elect officers who govern the day-to-day work of the AFL-CIO.

In 2009, delegates to the 26th AFL-CIO Constitutional Convention elected Richard Trumka as president and Elizabeth Shuler as secretary-treasurer. Arlene Holt Baker was re-elected as executive vice president. These three officers, along with 54 vice presidents, make up the AFL-CIO Executive Council, which governs the AFL-CIO between conventions.

Between Executive Council meetings, the AFL-CIO is governed by an Executive Committee, made up of vice presidents of the AFL-CIO's 10 largest affiliate unions, the three executive officers and representatives of up to nine additional affiliate unions.

In states and communities, the AFL-CIO amplifies the voices of working families through 51 AFL-CIO-chartered state federations (including Puerto Rico) and more than 500 chartered central labor councils, led by officers and boards elected by local union delegates.

**The AFL-CIO's current immigration policy was approved at the 2009 convention.**

In 2009, delegates to the 26th AFL-CIO Constitutional Convention adopted *The Labor Movement's Principles for Comprehensive Immigration Reform* (Resolution 11). The resolution, which was deliberated and approved on the convention floor, established a national policy for the labor movement on comprehensive immigration reform. Former Secretary of Labor Ray Marshall and the Economic Policy Institute helped the AFL-CIO develop the policy. Secretary Marshall spent over a year meeting and consulting with AFL-CIO and Change to Win unions. Community-based organizations, civil rights leaders and immigration experts were also afforded an opportunity to provide valuable input.

**The 2009 immigration policy continues to be reaffirmed.**

Since its' adoption at the 2009 Convention, the officers of the AFL-CIO, the AFL-CIO Executive Committee and the AFL-CIO Executive Council have reaffirmed the labor movement's commitment to comprehensive immigration multiple times.

**The AFL-CIO submits the following materials for subcommittee consideration:**

- **Convention Resolution 11-** *The Labor Movement's Principles for Comprehensive Immigration Reform* (March 2009)
- **Executive Council Resolution-** *In Support of In-State Tuition for Undocumented Youth, Active Service Members and Veterans* (March 2012)
- **Statement by AFL-CIO President Richard Trumka-** *AFL-CIO Working Families Support Deferred Action for Childhood Arrivals* (August 2012)
- **Message from President Trumka-** Email to working family activists (January 2013)
- **Statement by AFL-CIO President Richard Trumka-** *On President Obama's Immigration Reform Speech* (January 2013)

**RESOLUTION 11**

## The Labor Movement's Principles for Comprehensive Immigration Reform

Submitted by the Executive Council  
Referred to the Legislation and Policy Committee

**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 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 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. Firstly, families strongly influence individual and national welfare. Families have historically facilitated the assimilation of immigrants into American life. Secondly, the failure to allow family reunification creates strong pressures for unauthorized immigration, as happened with the Immigration Reform and Control Act's (IRCA's) amnesty provisions. Thirdly, 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. Indeed, U.S. immigration policy must recognize that employment and family integration are interconnected: Family members work and workers have families.

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. It should consider the perspective of all key stakeholders, and the methodology it adopts should consider an ongoing role for labor representatives.

### 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 that 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 percent 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, a visa enforcement mechanism 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.

### 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 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 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 in which 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.

Fines, penalties and/or other requirements that are imposed as part of this process should not be so onerous as to deter these workers from registering for adjustment.

#### **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 "guestworker" 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.

The AFL-CIO calls upon Congress to promptly implement comprehensive immigration reform consistent with the approach described above, as further elaborated upon in the Ray Marshall/Economic Policy Institute report, "Immigration for Shared Prosperity: A Framework for Comprehensive Immigration Reform."



AFL-CIO Executive Council Statement  
 Lake Buena Vista, Fla.  
 March 14, 2012

**IN SUPPORT OF IN-STATE TUITION FOR UNDOCUMENTED YOUTH,  
 ACTIVE SERVICE MEMBERS AND VETERANS**

**Background**

In 2010, the AFL-CIO expressed its strong support for the DREAM Act—a piece of federal legislation that would provide hard-working immigrant students a path to legal status. We noted then that the bill is about children who have grown up in the United States, attended local schools and have demonstrated a sustained commitment to succeed in the educational system, but immigration laws provide no avenue for these students to become legal residents. We also recognized that access to higher education will allow these immigrants to make even stronger contributions to our society, and decrease the number of those forced to live in poverty. Unfortunately, that bill remains stalled in the United States Congress.

Meanwhile, some states have found a way to help these deserving young people, by adopting their own versions of the DREAM Act. Those state laws do not provide a path to legal status because that is an area of authority reserved to the federal government, and therefore they do not conflict with the federal DREAM Act; they simply provide access to an affordable education by allowing qualifying undocumented students to attend college at in-state tuition rates. Thirteen states have adopted such laws. Maryland's version is particularly important because it also allows active duty service members and veterans to qualify for in-state college tuition.

Not surprisingly, these laws have become a target of right-wing extremists connected to groups like the American Legislative Exchange Council (ALEC)—the very same organizations that are leading the nationwide attack on collective bargaining and voting rights. Maryland is currently their bull's-eye. An organization called "Help Save Maryland," which links itself to FAIR and Numbers USA—organizations that have been designated "hate groups" by the Southern Poverty Law Center—successfully placed the law on the ballot for repeal this fall.

**Protecting the Maryland DREAM Act is Important to Working Families**

- **Repeal would put the other state DREAM Acts at risk.** The extremist forces behind the repeal effort are using Maryland as a testing ground. If they are successful in Maryland, they are likely to target the other 12 states that have adopted similar laws.
- **Repeal would weaken support for the federal DREAM Act—the only immigration-related legislation that has attracted bipartisan support.** The growing number of states that have adopted DREAM legislation sends a powerful message to legislators: There is growing public support for common-sense solutions. Repeal of the Maryland law would accomplish the opposite and may scare away legislators.

**In Support of In-State Tuition for Undocumented Youth,  
Active Service Members and Veterans**

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- **The state DREAM Acts are the best sign of hope that hard-working undocumented youth currently have.** In-state tuition bills are balanced measures that benefit immigrant children who were brought to the United States by their parents through no fault of their own, and who are making the right choices in order to lead productive lives. These young people live in our communities, attend our schools and pray in our worship centers. All of us live with the consequences of whether they are provided with hope for the future.
- **A growing number of civil society organizations oppose repeal, in part because purveyors of hate are fueling the effort.** The Maryland Catholic Conference is among many civil society organizations opposing repeal of the law, and has urged that “we must be wary of an anti-immigration movement afoot in our country, including right here in Maryland, that is fueled in large part by a man who has spent much of his life, albeit at a great distance, playing on people’s fears and prejudices to advance his own racist and classist agenda,” citing the founder of FAJR and Numbers USA.
- **Repeal would further empower the ALEC and others whose goals is to reduce the number of people who vote.** Every time the labor movement beats back ALEC-inspired initiatives—whether it’s Ohio’s SB 5 or Maryland’s DREAM Act repeal -- working people diminish ALEC’s strength. It is in our collective interest to protect the progress we make on the ground and show ALEC just how strong we are.

The failure of the U.S. Congress to act has left a dangerous policy void which the states, reflecting the desperation of the American people, are attempting to fill. Some states—Alabama and Arizona, to name just two—are implementing mean-spirited and punitive bills that make the situation worse, and which the labor movement has strongly opposed. Others, like Maryland, have adopted in-state tuition bills that bring hope and modest relief for a small segment of the population. We will support state-level efforts like the Maryland DREAM Act, but make no mistake: These are not complete solutions. Congress must pass comprehensive immigration reform.

We need to focus on creating jobs and repairing our economy so it works for the 99%—not on tearing down real solutions and engaging in even more partisan payback. We will continue to fight back against political games and hold all of our elected officials accountable for their commitment to do what’s right for our veterans, service members, talented young new Americans and all working people.

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## American Federation of Labor and Congress of Industrial Organizations



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**For Immediate Release**

**Contact:** Gonzalo Salvador 202-637-5018

**Statement by AFL-CIO President Richard Trumka  
On President Obama's Announcement on Deferred Action for Immigrant Youth  
June 15, 2012**

We are thrilled by the Obama Administration's announcement to provide relief from deportation to immigrant youth brought to this country by their parents at a young age. The President's actions bring much-needed security and encouragement to our nation's youth who can finally live without fear of separation from their families and deportation to a country they barely remember. This talented group of young Americans was educated here and should be permitted to pursue their dreams where they call home. Beginning today, America's best and brightest can finally contribute to our nation's economy and help our communities prosper. The AFL-CIO commends the Administration for its courage and leadership in taking an important step towards a more just America.

President Obama's announcement is a critical step that begins to address our nation's dire need for comprehensive immigration reform. We call on both parties to work with the President towards a legislative solution that will address the parents and families of these immigrant youth, and the millions of undocumented workers who are now living in the shadows.

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**President Trumka sent the following message to working family activists on Tuesday, January 29, 2013:**

I'm from Nemaquin, Pa. It's like a lot of other little towns: close-knit, lots of great families, working together in tough times and good times, just trying to make something of themselves.

Everybody in that small town came from somewhere, just like almost everyone else in America. We all had different accents, but we were united by a deep respect for those who work hard and a shared commitment to a country we all called home.

Today, I stood with President Obama as he announced his plan for a commonsense immigration process that creates a road map to citizenship for new Americans who aspire to be citizens.

Join us and sign the pledge: "We hold these truths to be self evident that all people have rights, no matter what they look like or where they come from. We pledge to win a road map to citizenship for 11 million new Americans who aspire to become citizens."

Our unions haven't always wanted to talk about this, and I know some of you won't agree. That's OK. We're going to keep talking about this issue, keep working on it and we'll get there together. This is what we do as the labor movement. We protect the most vulnerable among us, and lift all workers up, whoever they are.

Folks in Nemaquin taught me that it's not about what you look like or where you were born that makes you American—it's how you live your life and what you do that defines you here in this country. No one started out here. People moved their families here to the land of freedom and opportunity to provide a better life for their children and contribute to our culture in this country. It's hard to move—to pack up everything and go to new place takes courage.

As Americans, we all do our part to contribute, and we're all the better for having hardworking new immigrants as members of our communities. Nemaquin was better for it, and our country is better for it. Let's face it: Immigrants aspiring to be citizens are Americans in all but paperwork. It's time we modernized our immigration laws to catch up to that reality.

This is how we build the labor movement—by standing together. Not as union or nonunion, or Democrat or Republican, or black or white or brown—but as workers.

It's time to win citizenship for all, and it starts with your name right now:  
[go.aflcio.org/citizenship-for-all](http://go.aflcio.org/citizenship-for-all)

In Solidarity,  
Richard Trumka  
President, AFL-CIO

## American Federation of Labor and Congress of Industrial Organizations



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### Statement by AFL-CIO President Richard Trumka On President Obama's Immigration Reform Speech January 29, 2013

President Barack Obama was elected this fall with several mandates, but voters spoke with particular clarity on one issue: the need to support the aspiration of 11 million immigrants to become citizens. That's why we applaud President Obama's eloquent and thoughtful embrace of immigration reform, including a viable path to citizenship for those who are American in every way except on paper.

In a phrase, President Obama "gets it" – he gets that a rising tide lifts all boats and that empowering immigrant workers is a win for all working people. The President clearly shares the AFL-CIO's commitment to a viable pathway to citizenship, meaning that seemingly innocuous conditions cannot be allowed to get in the way of a roadmap for citizenship that encompasses the dreams of 11 million people.

President Obama's leadership, and the bipartisan Senate group which announced its reform principles yesterday, makes us hopeful that 2013 will be the year in which the United States finally builds a working immigration system.

But hope is not a plan. That's why America's unions are undertaking a national campaign to ensure that Congress passes a genuinely comprehensive plan in 2013.

We look forward to the fight ahead. Our top priority – citizenship – is clear. Our opponents are just as readily identified: those who deride the fundamental equality of our fellow working women and men. With those clear values to guide us, we stand with President Obama and leaders of goodwill across the political spectrum to do right by the 11 million and make our country stronger.

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**Testimony of the American Immigration Lawyers Association  
Submitted to the  
Committee on the Judiciary of the U.S. House of Representatives**

**Hearing on February 5, 2013**

**"America's Immigration System: Opportunities for Legal Immigration and Enforcement of Laws against Illegal Immigration"**

The American Immigration Lawyers Association (AILA) submits the following testimony to the Committee on the Judiciary. AILA is the national association of immigration lawyers established to promote justice and advocate for fair and reasonable immigration law and policy. AILA has over 12,000 attorney and law professor members.

As Congress opens its 113<sup>th</sup> session, there is momentum building across the nation to enact immigration reform. Polling nationwide shows two-thirds of American voters support immigration reform, including a path to legal status, permanent residency, and eventually citizenship for the estimated 11 million undocumented persons living in the country. One week ago, a bi-partisan group in the Senate introduced a comprehensive reform plan, and the next day President Obama announced his own detailed plan. AILA encourages lawmakers to commit to informed discussions that will shape a common sense immigration policy that helps to rebuild America's economy, recognizes the contributions of immigrants, keeps families together, and strengthens America's security.

**The Legal Immigration System**

AILA is pleased that the House Judiciary Committee has chosen immigration as the subject of its first hearing in the 113<sup>th</sup> Congress. As the hearing title suggests, immigration reform brings with it real opportunities for not only immigrants, but also American businesses, our families, and the nation as a whole. Well-documented are the benefits immigrants bring to every sector of the economy. Immigrants are innovators and job creators, especially in the science and technology fields where they represent about half of all PhD holders. Immigrant families are more likely to start small-and medium-sized businesses. Finally, comprehensive immigration reform that includes a legalization plan for the undocumented and enables the future flow of legal workers will bring an estimated \$1.5 trillion in additional gross domestic product over ten years.

Conversely, a poorly functioning immigration system can have deleterious effects on business growth, job creation and the American economy. AILA's immigration attorney members frequently help their clients—be they small or large businesses, family-owned startups or corporations—navigate extremely long delays in the visa application process. In far too many instances, such delays due to backlogs in visa availability prevent a project from moving forward and hurt businesses and job growth. America's immigration system must be flexible and responsive to meet the needs of American businesses to ensure our economic security—both in times of prosperity and recession.

As vital as expansions to employment visas may be, such reforms cannot be made at the expense of the family immigration system. Family unification has always been the cornerstone of the U.S. legal immigration system. Keeping families strong and united is a core national value and interest, and we must continue our historic commitment to bringing families together. Some proposals call for increases in employment visa categories only at the expense of reducing visas in family categories. This approach is premised on the faulty assumption that America can only absorb a fixed number of immigrants at a given time when in fact, our nation's needs are constantly changing—sometimes expanding and other times contracting. Our immigration system must be flexible and capable of meeting the needs of American businesses, families, and the economy.

A popular misconception about the immigration system is that people who would like to immigrate can simply get into line to obtain a visa, and then get their green card in a reasonable period of time. Currently, close family members of U.S. citizens and legal permanent residents wait years or even decades to get a visa due to quotas that limit visa numbers. For example, a U.S. citizen parent typically has to wait about seven years to bring an adult child; almost 20 years for those coming from Mexico. Siblings of U.S. citizens typically wait about 12 years. But siblings coming from the Philippines wait 24 years. In the employment-based system, reports have indicated that a highly skilled worker from India could end up waiting multiple decades to receive a green card.

The restrictive visa quotas and long backlogs dispel assertions that the family immigration system enables the phenomenon of “chain migration,” in which family members petition endlessly for each other resulting in exponential growth in overall immigration. In fact, the process is so tightly controlled and restricted numerically that decades will pass before a family member who waits to obtain a visa can bring in another relative in the so-called chain.

The exceptionally long waits for both family- and employment-based visas keep families apart and hinder or even halt business operations. Immigration reform should improve the legal immigration system by enacting policies that eliminate the backlogs. To keep families together and to ensure our nation is strong, additional green cards should be added to both family and employment categories.

#### **Immigration Enforcement**

In recent years, immigration reform bills have proposed dramatic increases in border security and interior enforcement reflecting the perception that the U.S. government is not doing enough to enforce immigration laws. But immigration enforcement efforts of the past decade have been aggressive and have reached a historic high-point. With \$18 billion annually going toward immigration enforcement agencies and technologies, our borders and the interior have never been more secure. In 2012, the Department of Homeland Security (DHS) removed a total of 409,849 individuals—a record number. In January, AILA released, “Border Security: Moving Beyond Past Benchmarks,” which found that border security efforts have exceeded the border security benchmarks established by each of the Senate immigration reform bills of 2006, 2007 and 2010.

In just over two years—between July 1, 2010 and September 31, 2012—DHS deported 204,810 parents of U.S. citizens, amounting to nearly 23% of all deportations. In other words, more than

one in every five people deported is the parent of a U.S. citizen. America's deportation laws are literally tearing families apart and hurting people who know America as their only home. Thousands of people, including those seeking asylum, are unnecessarily detained at great expense to taxpayers even though they pose no threat to anyone. Our laws mandate detention or deportation for many people, denying them access to a hearing before a judge, in a system that does not guarantee legal counsel for those who cannot afford it. Immigration enforcement measures frequently target minority and immigrant communities through impermissible racial profiling that instills fear and distrust of law enforcement and makes communities less safe.

Current immigration laws and policies deny basic due process to millions of people who live in the U.S. Long-time residents are subject to deportation even when they have strong ties to the community, pay taxes, and desperately want to become full-fledged members of our society. Many are eligible to apply for legal status, but because they lived in the U.S. for a period of time that was unauthorized they are now barred from fixing their status. Judges often have no ability to weigh the individual circumstances of the case. Low-level immigration officials often act as judge and jury, and the federal courts have been denied the power to review most agency decisions. Congress should restore fairness and flexibility to our system by authorizing immigration judges and officials to exercise discretion in considering the individual circumstances of each case.

Worksite enforcement should protect workers, ensure safe working conditions, and prevent worker exploitation while at the same time minimizing the impact on businesses. With respect to employment verification, AILA recognizes that America needs an effective way to verify that workers are authorized. Such a system must be workable and not overly burdensome for employers—including large and small businesses, and employers in various industry sectors. Employment verification should be done in a way that protects the rights of all workers—foreign and American born.

The smart solutions to our immigration system or to our border security will not come from blindly increasing spending on enforcement. Nor will it come from outdated and unrealistic frameworks, such as a 100 percent-sealed border. With immigration enforcement occurring at unprecedented levels, it is time to re-evaluate how to move forward.

America is a nation of values, founded on the idea that all people are created equal and that all people have rights, no matter what they look like or where they came from. Our immigration laws should reflect our commitment to these values. They should be grounded in civil and human rights and ensure due process, equal treatment, and fairness. AILA looks forward to working with all of our leaders to ensure that all aspects of our immigration system reflect America's values.

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**Statement of  
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American Jewish Committee (AJC)**

**Submitted on behalf of AJC to  
The House Judiciary Committee**

**Hearing on  
America's Immigration System: Opportunities for Legal Immigration and  
Enforcement of Laws Against Illegal Immigration**

**February 5, 2013**

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American Jewish Committee Statement on  
Comprehensive Immigration Reform

1

Since its founding in 1906, AJC has been outspoken in support of fair and generous immigration policies. As American Jews, we recall how our parents and grandparents made their way to this country seeking a better life, and know that we have prospered in and contributed to this country. That same opportunity should be available for others. Comprehensive immigration reform will strengthen America's global competitiveness as well as allow hard-working immigrants an opportunity to succeed in the United States, for themselves and for future generations—and, at the same time, promote respect for the rule of law and protect our national security.

In advocating for fair, effective and humane immigration policies, AJC acts in accord with the American Jewish community's longstanding interest in, and commitment to, a United States immigration and refugee policy that represents our nation's best traditions. According to Jewish tradition, "strangers" are to be welcomed and valued, as we were once "strangers in the land of Egypt." The Torah tells us: "The strangers who sojourn with you shall be to you as the natives among you, and you shall love them as yourself; for you were strangers in the land of Egypt" (Leviticus 19:33-34).

Comprehensive immigration reform must provide a holistic approach to reforming our immigration system. Such reform should include:

**1. A path to legalization for immigrants already in the United States.**

There are an estimated 11 million undocumented immigrants currently residing in the United States. Comprehensive immigration reform would provide these immigrants with a path to legal status and eventual earned citizenship. This track to citizenship should be realistic, rather than being so burdensome that it prevents integration. Reasonable criteria may include learning English, having a job, maintaining a criminal-free background, and/or paying a modest fine and back taxes. However, fines should not be excessive, exemptions should be made for vulnerable populations, and immigrants should not have to return to their country of origin to apply for legal status or citizenship. These measures would only deter participation in the legalization process. Creating a path to citizenship for the undocumented would open the door to a better life for those who desire to work hard and contribute in a positive way to American society but for now must live in the shadows, a situation that offends the dignity of all human beings.

Additionally, within the 11 million undocumented immigrant population, there are an estimated 50,000-65,000 undocumented students who graduate from American high schools each year. Many came to the U.S. at a young age, have grown up in American schools, developed American values, and are American in every sense except their citizenship. AJC supports inclusion of the Development, Relief, and Education for Alien Minors (DREAM) Act in a comprehensive immigration reform bill. The DREAM Act would provide this select group of immigrant students, who at this time are only eligible for a two-year temporary status under the Deferred Action for Childhood Arrivals program, a permanent path to citizenship.

**2. Reforms that favor reuniting families.**

Family is the cornerstone of American society. Allowing immigrant families to more easily reunite with their loved ones strengthens our economy and promotes a strong social fabric in our communities.

Promoting family unity incentivizes integration and economic development, as families provide strong foundations for learning English, purchasing a home, pursuing job opportunities, starting a business, preparing children for college, and strengthening the foundation of our communities. When families are together, the money they earn fuels the U.S. economy through taxes, investments, and the purchasing of goods and services. Because of the strong economic and social value of family unity, enhancement of the family immigrant visa category must, under any circumstances, remain a priority of immigration reform.

Right now, many immigrant families remain separated for years – sometimes even decades – because of bureaucratic visa delays. Comprehensive immigration reform must reform the immigration system to expedite the visa process in favor of family reunification. This includes making family-based visas more accessible, reducing the current backlog of family-based visas, increasing the per-country numerical limitation for family-sponsored immigrants from 7 percent to 15 percent of admissions, and generally reorienting the visa system to prioritize family unity. These reforms would help ensure immigrant families reunite more quickly and protect families from being separated, thus promoting family stability and fostering economic growth.

Further, it is important that, in reforming the immigration system, we push back against efforts to deny citizenship to immigrant children born in the United States, which violates the 14th Amendment of the U.S. Constitution. Also, we must ensure that family-based visas are not placed in competition with other visa categories, an approach that would be inimical to the goal of family unity and a better functioning immigration system.

### **3. Adjustment of quotas for future flows of immigrants, including high and low-skilled employment visas.**

Immigration policies that promote entry of both high and low-skilled workers would strengthen our nation's global competitiveness and ensure that American businesses have the skilled and unskilled labor they need to compete in a global economy. AJC supports increasing or eliminating the numerical limit of visas for high-skilled workers in proportion to our country's economic demands, and establishing an additional visa category for foreign nationals who earn master's degrees or Ph.Ds in science, technology, engineering or mathematics (STEM).

Addressing the low-skilled labor demands of the agricultural industry, AJC supports inclusion of the Agricultural Jobs, Opportunity, Benefits and Security Act (AGJOBS) in an immigration reform bill, legislation that would grant earned legalization to undocumented agricultural workers based both on past agricultural work in the U.S. and a prospective work requirement. Seasonal agricultural workers, due to their migrant status, are highly vulnerable to economic exploitation and denial of their civil rights, with little ability to defend themselves. AgJOBS represents a step forward in putting such workers on the path to eligibility for earned legalization and citizenship, better protecting their rights, their access to our legal system and their stake in our society.

Establishing an improved process for admitting future workers to serve our nation's workforce needs would allow our country to meet its labor demands while protecting the workforce from abuse. These forward thinking reforms would help to ensure that American businesses have the labor they

need to remain globally competitive and would benefit American businesses by providing a sustainable, reliable and competitive workforce.

#### **4. Facilitation of and support for immigrant integration.**

Many immigrants desire to naturalize but lack the necessary tools. AJC believes that the successful acculturation of immigrants is fundamental to a sound immigration policy, and urges greater efforts to facilitate newcomers' adjustment to American society. Acculturation efforts should convey an understanding of and appreciation for American democratic institutions, patriotism, and constitutional principles, including equality under the law and due process. At the same time, without a vigorous commitment to pluralism and respect for immigrant cultures, America risks increasing ethnic tension and resentment. Both the successful incorporation of immigrants and a respect for pluralism are necessary to preserve the "American dream" and sustain democracy.

Consistent with these beliefs, AJC supports the creation and/or reinvigoration of, as well as increased funding for programs and practices designed to effectively acculturate immigrants, including increased support for programs for adults and children. Also, comprehensive immigration reform should include greater emphasis on the importance of learning English by newcomers—adults and children—with greater funding for such programs so that all who wish to do so have the opportunity to learn English upon their arrival in the U.S. or soon thereafter. Finally, there must be recognition that acculturation cannot be accomplished without the significant participation of community institutions.

#### **5. Smart and humane enforcement measures that bolster our national security.**

Border policies must be consistent with humanitarian values and with the need to treat all individuals with respect, while allowing the United States to implement its immigration laws and identify and prevent the entry of criminals, and of persons who wish to do us harm or otherwise pose a risk to our national security.

In updating and reforming border security measures, there should be (1) greater intelligence sharing regarding potential terrorists among the nation's intelligence and gatekeeper agencies; (2) increased use of state-of-the-art anti-fraud technology to create counterfeit-resistant passports and visas, and analyze suspect documents; (3) layers of security with multiple screening points for those departing for and arriving in the U.S.; and (4) improvements in the system that tracks foreign nationals who enter and leave the U.S., including the vigorous monitoring of those who enter with student, visitor, or employment visas; matching of entries into and exits from the U.S. in order to better alert the government to those who stay in the U.S. beyond the terms of their visas; and improved enforcement of applicable laws for those who overstay their visas.

To the extent Congress considers, as part of comprehensive immigration reform, the creation of a mandatory electronic work-eligibility verification system and action on "employer sanctions" that penalize employers for the knowing employment of unauthorized immigrants, such measures should incorporate adequate safeguards to protect workers from discrimination in the workplace.

#### **6. Reform of detention policies, due process protections, and special protection for asylum seekers, refugees and vulnerable populations.**

The United States has a long history of global leadership in protecting persecuted refugees and displaced persons. Immigration reform legislation must include key changes to the U.S. asylum system to better ensure that refugees who seek the protection of the United States are afforded meaningful access to a fair, effective and timely asylum adjudication process and the U.S. must take steps to ensure that the U.S. asylum system reflects U.S. values and commitments to protecting the persecuted.

AJC supports the recommendations proposed in the Refugee Protection Act (RPA) of 2011 (H.R. 2185), and urges that an immigration reform bill include provisions to eliminate the limitations that prevent qualified individuals from applying for asylum, improve legal information for immigrants, invest in our immigration courts, and expand alternatives to detention, especially for asylum seekers and vulnerable populations. Enforcement measures such as detention and raids should be narrowly tailored, and should be carried out in a humane fashion and in accord with due process.

In sum, AJC calls upon our elected officials to enact immigration reform legislation that provides an opportunity for hard-working immigrants who are already contributing to this country to come out of the shadows, regularize their status upon satisfaction of reasonable criteria and, over time, pursue an option to become lawful permanent residents and eventually United States citizens; reforms our family-based immigration system to significantly reduce waiting times for separated families who currently wait many years to be reunited; establishes new legal avenues for workers and their families who wish to migrate to the U.S. to enter our country and work in a safe, legal, and orderly manner with their rights fully protected; reduces the use of detention for immigrants, especially vulnerable groups and those seeking asylum; and ensures that border protection policies are consistent with humanitarian values and with the need to treat all individuals with respect, while allowing the authorities to carry out the critical task of identifying and preventing entry of terrorists and dangerous criminals, thereby bolstering our national security.

As a faith-based organization, we call attention to the moral dimensions of public policy and pursue policies that uphold the human dignity of each person, all of whom are made *b'iselem elohim*, in the image of G-d. We engage the immigration issue with the goal of fashioning an immigration system that facilitates legal status and family unity in the interest of serving the inherent dignity and rights of every individual, even as it enhances our national security and promotes respect for the rule of law. It is our collective prayer that the legislative process will produce a just immigration system of which our nation of immigrants can be proud.

AJC appreciates the opportunity to submit this statement and welcomes your questions and comments.

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Statement Submitted  
to the  
House Judiciary Committee Hearing  
on  
"America's Immigration System: Opportunities for Legal Immigration  
and Enforcement of Laws Against Illegal Immigration"

February 5, 2013

The Arab American Institute applauds the efforts that President Obama and members of Congress have taken to address fundamental immigration reform, including the holding of this timely hearing today. A thoughtful discussion of comprehensive immigration reform (CIR) is long overdue and we are pleased to be part of it.

Arab Americans are a diverse community of immigrants and the descendants of immigrants, three and one-half million strong, who have come from throughout the Arab world. Indeed, our community's history illustrates how the immigrant experience has shaped the United States, as we are part of the American success story. And as we reflect on reform efforts, we trust that the fundamental issue of family reunification will remain a cornerstone of our immigration policy. Toward that goal, we believe that while any discussion of immigration reform will undoubtedly emphasize border security, a pathway to citizenship for the nearly 11 million undocumented immigrants living and working in the US should not be contingent upon border issues. This approach will inevitably leave millions of immigrants in limbo status, prolonging their wait, and often their separation from family members.

We are heartened by the commitment demonstrated thus far to address the needs of individuals who through no fault of their own entered the US illegally as children and now face deportation as young adults. We were delighted that the President took steps last year to defer action against these young people. It is important to us that the proposals offered by the President and the Senate have addressed this matter directly and expect that House efforts will do the same.

Understanding the impact of a number of initiatives linked to our national security that have been added to our already overburdened and inefficient immigration system over the last decade, Arab Americans believe that real immigration reform must include the termination of measures that base their enforcement actions on race, religion, or national origin. The recent framework released by the bipartisan Senate group included provisions calling for the strengthening of prohibitions against racial profiling and inappropriate use of force at the borders. As the House prepares to draft legislation, we ask you to join the Senate in calling for immigration policy reforms that ban racial profiling and will safeguard the civil rights and civil liberties of all immigrant communities. Our Constitution and our nation demand no less.

The violation of human rights by some of these enforcement initiatives has been well-documented and is of grave concern to us. Specifically, reform efforts and legislative language must include provisions that address the serious problems with Secure Communities, the Criminal Alien Program (CAP), and the Department of Homeland Security's 287(g) program. These programs tangle local police in immigration enforcement and have led to arrests based merely on minor infractions which undermine community trust in local enforcement, thus compromising public safety and incentivizing racial profiling.

The Secure Communities program, launched in 2008, allows local and state police to check the fingerprints of detainees against the FBI and DHS databases in order to screen for immigration status and prior immigration violations. Such policies, however, have created incentives for the police to make pre-textual arrests based on racial profiling and other impermissible bases so that immigration status could be checked. The Criminal Alien Program, administered by Immigration and Customs Enforcement (ICE), was created to screen inmates and at-large criminals to identify non-citizens with serious criminal histories to place into deportation proceedings. As a result of CAP, however, individuals are often detained by ICE and deported before they have been convicted of a crime or have had the opportunity to seek legal counsel. Finally, the 287(g) program enacted by Congress in 1996, which authorizes state, county, and local law enforcement agencies to enforce federal immigration law pursuant to agreements signed with ICE, has been deemed by the Government Accountability Office (GAO) as lacking certain controls related to potential misuses of the program. Numerous studies evaluating the nationwide impact of 287(g) programs, conducted by the federal government as well as academic and advocacy groups, have raised concerns about certain jurisdictions, not adhering to ICE's guidelines.

Though it has not been explicitly mentioned in proposals on immigration reform, the National Security Entry-Exit Registration System (NSEERS) should be part of the conversation as well.

NSEERS permitted the government to systematically target Arabs, Middle Easterners, South Asians, and Muslims from 25 designated countries for enhanced scrutiny. Though the program was suspended in 2011, countless remain in legal limbo as a result of deemed arbitrary NSEERS violations. NSEERS served as a clear example of discriminatory and arbitrary racial profiling and we call for its full termination.

These are but a few of the important concerns you will hear about today from various witness testimony and organizations submitting statements. We look forward to working with members and staff of the House Judiciary Committee to ensure that 2013 will serve as a year of meaningful and fair immigration reform, and we thank you for your efforts.

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February 5, 2013

House Committee on the Judiciary

Hearing On: "America's Immigration System: Opportunities for Legal Immigration and Enforcement of Laws against Illegal Immigration"

On behalf of the Asian American Center for Advancing Justice (Advancing Justice), a leading non-profit, non-partisan affiliation representing the Asian American and Pacific Islander community on issues of the equality and civil and human rights, we write in conjunction with today's House Committee on the Judiciary hearing: "America's Immigration System: Opportunities for Legal Immigration and Enforcement of Laws against Illegal Immigration." We have extensive experience providing free immigration legal services including to detainees facing deportation. The members of Advancing Justice are the Asian Law Caucus in San Francisco, the Asian American Justice Center in Washington, D.C., the Asian American Institute in Chicago, and the Asian Pacific American Legal Center in Los Angeles.

We commend the leadership of both parties in Congress for addressing our broken immigration system. In the coming months, we look forward to working with Congress in creating an immigration system that is fair, equitable, and embodies American values. Based on our decades of expertise on immigration enforcement, we believe that a comprehensive immigration reform bill should include:

- A rollback of unprecedented levels of immigration enforcement over the past decade
- Provisions to ensure family unity for long term permanent residents facing deportation
- Ensure every immigrant gets a fair day in court before being ordered deported

#### **A Decade of Enforcement**

In the past decade, we have deported more people than in the preceding century.<sup>1</sup> Expenditures on immigration enforcement have also swelled, eclipsing the budgets of all other federal law enforcement agencies combined.<sup>2</sup> The unprecedented rise in deportations has come with a parallel rise in the size of our immigration detention system. IIRIRA subjected many people to mandatory detention, meaning that immigration judges do not have the authority to release them from detention or place them in alternatives to detention, even if they are determined not to be a danger to the community or a flight risk. Currently, there over 32,000 people in immigration detention, nearly a 1700% increase from 1986.<sup>3</sup> More than half of those in immigration detention have never been convicted of a crime.<sup>4</sup> In 2009, a Department of Homeland Security

<sup>1</sup> *A Decade of Rising Immigration Enforcement*, IMMIGRATION POLICY CENTER—AMERICAN IMMIGRATION COUNCIL at n.2 (Jan. 2013), <http://www.immigrationpolicy.org/sites/default/files/docs/enforcementinfactsheet.pdf>.

<sup>2</sup> *Immigration Enforcement in the United States*, MIGRATION POLICY INSTITUTE at 12 (Jan. 2013), <http://www.migrationpolicy.org/pubs/pillars-report/ibric.pdf>.

<sup>3</sup> *The Math of Immigration Detention: Runaway Costs for Immigration Detention Do Not Add Up to Sensible Policies*, NATIONAL IMMIGRATION FORUM, (Aug. 2012) <http://www.immigrationforum.org/images/uploads/MathofImmigrationDetention.pdf>.

<sup>4</sup> Donald Kerwin and Serena Yi-Ying Lin, *Immigrant Detention: Can ICE Meet Its Legal Imperatives and Case Management Responsibilities?*, MIGRATION POLICY INSTITUTE (Sept. 2009).

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Member/Institute, Asian American Institute in Chicago, Asian American Justice Center in Washington, D.C., and Asian Pacific American Legal Center in Atlanta

report found that only 11% of detainees had committed a violent crime and the majority of detainees posed no threat to the general public.<sup>5</sup> The immigration detention system is a massive waste of taxpayer dollars, costing \$164 per day to house a detainee, or \$2 billion per year.<sup>6</sup>

The growth of our detention and deportation system also has been fueled by the Secure Communities Program. Launched in 2008, this program shares fingerprints between local police and ICE at the point of arrest. Although the program's purpose was to identify and deport individuals with serious or violent felony convictions, about 7 out of 10 individuals deported either do not have criminal convictions or were convicted of lesser offenses.

#### **Immigration Enforcement Separating Families**

Over 204,000 people deported between 2010 and 2012 left behind U.S. citizen children.<sup>7</sup> In the decade following IIRIRA, 217,068 people lost an immediate permanent resident family member to deportation.<sup>8</sup> Over 5,000 children have been placed in foster care because of the deportation of their parents.<sup>9</sup> Estimates are that an additional 15,000 children will enter the foster care system in the next five years because of deportations, at a cost of \$26,000 per child per year.<sup>10</sup> Studies have shown high rates of depression and post-traumatic stress disorder among children who lost a parent to deportation.<sup>11</sup>

#### **Deportations of Asian-Pacific Islanders**

Asian-Pacific Islander communities are disproportionately impacted by IIRIRA. One and a half million refugees from Cambodia, Vietnam, and Laos came to the United States as refugees during the 1980s. Their children were very young when they arrived and grew up as Americans. Refugees face a number of hurdles in the United States, including being resettled in neighborhoods with high crime and unemployment rates, language barriers, and mental health needs stemming from the war.

Adjustment was particularly difficult for Cambodian refugees who fled a genocide in which one third of the country was killed. Ninety-nine percent of Cambodian refugees faced starvation, 90 percent lost a close relative in the genocide, and 70 percent continue to suffer from depression.<sup>12</sup>

<http://www.migrationpolicy.org/pubs/detentionreportSept1009.pdf> (reporting that 58% of the detainees held on January 25, 2009 did not have criminal convictions).

<sup>5</sup> Dora Schiro, *Immigration Detention Overview and Recommendations*, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT 612 (Oct. 2009).

<sup>6</sup> <http://www.ice.dhs.gov/docId/abc06060/ices06pp/pdffree-detention-rl.pdf>.

<sup>7</sup> NATIONAL IMMIGRATION FORUM, *supra* note 3, at 2.

<sup>8</sup> Seth Wessler, *Nearly 200K Depressions of Parents of U.S. Citizens in Just Over Two Years*, COLORLINES: NEWS FOR ACTION (Dec. 17, 2012), [http://colorlines.com/archives/2012/12/us\\_deports\\_more\\_than\\_200k\\_parents.html](http://colorlines.com/archives/2012/12/us_deports_more_than_200k_parents.html).

<sup>9</sup> *In the Child's Best Interest: The Consequences of Losing a Lawful Immigrant Parent to Deportation*, INTERNATIONAL HUMAN RIGHTS LAW CLINIC, EARL WARREN INSTITUTE ON RACE, ETHNICITY AND DIVERSITY, AND IMMIGRATION LAW CLINIC (March 2010), [http://www.law.berkeley.edu/files/Human\\_Rights\\_report.pdf](http://www.law.berkeley.edu/files/Human_Rights_report.pdf).

<sup>10</sup> *Shattered Families: The Perilous Intersection of Immigration Enforcement and the Child Welfare System*, APPLIED RESEARCH CENTER: RACIAL JUSTICE THROUGH MEDIA, RESEARCH AND ACTIVISM (Nov. 2011), <http://arc.org/shatteredfamilies>.

<sup>11</sup> *How Today's Immigration Enforcement Policies Impact Children, Families, and Communities*, CENTER FOR AMERICAN PROGRESS (Aug. 20, 2012), <http://www.americanprogress.org/issues/immigration/report/2012/08/20/27082/how-todays-immigration-enforcement-policies-impact-children-families-and-communities/>.

<sup>12</sup> Urban Institute, *Paying the Price: Impact of Immigration Raids on America's Children*, THE NATIONAL COUNCIL OF LA RAZA (2007), [http://www.urban.org/UploadedPDF/411566\\_immigration\\_raids.pdf](http://www.urban.org/UploadedPDF/411566_immigration_raids.pdf).

<sup>13</sup> Grant N. Marshall et al., *Mental Health of Cambodian Refugees 2 Decades After Resettlement in the United States*, 294(5) JAMA 571 (2005); J. Kröll et al., *Depression and posttraumatic stress disorder in Southeast Asian refugees*, 146(12) AM J. PSYCHIATRY 1592 (1989).

Faced with these difficulties, many of the younger refugees who had grown up in the United States turned to gangs as surrogate families.

Today, Southeast Asians and Pacific-Islanders are deported at a rate three times higher than other immigrants.<sup>13</sup> Many are deported to countries in which they have never set foot. Under IIRIRA, immigration judges are not allowed to consider their rehabilitation, hardship to children, or lack of ties to their home countries. Upon deportation, deportees face high levels of homelessness, depression, and suicide due to difficulties in acclimating to a foreign country and separation from family.

Immigrants who have rehabilitated and become contributing members of society should be given an opportunity to remain with their families. For example, Som Narith was born in a refugee camp in Thailand after his family fled the genocide in Cambodia.<sup>14</sup> He immigrated to the United States in the 1980s when he was two years old. In 1997, as a teenager, he was convicted of burglary. After serving several years in prison, he trained as a welder, married a United States citizen, and had two children. In 2011, ICE officers arrested him at home even though he had no other criminal history and deported him to Cambodia. He is barred for life from returning to the United States even to visit his wife and children.<sup>15</sup>

#### **Restore A Fair Day in Court**

IIRIRA stripped judges in many cases from considering hardship to family members and rehabilitation. Judges are required to order deportations without the ability to consider any positive equities. An example of one of these cases is that of Mr. Robert Lucena.<sup>16</sup>

Mr. Robert Lucena, a native of the Philippines, became a Lawful Permanent Resident in the 1960s and after voluntarily enlisting, he honorably served in the U.S. Marine Corps during the Vietnam War. Like many veterans, Mr. Lucena developed substance abuse issues after his service. His conviction for possession of three vials of methamphetamine stripped the judge of authority to consider his service, rehabilitation, marriage to a U.S. citizen, U.S. citizen children, or lengthy residence. Mr. Lucena's situation was similar to that presented in *Padilla v. Kentucky*, 130 S.Ct 1473 (2010). There, Mr. Padilla, a long term resident and Vietnam veteran, was being deported due to ineffective assistance by his criminal defense counsel in advising him on the immigration consequences of his plea. However, unlike Mr. Padilla, Mr. Lucena was unable to appeal his case to the Supreme Court and was ordered removed.

As a result, long term permanent residents are deported daily for misdemeanor convictions or decades old convictions without receiving a fair day in court. Immigration Judges must be given the power to grant a second chance to immigrants after considering their criminal convictions as well as their rehabilitation, family ties, and length of time in the United States. In a country that values second chances, immigrants should not be judged based solely on their worst acts. Thank you.

<sup>13</sup> Office of Immigration Statistics, *2010 Yearbook of Immigration Statistics*, U.S. DEPARTMENT OF HOMELAND SECURITY (2010).

<sup>14</sup> Names and identifying details have been changed to protect the confidentiality of clients.

<sup>15</sup> 8 U.S.C. § 1182(a)(9)(A)(ii).

<sup>16</sup> Names and identifying details have been changed to protect the confidentiality of clients.



## Franciscan Action Network

Transforming the World in the Spirit of St. Francis and St. Clare

3025 4<sup>th</sup> Street, N.E. • Washington, DC 20017 • 202-527-7975 • 1-888-364-3888 (toll free) • 202-527-7976 (fax)

### FAN STATEMENT ON FAMILY UNITY

Franciscan Action Network strongly supports the position of the US Conference of Catholic Bishops and the Interfaith Immigration Coalition that family unification is an essential component of common sense, humane immigration reform. Families are the basic unity of communities, and thus of a strong United States society.

Many of our members have witnessed the devastating impact that family separation, through detention and deportation, have had on immigrant families. Backlogs at USCIS and limited number of visas force family members to make a terrible choice between being separated for an extended period of time, stretching into many years, or illegally entering the country. Families being torn apart will not fix our immigration system.

We support changes which would expedite family reunification, including increasing per country caps to 15 per cent to reduce long waiting times, and eliminating the cap on number of family visas available. Family based visas are not in competition with skilled worker visas. Increase the number of worker visas rather than jeopardize a family based system.

Immigration reform must be fair and compassionate. A country has the right to protect its borders, but we urge members of Congress to acknowledge the fact that our southern border is more secure than it has ever been, with as much as \$150 billion spent in the past ten years on border enforcement. For details on enforcement, we refer members of Congress to the 2013 report of the Migration Policy Institute, "Immigration Enforcement in the United States: The Rise of a Formidable Machinery."

We are encouraged by work underway in the Congress to finally construct a workable, just and humane immigration system. It is critical that immigration reform does not punish families, but rather honors the values of hard work, perseverance and family unity.

Sister Marie Lucey, OSF  
Director of Advocacy  
Franciscan Action Network



**U.S. Jesuit Conference: Family Unity Must be Prioritized in Immigration Reform Bill**

"The U.S. Jesuit Conference commends Congress and the Obama Administration on making immigration reform a priority. We urge elected officials to move from the rhetoric of 'America as a land of family values' to the reality of a nation that enacts just immigration laws that protect and reunite families. The social and economic costs of separating children from their parents and incarcerating caregivers and wage earners grow higher each year. We, as Jesuits, because of our commitment to educating the children of migrants in our schools, serving migrant communities in our parishes, and offering deported men, women and children food and shelter on the border, see firsthand the costs of our current immigration laws. Therefore, the Jesuit Conference urges Congress to right size its family visa allocation and abolish 3 and 10 year bars which prolong family reunification and destroy familial bonds."

- Rev. Thomas P. Greene, SJ, Secretary for Social and International Ministries, Jesuit Conference of the United States

**U.S. Jesuit Network Welcomes Bi-Partisan Action for Immigration Reform, Cautions Congress to Define "Border Security" in Way that Protects Human Dignity of Migrants**

The U.S. Jesuit Conference, the Jesuit Refugee Service/USA and the Kino Border Initiative welcome the framework for comprehensive immigration reform released yesterday by a bi-partisan group of Senators. Likewise, we were encouraged by President Obama's remarks in Las Vegas, Nevada today calling for a "commonsense" approach to swiftly address an "out-of-date and badly broken immigration system."

Through our ministries, on a daily basis we witness the tragic consequences of our nation's flawed and outdated immigration laws and policies. We can and must do better. As our elected officials attempt to craft a viable immigration system, we urge them to place family unity, human dignity, transparency and accountability at the center of their debates. Very Rev. Thomas H. Smolich, S.J., President of the Jesuit Conference of the United States stressed, "We assess each immigration policy proposal by whether it adheres to the Catholic and American value of promoting and affirming human dignity." As was established by the Justice for Immigrants campaign of the U.S. Conference of Catholic Bishops, and reiterated by the U.S. Jesuit Provincials in their joint letter to Congress in June 2010, a comprehensive and humane approach to immigration reform must:

- Establish a pathway to citizenship that ensures that undocumented immigrants have access to full rights;
- Expedite family reunification and emphasize family unity for all immigrants;
- Restore due process, accountability, and transparency, particularly in the context of detention and deportation processes to foster humane enforcement of our immigration policies;
- Include policies that address the root causes of migration from developing countries; and

- Create a legal employment structure for future workers that protects both migrants and the U.S. citizen labor force.

While we are encouraged by the bipartisan tone of yesterday's release and its call for a pathway to citizenship for undocumented individuals, we are concerned that earned legalization in the plan is contingent upon a "secure border." We caution that the concept of achieving an impervious border *before* implementing legalization will leave millions of lives in limbo and prolong indefinitely the irregular status of our undocumented brothers and sisters. A genuine understanding of the realities faced by border communities will yield the best policy. We contend that our borders are best secured and our communities best kept safe by humane, transparent, and accountable practices which foster trust between border communities and law enforcement entities. Said Rev. Sean Carroll, S.J., Executive Director of the bi-national Kino Border Initiative in Nogales, Arizona, "Law enforcement agencies like CBP and ICE must take local community input into account for true security and respect for human rights to become a reality along the U.S./Mexico border."

We look forward to working with lawmakers as they develop legislation that meets the need for comprehensive and humane immigration reform.

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*A National Catholic Social Justice Lobby*

### **Statement on Family Reunification and Family-Based Visas**

*Sister Simone Campbell, NETWORK Executive Director*

*Statement for the Congressional Record relating to the  
House Judiciary Committee Hearing on Tuesday, February 5, 2013*

NETWORK, A National Catholic Social Justice Lobby, has long advocated for commonsense, humane immigration reform because the current shattered system does not reflect the compassion of our nation or Gospel values. Catholic Social Teaching and Scripture teach us that each person has a right to be treated with dignity, and that any system that is deliberately cruel or inhumane needs to change.

One of the cruelest aspects of our immigration system is that human suffering results from an inability to foster family unity. Unified families bring stability to individual households while they strengthen neighborhoods and communities. Family members encourage one another to learn English, create stable housing, find gainful employment, etc.

Family-based visas are a critical component of a fair system, and any attempt to lower the number of these visas in order to increase those that are employment-based must be roundly defeated. Instead, the employment issue should be addressed by simply increasing the overall number of visas available to workers.

Limiting family-based visas will not erase the natural, human longing of family members to be together. Instead, it will encourage risky, illegal activities so that children can be with their parents and spouses with one another.

Our nation and neighborhoods are healthier and stronger when building blocks such as family unity are promoted. We call on Congress to maintain or increase the numbers of family-based visas and to quickly address the backlog of applications that keep families apart.

**Church World Service statement for the Congressional Record pertaining to the  
House Judiciary Committee Hearing on Tuesday, February 5<sup>th</sup>, 2013**

As a 67 year old humanitarian organization, Church World Service welcomes newcomers by helping them integrate into their new communities. Our member denominations and refugee resettlement offices know first-hand the impact that our broken immigration system has had on communities. It is from this lens that we approach immigration policy issues, including today's hearing, "America's Immigration System: Opportunities for Legal Immigration and Enforcement of Laws Against Illegal Immigration."

For decades, the United States has increased border and interior enforcement efforts. Last year alone, the U.S. spent more than \$18 billion on immigration enforcement, more than all other federal law enforcement agencies combined.<sup>1</sup> However, border militarization and fence construction, workplace and home invasion raids, utilizing local police to enforce immigration laws, and inhumane detention, coupled with congress's failure to enact real solutions, have only further damaged an already broken system.

To truly fix the immigration system, we must recognize and respond to the reasons why this country needs immigrants, and the reasons why people want to immigrate to the United States. There are two key factors that benefit the United States and simultaneously improve the lives of immigrants: family unity and economic opportunity. These are inseparable and co-joined factors that cannot exist without one another.

Immigrant-owned companies contribute more than \$775 billion dollars annually to U.S. gross domestic product, creating jobs that are essential to economic growth.<sup>2</sup> Family unity is integral to the economic contribution of immigrants, and also key to the function of our immigration system. When families are separated by lengthy visa backlogs, bars to re-entry, and no option to adjust their status, our immigration system, by failing to function in a timely way, incentivizes illegal entry. What mother or father would not go to the ends of the earth – or in this case cross a border – to reunite with their children? Any immigration system that ignores the deep, God-given desire to be united with family renders itself ineffective.

Our current visa system only allows U.S. citizens to sponsor their spouse, children, parents, and siblings; and Lawful Permanent Residents (LPRs) can only sponsor their spouse and children. In addition, visa backlogs can be as long as seven years for a spouse or minor child of LPRs, and as long as 27 years for a sibling of a U.S. citizen. Under these constraints, the notion of 'chain migration' is a myth. CWS opposes any attempt to reduce family visas or put them in competition with other visas.

Measures that prevent family unity slow and clog the immigration system and negatively impact the economy. In contrast, family unity spurs integration, as families provide strong foundations for learning English, purchasing a home, pursuing job opportunities, starting a business, preparing children for college, and contributing to communities. When families are together, the money they earn fuels the U.S. economy through taxes, investments, and the purchasing of goods and services.

CWS is committed to working with all members of the House and Senate to enact immigration reform that will keep families together and provide a pathway to citizenship for undocumented immigrants. Such reform would mark real progress. We need to make our immigration system work better for our economy and for the fabric of our communities – families. We urge all members of the House Judiciary Committee to strive toward this goal.

<sup>1</sup> *Immigration Enforcement in the United States: The Rise of a Formidable Machinery*. The Migration Policy Institute.

<<http://www.migrationpolicy.org/pubs/enforcementpillars.pdf>>

<sup>2</sup> *Open for Business: The Partnership for a New American Economy*.  
<<http://www.renewoureconomy.org/sites/all/themes/prae/openforbusiness.pdf>>



**General Board of Church and Society of The United Methodist Church  
Statement for the Congressional Record for the  
House Judiciary Committee Hearing  
Tuesday, February 5<sup>th</sup>, 2013**

The General Board of Church and Society of The United Methodist Church has long advocated for just and humane immigration reform that provides a pathway to full citizenship for undocumented immigrants and reunifies families separated by migration. United Methodists have witnessed the brokenness of the current immigration system firsthand. United Methodists serve immigrant communities through such ministries as Justice for Our Neighbors, which provides free legal counsel for low-income immigrants. Many United Methodist churches are located in immigrant communities and led by immigrants. Therefore, we advocate for policies that will uphold the basic dignity of all immigrants and protect their civil and human rights.

The United Methodist Church believes that "at the center of Christian faithfulness to Scripture is the call we have been given to love and welcome the sojourner...to refuse to welcome migrants to this country and to stand by in silence while families are separated, individual freedoms are ignored, and the migrant community in the United States is demonized...is complicity to sin." ("Welcoming the Migrant to the U.S.", 2008 *Book of Resolutions*)

The time for humane reform is now. For far too long, the United States has continually increased border and interior enforcement efforts. Last year alone, the U.S. spent more than \$18 billion on immigration enforcement, more than all other federal law enforcement agencies combined.<sup>3</sup> After billions of dollars spent on enforcement, workplace and home invasion raids that resulted in more than a million immigrants deported during the Obama Administration alone, including 100,000 parents of U.S. citizen children, utilizing local police as immigration enforcement officials, and inhumane and indefinite detention, it is indeed far past time for Congress to enact legislative reform that protects the rights of immigrants and preserves the integrity of immigrant families.

What is true throughout Scripture remains true today: families are the cornerstone of a strong and growing society. Family stability strengthen individuals, neighborhoods, and entire communities. It is through families that individuals learn basic skills to flourish in life, and importantly, that they gain their values and morality. Family unity is the primary way individuals integrate into the larger society. Families provide strong foundations for learning English, purchasing a home, pursuing job opportunities, starting a business, preparing children for college, and contributing to communities. When families are together, the money they earn fuels the U.S. economy through taxes, investments, and the purchasing of goods and services. Therefore, any reform to the immigration system must make family unity its cornerstone.

Policies that prevent family unity only further damage the immigration system and negatively impact the economy. Under the current visa system, only U.S. citizens are allowed to sponsor their spouse, children, parents, and siblings; and Lawful Permanent Residents (LPRs) can only

<sup>3</sup> *Immigration Enforcement in the United States: The Rise of a Formidable Machinery*. The Migration Policy Institute. <<http://www.migrationpolicy.org/pubs/enforcementpillars.pdf>>

sponsor their spouse and children. In addition, visa backlogs can be as long as seven years for a spouse or minor child of LPRs, and as long as 27 years for a sibling of a U.S. citizen. Under these constraints, the notion of 'chain migration' is a myth. Therefore, we vigorously oppose any attempt to reduce family visas or put them in competition with other types of visas.

United Methodists across the country stand ready to work with all members of the House and Senate to enact immigration reform that will keep families together and provide a pathway to citizenship for undocumented immigrants. We need reform that is humane and effective and we urge all members of the House Judiciary Committee to strive toward this goal.

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**TESTIMONY ON OF ALEXANDER D. BAUMGARTEN AND KATIE CONWAY ON  
BEHALF OF THE EPISCOPAL CHURCH<sup>1</sup>**

**FEBRUARY 5, 2013**

We thank Representative Gowdy, Chairman of the House Judiciary Subcommittee on Immigration and Border Security, and Ranking Member Lofgren for the opportunity to submit this testimony. We welcome this timely hearing, "America's Immigration System: Opportunities for Legal Immigration and Enforcement of Laws against Illegal Immigration" and wish to express our support for maintaining the family visa system as a cornerstone of our legal immigration system.

The Episcopal Church's highest governing body, the General Convention, has passed multiple resolutions affirming the rights of all families to reunify without undue delay, including the families of same-sex partners and spouses. These calls are rooted in our understanding of the Christian imperative to "welcome the stranger," and the experience of our Church's decades of work with migrant communities. Keeping families apart through per-country caps, redistributing family visas to the employment system, or failing to recognize the immigration claims of same-sex partners harms the U.S. economy, fractures our communities, and denies the socio-economic necessity of family. The family immigration system and the employment system should be viewed as complimentary pieces of a holistic immigration system rather than as separate systems in competition with one another.

We believe that families create healthy individuals and serve as the foundation for strong communities. Family members help one another to other integrate, pursue job opportunities, start their own businesses, and contribute economically, socially and spiritually to our communities. Under current immigration law, however, millions of families are forced to wait decades to reunify and some even face permanent separation. This forces families to make impossible choices between our immigration laws and the people they love.

Our Church recognizes the importance of adhering to our nation's laws, but we believe we must work change laws if they do not respect the dignity of human beings or respond to the needs of communities. This call to right relationship within human communities is a cornerstone of the Judeo-Christian scriptural and ethical tradition, and finds expression for Episcopalians in the promise each makes at baptism to "strive for justice and peace among all people and respect the dignity of every human being." Our immigration system must be transformed to into a just and humane system that discerns between those who enter illegally to do us harm and those who enter because our system cannot provide them with a clear and timely path to family.

<sup>1</sup> Alexander D. Baumgarten is the Director of Government Relations, and Katie Conway is the Immigration and Refugee Policy Analyst for the Episcopal Church, a multinational religious denomination based in the United States with members in 15 other sovereign.

reunification or legal employment. Destructive enforcement programs like Secure Communities should be terminated and the immigrant workers upon whom much of our economy depends should be allowed to sponsor their families.

Thank you for carrying the costly burden of public service, and for the opportunity to submit these views to the Subcommittee.

Respectfully submitted,  
Alexander D. Baumgarten and Katie Conway

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**Statement in Support of Family-Based Immigration**  
**National Advocacy Center of the Sisters of the Good Shepherd**  
**Sister Gayle Lwanga, RGS**  
**February 5, 2013**

The Sisters of the Good Shepherd form one international congregation ministering in 71 countries on five continents. In the United States, the Sisters are spread from east to west in 23 states and also are in Canada. Founded over two hundred years ago in Angers, France, by St. Mary Euphrasia who believed that God is like a compassionate Shepherd whose love for all is boundless, Good Shepherd Sisters respond to a call to reach out to everyone and help awaken in all peoples a sense of each one's unique worth and inestimable value.

As a religious community we believe the unique worth of each individual extends to all immigrants, both documented and undocumented. Seeking to build a more just and compassionate society, we urge members of Congress to give priority to family unity when they are creating immigration policy.

The worse human suffering is being separated from the person you love. This suffering is even more so when it is separation from your mother or father, your daughter or son, your wife or husband

The Catholic Church has consistently taught the importance and the sacredness of the family. Without the presence of a secure and loving family, we cannot be emotionally nourished and develop into loving and socially responsible adults.

Please create legislation that assures that families will not be separated. Also, enact legislation that will ensure that the hundreds of immigrant families who have been separated for many years will be quickly reunited.

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**Leadership Conference of Women Religious Statement on  
Importance of Family Unity in Immigration Reform  
Sister Janet Mock, CSJ, Executive Director**

As women of faith we, the members of the Leadership Conference of Women Religious (LCWR), take seriously the gospel call to welcome the stranger and care for those in need. As Catholic sisters we are committed to the precepts of Catholic Social Teaching rooted in the Catholic tradition that remind us that the dignity of the person is at the core of our moral vision of society; that how we organize our society affects human dignity directly; and that any system that is deliberately cruel or inhumane needs to change. Because of these beliefs, at our 2012 national assembly, LCWR, "called on Congress to pass comprehensive immigration reform that includes the reunification of families and a path to citizenship for undocumented immigrants living in the United States."

Catholic sisters began coming to these shores 286 years ago as immigrants to serve immigrant populations. To this day they continue to minister to these aspiring citizens in schools and hospitals, in the fields and in the cities. They see the devastating effects of the brokenness of the current immigration system every day. They share the pain of mothers separated from their children and fathers who have risked their lives for love of their families.

The Senate framework and the principles laid out in the President's speech in Las Vegas provide hope to our immigrant brothers and sisters and promise that the values that are the bedrock of our national identity will flourish—family unity, equal opportunity, due process, and respect for the dignity of all God's children.

Today our broken immigration system too often splits families, separates spouses, and keeps parents from their children. Our nation needs, and our people deserve, immigration reform that reflects the paramount importance and socio-economic necessity of family unity; reform that does not pit one group of aspiring Americans against another. We need not sacrifice family unity to meet the needs of business and workers. We can and must protect families' and workers' rights.

Families are the very building blocks of our society. If given access to what is needed to live in healthy ways, it is in our families that we first experience the love of God. It is in our families that we learn to care for one another. It is in our families that we come to know that each of us can and must contribute to the common good and work with our neighbors to build a community where all can flourish.

We have the opportunity to honor parents who have sacrificed their own safety and risked their lives for the future of their children. We have the opportunity to reunite mothers with their sons

and fathers with their daughters. If we fail to act we not only place the well-being of our mothers and fathers and children at risk, we threaten the heart and soul of our nation.

We look forward to working with lawmakers as they develop legislation that expedites the reunification of families, preserves family-based visa categories, reduces current backlogs, and provides humanitarian consideration for families.

LCWR is an association of leaders of congregations of Catholic sisters in the United States. The conference has nearly 1500 members, who represent more than 80 percent of the 57,000 women religious in the United States. Founded in 1956, the conference assists its members to collaboratively carry out their service of leadership to further the mission of the Gospel in today's world.



**LIRS Statement for Hearing: "America's Immigration System: Opportunities for Legal Immigration and Enforcement of Laws Against Illegal Immigration"**

**House Judiciary Committee**

**February 5, 2013**

Lutheran Immigration and Refugee Service (LIRS), the national agency established by Lutheran churches in the United States to serve uprooted people, is pleased by Congressional and Administrative efforts to draft and enact comprehensive immigration reform. People of faith have long called for an immigration system that prioritizes family unity and is grounded in humanitarian principles.

As this committee and others begin work on immigration reform legislation, LIRS offers our support for legislation adhering to the following five principles for reform:

- Providing an earned pathway to lawful permanent residency and eventual citizenship for undocumented immigrants and their families.
- Ensuring the humane and just enforcement of U.S. immigration laws, specifically by reducing the use of immigration detention and expanding the use of community support programs for immigrants who do not need to be detained.
- Protecting families from separation and ensure an adequate supply of visas for families seeking to reunite.
- Providing adequate resources and protections to ensure the successful integration of refugees, asylees, survivors of torture and trafficking, unaccompanied minors, and other vulnerable migrants.
- Ensuring the protection of U.S. citizen and migrant workers.

**Family-Based Immigration System**

LIRS strongly believes that a reformed immigration system must improve family unity. Family is the cornerstone of our faith and the grounding structure of our society. Comprehensive immigration reform must uphold the importance of families to our congregations and communities by including meaningful reforms to the family-based immigration system.

LIRS and Lutherans all over America wholeheartedly agree on the need for an improvement of the immigration process for families. The current family visa system forces too many families to endure years of separation from their loved ones. For some families who filed a visa petition before June 1, 1989, backlogs have forced them to wait over 23 years to begin the application process.<sup>5</sup> They will finally be able to do so in February 2013. Any reform of our immigration system must reduce these backlogs and improve mechanisms for family members to reunite with relatives in the United States.

<sup>5</sup> *Visa Bulletin*, Department of State, [http://travel.state.gov/vsa/bulletin/bulletin\\_5856.html](http://travel.state.gov/vsa/bulletin/bulletin_5856.html) (February 2013).



LIRS and Lutherans all across this country will be lifting up our voices and engaging lawmakers from both parties to answer the president's call for fair and compassionate immigration reform that is both business and family friendly," said LIRS President and CEO Linda Hartke.

#### **Immigration Enforcement**

As Congress has deliberated on how to reform America's immigration laws for decades, enforcement of current laws has exponentially expanded. When adjusted for inflation, the government spends 15 times as much on immigration enforcement today (\$17.9 billion) as it did in 1986 (\$1.2 billion).<sup>6</sup>

Since the last serious debate on immigration reform in 2007, the budget for Immigration and Customs Enforcement's (ICE) detention and removal operations has grown from \$1.984 billion to \$2.75 billion.<sup>7</sup> In fiscal year (FY) 2011, ICE detained an all-time high number of persons- 429,000.<sup>8</sup> In FY 2012, 409,849 individuals were removed by ICE's Office of Enforcement and Removal Operations<sup>9</sup>.

The numbers bear witness to the fact that enforcement of our immigration laws is happening at an unprecedented and incredible pace. Through LIRS's programmatic work, we have witnessed firsthand the detrimental effects immigration enforcement measures, such as immigration detention, have on individuals, families, and communities.

Isatu Jollah, grew up in Sierra Leone during the country's civil war.<sup>11</sup> When she was twelve years old, Isatu was raped by rebel soldiers and separated from her mother. Isatu later suffered female genital mutilation (FGM) and was severely punished when she refused to perform the practice on other young women. Isatu fled to the United States where upon expressing her intention to apply for asylum at the airport she was detained in York County Prison (PA). While in detention, Isatu was denied medical care for complications relating to FGM. When post-traumatic stress disorder caused her attacks of anxiety she was isolated in solitary confinement.

Despite being an expensive and inhumane way to ensure appearance at immigration court proceedings, the growth of immigration detention has been steep and continual. The United States currently spends approximately 24% more money on immigration enforcement activities than on all other federal law enforcement programs combined.<sup>12</sup>

<sup>6</sup> *Immigration Enforcement in the United States: The Rise of a Formidable Machinery*, Migration Policy Institute, <http://www.migrationpolicy.org/pubs/enforcementpillars.pdf> (January 2013).

<sup>7</sup> *Unlocking Liberty: A Way Forward for U.S. Immigration Detention Policy*, Lutheran Immigration and Refugee Service [www.lirs.org/dignity](http://www.lirs.org/dignity) (October 2011).

<sup>8</sup> *Consolidated Appropriations Act of 2012*, PL 122-74 <http://www.gpo.gov/fdsys/pkg/PLAW-112pub74/html/PLAW-112pub74.htm> (Dec. 23, 2011).

<sup>9</sup> *Immigration Enforcement Actions: 2011*, Office of Immigration Statistics, Policy Directorate, [http://www.dhs.gov/sites/default/files/publications/immigration-statistics/enforcement\\_ar\\_2011.pdf](http://www.dhs.gov/sites/default/files/publications/immigration-statistics/enforcement_ar_2011.pdf) (Sept. 2012)

<sup>10</sup> *FY 2012: ICE announces year-end removal numbers, highlights focus on key priorities and issues new national detainee guidance to further focus resources*, Immigration and Customs Enforcement, <http://www.ice.gov/news/releases/1212/121221washingtondc2.htm> (Dec. 2012).

<sup>11</sup> *Broken Promises: Seeking Political Asylum in America*, Ladies Home Journal, <http://www.lhjc.com/health/news/seeking-political-asylum-in-america/?page=1> (Feb. 2010).

<sup>12</sup> *Immigration Enforcement in the United States: The Rise of a Formidable Machinery*, Migration Policy Institute <http://www.migrationpolicy.org/pubs/enforcementpillars.pdf> (January 2013).

To detain a woman like Isatu for one day costs U.S. taxpayers an average of \$164.<sup>13</sup> LIRS supports increased use of alternatives to detention, which range in cost from a few cents a day to an average of \$22 a day and allow migrants to reunite with family members and contribute to their communities while undergoing immigration proceedings.<sup>14</sup> Isatu was eventually released from detention with a tracking device as part of an alternatives to detention program. Appearance rates in immigration proceedings for those released on alternatives to detention average over 90%, making these options a practical, humane, and economical alternative to detention.<sup>15</sup> Any reform of our immigration system must include protections against arbitrary detention and safeguards to ensure enforcement is carried out in a fair, humane, and economically sound manner.

LIRS is nationally recognized for its leadership advocating on behalf of refugees, asylum seekers, unaccompanied children, immigrants in detention, families fractured by migration and other vulnerable populations, and for providing services to migrants through over 60 grassroots legal and social service partners across the United States.

If you have any question about this statement, please contact Brittney Nystrom, Director for Advocacy, at (202) 626-7943 or via email at [bnystrom@lirs.org](mailto:bnystrom@lirs.org).

#### Additional LIRS Resources

- The January 29, 2013 press release on President Obama's speech outlining a vision for immigration reform may be read here: [www.bit.ly/VxQHfYW](http://www.bit.ly/VxQHfYW)
- The January 28, 2013 press release on the release of the bipartisan principles for immigration reform in the Senate may be read here: [www.bit.ly/WbPPN2](http://www.bit.ly/WbPPN2)
- LIRS's FAQ's on the Family Immigration System may be read here: [www.bit.ly/11Jqt2Z](http://www.bit.ly/11Jqt2Z)
- The December 15, 2011 press release expressing concerns with increased FY 2012 immigration detention spending may be read here: [www.bit.ly/XogHtA](http://www.bit.ly/XogHtA)
- The October 2011 report, *Unlocking Liberty: A Way Forward for U.S. Immigration Detention Policy*, may be read here: [www.bit.ly/VwvNtLl](http://www.bit.ly/VwvNtLl)

<sup>13</sup> *The Math of Immigration Detention*, National Immigration Forum, <http://www.immigrationforum.org/images/uploads/MathofImmigrationDetention.pdf> (August 2012).

<sup>14</sup> *Unlocking Liberty: A Way Forward for U.S. Immigration Detention Policy*, Lutheran Immigration and Refugee Service [www.lirs.org/4gaur](http://www.lirs.org/4gaur) (October 2011).

<sup>15</sup> *Ibid.*

**Statement in Support of Family Based Immigration  
from Christian Church (Disciples of Christ) Refugee & Immigration Ministries**

The Christian Church (Disciples of Christ) is an immigrant denomination of approximately 700,000 members and 3,500 congregations. Born from a movement on the American frontier, it was founded on the principles that all are welcome at the Table of Christ, and includes a large number of congregations with first generation Americans. Throughout our history, Disciples have had specific ministries of welcome to immigrants coming to the United States and Canada, which have been carried out by congregations, regions, and general ministries.

As a denomination, we recognize that immigration has played a major role in the development of our countries and in the advancement of our economies, and we recognize the strength of the United States emerges from the diversity of its immigrants. Repeatedly, our General Assemblies have called upon Disciples members and ministries to reflect from a faith perspective and with intentionality on current immigration issues and to “advocate immigration reform legislation that is just, humane and compassionate” (resolution on “Faith and Our New Neighbors,” 2007.) This includes support at this time for immigration reform that prioritizes family unity and creates a pathway to full citizenship.

President of Disciples Home Missions, Rev. Dr. Ronald J. Degges, comments that “As Christians committed to God’s call to welcome the stranger and to promote the wholeness and well being of families, Disciples leaders and governing bodies have for years called upon our political leaders to move beyond our current system that demonizes our neighbors, divides us against one another, and devastates children by tearing apart their families. We therefore welcome an opportunity to achieve immigration reform that is not only comprehensive and bipartisan, but also consistent with our basic values of justice and compassion.”

Rev. Dr. Sharon Stanley, Director of Disciples Refugee and Immigration Ministries, agrees. “Family unity is not only a national issue, but a personal and church issue as well. In our daily work and in our congregations, we constantly encounter immigrants whose parents and children, and grandparents and spouses, have been torn apart from one another for years. Such separation causes wrenching pain, and diminishes families’ abilities to focus upon education, progress, and contributions to our society. In response, we urge Congress consider humane legislation that increases the numbers of family based visas, and insures that families long suffering from separation will be reunited.”

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**First Person: Fernanda\***  
**Mennonite Central Committee U.S. Washington Office**  
*As told to Sarah Birkebak*

Nothing like this had ever happened to me before, I thought, as seven armed immigration officials entered my home and put my hands behind my back. It was 9:00 at night when they came into my house with their large guns. They took my oldest son who was sleeping in the next room. We tried to explain that we hadn't done anything wrong, but they wouldn't listen. They just told us to be quiet and forced us to get on the bus. My 10 year old daughter was crying as they took us away and I worried what would happen to my family.

I came to the U.S. from Guatemala to escape the violence of my life there. My father was killed by guerrillas and I married my husband so that I would have protection. He was abusive to me and it was an impossible life. I knew I had to look for a place of refuge for myself and my children, so we followed my husband to the U.S. At first I didn't speak English or Spanish, only the Mayan dialect I spoke in Guatemala. My husband promised he would be a good father but it was a lie. We were stuck in a cycle of violence.

My oldest son is still in detention and my other son who is 19 was deported to Guatemala last year. I worry for my children that they will be like strangers when they are deported, that they will be persecuted because they will not know the language. It is dangerous for them in Guatemala; they will not have work or family to take care of them.

In the U.S. we found a church and they became like a family to me. While I was in detention my pastor took care of my children and introduced me to Gloria, a worker with the MCC West Coast Office which supports immigrant families in finding paths to citizenship. Gloria helped me prove that I was a victim of domestic violence and I was released from detention after three months. I am still under supervision and have to report every month to Immigration and Customs Enforcement. Gloria is helping me to get permission to work, but we are still waiting for results. As immigrants we need the help of President Obama and the people of the United States. We need to have freedom to make a life for ourselves and our families in this country. Families should never be separated with children being left to suffer without their parents.

I am not a criminal; I am a mother who is fighting for her children to give them a future. I feel like my heart is broken in two pieces because my children are separated from me. My greatest desire is to be together again with my family and for my children to continue studying in this country.

Fernanda has lived in the United States for more than 15 years. She has four children, two of whom are U.S. citizens.

*\*Name has been changed to protect identity.*

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**Written Testimony Submitted for the  
"America's Immigration System: Opportunities for Legal Immigration and Enforcement of  
Laws against Illegal Immigration"  
Hearing Before the House Judiciary Committee  
February 5, 2013**

The Religious Action Center of Reform Judaism is the legislative office of the Union for Reform Judaism, whose 900 congregations across North America encompass 1.5 million Reform Jews, and the Central Conference of American Rabbis, whose membership includes more than 2,000 Reform rabbis. The Reform Movement has long advocated for comprehensive immigration reform, inspired by the oft-repeated Biblical mandate to "welcome the stranger" and rooted in the United States' heritage as a nation of immigrants.

We have reached a point in our history where immigration reform is a legal, economic and moral imperative. Between eleven and twelve million undocumented immigrants currently live in the shadows of our society. They, like so many of our forebears, came to this country seeking better lives for themselves and their families. For many of these 12 million, America is the only home they have ever known. They contribute to our economy, our culture and our communities.

At the same time, chronic backlogs in visa distribution result in families being separated for years. While "immediate relatives" face the shortest wait for visas, those in lower preference categories are plagued by delays as long as 11 years. Unauthorized crossings at the U.S.-Mexico border have resulted in a record number of deaths in the past year alone. A comprehensive approach that balances enforcement with justice is the most realistic and humane solution to this escalating crisis. This should include, as well, full opportunities for LGBT immigrants and their families to participate in the immigration, family reunification and asylum systems.

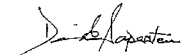
The failure to address problems within our current immigration system has created an enforcement vacuum, too often leading non-federal authorities to attempt to enforce federal immigration law. When local law enforcement agents or health care professionals are required to enforce federal immigration law, it undermines their ability to work cooperatively with their immigrant communities. Domestic safety can be undermined when so many people are unable or unwilling to work cooperatively with law enforcement agencies. In addition, there are humanitarian implications from the fact that millions of undocumented immigrants are currently living in the shadows of society where they are potential targets for victimization or unscrupulous employers. Living in fear of law enforcement, they are afraid to report crimes, from domestic violence to threats to our national security. We cannot ignore the economic, social, and human reality of these "strangers" who are, in fact, our neighbors.

As a community of immigrants and refugees with a long history of sojourning in foreign lands, American Jews have a unique responsibility to ensure that the rights of non-citizens are protected by our nation's immigration policy. Just as our mothers and fathers who came to America sought (and were often permitted) to reunite their families and resettle refugees from their lands of origin to America, today's immigrant communities deserve similar opportunities. We are inspired by the command to "love the stranger for you were strangers in the land of Egypt" (Deuteronomy 10:19), and are reminded of our own experiences moving

to America in the not so distant past. Truly "loving the stranger" means not simply providing technical frameworks and legal pathways, but also recognizing the human face of those seeking legal status – and in doing so, realizing the moral necessity of uniting and assisting families and loved ones.

We thank you again for this opportunity, and look forward to working with members of this committee and with all members of the 113<sup>th</sup> Congress to enact comprehensive immigration reform that lives up to our highest moral and American values.

Sincerely,

A handwritten signature in black ink, appearing to read "David Saperstein". The signature is fluid and cursive, with a prominent initial "D" and a long, sweeping underline.

Rabbi David Saperstein

**Rev. Linda Jaramillo, Executive Minister  
United Church of Christ  
Justice and Witness Ministries**

In today's religious and political culture, we often hear that family values are the cornerstone of a healthy society. However in these descriptions, families are portrayed in a picture that leaves little room for diversity. We do not agree with the narrow scope that defines families in only certain ways, but rather we value families in their many different configurations. If this is our cultural value, we must ask a question. Whose children and elders are important and whose families are valued? We must not limit family unity to only certain societies of former immigrants.

Keeping families together is important for each member, however it is especially crucial for children and elders. If we agree that a healthy family is one that stays together to support its children, parents seeking a better life must not be deported and forced to leave their citizen children behind. If a healthy family is one that stays together to care for its elders, we cannot accept policies that separate them from those who are charged to care for them. Intentionally keeping families apart contradicts the moral values our nation professes. If we hold family values as the cornerstone of a healthy society, we must demand that fair immigration policies safeguard options for keeping families together.

Most of us are members of immigrant families who came from countries all over the world in search of freedom and a better life for the children. Personally, I am deeply grateful for the trials that my ancestors faced some five hundred years ago as they crossed the seas in search of a better life not only for themselves, but for the generations that would follow. Today's immigrant families are no different than those of generations past. If families were valued then, they must be valued now.

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Monday, February 4, 2013

*In anticipation of the hearing being held Tuesday, February 5<sup>th</sup>, by the House Subcommittee on Immigration, Sojourners has released the following statement:*

**Immigration reform must be guided by the core values we share as a nation. Evangelical Christians and other people of faith believe that protecting the unity of the family is one of these values and should be part of any reform. Immigrants make significant contributions to our communities and our economy. Instead of pitting employment-based visas versus family-based visas, we need real immigration reform that grows our economy, strengthens our families, and provides the 11 million aspiring Americans with a road map to citizenship.**

*Sojourners' mission is to articulate the biblical call to social justice, inspiring hope and building a movement to transform individuals, communities, the church, and the world. For more information about Sojourners or Jim Wallis, President and CEO of Sojourners, please visit [www.sojourners.org](http://www.sojourners.org)*





**Written Statement of Bruce Goldstein  
President, Farmworker Justice**

**House Committee on the Judiciary  
Subcommittee on Immigration Policy and Enforcement**

**Hearing on: "America's Immigration System: Opportunities for Legal Immigration and  
Enforcement of Laws against Illegal Immigration."  
February 5, 2013**

The public debate on immigration policy vitally affects the agricultural workers who cultivate and harvest our food. More than 80% of farmworkers are immigrants. Of the approximately 2 million seasonal workers on U.S. farms and ranches, over one-half lack authorized immigration status. Farmworkers work extremely hard, often in hazardous conditions, for very low wages, and perform an essential role in bringing food to our table.

Congress should enact legislation that reforms our broken immigration system and creates a roadmap to citizenship for the 11 million aspiring Americans, including farmworkers and their family members. Immigrants who may be needed on our farms in the future must also be provided an opportunity to earn lawful permanent residency and citizenship. Granting immigration status will help ensure that workers have the economic freedom to search agricultural job markets for the best employers. Future farmworkers also should enjoy strong and equal workplace protections and conditions to ensure fair treatment and prevent discrimination. Proposals for anachronistic guestworker programs should be rejected as inconsistent with America's economic and democratic freedoms. Immigration reform should be a stepping stone toward modernizing agricultural labor practices and treating farmworkers with the respect they deserve. A roadmap to citizenship and strong and equal labor protections are key to these goals.

**Our Broken Immigration System Contributes to Poor Living and Working Conditions**

The lack of authorized immigration status of so many farmworkers contributes to their poor wages and working conditions. There are roughly 4.5 million farmworkers and family

members in the U.S. About 77% of the farm labor force is foreign-born. An estimated 50% to 75% of farmworkers are undocumented. Such marginalized workers fear joining labor unions, demanding improved job terms, or challenging illegal employment practices.

Farmworker wages are low. Many earn at or just above the minimum wage. Poverty among farmworkers is more than double that of all wage and salary employees. Few farmworkers receive any fringe benefits, such as paid sick leave or paid vacation. Decrepit, overcrowded housing is all too common. Health insurance is rarely provided by employers and few farmworkers can afford to purchase it on their own. Yet, agriculture ranks among the most hazardous occupations. Federal laws on overtime pay and collective bargaining exclude farmworkers, as do most federal occupational safety standards.

Agricultural workers experience rampant violations of employment laws, including minimum wage requirements. Frequently, farm operators hire workers through farm labor contractors, whom they claim are the sole “employers” for purposes of escaping immigration and labor laws. Undocumented workers who challenge illegal employment practices risk losing their job and breaking up their families and other dire consequences of deportation.

#### **Congress Should Provide a Roadmap to Citizenship for Undocumented Immigrants**

Congress should reform the nation’s dysfunctional immigration system. Our food system depends on at least one million undocumented workers employed on our farms and ranches. It is untenable to continue this way. Immigration reform should include a road map to immigration status and citizenship for undocumented farmworkers and their family members and for any agricultural workers needed in the future.

The opportunity to obtain legal immigration status would yield many benefits. Parents would no longer fear that the simple act of going to work or bringing children to school might result in deportation that separates them from their families. They could participate more actively in building vibrant communities. Employers could be confident that they were not violating immigration laws when hiring farmworkers.

An above-board agricultural labor relations system will lead to better working conditions, less employee turnover and higher productivity, all of which will help ensure a prosperous agricultural sector. Workers on farms and ranches could feel more empowered to speak up to obtain better wages and working conditions, to identify unsafe workplace practices, and to secure compliance with labor protections. The entire food system will benefit by responding to consumers’ increasing interest in the conditions under which their fruits and vegetables are produced.

### **The Farmworkers of the Future: An Immigration System Worthy of Our Democracy**

The people who cultivate and harvest our fruits and vegetables should not be deprived of our nation's economic and democratic freedoms. If workers from abroad are needed in the future to perform seasonal agricultural jobs for which United States workers are not available, they should be treated as immigrants who have the opportunity to earn citizenship. While some foreign workers may choose to work only seasonally and not remain permanently in the United States, that choice would be theirs. To prevent employers from displacing U.S. farmworkers and hiring vulnerable foreign workers under poor wages and working conditions, strong labor protections must be in place for both workers already in U.S. agriculture and those who come in the future.

Currently, employers may hire foreign workers on temporary visas through the H-2A temporary foreign agricultural worker program. The H-2A program does not limit the number of visas available to employers each year, but contains several important protections aimed at reducing exploitation of foreign citizens of poor countries and protecting the jobs, wages and other labor standards of U.S. farmworkers. These labor protections are rooted in the experiences of the Bracero program, which nonetheless became notorious for abuses of Mexican citizens during its twenty-two year history ending in 1964. Still, H-2A workers are excluded from the principal federal employment law for farmworkers, the Migrant and Seasonal Agricultural Worker Protection Act.

Rampant violations of workers' rights are endemic to the H-2A program because it is inherently flawed and the labor protections to overcome those flaws are inadequate. The H-2A worker is tied to an employer for an entire season, must leave the country when the job ends, and never earns the opportunity to become an immigrant or citizen. The employers determine whether a foreign citizen obtains a visa and can return in a future year. In that restricted, dependent status, H-2A workers are too fearful to challenge unfair or unlawful conduct. For this reason, many employers prefer H-2A workers over U.S. workers who may have the freedom to quit a job. Further compounding the problem, many H-2A workers must borrow large sums of money each year to pay exorbitant fees to recruiters in Mexico and elsewhere to obtain these jobs. The H-2A program should have stronger protections across the arc of the workers' experiences: from the moment the workers are recruited in the foreign country to their experience in the workplace and back home again.

The immigration policy debate has always featured demands by powerful agribusiness interests for new, exploitative guestworker programs and devastating, anti-worker changes to the H-2A program. The present debate is no exception. These proposals must be defeated.

Any new agricultural visa program, and the H-2A program, should offer farmworkers and their family members a meaningful opportunity to become immigrants and citizens. Anything less would be contrary to our values of democracy, freedom and fairness.

**A Practical, Realistic Solution is Possible**

Now is the time to move forward on immigration reform. Congress should provide a roadmap to citizenship for the 11 million aspiring Americans, including farmworkers. Farmworker Justice is committed to immigration reform that empowers farmworkers to improve their inadequate wages and working conditions. For today's and tomorrow's farmworkers, a roadmap to immigration status and citizenship, combined with strong labor protections and economic freedom, is essential to these goals. Thank you for the opportunity to submit these comments.

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**FIRST FOCUS CAMPAIGN FOR CHILDREN  
STATEMENT FOR THE RECORD**

**COMMITTEE ON THE JUDICIARY: "AMERICA'S IMMIGRATION SYSTEM:  
OPPORTUNITIES FOR LEGAL IMMIGRATION AND ENFORCEMENT OF LAWS  
AGAINST ILLEGAL IMMIGRATION"**

**February 5, 2013**

Chairman Goodlatte, Ranking Member Conyers, and Members of the House Judiciary Committee, thank you for the opportunity to submit this statement on the United States immigration system.

The First Focus Campaign for Children is a bipartisan children's advocacy organization dedicated to making children and families a priority in federal policy and budget decisions. Our organization is committed to ensuring that our nation's immigration policies promote child well-being by ensuring that families stay together unity and that all children have the opportunity to live a healthy and successful life in the United States.

Children have historically been disregarded or intentionally excluded from U.S. immigration policy decisions. Children have few special protections under current immigration law and their best interests are often not considered when making critical decisions regarding their own or a parent's ability to enter or stay in the U.S. This failure to consider children's best interests, combined with increased immigration enforcement, has had devastating results for children and their families. Current immigration policy should be reformed to include consideration and protection of children and their best interests.

**The Failure to Consider Children in Current Immigration Policy**

Although children of immigrants comprise roughly 1 in 4 of all children in the U.S. and are the fastest growing segment of the child population,<sup>1</sup> current law ignores the unique needs and rights of children and provides few protections for these mixed legal status families. In fact, a common result of current immigration law is the separation, sometimes permanent, of children from their parents as a result of deportation or detention.

The current family-based immigration system allows U.S. citizens and legal permanent residents to petition for immigrant visas for certain family members. Though the backlog for family-based immigration means families can wait as long as 20 years for a family member to receive a visa, U.S. citizen children face an even larger obstacle to

<sup>1</sup> Kanna Fortney et. al., The Urban Institute (2010), *Young Children of Immigrants: The leading edge of America's future*.  
<http://www.urban.org/publications/412203.html>.

FIRST FOCUS CAMPAIGN FOR CHILDREN STATEMENT FOR THE RECORD  
HEARING ON IMMIGRATION REFORM FEBRUARY 5, 2013

family-based immigration. A child-parent relationship is prioritized in family-based immigration, but only if the parent has legal immigration status and is petitioning on behalf of their undocumented child. A U.S. citizen child cannot file a petition for their undocumented parents to obtain lawful immigration status until the child is over 21-years-old, and thus no longer a child. This is also the case for child asylees and refugees; while adult asylees and refugees can petition for status for their spouses and children, child asylees and refugees cannot petition for status for their parents.

Additionally, undocumented parents who face deportation often cannot receive a cancellation of deportation even if that deportation would separate them from their U.S. citizen child. When seeking a cancellation of removal, an individual must prove “exceptional and extremely unusual hardship”<sup>3</sup> to a U.S. citizen spouse, parent or child. If that hardship is to children, it must be “substantially different from, or beyond that which would normally be expected from the deportation of an alien with close family members here.”<sup>3</sup> It is not enough to prove hardship to a child to stop a parent’s deportation; that hardship must be worse than it would be for any other citizen. This means that under current immigration law, children are expected and required to suffer vastly more than other individuals. Immigration policy is unlike most of our other laws in this way. Most law recognizes the unique needs of children and is designed to protect children, but immigration law takes a distinctly different approach and requires children to suffer more than other individuals.

Finally, current immigration policy consistently punishes children for their parents’ actions. While criminal law does not expect the same level of decision making and maturity from children as it does from adults and typically assigns less burdensome punishments to children, immigration policy makes no such distinction. Children brought here as minors by their parents face the same penalties and barriers that adults who enter the country. Even the youngest undocumented children who entered the country face the same penalties and obstacles as adults.

#### **Causing Children Harm**

Combined with increased immigration enforcement, this complete disregard for children’s best interest in immigration policy has had a devastating effect on children, their families, and their communities. It has resulted in family separation, sometimes permanent, and the creation of a large untapped population of youth with limited access to higher education and only temporary legal means to work.

According to the Department of Homeland Security, nearly 205,000 parents of U.S. citizen children were deported in the 26 months between July 1, 2010 and September 31, 2012.<sup>4</sup> As a result, an estimated 5,100 children are in the U.S. child welfare system due to their parent’s deportation or detention and face potentially permanent separation from their parents, while thousands more U.S. citizen children have moved abroad with their deported parents.<sup>5</sup> Children separated from their parents due to detention or deportation suffer short-term and long-term behavioral

<sup>3</sup> 8 U.S.C.A. § 1229b. <http://www.gpo.gov/fdsys/pkg/USCQ211-2011-title8/pdf/USCQ211-2011-title8-chap17-subchap11-part1V-sec1229b.pdf>.

<sup>4</sup> In re Monreal-Aguinaga, 231 F.3d 1100 (9th Cir. 2001). Available: <http://www.justice.gov/coir/vdi/in/tdes/vs023/3447.pdf>.

<sup>5</sup> U.S. Immigration and Customs Enforcement. Deportation of Parents of U.S. Citizen Children July 1, 2010- September 30, 2012. Accessed by Colorlines.com on December 12, 2012. [http://colorlines.com/archives/2012/12/deportations\\_of\\_parents\\_of\\_us-born\\_citizens\\_122012.html](http://colorlines.com/archives/2012/12/deportations_of_parents_of_us-born_citizens_122012.html)

<sup>6</sup> Seth Freed Wessler, Applied Research Center (2011). *Shattered Families: The perilous intersection of immigration enforcement and the child welfare system*. <http://arc.org/shatteredfamilies>.

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changes, including increased fear, anger, and instances of crying, as well changes in sleeping and eating habits. Additionally, families often suffer economic hardship, including housing and nutrition instability, as a result of the deportation or detention of a parent.<sup>6</sup>

There are also approximately 1 million children and youth with limited access to higher education and only temporary legal means to join the workforce.<sup>7</sup> These children and youth were brought to the U.S. as minors and have grown up here, including attending our public schools and contributing to our communities. They are commonly called DREAMers after past legislation that would have given them a path to citizenship, and they only have temporary two year work authorization due to the Department of Homeland Security's (DHS) Deferred Action for Childhood Arrivals (DACA) policy. Despite DACA, these individuals still face barriers to higher education, including lack of access to financial aid, and are in the tenuous position of being considered legally present for only two years with a chance at renewal. While DACA-grantees are considered lawfully present by DHS, they still lack access to health coverage because the Department of Health and Human Services has made DACA-grantees ineligible for CHIP and Medicaid and will not allow them to purchase insurance through the Affordable Care Act Exchanges.

#### Solutions

As stated above, U.S. immigration policy currently ignores or disregards children, with devastating effect on both undocumented and citizen children. Congress now has an opportunity to enact policy changes that will allow for immigration law to adequately account for and protect the unique needs and rights of children. The following principles have been endorsed by over 200 national and state organizations that support an immigration reform proposal that considers the best interest of children. The principles, which are also attached in their entirety, state that immigration reform should:

- **A direct, clear, and reasonable pathway to citizenship.** Any pathway to citizenship must be open, affordable, safe, and accessible to children in need of status, including beneficiaries of Deferred Action for Childhood Arrivals (DACA), undocumented children under the age of 21, and unaccompanied immigrant children.
- **Protection and promotion of children's fundamental rights.** Our immigration system must uphold children's constitutional rights and ensure equal access to critical public services, programs, and economic supports for children and their families. The protection of fundamental rights also includes ensuring all children receive legal representation before all immigration authorities and, for all unaccompanied children, the appointment of an independent child advocate from the moment of detention throughout the course of any immigration or other related court proceedings.
- **Ensure that enforcement efforts have appropriate protections for children.** In all enforcement actions, including those along the border, the best interests of the child should be a primary consideration and children must be given the benefit of the doubt during any investigation, inquiry or detention. There

<sup>6</sup> Ajay Chaundry et. al., The Urban Institute (2010). *Facing our Future: Children in the aftermath of immigration enforcement*. [http://www.urban.org/UploadedPDF/412029\\_FacingOurFuture\\_final.pdf](http://www.urban.org/UploadedPDF/412029_FacingOurFuture_final.pdf).

<sup>7</sup> Immigration Policy Center (2012). *Who and Where the DREAMers are*. <http://www.immigrationpolicy.org/fact-facts/who-and-where-dreamers-are>.

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should be appropriate and accountable training policies and protocols for interacting with and screening children that reflects a humanitarian and protection-oriented approach, prohibits the use of force with children, and creates reasonable and safe conditions for children while in or released from the custody of all arms of the federal government.

- **Keep families together.** All policies regarding admissibility, enforcement, detention, and deportation of children and their parents must duly consider the best interests of children, including enabling immigration judges to exercise discretion in admission and removal decisions based on the hardship to U.S. citizen and lawful permanent resident children. The immigration system must be updated by resolving current backlogs and ensuring family-based immigration channels are adequate for future migration without lengthy family separation.

#### **Conclusion**

While current U.S. immigration policy does not acknowledge or account for the unique needs of children, there are concrete policy reforms that would bring the immigration system in line with other laws and our national values that give special protections to children. Millions of children in the U.S. have been separated from their parents or live in fear of separation, they lack access to important public supports and higher education, they have been punished for actions they had no control over, and have suffered unnecessary hardship due to current immigration policy. Instead of allowing for and encouraging these outcomes, our federal immigration system should be reformed to ensure that it protects and advances the interests of our nation's children.

Thank you again for the opportunity to submit this statement. Should you have any further questions, please contact Wendy Cervantes, Vice President of Immigration and Child Rights Policy at [wmcvc@firstfocus.net](mailto:wmcvc@firstfocus.net).

Enclosed: Principles for Children in Immigration Reform



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#### Principles for Children in Immigration Reform

As our nation's leaders move forward with the important task of reforming the federal immigration system it is critical that they consider the specific needs of children and youth. Children of immigrants currently comprise 1 in 4 of all children in the U.S. and represent the fastest growing segment of the child population. The number of unaccompanied immigrant children entering the U.S. has also reached record-setting numbers in recent years, with more than 14,000 children coming into the custody of the Office of Refugee Resettlement in fiscal year 2012.

Despite the significant impact of immigration policy on children's lives, children have historically been disregarded and often intentionally excluded in U.S. immigration policy decisions. Even the youngest children have few special protections under current immigration law and their best interests are often considered irrelevant in critical decisions regarding their own or a parent's ability to enter or stay in the United States. Furthermore, complicated laws determining immigrant eligibility for federally funded services have created significant barriers for children in immigrant families. As a result, both children who are immigrants themselves as well as U.S. citizen children with immigrant parents continue to face high rates of family separation, emotional trauma, economic instability, poor educational outcomes, and limited access to critical services and programs.

The consistent failure of immigration policies to consider children's well-being, protect children's rights, and promote family unity has had devastating outcomes. The Department of Homeland Security reports that 205,000 parents of U.S. citizen children were deported in the 26 months between July 2010 and September 2012. It is estimated that 5,100 children are in the U.S. child welfare system due to a parent's immigration detention or deportation, and thousands of U.S. citizen children have moved abroad with their deported parents. Currently, 5.5 million children in the U.S. live in mixed-legal status families and are at risk of being separated from a parent at any time, and 1 million undocumented children under the age of 18 face limited access to a higher education and only temporary legal means to join the workforce.

Unaccompanied immigrant children are a particularly vulnerable segment of the child population. These children cross our borders every day seeking refuge, safety, and protection, and often reunification with family members. In addition to facing harm in their own countries, they also endure dangerous journeys where they are subject to violence, abuse, exploitation, and the high risk of becoming victims of trafficking. Once entering the U.S. these children encounter a new set of risks as they confront our complex laws and systems. Unaccompanied immigrant children are subject to the same harsh conditions as adults in border patrol stations, face immigration courts alone without guaranteed legal representation, have to defend against removal by proving eligibility for forms of relief designed almost exclusively for adults and which require the same burden of proof adults must meet, and are often repatriated or released without assessment of their safety and irrespective of their best interests.

The fact is that America's future prosperity will depend on our ability to ensure that *all* children have a fair shot at achieving their full potential. As the youngest and most vulnerable members of our society, children are the most deserving of protection under the law, and every child should have access to the services and resources they need to grow and thrive. **Thus, any long-term solution to our immigration system must take into account the unique needs of children and protect and promote their fundamental rights and overall well-being.**

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As advocates for children, we urge Congress and the Administration to incorporate the following principles in immigration reform:

- **A direct, clear, and reasonable pathway to citizenship.** Any pathway to citizenship must be open, affordable, safe, and accessible to children in need of status, including beneficiaries of Deferred Action for Childhood Arrivals (DACA), undocumented children under the age of 21, and unaccompanied immigrant children.
- **Protection and promotion of children's fundamental rights.** Our immigration system must uphold children's constitutional rights and ensure equal access to critical public services, programs, and economic supports for children and their families. The protection of fundamental rights also includes ensuring all children receive legal representation before all immigration authorities and, for all unaccompanied children, the appointment of an independent child advocate from the moment of detention throughout the course of any immigration or other related court proceedings.
- **Ensure that enforcement efforts have appropriate protections for children.** In all enforcement actions, including those along the border, the best interests of the child should be a primary consideration and children must be given the benefit of the doubt during any investigation, inquiry or detention. There should be appropriate and accountable training policies and protocols for interacting with and screening children that reflects a humanitarian and protection-oriented approach, prohibits the use of force with children, and creates reasonable and safe conditions for children while in or released from the custody of all arms of the federal government.
- **Keep families together.** All policies regarding admissibility, enforcement, detention, and deportation of children and their parents must duly consider the best interests of children, including enabling immigration judges to exercise discretion in admission and removal decisions based on the hardship to U.S. citizen and lawful permanent resident children. The immigration system must be updated by resolving current backlogs and ensuring family-based immigration channels are adequate for future migration without lengthy family separation.

**Endorsing Organizations**

**National and International**

Alianza por los Derechos Niños Ninos y Adolescentes  
Alliance for a Just Society  
American Civil Liberties Union (ACLU)  
American Immigration Council  
Americans for Immigrant Justice, formerly Florida Immigrant Advocacy Center  
America's Promise Alliance  
Asian & Pacific Islander Institute on Domestic Violence

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Asian American Justice Center (AAJC), member of Asian American Center for Advancing Justice  
 ASISTA Immigration Assistance  
 Association for Childhood Education International  
 Association of Farmworker Opportunity Programs (AFOP)  
 Ayuda  
 Breakthrough  
 Capital Area Immigrants' Rights Coalition  
 Casa Esperanza  
 Catholic Legal Immigration Network, Inc. (CLINIC)  
 Center for Gender & Refugee Studies  
 Center for Law and Social Policy (CLASP)  
 Center for the Vulnerable Child  
 Christian Church (Disciples of Christ) Refugee and Immigration Ministries  
 Church World Service  
 Clergy and Laity United for Economic Justice  
 Concerned Educators Allied for a Safe Environment (CEASE)  
 Congressional Coalition on Adoption Institute (CCAI)  
 Department of Anthropology, Georgetown University  
 Emory Child Rights Project  
 First Focus  
 Foster Care to Success Foundation  
 Foster Family-based Treatment Association  
 Franciscan Action Network  
 Franciscan Federation  
 Franciscan Friars  
 Franciscan Friars, TOR  
 Franciscan Sisters  
 Franciscan Sisters of Little Falls Leadership  
 Franciscan Sisters of the Atonement (International)  
 Franciscans for Justice  
 Futures Without Violence  
 Healthy Teen Network  
 Hebrew Immigrant Aid Society (HAIS)  
 Hoyas for Immigrant Rights  
 Immigration Equality  
 Immigrant Legal Resource Center  
 IMUMI (Instituto para las Mujeres en la Migración)  
 International Detention Coalition  
 Kids in Need of Defense (KIND)  
 Leadership Team of the Felician Sisters of North America  
 Legal Services for Children

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LULAC Council 7226  
 Lutheran Immigration and Refugee Service  
 Lutheran Social Services of New England  
 Main Street Alliance  
 MomsRising.org  
 NAFSA: Association of International Educators  
 NAKASF  
 National Asian Pacific American Women's Forum (NAPAWF)  
 National Association for the Education of Homeless Children and Youth (NAEHICY)  
 National Center for Adoption Law & Policy  
 National Domestic Workers Alliance (NDWA)  
 National Education Association (NEA)  
 National Immigrant Justice Center  
 National Immigration Law Center (NILC)  
 National Latina Institute for Reproductive Health  
 National Latino Children's Institute  
 OneAmerica  
 Providential Support Service  
 Sin Fronteras (International)  
 Sisters of Saint Francis of Perpetual Adoration (International)  
 Sisters of St. Francis (International)  
 Southern Poverty Law Center  
 Tahirih Justice Center  
 TLSOL International Association  
 The Advocates for Human Rights  
 The Coalition to Abolish Slavery & Trafficking (CAST)  
 The Episcopal Network for Economic Justice  
 The Young Center for Immigrant Children's Rights  
 U.S. Committee for Refugees and Immigrants  
 United Methodist Church, General Board of Church and Society  
 United Methodist Women  
 United States Conference of Catholic Bishops (USCCB)  
 United We Dream  
 Women's Refugee Commission  
 Youth Law Center

**State and Local Organizations**

**Arizona**

Children's Action Alliance  
 Coalicion de Derechos Humanos

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Kino Border Initiative  
No More Deaths  
Somos America/We Are America Coalition  
The Florence Immigrant & Refugee Rights Project  
University of Arizona, Center for Latin American Studies

**Arkansas**

Arkansas Advocates for Children and Families

**California**

Asian Pacific American Legal Center, a member of the Asian American Center for Advancing Justice  
California Immigrant Policy Center  
California Pan-Ethnic Health Network  
California Primary Care Association  
Children's Defense Fund  
Children's Hospital Oakland  
Children Now  
CLUE Santa Barbara  
Coalition to Abolish Slavery & Trafficking  
Esperanza Immigrant Rights Project, Catholic Charities of Los Angeles, Inc.  
Families & Criminal Justice (formerly the Center for Children of Incarcerated Parents)  
Immigration Center For Women and Children  
Kids in Common, a program of Planned Parenthood Mar Monte (California and Nevada)  
Latino Health Alliance  
Modoc Child Care Council  
Public Counsel  
Southwestern Law School Immigration Clinic  
The Children's Partnership  
United Advocates for Children and Families  
University of California Davis School of Law Immigration Clinic

**Colorado**

Immigrant Legal Center of Boulder County  
Rocky Mountain Immigrant Advocacy Network  
Servicios de La Raza  
Sisters of St. Francis

**Florida**

The Center on Children & Families, University of Florida Levin College of Law  
UNO Immigration Ministry

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**Georgia**

Georgia Rural Urban Summit

**Illinois**

Center for the Human Rights of Children, Loyola University Chicago  
Chicago Legal Advocacy for Incarcerated Mothers  
Franciscan Sisters of Chicago  
Illinois Coalition for Immigrant and Refugee Rights

**Indiana**

Justice & Peace Office for Oldenburg Franciscans

**Iowa**

Iowa Justice For Our Neighbors  
Luther College Office for Campus Ministries  
Unitarian Universalist Fellowship of Ames

**Louisiana**

Jesuit Social Research Institute, Loyola University New Orleans

**Maine**

Maine Children's Alliance  
University of Maine School of Law, Cumberland Legal Aid Clinic (Refugee and Human Rights Clinic)

**Maryland**

Advocates for Children and Youth  
Grossman Law, LLC

**Massachusetts**

Applied Developmental & Educational Psychology Department, Boston College Lynch School of Education  
Center for Human Rights and International Justice, Boston College  
Immigrant Integration Lab, Boston College  
Migration and Human Rights Project, Boston College  
Political Asylum/Immigration Representation Project

**Michigan**

Casa Latina  
CMSJ Consulting LLC  
Washtenaw Interfaith Coalition for Immigrant Rights

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**Minnesota**

Immigrant Law Center of Minnesota  
Interfaith Coalition on Immigration  
Law Office of Allison Anastos  
Sisters of St. Francis, Rochester

**Montana**

Sisters of St. Francis, Savannah

**Nebraska**

Center for Legal Immigration Assistance  
Nebraska Families Collaborative

**New Hampshire**

University of New Hampshire School of Law

**New Mexico**

For Families LLC  
New Mexico Children Youth and Families Department  
New Mexico Voices for Children  
Pegasus Legal Services for Children

**New Jersey**

Advocates for Children of New Jersey  
Family Voices NJ  
IRATE & First Friends New Jersey  
Missionary Sisters of the Immaculate Conception  
Reformed Church of Highland Park, NJ  
Rutgers School of Law - Camden  
Statewide Parent Advocacy Network  
Stockton College

**New York**

Catholic Charities  
Coalition for Asian American Children & Families  
Feerick Center for Social Justice (Fordham University Law School)  
Legal Aid Society (NYC)  
Maya Media Corp.  
Northern Manhattan Coalition for Immigrant Rights  
The Door's Legal Services Center

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**North Carolina**

Action for Children NC  
North Carolina Immigrant Rights Project

**Ohio**

Church of Our Saviour Episcopal/La Iglesia de Nuestro Salvador  
Franciscan Sisters of the Poor  
Sisters of St. Francis, Sylvania

**Oklahoma**

University of Tulsa College of Law Legal Clinic

**Oregon**

Immigration Counseling Service (ICS)

**Pennsylvania**

Advocacy Committee of the Sisters of St. Francis of Philadelphia  
Advocacy for Justice and Peace Committee of the Sisters of St. Francis of Philadelphia  
IIIAS Pennsylvania  
James F. Beasley School of Law at Temple University  
Pennsylvania Council of Churches  
Sisters of St. Francis of Philadelphia  
Sisters of St. Joseph Welcome Center

**Rhode Island**

Family Voices Rhode Island  
Rhode Island KIDS COUNT

**South Carolina**

South Carolina Appleseed Legal Justice Center  
South Carolina Department of Social Services

**Tennessee**

Franciscan Friars

**Texas**

Alternatives Centre for Behavioral Health  
American Gateways  
Cabrini Center for Immigrant Legal Assistance of the Archdiocese of Galveston (Houston)  
Center for Public Policy Priorities  
Diocesan Migrant & Refugee Services, Inc. (DMRS)



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Dominican Sisters of Houston  
Fabens ISD  
Human Rights Initiative of North Texas  
Paso Del Norte Civil Rights Project  
Texans Care for Children

**Utah**

Voices for Utah Children

**Virginia**

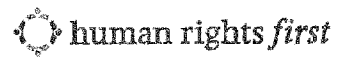
Voices for Virginia's Children

**Washington**

Children's Alliance  
Episcopal Church  
OneAmerica  
PAVE  
Stop the Checkpoints  
Washington Department of Corrections

**Wisconsin**

Capuchin Justice & Peace Office, Milwaukee  
Wisconsin Council on Children and Families



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STATEMENT FOR THE RECORD OF ELEANOR ACER

Director, Refugee Protection Program

HUMAN RIGHTS FIRST

On

**"America's Immigration System: Opportunities for Legal Immigration and Enforcement  
of Laws against Illegal Immigration"**

Submitted to the

House of Representatives Judiciary Committee

February 5, 2013

### **Introduction**

Human Rights First is an independent advocacy and action organization that challenges America to live up to its ideals. We are a non-profit, nonpartisan international human rights organization based in New York and Washington D.C. To maintain our independence, we accept no government funding. For over 30 years, we've built bipartisan coalitions and teamed up with frontline activists and lawyers to tackle issues that demand American leadership, including the protection of the rights of refugees. Human Rights First oversees one of the largest pro bono legal representation programs for refugees in the country. Through that program, we see day in and day out the ways in which current U.S. immigration laws and policies are denying or delaying protection to refugees who seek this country's protection from political, religious and other persecution.

Today's hearing is entitled "America's Immigration System: Opportunities for Legal Immigration and Enforcement of Laws against Illegal Immigration." In this statement, I will explain the impact of our nation's current immigration laws on asylum seekers and refugees, and provide recommendations on how to repair the U.S. asylum system, based on the research of Human Rights First and our experience representing refugees in the U.S. asylum system.

### **U.S. Protection of Asylum Seekers: A Core American Value and Commitment**

The United States has a long history of providing refuge to victims of religious, political, ethnic and other forms of persecution. This tradition reflects a core component of this country's identity as a nation committed to freedom and respect for human dignity. Over thirty years ago, when Congress—with strong bipartisan support—passed the Refugee Act of 1980, the United States enshrined into domestic law its commitment to protect the persecuted, creating the legal status of asylum and a formal framework for resettling refugees from around the world. The United States is the world leader in resettling refugees, working in partnership with faith groups, civil society, and communities across the country.

U.S. leadership in the protection of refugees is also about how this country treats refugees who seek asylum here in the United States, and about whether this country's policies and programs – including its approach to immigration law enforcement – live up to the same standards we call on the rest of the world to respect. In the wake of World War II, the United States played a leading role in drafting the 1951 Convention Relating to the Status of Refugees and committed to comply with its core provisions by signing on to the Convention's Protocol.

### **How the U.S. Commitment to Asylum Seekers Has Faltered**

The United States has faltered on its commitment to those who seek protection—imposing a flawed one-year filing deadline and other barriers that prevent refugees from receiving asylum; interdicting asylum seekers and migrants at sea without adequate protection safeguards; detaining asylum seekers in jails and jail-like facilities without prompt court review of detention; mislabeling victims of armed groups as supporters of "terrorism"; and leaving many refugees separated from their families for years and struggling to feed, house, and support themselves due to extensive delays in the underfunded and overstretched immigration court system.

These deficiencies not only have domestic consequences, but they also lower the global standard. As the Council of Foreign Relations' Independent Task Force on U.S. Immigration Policy—co-chaired by former White House chief of staff Thomas “Mack” McLarty and former Florida governor Jeb Bush—pointed out, the U.S. commitment to protect refugees from persecution “is enshrined in international treaties and domestic U.S. laws that set the standard for the rest of the world; when American standards erode, refugees face greater risks everywhere.”<sup>1</sup>

### **How to Repair the U.S. Asylum System in Immigration Reform Legislation<sup>2</sup>**

A range of barriers in current immigration law limits access to asylum or other protection for many refugees and other vulnerable persons. Immigration reform initiatives should honor our history as a nation of immigrants and a global leader in the protection of refugees. We welcome the call by leaders on both sides of the aisle to prioritize immigration reform, fix existing visa programs, and provide a pathway to citizenship. As these proposals take shape over the coming months, Congress and the president should commit to measures that will strengthen basic due process, fix the nation's flawed approach to immigration detention, and realize the full potential of America's commitment to refugees.

#### **1. Eliminate the unfair and wasteful asylum filing deadline from immigration law**

Through pro bono legal representation and research, Human Rights First has documented that many bona fide refugees are unable to file for asylum within one year of arrival, due to challenges such as trauma, inability to speak English, and lack of knowledge about the U.S. asylum system. Many refugees have been barred from asylum in this country due to the filing deadline. This technicality diverts limited governmental resources that could be more efficiently spent addressing the merits of cases.

Specifically, Human Rights First's 2010 report, *The Asylum Filing Deadline: Denying Protection to the Persecuted and Undermining Governmental Efficiency*, found that the filing deadline has not only barred refugees who face religious, political, and other forms of persecution from receiving asylum in the United States, but has also delayed the resolution of asylum cases and led thousands of cases that could have been resolved at the asylum office level to be shifted in to the increasingly backlogged and delayed immigration court system. An independent academic analysis of DHS data concluded that, between 1998 and 2009, if not for the filing deadline, more than 15,000 asylum applications—representing more than 21,000

<sup>1</sup> Council on Foreign Relations, Independent Task Force Report No. 63, U.S. Immigration Policy, p. 31 available at <http://www.cfr.org/immigration/usimmigration-policy/p26030>.

<sup>2</sup> For a full set of recommendations, see Human Rights First's 2013 Blueprints, *How to Repair the U.S. Asylum and Resettlement Systems*, at [http://www.humanrightsfirst.org/wp-content/uploads/pdf/blueprints2012/HRF\\_Asylum\\_blueprint.pdf](http://www.humanrightsfirst.org/wp-content/uploads/pdf/blueprints2012/HRF_Asylum_blueprint.pdf), and *How to Repair the U.S. Immigration Detention System*, at [http://www.humanrightsfirst.org/wp-content/uploads/pdf/blueprints2012/HRF\\_Immigration\\_Detention\\_blueprint.pdf](http://www.humanrightsfirst.org/wp-content/uploads/pdf/blueprints2012/HRF_Immigration_Detention_blueprint.pdf)

refugees—would have been granted asylum by DHS without the need for further litigation in the immigration courts.<sup>3</sup>

In 2011, DHS confirmed that it concluded that the one-year asylum filing deadline should be eliminated, confirming that it expends resources without helping uncover or deter fraud.<sup>4</sup> In connection with the 60th anniversary of 1951 Refugee Convention, the Administration pledged to work with Congress to eliminate the deadline.<sup>5</sup>

### Recommendations

- Eliminate the asylum filing deadline contained in INA §208(a)(2)(B); and
- Address the plight of refugees who have been denied asylum due to the deadline by adding a provision in the INA to permit refugees who were granted withholding of removal, but not asylum, due to the filing deadline to adjust their status to lawful permanent resident and petition to bring their spouses and children to safety.

### 2. Reduce unnecessary immigration detention costs and implement lasting reforms

DHS and ICE detain up to 33,400 immigrants and asylum seekers each day—an all-time high of over 429,247 in fiscal year 2012 alone. At an average price of \$164 per person, per day, the U.S. immigration detention system costs taxpayers \$2 billion annually, despite the availability of less costly, less restrictive, and highly successful alternative to detention programs.<sup>6</sup> Alternatives to detention—which can include a range of monitoring mechanisms, case-management, and in some cases electronic monitoring—can save more than \$150 per day per immigration detainee—millions annually.<sup>7</sup> As the Council on Foreign Relations' Independent Task Force on U.S. Immigration Policy noted, alternatives to detention can “ensure that the vast majority of those facing deportation comply with the law, and at much lower costs.”<sup>8</sup> A January 2012 Heritage Foundation report also recognized the cost-effectiveness of alternatives to detention.<sup>9</sup> While ICE has expanded alternatives to detention, it has not used these cost-effective alternatives to reduce unnecessary detention and detention costs—citing to language in DHS appropriations legislation that ICE has viewed as mandating that it maintain and fill a specific number of

<sup>3</sup> See Human Rights First, *The Asylum Filing Deadline: Denying Protection to the Persecuted and Undermining Governmental Efficiency* (New York: 2010), at <http://www.humanrightsfirst.org/wp-content/uploads/pdf/afd.pdf>. P. Schrag, A. Schoenholtz, J. Ramji-Nogales, and J.P. Dombach, “Rejecting Refugees: Homeland Security’s Administration of the One-Year Bar to Asylum,” *William and Mary Law Review*, (2010), at <http://wmlawreview.org/files/Schrag.pdf>.

<sup>4</sup> UNHCR Washington Office, Reaffirming Protection, October 2011, Summary Report, p. 18, at <http://www.unhcrwashington.org/atf/cf/%7BC07EDA5EAC71-4340-8570-194D98BDC139%7D/georgetown.pdf>

<sup>5</sup> U.S. Department of State, PRM, *Fact Sheet: U.S. Commemorations Pledges*, 7 December 2011, available at <http://www.state.gov/j/prm/releases/factsheets/2011/181020.htm>.

<sup>6</sup> National Immigration Forum, “Math of Immigration Detention” (August 2012) available at <http://www.immigrationforum.org/images/uploads/MathofImmigrationDetention.pdf>.

<sup>7</sup> *Ibid.*

<sup>8</sup> Council on Foreign Relations, *supra* note 1, p. 29.

<sup>9</sup> Heritage Web Memo 3455, Administrative Reforms Insufficient to Address Flawed White House Immigration and Border Security Policies, by Matt A. Mayer, Jan. 10, 2012, at <http://www.heritage.org/research/reports/2012/01/administrative-reforms-in-immigration-and-border-security-policies>.

detention beds (33,400 for fiscal year 2012). This type of “mandate” does not exist in other law enforcement contexts and prevents the agency from saving taxpayer dollars by using more appropriate alternatives when detention is not necessary.

Under current U.S. policies, many asylum seekers and immigrants do not have access to prompt court review of their immigration detention, contrary to U.S. commitments to human rights, refugee protection, and basic fairness. For example, the initial decision to detain an asylum seeker or other “arriving alien” at a U.S. airport or border is “mandatory” under the expedited removal provisions of the 1996 immigration law. The decision to release an asylum seeker on parole—or to continue his or her detention for longer—is entrusted to local officials with ICE, which is the detaining authority, rather than to an independent authority or at least an immigration court. Several other categories of immigrants—including lawful permanent residents convicted of a broad range of crimes, including simple drug possession and certain misdemeanors, as well as more serious crimes, and who have already completed their sentences—are also subjected to “mandatory” detention, and deprived of access to immigration court custody hearings.<sup>10</sup>

ICE detains immigrants in approximately 250 jails and jail-like facilities nationwide. In these facilities, they wear prison uniforms and are typically locked in one large room for up to 23 hours a day, they have limited or essentially no outdoor access, and they visit with family through a Plexiglas barrier. USCIRF concluded that these kinds of facilities “are structured and operated much like standardized correctional facilities” and are inappropriate for asylum seekers.<sup>11</sup> A 2009 DHS-ICE report confirmed that, “all but a few of the facilities that ICE uses to detain aliens were built as jails and prisons.”<sup>12</sup>

In 2009, DHS and ICE committed to shift the immigration detention system away from its longtime reliance on jails and jail-like facilities to facilities with conditions more appropriate for civil immigration law detainees.<sup>13</sup> Since then, ICE has opened two facilities with less-penal conditions and made progress on some other aspects of detention reform. ICE continues, however, to hold the overwhelming majority of its daily detention population in jails and jail-like facilities, with a full 50 percent held in actual jails.

<sup>10</sup> See INA § 236(c); 8 CFR § 208.30, 212.5, 235.3, and 1003.19.

<sup>11</sup> USCIRF, *Asylum Seekers in Expedited Removal Volume II*, p. 189, available at [http://www.uscirf.gov/images/stories/pdf/asylum\\_seekers/ERS\\_RptVolII.pdf](http://www.uscirf.gov/images/stories/pdf/asylum_seekers/ERS_RptVolII.pdf); USCIRF, *Expedited Removal Study Report Card* (2007), p. 5.

<sup>12</sup> Dr. Dora Schriro, *Immigration Detention Overview and Recommendations* (Washington, DC: Immigration and Customs Enforcement, 2009), p. 21, available at <http://www.ice.gov/doclib/about/offices/odpp/pdf/ice-detention-rpt.pdf> (hereinafter cited as 2009 DHS/ICE Report).

<sup>13</sup> Human Rights First, *Jails and Jumpsuits: Transforming the U.S. Immigration Detention System – A Two-Year Review* (New York: Human Rights First, 2011), pp. 4-6, available at <http://www.humanrightsfirst.org/wp-content/uploads/pdf/HRF-Jails-and-Jumpsuits-report.pdf>, citing ICE, “Fact Sheet: 2009 Immigration Detention Reforms,” available at <http://www.ice.gov/news/library/factsheets/reform-2009reform.htm>; ICE Strategic Plan FY 2010-2014 (Washington, DC: ICE, 2010), p. 6; ICE, “Fact Sheet: ICE Detention Reform Principles and Next Steps,” news release, October 6, 2009, available at [http://www.dhs.gov/xlibrary/assets/press\\_ice\\_detention\\_reform\\_fact\\_sheet.pdf](http://www.dhs.gov/xlibrary/assets/press_ice_detention_reform_fact_sheet.pdf); DHS press conference, October 6, 2009, video recording, <http://www.c-spanvideo.org/program/289313-1>; and 2009 DHS/ICE Report, pp. 2-3.

The UNHCR, in its 2012 guidelines on detention, as well as other international human rights authorities, have confirmed that asylum seekers and other immigration detainees should not be detained in facilities that are essentially penal facilities, nor should they be made to wear prison uniforms but should instead be permitted to wear their own civilian clothing<sup>14</sup> As documented in Human Rights First's 2011 report *Jails and Jumpsuits: Transforming the U.S. Detention System—A Two-Year Review*, and discussed during Human Rights First's 2012 Detention Dialogues, many criminal correctional facilities actually offer less restrictive conditions than those typically found in immigration detention facilities, and corrections experts have confirmed that a normalized environment helps to ensure the safety and security of any detention facility. The American Bar Association, at its annual meeting in August 2012, adopted civil immigration detention standards that outline the conditions that should be required in connection with detention of civil immigration detainees.<sup>15</sup>

### Recommendations

- Direct DHS to use alternatives in place of more costly detention when it is not necessary, resorting to detention only when threat to public safety or risk of flight cannot be addressed through less restrictive measures;
- Direct DOJ and DHS to revise regulatory language to provide immigration court custody hearings for “arriving aliens,” and amend INA §235 and §236 to provide that all detention decisions be made on an individual basis, reviewable by an immigration court; and
- Require DHS to implement standards and conditions in line with the American Bar Association’s proposed civil immigration detention standards.

### 3. Require and support a fair and efficient adjudication process

U.S. immigration courts are over-stretched and underfunded, leading many cases to be delayed for two years or more and prolonging the separation of many refugee families. 84 percent of detained immigrants – including many asylum seekers – have no legal counsel, left to navigate complex removal proceedings unrepresented. The DOJ Executive Office for Immigration Review (EOIR) has explained that “[n]on-represented cases are more difficult to conduct. They require far more effort on the part of the judge.” Another obstacle that exacerbates the difficulty of securing legal representation for immigration detainees is the remote location of many detention facilities. USCIRF has found that many of the facilities used to detain asylum seekers are “located in rural parts of the United States, where few lawyers visit and even fewer maintain a practice.” The Commission concluded that “[t]he practical effect of detention in remote locations...is to restrict asylum seekers’ legally authorized right to counsel.”<sup>16</sup>

The immigration court system within EOIR is in a state of crisis and is not adequately serving the interests of the U.S. government or the applicants appearing before it. While resources for

<sup>14</sup> UNHCR, *Detention Guidelines: guidelines on the applicable criteria and standards relating to the detention of asylum-seekers and alternatives to detention* (2012) at <http://www.unhcr.org/505b10ee9.html>.

<sup>15</sup> See ABA Civil Immigration Detention Standards at <http://www.americanbar.org/content/dam/aba/administrative/immigration/abaimmdetstds.authcheckdam.pdf>.

<sup>16</sup> USCIRF, *Asylum Seekers in Expedited Removal*, p. 240.

immigration enforcement have increased steeply or remained high in recent years, the resources for the immigration court system have lagged far behind. The immigration court backlog, as of December 2012, was at 322,818 cases, with pending cases already waiting an average of nearly a year and a half (545 days).<sup>17</sup> As the Administrative Conference of the United States (ACUS) confirmed in June 2012, the immigration court backlog and “the limited resources to deal with the caseload” present significant challenges.<sup>18</sup> The American Bar Association’s Commission on Immigration, in its comprehensive report on the immigration courts, concluded that “the EOIR is underfunded and this resource deficiency has resulted in too few judges and insufficient support staff to competently handle the caseload of the immigration courts.”<sup>19</sup>

Through our partnership with law firms representing asylum seekers through our pro bono program, Human Rights First sees firsthand the hardship that court backlogs and extended processing times create for our refugee clients—many of whom are currently being given court dates two years away. While they wait for their claims to be heard, many remain separated from spouses and children who may be in grave danger in their home countries. Lengthy court delays also increase the difficulty of recruiting pro bono counsel.

#### Recommendations

- Provide DOJ/EOIR with adequate resources to conduct timely and fair proceedings, including to increase staffing at the immigration courts and the Board of Immigration Appeals and to provide mandatory initial training and ongoing professional development for all BIA members, immigration judges, and legal support staff;
- Mandate that EOIR’s Legal Orientation Program, lauded for promoting efficiency and effectiveness, is provided in all facilities that detain immigrants for ICE;
- Support legal representation in cases where justice requires, including for children, persons with mental disabilities, and other vulnerable immigrants; and
- Support elimination of asylum filing deadline, which, as detailed above, would reduce the number of asylum cases referred to the immigration courts.

#### 4. Protect refugees from inappropriate exclusion and free up administrative resources

U.S. immigration laws have for many years barred from the United States people who pose a danger to our communities or threaten our national security, even if they would otherwise qualify for refugee protection. Bars to refugee protection also exclude people who have engaged in or supported acts of violence that are inherently wrongful and condemned under U.S. and international law. These important and legitimate goals are consistent with the U.S. commitment under the Refugee Convention and its Protocol, which exclude from refugee protection perpetrators of heinous acts and serious crimes, and provide that refugees who threaten the safety

<sup>17</sup> TRAC, *Latest Immigration Court Numbers, as of December 2012* at [http://trac.syr.edu/immigration/reports/latest\\_immcourt/#backlog](http://trac.syr.edu/immigration/reports/latest_immcourt/#backlog)

<sup>18</sup> Administrative Conference of the United States (ACUS), “Immigration Removal Adjudication, Committee on Adjudication, Proposed Recommendation, June 14-15, 2012,” p. 1, available at <http://www.acus.gov/wp-content/uploads/downloads/2012/05/Proposed-Immigration-Rem-Adi-Recommendation-for-Plenary-5-22-12.pdf>.

<sup>19</sup> American Bar Association, *Reforming the Immigration Detention System* (2010), pp. 2-16 at [http://www.americanbar.org/content/dam/aba/migrated/immigration/PublicDocuments/aba\\_complete\\_full\\_report.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/migrated/immigration/PublicDocuments/aba_complete_full_report.authcheckdam.pdf)



of the community in their host countries can be removed. However, as detailed in two reports issued by Human Rights First, for a number of years now, overbroad definitions and interpretations of the terms “terrorist organization” and “terrorist activity” in U.S. immigration law have ensnared people with no real connection to terrorism. Consequently, thousands of refugees seeking safety—including those with family already in the United States—have been barred from entering or receiving protection in the United States, and many refugees and asylees already granted protection and living in this country have been barred from obtaining green cards and reuniting with family members.<sup>20</sup>

#### **Recommendation**

- Amend the definitions of “terrorist activity” and “terrorist organization” in INA §212(a)(3)(B) so that they target actual terrorism. Currently, these definitions are being applied to anyone who at any time used armed force as a non-state actor or gave support to those who did. These have included Iraqis who supported the overthrow of Saddam Hussein, Sudanese who fought against the armed forces of President Omar Al-Bashir, and Eritreans who fought for independence from Ethiopia. These definitions are also being applied to persons who supported armed groups under duress, and to individuals who were kidnapped or conscripted as child soldiers. Specifically, the very expansive sub-section of the “terrorist activity” definition at INA § 212(a)(3)(B)(V)(b) should be limited to the use of armed force against civilians and non-combatants, and the definition of a “Tier III” organization at INA § 212(a)(3)(B)(vi)(III) should be eliminated.

Thank you again for your consideration of Human Rights First’s views.

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<sup>20</sup> See Human Rights First, *Is This America? The Denial of Due Process to Asylum Seekers in the United States* (New York: Human Rights First, 2000), at <http://www.humanrightsfirst.org/our-work/refugee-protection/due-process-is-this-america/>.



Written Statement of Antonio M. Ginatta  
Advocacy Director, US Program  
Human Rights Watch

to

US House of Representatives, Committee on the Judiciary  
Subcommittee on Immigration and Border Security

**Hearing on “America’s Immigration System:  
Opportunities for Legal Immigration and Enforcement of  
Laws against Illegal Immigration”**

February 5, 2013

Mr. Chairman, Members of the Subcommittee, thank you for the opportunity to submit a statement on today's hearing on the US immigration system. Human Rights Watch is an independent organization dedicated to promoting and protecting human rights around the globe. We have been reporting on abuses in the US immigration system for over 20 years. Last week we issued a briefing paper entitled, "Within Reach: A Roadmap for US Immigration Reform that Respects the Rights of All People," which we wish to submit for the record.<sup>1</sup> My testimony will discuss a number of the recommendations that are developed in greater detail in the briefing paper, and which we think should guide any effort to reform our current, deeply flawed, immigration system.

### **1. The US Immigration System Should Focus Enforcement Efforts on Genuine Threats**

The US immigration enforcement system has grown exponentially since the last major legalization program under President Ronald Reagan. Deportations have increased dramatically, from 30,039 in 1990 to over 400,000 in 2012, totaling over 4 million since 1990. As recently reported by the Migration Policy Institute, expenditures on immigration enforcement exceed spending by all other criminal federal law enforcement agencies combined.<sup>2</sup>

Yet rather than ensure public safety and enhance the rule of law, the indiscriminate enforcement of harsh laws has broken apart families and forced others to live in fear, while diverting public resources that could have been usefully spent in other ways.

As local law enforcement gets increasingly involved in immigration enforcement through programs like Secure Communities, the interactions that lead to deportation are not only arrests for serious, violent offenses, but often traffic stops and other matters that do not always lead to criminal charges. At the same time, an enormous number of crimes—including nonviolent offenses like shoplifting—now constitute "aggravated felonies" under immigration law (even if they do not match the definition of "aggravated felony" in criminal law) and are grounds for mandatory and permanent deportation, even of longtime lawful permanent residents. The federal crimes of illegal entry (a misdemeanor) and illegal reentry (a felony) also now make up over 50 percent of all

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<sup>1</sup> "Within Reach" can also be downloaded at <http://www.hrw.org/news/2013/02/01/us-immigration-reform-should-uphold-rights>.

<sup>2</sup> Migration Policy Institute, "Immigration Enforcement in the United States: The Rise of a Formidable Machinery," January 2013, <http://www.migrationpolicy.org/pubs/enforcementpillars.pdf> (accessed January 8, 2013).

federal prosecutions, driven largely by Operation Streamline and similar programs that seek to criminally prosecute everyone caught entering the US unlawfully.<sup>3</sup> Customs and Border Protection refers more cases for criminal prosecution than the FBI,<sup>4</sup> and some judges and prosecutors have raised questions about whether resources are being diverted from more serious criminal matters.

The pressure of increased immigration enforcement has had a significant impact on the federal criminal justice system. Under Operation Streamline and similar programs along the border, federal courtrooms have become unrecognizable, packed with defendants who plead guilty in groups, with lawyers who are able to meet with their clients for only 10 to 30 minutes at a time. Federal judges, prosecutors, and defenders have criticized Operation Streamline for wasting resources that would have been better spent on prosecuting more serious crimes.<sup>5</sup>

And although the Obama administration claims that it is targeting serious and dangerous criminals for deportation, its claims do not hold up when the statistics are scrutinized. Although a greater proportion of non-citizens deported now have criminal convictions than ever before, of the 188,382 non-citizens deported for criminal convictions in 2011, 42 percent had as their most serious offense a conviction for immigration or criminal traffic offenses.<sup>6</sup>

The blurring of the line between civil immigration enforcement and criminal law enforcement is perhaps most apparent and problematic in the vast system of immigration detention. To deprive a person of his or her liberty is a grave matter, particularly when it occurs outside the criminal justice system, with its established due process protections. Many nonviolent offenses, including minor possession of controlled substances and shoplifting, trigger a “mandatory detention” provision in immigration law, meaning immigrants (including lawful permanent residents) have no opportunity to post bond. By contrast, in the US criminal justice system, no one is held in comparable circumstances (in pre-trial detention, for example) without a hearing to determine if they are dangerous or a flight risk.

<sup>3</sup> Transactional Records Access Clearinghouse (TRAC), Syracuse University, “Prosecutions for September 2012,” <http://trac.syr.edu/tracreports/bulletins/overall/monthlysep12/fil> (accessed January 8, 2013).

<sup>4</sup> Migration Policy Institute, “Immigration Enforcement in the United States: The Rise of a Formidable Machinery.”

<sup>5</sup> Warren Institute, University of California, Berkeley Law School, “Assembly-Line Justice: A Review of Operation Streamline,” January 2010, [http://www.law.berkeley.edu/files/Operation\\_Streamline\\_Policy\\_Brief.pdf](http://www.law.berkeley.edu/files/Operation_Streamline_Policy_Brief.pdf) (accessed January 8, 2013).

<sup>6</sup> US Department of Homeland Security, “Immigration Enforcement Actions: 2011,” September 2012, [http://www.dhs.gov/sites/default/files/publications/immigration-statistics/enforcement\\_ar\\_2011.pdf](http://www.dhs.gov/sites/default/files/publications/immigration-statistics/enforcement_ar_2011.pdf) (accessed February 4, 2013).

Immigration detention is supposed to be civil and administrative in nature, rather than punitive, and it should be used as sparingly as possible. As the American Bar Association (ABA) has recommended, civil detention should be closer in nature to housing in a secure nursing facility or residential treatment facility than to incarceration in a prison.<sup>7</sup> About half of all detainees have never been convicted of a crime, and even those convicted of a crime have already served any sentences meted out by the criminal justice system.

In the last decade, however, an expensive and extensive system of detention centers and local jails have held 3 million non-citizens, without due consideration of whether they are actually dangerous or at risk of absconding from legal proceedings. Numerous detainees, including torture victims and children, have endured punitive conditions in which medical care is grossly inadequate and sexual abuse goes unreported or unaddressed.<sup>8</sup>

**Recommendations:**

- Reject the draconian and arbitrary provisions of the 1996 amendments to the immigration system and limit the definition of “aggravated felony” to serious violent crimes classified as felonies under state law;
- Restore discretion to immigration judges to weigh evidence of rehabilitation, family ties, and other equities against a criminal conviction in deciding whether to deport lawful permanent residents;
- Halt Operation Streamline’s expansion and evaluate the need for continuing operation of such programs; and
- Reform immigration detention by:
  - Limiting mandatory detention to violent offenders;
  - Not detaining lawful permanent residents and asylum seekers (unless they are shown to be a safety or flight risk);
  - Expanding the limited alternatives-to-detention programs currently in use;

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<sup>7</sup> American Bar Association, “ABA Civil Immigration Detention Standards,” 2012, <http://www.americanbar.org/content/dam/aba/administrative/immigration/abaimmdetstds.authcheckdam.pdf> (accessed January 22, 2013).

<sup>8</sup> See Human Rights Watch, *Detained and At Risk: Sexual Abuse and Harassment in United States Immigration Detention*, August 25, 2010, <http://www.hrw.org/reports/2010/08/25/detained-and-risk-0>; and *Detained and Dismissed: Women’s Struggles to Obtain Health Care in United States Immigration Detention*, March 17, 2009, <http://www.hrw.org/reports/2009/03/16/detained-and-dismissed>.

- Prohibiting all long-distance transfers of detainees that could interfere with assistance of counsel or unduly separate detainees from their families;
- Guaranteeing proper treatment of detainees, including access to adequate medical care;
- Only contracting with detention facilities that reflect the civil detention standards recommended by the ABA; and
- Ending contracts with facilities built and operated to detain people who have been convicted of a criminal offense.

## 2. The US Immigration System Should Respect and Protect Families

The United States is home to 40 million immigrants—11 million of whom are unauthorized.<sup>9</sup> Nearly 17 million people live in families in which at least one member is an unauthorized immigrant.<sup>10</sup> Despite these family relationships, most unauthorized immigrants have no realistic way to gain legal status under existing law. Some of these immigrants have valid applications for legal status filed by their US citizen or permanent resident family members, but low numerical limits for family visas and processing inefficiencies have led to a massive backlog. An adult son or daughter from Mexico, for example, may wait almost 20 years after a petition is filed by a US citizen parent. This backlog creates tremendous pressure throughout the immigration system, leading to increased illegal immigration and visa overstays.

Some immigrants are completely barred from getting a visa through their US citizen spouse or partner due to the Defense of Marriage Act (DOMA), which excludes lesbian and gay couples from the definition of “spouse.”<sup>11</sup>

<sup>9</sup> Pew Hispanic Center, “Unauthorized Immigrant Population: National and State Trends, 2010,” February 1, 2011, <http://www.pewhispanic.org/files/reports/133.pdf> (accessed January 8, 2013). The Pew Hispanic Center updated its estimate of the unauthorized immigrant population more recently to 11.1 million in 2011. Pew Hispanic Center, “Unauthorized Immigrants: 11.1 Million in 2011,” December 6, 2012, <http://www.pewhispanic.org/2012/12/06/unauthorized-immigrants-11-1-million-in-2011> (accessed January 8, 2013).

<sup>10</sup> *Ibid.*

<sup>11</sup> Human Rights Watch, *Family Unvalued: Discrimination, Denial, and the Fate of Binational Same-Sex Couples Under U.S. Law*, May 2, 2006, <http://www.hrw.org/reports/2006/05/01/family-unvalued-0>.

Under current immigration law, therefore, most unauthorized immigrants with US citizen family are under a constant threat of deportation. In most cases, immigration judges are not even empowered to take family unity into account. In just the past two years, the US government has carried out over 200,000 deportations of people who said they had US citizen children.<sup>22</sup> These parents have almost no way to return legally. Immigrants can be barred from the US for 10 years, or for life, if they leave after having been in the country for at least a year without authorization.

Immigration law is particularly harsh on people who face deportation after criminal convictions, even for lawful permanent residents convicted of minor or old offenses. Amendments that went into effect in 1996 stripped immigration judges of much of the discretion they once had to balance family unity against the seriousness of the crime. As a result, many lawful permanent residents, after serving whatever sentence is imposed by the criminal justice system, feel they are further punished with exile. If they return without permission to the US, they are often charged with the federal crime of illegal reentry, punishable by up to 20 years in prison.

**Recommendations:**

- Restore the power of judges to consider family unity in any removal decision;
- Adjust the country quotas and number of family-based preference visas available to reduce the current backlog;
- Ensure bi-national same-sex couples receive the same recognition and treatment afforded to bi-national opposite-sex couples; and
- Create avenues for immigrants who are currently inadmissible to apply for permission to gain legal status if they have lawfully present family in the US and can currently demonstrate good moral character.

### **3. Immigration Reform Should Include a Fair and Effective Legalization Process**

The large and highly vulnerable unauthorized immigrant population in the US faces many unnecessary hardships under the current immigration system. To be effective, any revision of the system will need to be coupled with a program of legalization for unauthorized immigrants

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<sup>22</sup> Seth Freed Wessler, "Nearly 205K Deportations of Parents of US Citizens in Just Over Two Years," *Colorlines*, December 17, 2012, [http://colorlines.com/archives/2012/12/us\\_deports\\_more\\_than\\_200k\\_parents.html](http://colorlines.com/archives/2012/12/us_deports_more_than_200k_parents.html) (accessed January 22, 2013).

currently in the United States. Such a legalization process should be clear and straightforward, and its eligibility criteria should be non-discriminatory and anchored by the values of fairness that the US has long espoused.

**Recommendations: The United States should put in place a revamped legalization process that is forward-looking and includes opportunities for those who are currently unfairly disqualified from applying for legal status.**

The process should:

- Include immigrants of limited means;
- Include procedural safeguards such as confidentiality and an ability to appeal decisions to a higher authority;
- Ensure that vulnerable immigrants (for example, youth, the elderly, and persons with mental disabilities) have access to assistance in navigating the process;
- Recognize the special ties to the United States established by immigrants who have lived in the US from a young age;
- Ensure that unauthorized immigrants who under existing law may be barred from the United States, such as for immigration offenses or criminal convictions, are given the opportunity to overcome these bars and apply for legalization if they are able to offer evidence of current good moral character, long residence in the United States, family ties, military service, and similar factors in their favor; and
- Create mechanisms that allow future legalization of unauthorized immigrants if certain requirements are met, so that unfair treatment of immigrants is not replicated in future generations.

#### **4. The US Immigration System Should Be Committed to Protecting Immigrants from Workplace Violations and Crime**

##### ***A. Equal Protection for All Workers***

All workers, regardless of immigration status, should have the right to safe and healthy work conditions, to equal treatment, and to organize and bargain collectively. Immigrant workers, however, face particular challenges in asserting these rights, even when they are legally allowed to work in the United States. Industries that rely heavily on an immigrant workforce, including agriculture and home health care, are excluded from basic labor laws, such as overtime, that



apply to nearly every other sector. Immigrant workers injured on the job or subject to sexual abuse are often afraid to report the harm they have suffered.<sup>13</sup>

Temporary workers, despite having legal permission to work, are dependent on their employers for continued legal status. Thus, unscrupulous employers can use the threat of deportation to coerce immigrant workers, both authorized and unauthorized, to not report abuses. And unlike victims of serious crimes, victims of workplace abuse who file claims have no access to temporary visas that would allow them to remain in the United States while their claims are pending.

**Recommendations: A new immigration system should ensure that all workers, regardless of immigration status, can assert their basic rights and seek remedies when those rights are violated.**

- Create temporary visas for unauthorized workers who are victims of workplace abuses so that they can pursue their claims and, in criminal cases, so that they can testify and help ensure that perpetrators face justice;
- Ensure equality of remedies for all workers who suffer workplace violations or seek to enforce workers' rights, regardless of immigration status; and
- Minimize the particularly exploitative conditions of temporary migrant work by:
  - Making temporary worker visas portable between employers, including employers in different industries;
  - Providing temporary migrant workers a grace period to search for new employment after leaving their initial job; and
  - Ensuring temporary migrant workers can maintain legal status while credible legal claims are pending.

#### ***B. Equal Protection for Victims of Crime***

When unauthorized immigrants fear reporting crimes, the entire community is put at risk. Instead of encouraging trust in law enforcement, the US government and several states support laws and policies that, in effect, intimidate unauthorized immigrants and deter them from calling the police.

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<sup>13</sup> Human Rights Watch, *Cultivating Fear: The Vulnerability of Immigrant Farmworkers in the US to Sexual Violence and Sexual Harassment*, May 16, 2012, <http://www.hrw.org/reports/2012/05/15/cultivating-fear>; and *Blood, Sweat, and Fear: Workers' Rights in U.S. Meat and Poultry Plants*, January 25, 2005, <http://www.hrw.org/reports/2005/01/24/blood-sweat-and-fear-0>.

Local law enforcement agencies have increasingly become intertwined with federal immigration enforcement. Over the last several years, the US government has pushed states to adopt programs such as the Criminal Alien Program, the 287(g) Program, and Secure Communities. Through these programs, unauthorized immigrants who come into contact with law enforcement—often through incidents as minor as traffic stops—are checked against an immigration database and then held for immigration authorities. Although the Obama administration claims Secure Communities targets only serious criminals for deportation, over half of immigrants removed through the program had no criminal convictions or convictions only for minor offenses, including traffic violations and street vending.<sup>14</sup> At the same time, state governments in Arizona, Alabama, South Carolina, Georgia, and Utah have all passed laws that require or authorize law enforcement agencies to check the immigration status of individuals during a lawful stop or arrest. In some communities, unauthorized immigrants have good reason to believe any contact with the police, even a call reporting domestic violence, can lead to deportation. As a result, law enforcement officials around the country have expressed concern that the program is adversely affecting their ability to police their communities.

A temporary visa called the U visa is available to unauthorized immigrants who are victims of certain serious crimes, who have suffered serious physical or mental abuse, and who cooperate with the investigation, but only 10,000 U visas are available each year, and for each of the past three years that limit has been reached before the end of the year.<sup>15</sup> Local law enforcement agencies also often unfairly refuse to certify applications for victims who have cooperated with investigations.<sup>16</sup> And most witnesses to crimes—as opposed to victims—are not eligible for U visas, which limits law enforcement’s ability to investigate crimes fully.

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<sup>14</sup> US Department of Homeland Security, Immigration and Customs Enforcement, “Secure Communities: Monthly Statistics Through August 31, 2012,” [http://www.ice.gov/doclib/foia/sc-stats/nationwide\\_interop\\_stats-fy2012-to-date.pdf](http://www.ice.gov/doclib/foia/sc-stats/nationwide_interop_stats-fy2012-to-date.pdf) (accessed January 10, 2013).

<sup>15</sup> U visas are available for victims of crimes such as abduction, domestic violence, murder, rape, and torture. A full list of enumerated crimes can be found at US Department of Homeland Security, Citizenship and Immigration Services, “Victims of Criminal Activity: U Nonimmigrant Visa Status,” last updated October 3, 2011, <http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=ee1e3e4d77d73210VgnVCM1000082ca60aRCRD&vgnnextchannel=ee1e3e4d77d73210VgnVCM100000082ca60aRCRD> (accessed January 22, 2013).

<sup>16</sup> See Human Rights Watch, *Cultivating Fear*, Section V: A Dysfunctional Immigration System, Limitations of U Visas, p. 49.

**Recommendations: A new immigration system should ensure that civil immigration enforcement does not take priority over protecting communities from violent crime.**

- End Secure Communities, the 287(g) Program, and similar programs that turn local law enforcement officers into immigration agents;
- Eliminate the arbitrary cap on U visas;
- Allow for additional ways to prove cooperation with law enforcement in applications for U visas; and
- Create temporary visas for witnesses of serious crimes (the crimes enumerated in the eligibility criteria for U visas) in order to further investigations.

The Washington Times – Op-Ed

**Mathew Staver: *A Christian approach to immigration reform***



By Mathew Staver  
Tuesday, February 5, 2013

Americans are ready for just immigration reform that keeps our borders secure, respects the rule of law and creates a pathway to earned legal status for our hardworking neighbors who lack documentation. This earned legal status should include temporary worker visas and citizenship.

As an evangelical leader, I applaud leaders in Congress for recognizing that a better immigration process is urgent. Republicans in particular are showing leadership by prioritizing the debate.

As the House of Representatives holds a hearing Tuesday to take up the challenge of creating a better immigration process, evangelical Christians across the country are participating in their own challenge: to reflect on what the Bible has to say about how we treat our immigrant neighbors.

My own contemplation has led me to conclude that we must unite behind an immigration process that is fair, that respects every human being's God-given dignity, that protects the unity of our families and that preserves our standing as the world's standard-bearer for freedom.

As members of the Evangelical Immigration Table affirmed in June, just immigration reform will strengthen our economy and our communities.

of Scripture that speaks to God's compassion toward immigrants, and we are praying for our immigrant neighbors.

The Bible presents a stark choice between two paths: welcoming the stranger leads to eternal bliss; not welcoming the stranger leads to eternal punishment.

These teachings speak to us in our lives. They help us see that no matter how we got here, we are all created in God's image and all worthy of God's love and of one another's respect.

As we take God's Word to heart and honor it in our lives, we must acknowledge that as a beacon of freedom, the United States has attracted immigrants who move here to improve life for themselves and their families — today, as throughout our history. Nearly all of us have ancestors who came here from somewhere else to build a better life.

That is the promise of America, and that is our pride. We are a nation of hope for people of courage who leave behind lives they know because they believe in the opportunity for better lives on our shores.

We must continue to prove that the American dream we idealize is more than a mirage — that people from diverse backgrounds can come here, and that all of us can live in peace with our neighbors, pursue our dreams and succeed.

As Congress embarks on the difficult challenge of creating a just immigration process, we support their efforts to have a respectful debate, and we rededicate ourselves to a process that shines freedom's light more brightly.

In so doing, we will honor God's will and bring God's blessing on our country and its inhabitants, each created in God's image — no matter where we were born.

*Mathew Staver is chairman of Liberty Counsel and chief counsel of the National Hispanic Christian Leadership Conference.*



**Statement for the Record**

**House Judiciary Committee**

**"America's Immigration System: Opportunities for Legal Immigration and Enforcement of Laws against Illegal Immigration"**

**February 5, 2013**

The National Immigration Forum works to uphold America's tradition as a nation of immigrants. The Forum advocates for the value of immigrants and immigration to the nation, building support for public policies that reunite families, recognize the importance of immigration to our economy and our communities, protect refugees, encourage newcomers to become new Americans and promote equal protection under the law.

The National Immigration Forum applauds the Committee for holding this hearing on the matter of America's broken immigration system and urges the Committee to take up a broad immigration reform approach.

We believe this time will be different when it comes to passing immigration reform. In the past two years, an alliance of conservative faith, law enforcement and business leadership has come together to forge a new consensus on immigrants and America. These relationships formed through outreach in the evangelical community; the development of state compacts; and regional summits in the Mountain West, Midwest and Southeast.

In early December 2012, over 250 faith, law enforcement and business leaders from across the country came to Washington, D.C., for a National Strategy Session and Advocacy Day. They told policymakers and the press about the new consensus on immigrants and America. The event generated more than 60 news stories across the country, and participants organized 78 Hill meetings (57 with Republicans). More importantly, faith, law enforcement and business leaders from across the country committed to work together to pass broad immigration reform in 2013.

As the Committee discusses reforming our immigration system, it is important that the discussion does not become singularly focused on enforcement. A singular focus on immigration enforcement will not result in workable solutions, and gives an appearance of an attempt to prey upon both our legitimate concerns and prejudices in order to score political points.



In light of the record enforcement that is now taking place—at great cost to taxpayers—it will be hard to justify even more enforcement. The deportation of undocumented immigrants is now at record levels, border apprehensions are at their lowest levels in 40 years and net migration is at zero.

Criminal prosecutions of employers who are exploiting undocumented workers are also at record levels. The Administration's focus on cracking down on unscrupulous businesses that exploit cheap immigrant labor is the best way to protect the jobs of all American workers while at the same time leveling the playing field for honest businesses that play by the rules.

To blame the immigrant worker for a system that is so broken only punishes hard-working families yearning for the American Dream. More of the same kinds of enforcement is not a solution that meets America's interests.

The American people want this problem solved. Multiple national polls over the last month show solid support for solutions that include, in addition to reasonable enforcement, creating legal channels for immigrants and establishing tough but fair rules to allow undocumented immigrants to stay and continue to work in the U.S. and eventually earning U.S. citizenship.

Reforming our immigration laws would generate as much as \$5 billion in additional tax revenue in just the next 3 years and support nearly a million jobs—and right now Americans overwhelmingly want Congress to focus on job creation and the economy. By contrast, mass deportation of undocumented immigrant already working here would cost more than \$200 billion—draining the treasury further and adding to our debt.

At the border, any additional investments in enforcement programs must be held to some standard of effectiveness. Millions of dollars have been wasted as more money has been poured into border enforcement without consideration of need or result.

We cannot spend or enforce our way to a solution on illegal immigration, and we urge the Committee to focus today, and in subsequent hearings, on enacting common-sense reforms that move us forward, not backward.



**Testimony by Mary Meg McCarthy**  
**Executive Director, National Immigrant Justice Center**

**Submitted to the House Judiciary Committee**  
**Hearing on America's Immigration System: Opportunities for Legal Immigration and Enforcement of**  
**Laws Against Illegal Immigration**

February 5, 2013

Chairman Goodlatte, Ranking Member Conyers, and members of the Committee: Thank you for the opportunity to submit this statement for the record. Since its founding nearly 30 years ago, Heartland Alliance's National Immigrant Justice Center (NIJC), a Chicago-based non-governmental organization, has been dedicated to safeguarding the rights of non-citizens. Each year, NIJC and its unparalleled network of 1,000 *pro bono* attorneys provide legal counsel and representation to nearly 10,000 individuals. NIJC also promotes access to justice for impoverished immigrants, refugees, and asylum seekers through impact litigation, policy reform, and public education.

America deserves a common-sense immigration system, and we are grateful that this Committee is taking steps to address this issue. NIJC believes that protecting the border and creating an immigration system that responds to our country's needs are not mutually exclusive approaches to legislative action. In fact, the best way to enforce immigration laws is to first create a system that works. For many noncitizens, there is simply no "line" to get into if they want to come to the United States legally. Others are presented with a waiting period of years or decades before they can join their families. This kind of system is not viable.

Worse, once people have begun any unlawful presence in the United States, our system is not designed to encourage individuals to come into conformity with our laws. To the contrary, our laws often prohibit a second chance, even if they contribute to our communities and view the United States to be their home. This, in turn, causes our current immigration enforcement and detention system to waste enormous resources on individuals who are not a threat to public safety or national security. Consider the stories of Carlos, Rafael, and Jordana below:

*Carlos and Rafael are brothers from Mexico. They entered on visitors' visas with their mother and younger sister in 2004, at ages 14 and 13, to escape the rising crime in Mexico. The brothers thrived in this country. They graduated from Palatine High School in Illinois with honors, played on the tennis team, and earned scholarships to college. Carlos is pursuing an education degree and Rafael is studying architecture. They've never been in trouble with the law. On Friday, March 19, 2010, Carlos and Rafael boarded an Amtrak train to Boston to visit a friend at Harvard University. While waiting in the breakfast line on the train, they noticed two Customs and Border Protection agents asking people on the train for identification. When approached, Carlos and Rafael admitted they were not citizens, and presented their Mexican identifications. They were immediately arrested and detained in Wayne County Jail for the weekend. With the support of their high school teachers, the boys' parents posted a \$10,000 bond and the brothers were released. Two years later, it is still impossible for these young men to become U.S. citizens.*



Testimony of National Immigrant Justice Center  
House Judiciary Hearing on America's Immigration System

*In June 2011, Immigration and Customs Enforcement (ICE) agents came to the home of Jordana Vera, a 22 year old woman from Argentina. Though they were looking for another individual, ICE agents questioned and detained Jordana. Agents believed that she had entered the United States under the Visa Waiver Program (VWP), which requires individuals to waive their rights to challenge deportation before they enter the country. Under the VWP, an individual does not have any right to removal proceedings before an immigration judge before being removed. Jordana had been brought to the United States at age 12, and did not know the details of how she and her family entered. She had to file a lawsuit in federal court. After almost a year of federal litigation and after NIJC became involved and her case obtained media attention, it emerged that the government's own files proved that she had not entered on the VWP. The government revoked the removal order against Jordana, and after nine months of detention, released her. She would be eligible for the DREAM Act, if passed.*

As you consider legislative options, NIJC requests that you:

- Create a roadmap toward timely legal status and citizenship for undocumented immigrants currently in the United States;
- Establish a humane, flexible, and efficient visa program that responds to the future needs of our country and respects family unity; and
- Ensure due process protections for all individuals in the immigration system.

NIJC has committed to five principles and fifteen high-impact policy priorities, outlined below, that must be considered in legislation. Though not all-encompassing, these changes would ensure a pathway to citizenship for as many people as possible. Legislating these policies will create a more just, effective, and efficient immigration system.

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

1. Pass legislation that creates a timely path to citizenship. This legislation must be as inclusive as possible.
2. Eliminate unlawful presence bars. Separating families or forcing people to continue in unlawful status because of past unlawful presence is a disproportionate punishment meted out on the undocumented individual and her U.S. citizen family members, and is profoundly unwise as a policy.
3. Eliminate permanent inadmissibility for false claims to United States citizenship. The current law includes a permanent inadmissibility ground for claiming U.S. citizenship, and forbids waiver of the ground. Many individuals have identified themselves as U.S. citizens to find work or out of fear of arrest. This permanent bar is disproportionate to the offense, especially because it falls heavily on individuals who have resided here for long periods of time and have become a part of the fabric of our communities.

**Principle II: Families, including LGBT families, should not be torn apart.**

4. Increase the number of family-based visas. Family values are the cornerstone of our nation's immigration policy; family unity impacts the well-being of our children, communities, and economy. Extremely low quotas for many categories of visas and overly stringent ways of counting those quotas have led to long waiting periods, particularly in family visa categories.

5. Congress must recognize same-sex partners for purposes of family-based petitions and view members of LGBT families as qualifying relatives in hardship analyses. Legislation like the Uniting American Families Act (UFAA) would allow same-sex, bi-national couples – including those in civil unions and domestic partnerships – to access family-based immigration benefits.

**Principle III: The criminal justice and immigration systems should only issue penalties proportionate to the violation.**

6. Restore discretion to immigration judges by reviving forms of relief that existed before 1996. Time has demonstrated that the 1996 changes have led to unnecessarily harsh consequences for many families, and the uneven results of litigation have led to unfair retroactive consequences for decades-old offenses. Those old rules could be improved by being combined with new mechanisms, such as a period of testing or “probation.” This approach would better achieve national goals than our current approach.
7. Adopt proportionate penalties for individuals who return after being removed. One of the inevitable results of deportation without regard to the facts of individual cases is an increase in the number of individuals who re-enter the United States without inspection. Individuals who have lived in the United States their entire lives and whose immediate families reside in the United States are desperate to return and reunite with their loved ones. Under our current legal system, the act of returning after being deported is a felony and is punished as harshly as armed robbery. Today, more than half of all federal criminal prosecutions are for immigration-related crimes.<sup>1</sup>
8. Reject any expansion of crimes that may render individuals removable or inadmissible. Immigrants who have committed minor offenses, have completed their criminal sentences, or have been sentenced only to probation face excessive punishment in the immigration system – including prolonged detention, deportation, and excessive or permanent separation from family members.

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

9. Ensure access to counsel. Under immigration law, non-citizens who are placed in removal proceedings are entitled to counsel at their own expense. However, many are unable to access counsel because of lack of financial resources, lack of providers in remote areas near detention facilities, lack of available *pro bono* assistance, and lack of information about available resources.
10. Ensure access to a hearing before an immigration judge or court. The rising number of “automatic” deportations where individuals are not given a hearing before an immigration judge denies their due process rights.<sup>2</sup> Because of the complexity of immigration law, giving immigration officers sole authority to issue an order of removal results is extremely dangerous. Moreover, those systems discourage immigration officials from exercising wise

<sup>1</sup> Transactional Records Access Clearinghouse (TRAC), “Going Deeper” tool, “Federal Criminal Enforcement, FY2011,” <http://tracfed.syr.edu>; (noting that out of 162,997 total federal prosecutions filed in FY2011, 82,250 were for immigration related offenses).

<sup>2</sup> A study by the Immigration Policy Center reveals that in 70 percent of removals in FY2011, non-citizens did not appear before a judge. See <http://www.immigrationpolicy.org/just-facts/decade-rising-immigration-enforcement>.

judgment before seeking removal. Individuals facing removal from the United States must have an opportunity to appear before an immigration judge.

11. Eliminate the one-year asylum deadline. Twenty percent of asylum claims are denied because of the technicality that they failed to apply within one year of their arrival in the U.S.<sup>3</sup> The one-year deadline disproportionately affects individuals suffering from grievous trauma due to past torture or persecution and those who were unaware that they might be eligible for protection, such as LGBT asylum seekers. Barred from asylum, individuals are only eligible for relief through withholding of removal and/or the Convention Against Torture. Since these forms of relief do not lead to permanent lawful status, many individuals who would be tortured or persecuted face indefinite limbo status. Our national commitment to protecting victims of persecution requires the elimination of this bar.
12. Give the immigration court system the resources necessary to fulfill its mission. The lack of judicial law clerks and other staff leave the court unable to handle its docket effectively, which ultimately leaves non-citizens in legal limbo for years and undermines the effectiveness of immigration enforcement. The solution cannot be to remove people without due process; rather we must allocate appropriate resources for the court.

**Principle V: Individuals should not be arbitrarily or indefinitely detained while they wait for a court hearing.**

13. End the detention bed quota. Immigration detention has expanded exponentially in recent years as the Department of Homeland Security (DHS) has increased enforcement and Congress has authorized more and more detention beds. Congress must correct the misguided notion that DHS is required to detain 34,000 immigration detainees every day.
14. Redefine "custody" to include alternatives to detention such as electronic monitoring and required check-ins with DHS. Immigration detention should be used only as a last resort, and alternatives to detention would allow DHS to enforce immigration laws in a more responsible, cost-effective, and humane manner than physical detention.
15. Give immigration judges authority to review all immigration detention determinations. Many detained non-citizens are not eligible to request release or to seek a less restrictive custody determination. All non-citizens should have an opportunity to apply for release or a less restrictive form of custody before an immigration judge.

We are a nation of laws and a nation of immigrants, but the current system does justice to neither of these core values. As Americans, we are defined by our values, especially respect for the rule of law and equality for all men and women, regardless of what they look like or where they came from. This Committee has an opportunity to create an immigration system that honors these beliefs for years to come. Any legislative reform must keep families together and create a roadmap to timely citizenship for aspiring Americans.

Please feel free to contact me at [mmccarthy@heartlandalliance.org](mailto:mmccarthy@heartlandalliance.org) or at 312.660.1351 with any questions.

<sup>3</sup> National Immigrant Justice Center, Human Rights First, and Penn State Law, *The One-Year Asylum Deadline and the BIA: No Protection No Process*, October 2010. Available at: <http://immigrantjustice.org/sites/immigrantjustice.org/files/1YD%20report%20FULL%202010%2010%2020%20FINAL.pdf>



CELEBRATING 40 YEARS OF  
ADVOCACY & EMPOWERMENT

EMBRACING THE HOPES AND ASPIRATIONS OF ASIAN PACIFIC AMERICANS

Testimony to the House Judiciary Committee

February 4, 2013

Submitted by Tom Hayashi, Executive Director, on behalf of OCA Asian Pacific American Advocates

OCA, a national organization dedicated to advancing the political, social, and economic well-being of Asian Pacific Americans (APAs), is deeply invested in enacting fair and comprehensive immigration reform. As with any creation of new wide-reaching policy, Congress must be conscious of existing and proposed law enforcement legislation and their effects on the community. As a national civil rights organization, OCA expresses its concerns regarding new enforcement laws on immigration that affect individuals' civil and human rights.

The policy framework that has been presented by both the Senate and President Obama, places border security as one of the paramount driving issue for immigration reform. While addressing security of entry points should indeed be a critically integral part of the policy solution for our broken system, we respectfully urge Congress and the Administration to take on a practical, yet holistically compassionate position and not to ignore standards in human and civil rights for the sake of political expediency:

- We discourage any legislation that promotes racial profiling of immigrants similar to the Arizona Senate Bill 1070 or "show me your papers" law. By allowing state and local law enforcement to target an individual based on their ethnicity is unconstitutional and sets a precedent that unfairly targets communities of color. While our country has gained much ground in racial healing, enforcement agents are far from color blind. Race is still very much an important factor when considering immigration reform and enforcement.
- Reality is, increased border security has little effect upon illegal immigration. By increasing border security, the United States is addressing only a small portion of the issue. According to the Pew Hispanic Center, 25 to 40 percent of unauthorized immigration is a result of expired visas, signaling a need to introduce a fair and realistic guest worker program where the appropriate work permits and sophisticated tracking systems can be put into place rather than militarizing the border including building out the physical infrastructure of our national boundaries.
- We support a plan that outlines a path to legal residency for those who are already in the country with unlawful immigration status with the requirement to begin the process without displacing applicants who have applied for work permits, visas, permanent residency status or citizenship. Such a policy will provide much needed status for the law abiding 11 million undocumented individuals while honoring those who have followed the current guidelines of immigration.
- Concurrently, deportation standards must be reformed to have fair, yet accountable measures to keep families together in cases where there are differences in status for kin or partners. By extending immigrants the basic right to due process, especially for charges that normally are reduced from misdemeanor to felony or expunged entirely due to length of time that has passed since the incident in question. These cases have resulted in trapping individuals in a technical limbo where they may or may not be deported, the outcome is still the same: families are nevertheless mercilessly torn apart.
- With a significant portion of low-skilled labor pool in this country are comprised of undocumented immigrant individuals, basic worker protections must be in place. We urge Congress to enact legislation that holds employers accountable for hazardous and

*Founded in 1973 as the Organization of Chinese Americans, OCA is a national organization dedicated to the social, political, and economic well-being of Asian Pacific Americans in the United States.*

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unlawful working conditions. The growing pool of the immigrant workers where this concern is a concern, they are not all laborers. Great many of them are also domestic workers who are either indentured or enslaved, often completely off the radar.

While our country's history is steeped in immigration, our system which has been established to has been long broken. Past attempts to rectify the wrongs have been motivated by racism. These efforts focused on limited dimensions to this complex problem, often uncreative, and lacking a strong moral framework for bringing about balanced as well as sustainable public policy solutions that addresses diversity of interests. Our political leaders, no, we as stakeholders to this issue have a historic opportunity to develop and implement a resolution as opposed to yet another fashionable solution. We cannot continue to open the same old debate every few decades, but failing to create a lasting system of equality and equity. OCA looks forward to working with Congressional leaders on a competent set of immigration policies that rightfully expresses our collective values and honors the dignity of current and future contributors to our economy and our way of life. This time we must get it right, I believe we can get it right. Thank you for your hard work to secure our future for all.

February 5, 2013

**Statement to the House Judiciary Committee by OneAmerica**

OneAmerica is Washington State's largest immigrant advocacy organizations. Our mission is to advance fundamental principles of democracy and justice at the local, state and national level by building power and capacity in immigrant communities with key allies.

OneAmerica thanks the House Judiciary Committee for holding hearings on the issue of immigration reform, and we are enthusiastic about the momentum for reform displayed through the bipartisan Senate agreement on comprehensive immigration reform recently released by a group of eight Senators and we welcome the recent statement and principles released by the President.

At the bottom of this statement, you will find 'OneAmerica's Principles for Just and Humane Immigration Reform'.

OneAmerica will focus this statement on four areas of particular concern: border security as it relates to the northern border, keeping families together through a pathway to citizenship, addressing visa backlogs and family preference, and ensuring basic due process and civil liberties in any comprehensive immigration reform legislation.

**Address the Growing Human Rights Crisis Along the Northern Border**

Washington State shares 427 miles of the northern border with Canada, including three border crossings in Blaine, Lynden and Sumas. From FY 2003 to FY 2012, Customs and Border Protections activating along the northern border has vastly increased from \$5.9 billion to \$11.7 billion in funding, and the number of Border Patrol agents has increased from 569 agents to more than 2,200 agents. Since 9/11, none of the 43 Washington State prosecutions for terrorism have been referred to the courts from the Border Patrol despite this massive increase in activity. Methods used to detain people and the lack of accountability for human rights violations and racial profiling has created a climate of fear in immigrant communities, creating mistrust of both local and federal law enforcement.

We are encouraged by proposals in both the President's and Senate's framework calling for accountability measures, including partnerships and commissions involving federal and local law enforcement, local elected leaders and community organizations and residents. More than a decade of increased enforcement along our nation's borders now require the federal government to institute strengthened systems of accountability that ensure the effective use of limited resources, that protect border residents from racial profiling and harassment, and that acknowledge the equally important goals of ensuring commerce along our borders.

Last week, Families for Freedom and the New York University School of Law released a report, Uncovering USBP: Bonus Programs for United States Border Patrol Agents and the Arrest of Lawfully Present Individuals (<http://familiesforfreedom.org/resources/families-freedom-new-report-uncovers-nearly-300-wrongful-arrests-border-patrol-and-almost>) which documents the use of bounties and

bonuses for the numbers of arrests by Border Patrol agents, creating pernicious incentives for harassment of individuals. The report also documents 300 wrongful arrests by the Border Patrol within one station in one Border Patrol sector since June 2010.

These practices are consistent with those found by OneAmerica documented in a report released in 2012, 'The Growing Human Rights Crisis Along Washington's Northern Border', which includes findings from 109 on-the-ground interviews, two hearings and observations and research in border communities. Our findings demonstrate several key patterns of abuse:

The Border Patrol engages in systematic profiling of religious and ethnic minorities. Our report identified 63 incidents that involved apparent racial profiling by the Border Patrol, and 82 incidents that involved the Border Patrol asking people for papers either while driving or at a public location, such as gas stations, ferry terminals, or outside of Wal-Mart, without reason to suspect unlawful activity. Respondents who experienced these incidences consistently reported that the only explanation for their targeting was that they looked Latino or like "workers."

Border Patrol agents routinely provide backup and language interpretation when requested by local police. About 38% of all incidents reported involved CBP acting as interpreters at the request of local police. Upon arrival, Border Patrol agents routinely ask for the immigration status of individuals present. In many cases, Border Patrol only checked immigration status and failed to provide interpretation at all.

Border Patrol's collaboration with other agencies, including local law enforcement, emergency responders, and the courts, has created extensive fear and resulted in vital services being perceived as immigration enforcement. The Border Patrol is the dispatcher for 911 calls in the cities of Blaine, Lynden, and Sumas. In many cases they arrive before or with local law enforcement and emergency responders. Many people are afraid to call 911 because they feel that local law enforcement and federal immigration agents are the same. These practices have erected barriers to the trust and relationships necessary for effective crime-fighting.

To address these abuses, OneAmerica recommends the following policy proposals:

For Congress:

- **Do not increase appropriations at the northern border** until an investigation has been completed examining the use of resources along the northern border.
- **Pass the reauthorization of the Violence Against Women Act**, including the strongest protections possible for immigrant women by **renewing and strengthening the U visa program**.
- Move forward swiftly with **Comprehensive Immigration Reform** that provides a **roadmap to citizenship** for the millions of aspiring citizens in the U.S., which will offer relief to mixed status families, power to workers to end worksite exploitation, relief to scrupulous businesses who contribute to the economy; and clearer lines of communication between immigrants and law enforcement to improve community safety.

- **Co-Sponsor and pass the End Racial Profiling Act** to prohibit the use of profiling based on race, religion, ethnicity, or national origin by any federal, state, local, or Indian tribal law enforcement agency.

For the Department of Homeland Security and Customs and Border Protection:

- **Develop, Release and Implement a sensitive locations policy** similar to Immigration and Customs Enforcement (ICE) that restricts Border Patrol's immigration enforcement activity at community spaces, such as schools.
- Bring Border Patrol enforcement practices in line with the Department of Homeland Security policy to focus on individuals who pose a threat to public safety.
- Border Patrol should not respond to 911 calls and routine police activity, such as traffic incidences.
- **CBP should not serve as interpreters** or, at a minimum, must develop a written code of conduct with clear expectations.
- Implement a written policy that clearly outlines that **CBP will not engage in enforcement during assistance with emergency checkpoints, health epidemics, or natural disasters.**

For the Department of Justice:

- Reform the Department of Justice 2003 "Guidance Regarding the Use of Race by Law Enforcement by Federal Law Enforcement Authorities" to improve protections for those affected by profiling practices at the border, including prohibition of racial profiling based on national origin, language, and religion, among other reforms.
- **Investigate CBP's interior enforcement** practices in and outside courthouses and the use of CBP as interpreters or as emergency responders and whether these practices limit meaningful access of Limited English Proficient (LEP) individuals to 911, emergency services, and the courts under TITLE VI OF THE CIVIL RIGHTS ACT OF 1964.

For a complete list of our recommendations, please visit <http://weareoneamerica.org/northern-border>

#### **Keep Families Together through a Roadmap to Citizenship**

In the last decade, immigration enforcement resources and activity has escalated at an astounding pace. In the last four years alone, more than 1 million undocumented immigrants have been removed from the United States. The current immigration enforcement system has seen literally hundreds of thousands of families ripped apart, and as a consequence it is estimated that more than 5,000 US citizen children of undocumented immigrants have been pushed into our nation's child welfare system. This has created a moral crisis that any comprehensive immigration reform system must resolve.

OneAmerica is encouraged by the basic frameworks for a pathway to citizenship for undocumented immigrants currently living in the United States proposed by the President and a bipartisan group of Senators last week. We strongly support creating a fair and sensible pathway to citizenship.



The President calls for a provisional legal status that would come into effect with requirements for registration, background checks, fees and back taxes. The Senate proposal calls for a probationary legal status that would have similar requirements. We support proposals that would immediately take pressure from detention and deportation off of immigrant families in the United States. Yet any such final legislation must be workable. If barriers or fees to adjustment of status are too extreme or difficult for low-income individuals to manage, this will only undermine the effectiveness of any program and lead to further family separation.

We furthermore recommend that the family members who have been deported be given the opportunity to return to the United States to be with their loved ones. Such a proposal would be pragmatic and reasonable, since one primary driver of illegal immigration (particularly in recent years) has been the desire to be re-united with loved ones. Such actions, called in most cases illegal re-entry, could render these individuals unable to return to the United States in the future and disqualify them from being able to adjust their status. In addition, the 3 and 10-year bars to re-entry must be eliminated, so that no individuals who are eligible for an immigrant visa are punished by being separated from their family for many years.

One major difference between the President's proposal and the proposal by the Senate bipartisan group is the timing for when a program would begin that would allow immigrants given provisional or probationary status the opportunity to begin the roadmap to legal permanent residence and citizenship. The President would begin such a process once the nation has addressed the current visa backlog. The Senate would not begin such a process until certain enforcement measures are completed. The President is accurate that ensuring certainty and clarity in any such process is far preferable to connecting any such process to the completion of vague measures that may be open to interpretation.

#### **Addressing Visa Backlogs and Family Preference**

Currently, families are divided by visa waiting periods and processing delays that can last decades. Immigration reform must strengthen the family preference system and keep families together by increasing the number of visas available both overall and within each category. OneAmerica is concerned that the Senate proposal may lead to significant changes to the family visa program, including shifting away from a family preference system. Any such system must prioritize family preference as a key component of future immigration into the United States. Our family preference system, despite bureaucratic flaws, is an important aspect of our nation's success in ensuring the effective integration of immigrants into our society.

OneAmerica calls for increasing the number of visas available both overall and within each category, including, recapturing unused visas, exempting immediate relatives from the numerical caps increasing the per country caps, and promoting family unity by reclassifying spouses and children of permanent residents as immediate relatives, protecting the eligibility of widows and orphans of US citizens and permanent residents, reducing the affidavit of support obligation from 125% to 100% of the federal poverty level, restoring 245(i) so that qualifying relatives of US citizens and permanent residents need no longer travel outside the US and separate from their families simply to process their immigrant visas (*this provision was not in CIR ASAP*), removing re-entry bars so that no individuals who are eligible

for an immigrant visa are punished by being separated from their family for many years, opening a path of return for US citizens' and residents' immediate family members who've been deported.

Immigration reform must also ensure that immigration status alone does not disqualify a parent, legal guardian, or relative from being a placement for a foster child. This would prohibit a State, county, or other political subdivision of a State from filing for termination of parental rights in foster care cases in which an otherwise fit and willing parent or legal guardian has been deported or detained. Immigration reform should also allow judges to decline to order the removal of the parent of a US citizen child if the judge determines that removal would not be in the child's best interests, and to extend opportunities for immigrant visas to permanent partners of US citizens and permanent residents (i.e. incorporate the Uniting American Families Act of 2011, HR 1537—*this provision was not in CIR ASAP*).

#### **Ensure Due Process and Civil Liberties**

We must uphold American values by ensuring that all people, no matter where they come from, are afforded fundamental rights, including the right to a fair day in court before being separated from family and community and deprived of liberty and the right to be free from inhumane conditions of confinement.

To reduce the cost of detention imposed on taxpayers and to ensure humane and safe treatment for all individuals, immigration laws must ensure that detention is used only as a last resort. This means repeal of mandatory detention laws and expansion of truly community-based alternatives to detention. Adopting these changes will bring about a massive reduction in the detention of immigrants. Those facing deportation who cannot afford attorneys must be provided a government-appointed attorney to ensure fair results. Failure to protect these fundamental rights goes against the core values of America's democracy. For the benefit of everyone, these basic rights must be restored and protected.

Since 1996, certain criminal convictions, including some minor misdemeanors from many years ago, automatically trigger deportation for life regardless of individual circumstances. Immigrants suffer a disproportionately harsh double punishment because they have already served their criminal sentence prior to deportation proceedings. Some immigrants even face deportation for conduct that was not deportable at the time it was committed or is not considered a "conviction" under state law.

Immigrants should not be treated only as the sum of their mistakes in a nation that values second chances. Immigration Judges must be given back the power to grant a second chance and cancel someone's deportation after looking at other aspects of a person's life—such as family ties, length of time in the U.S., rehabilitation, and acceptance of personal accountability. Criminal court judges should also be given back the power they once had to recommend against deportation.

The entanglement of these deportation programs with the criminal justice system threatens the rights of U.S. citizens and immigrants alike, encouraging racial profiling and resulting in long periods of detention. This undermines community safety by eroding trust between immigrant communities and local law enforcement. Immigrants hoping to reunite with their families by coming or returning to the U.S. without authorization now also face excessive criminal punishments, compounding the racial and economic injustices of the criminal justice system. Immigration legislation must rein in the constant funneling of immigrants into the deportation system and the unequal treatment of immigrants in the criminal justice system.

Current immigration laws allow the government to deport many without letting them see an Immigration Judge. Most also do not have lawyers to help them. For these people, low-level government agents simply decide to order their removal. No one should be banished from the U.S. and torn from their family and community without their day in court.

Laws that require jailing thousands of immigrants while they fight their deportation cases are inhumane. Even in the criminal justice system, people facing charges can at least request bail. Many immigrants are transferred to for-profit detention centers thousands of miles from their homes, do not have access to lawyers, and are pressured to accept deportation to escape the deplorable conditions.

OneAmerica also calls for the following specific provisions:

- roll back the definition of “aggravated felony” at least to its pre-1996 meaning
- provide government-appointed counsel for immigrants in removal proceedings who cannot afford an attorney
- ensure social service agencies, translators, and legal services are available during enforcement activities, and establishes access to legal orientation programs for all detained immigrants
- restore due process by ending mandatory detention (i.e. repeal INA section 236(c))
- authorize substantially increased funding for community-based release programs
- end use of private contractors for detention, so that no one profits from family separation and human misery
- require that detention facilities meet certain requirements to ensure humane treatment of detainees, including adequate medical treatment, access to telephones, and protection from sexual and other abuse
- establish an independent immigration detention commission to investigate and report on compliance
- require DHS to report any detainee death within 48 hours, and to report annually to Congress on circumstances of all deaths in detention
- prohibit the separation of detained families with children and increase protections for detained parents, guardians, and caregivers

#### OneAmerica’s Principles for Just and Humane Immigration Reform

Comprehensive immigration reform must include the following guiding principles:

- **Keep all families together by creating a roadmap to citizenship.** The current immigration system separates hundreds of thousands of children, parents, and families through policies that have not been updated in 25 years. America deserves a common sense immigration process, one that includes a roadmap for New Americans who aspire to be citizens, including LGBT families.
- **Reunite families.** An immigration process that values family unity must include family preference and enough visas to reunite all families separated by bureaucracy and discriminatory quotas. Family unification must also include the opportunity for family members who have been deported to return and join their families.

- **Create a sensible worker program with protections.** We are united by a deep respect for those who work hard for a living and share our commitment to country. We must develop a worker program that honors hard work and the contributions immigrants and their families to our economy. Visas should be tied to workers, not to an employer, to ensure full labor rights.
  - **Ensure humane treatment.** We will continue to aggressively push for accountability, humane treatment, and due process in the violent and abusive border and detention systems that have grown exponentially and wastefully in the last decade.
  - **Restore a Fair Day In Court.** Immigrants should not be treated only as the sum of their mistakes in a nation that values second chances. Immigration judges must be given back the power to cancel a person's deportation after looking at other aspects of her life, like family ties, length of time in the U.S., rehabilitation, and acceptance of responsibility.
  - **Respect safety in immigration enforcement.** Border enforcement – which has been made worse by increased collaboration between Federal agencies and local law enforcement – must reflect American values, prioritizing the safety and security of border communities and consulting with these communities in the process. We demand an end to failed immigration enforcement programs, including Secure Communities.
  - **Promote Immigrant Integration.** Comprehensive legislation should include forward-thinking strategies for how the United States will embrace immigrants and immigration, including adequate resources for local communities to support individuals seeking to legalize their status and a national office of immigrant integration to develop and support policies that help immigrants fully contribute to America's social, economic, and civic fabric. Ensure that taxpaying immigrants working to adjust their status have access to public benefits.
  - **Support Gender Equity.** Ensure that any new immigration process recognizes the unique challenges facing immigrant women, including protections for survivors of violence and human trafficking. A legalization program must value the contributions immigrant women make as workers, entrepreneurs, and mothers.
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**ABSTRACT**

Offered as Congressional Testimony (February 5, 2013)

**Restoring Discretionary Waivers for Certain Longtime Residents and Refugees with Criminal Problems**

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Today, the law does not afford lawful immigrants and refugees with a second chance if they have been convicted of an aggravated felony. As a result, many noncitizens from a wide range of countries are removed from the United States where they have spent many of their formative years. Most of the convicted lawful residents and refugees have one thing in common: Under U.S. immigration laws, they are regarded as aggravated felons. As aggravated felons, virtually no deportation relief is available from an immigration judge. Issues of rehabilitation, remorse, atonement, family support, and employment opportunities are irrelevant.

Previously repealed discretionary relief should be restored for these individuals. Their removal breaks up families, visiting severe emotional and economic hardship on their citizen and lawful resident relatives. Other options for handling criminal immigration cases should be made part of the immigration court system as well.

I provide a background on the problem, including the history of what came to be known as Section 212(c) relief until its repeal in 1996. I contrast the story of one of my pre-1996 clients with the stories of others after 1996. Clearly, the post-1996 individuals are deserving of a chance to apply for discretionary relief. I close with a discussion on the importance of taking a relational, restorative justice approach to criminal immigration cases.

## Restoring Discretionary Waivers for Certain Longtime Residents and Refugees with Criminal Problems

Bill Ong Hing

### I. Introduction

For the first time in many years, Congress and the White House are engaged in bipartisan efforts to enact comprehensive immigration reform. The give and take that dominates the debate mostly is over the terms of legalization for the estimated eleven million undocumented immigrants and the extent to which more funds should be dedicated to enforcement.<sup>1</sup> Along the way, conversations about the DREAM Act, a guestworker program, high-tech visas, and backlogs in family immigration categories take place as well.<sup>2</sup> However, the issue of relief for so-called “criminal aliens” mostly is being ignored. When not ignored, the issue is overly simplified by categorizing all immigrants and refugees as gang bangers who are hurting the community.<sup>3</sup>

As a legal services attorney in San Francisco in the 1970s, I represented a number of clients who were being deported because of crimes they had committed. One typical client was John Suey,<sup>4</sup> who immigrated with his parents from Hong Kong at the age of ten in 1966. They settled in Chinatown, where his parents found low-wage work. It did not take long for John to be running with other guys in a gang with nothing better to do. By the age of seventeen, John was arrested for robbery and extortion. A couple years later, he was busted for sale of heroin, convicted in federal court, and sent to Soledad State Prison. After his release, he was handed over to immigration authorities to face deportation charges back to Hong Kong. Fortunately, I was able to work with John, his new wife, drug counselors, employment counselors, job supervisors, probation officers, and a psychologist over a period of two years to prove that John was rehabilitated and would not recidivate. He was given a second chance by the immigration judge, and John has been law-abiding ever since. Another client was Linda Smith,<sup>5</sup> a native of Canada, who immigrated to the United States as a toddler. Somewhere along the line, she took to the streets and became a prostitute; a conviction for solicitation rendered her deportable. Her

<sup>1</sup> *Key senators agree on sweeping immigration reform*, CBS NEWS, Jan. 28, 2013, [http://www.cbsnews.com/8301-250\\_162-57566097/key-senators-agree-on-sweeping-immigration-reform/](http://www.cbsnews.com/8301-250_162-57566097/key-senators-agree-on-sweeping-immigration-reform/)

<sup>2</sup> *Id.*; Jens Manuel Krogstad, *Visa cap cuts off immigrants with advanced degrees*, THE DES MOINES REGISTER, Jan. 9, 2013; Miranda Campbell, *Candidates Debate the DREAM Act*, THE ARKANSAS TRAVELER, Oct. 22, 2012; Congressman Mike Honda, *The Reuniting Families Act*, [http://www.honda.house.gov/index.php?option=com\\_content&view=article&id=90&Itemid=76](http://www.honda.house.gov/index.php?option=com_content&view=article&id=90&Itemid=76)

<sup>3</sup> Julianne Hing, *Who Are Those ‘Gangbangers’ Obama’s So Proud of Deporting?*, COLORLINES.COM, Oct. 17, 2012.

<sup>4</sup> “John Suey” is not my former client’s actual name.

<sup>5</sup> “Linda Smith” is not my former client’s actual name.

mother, the “star” witness in her deportation hearing, was a straight-laced high school teacher. She pleaded with the immigration judge to give her daughter a second chance, admitting that she (the mother) had failed as a parent and wanted a second chance for herself as well as for her daughter. The judge agreed, granted the waiver, and today Linda is leading a law-abiding life.

Things have changed. Today, the law does not afford those in John’s and Linda’s shoes a second chance. In the process, many noncitizens of countless other nationalities are removed from the United States where they have spent many of their formative years. Most of the convicted lawful residents and refugees have one thing in common: Under U.S. immigration laws, they are regarded as aggravated felons. As aggravated felons, virtually no deportation relief is available from an immigration judge. Issues of rehabilitation, remorse, family support in the United States, and employment opportunities are irrelevant.

Previously repealed discretionary relief should be restored for these individuals. Their removal breaks up families, visiting severe emotional and economic hardship on their citizen and lawful resident relatives. Other options for handling criminal immigration cases should be made part of the immigration court system as well.

Below, I provide a background on the problem, including the history of what came to be known as Section 212(c) relief until its repeal in 1996. I contrast the story of John Suey, one of my pre-1996 clients, with the stories of others after 1996. Clearly, the post-1996 individuals are deserving of a chance to apply for discretionary relief. I close with a discussion on the importance of taking a relational, restorative justice approach to criminal immigration cases.

## II. Deporting Immigrants Based on Criminal Convictions – “Aggravated Felony”

September 11, 2001, profoundly affected the immigrant community. The Department of Justice and the U.S. Congress passed at least two dozen statutes and federal regulations in response. For example, immigrants with criminal convictions are now a primary concern for the Department of Justice (DOJ) and the Department of Homeland Security (DHS).<sup>6</sup> Now, noncitizens, including lawful permanent residents, can be deported based on a criminal conviction. Immigrants must become lawful permanent residents to become U.S. citizens. These individuals are granted permission by the U.S. government to live and work in the United States for an indefinite period of time, establishing close relatives and ties. The Immigration and Nationality Act (INA) establishes three categories of crimes that place a noncitizen at risk of deportation or prevent a noncitizen from ever becoming a lawful permanent resident: (1) aggravated felonies, (2) crimes involving moral turpitude, and (3) a variety of other crimes involving firearms, domestic violence or controlled substances.<sup>7</sup>

<sup>6</sup> Jennifer Chacón, *Unsecured Borders: Immigration Restrictions, Crime Control and National Security*, 39 CONN. L. REV. 1827 (2007)

<sup>7</sup> Robin Bronen, *Immigration Consequences of Criminal Convictions*, Alaska Justice Forum (2003), at [http://justice.uaa.alaska.edu/forum/20/1spring2003/c\\_immigcrim.html](http://justice.uaa.alaska.edu/forum/20/1spring2003/c_immigcrim.html).

Under the INA's aggravated felony provision, neither the adverse effect on the family of a lawful permanent resident nor the effect on the person exiled to a country he or she never knew is considered. Despite the harsh effects on the families involved, courts continue to sanction these laws under the plenary power doctrine.<sup>8</sup> Deportation is clearly more detrimental to the life of a noncitizen than the imposition of a criminal sentence.

A deported noncitizen faces the possibility of losing his or her family, friends, and livelihood forever. Many deported noncitizens are removed to countries with which they have virtually no ties.

The aggravated felony provision subjects any noncitizen convicted of an aggravated felony to deportation from the United States.<sup>9</sup> "Few punishments are more drastic than expelling persons from this country when their family members are residents."<sup>10</sup> Yet, the legislation mandating deportation of long-time, lawful residents with strong family ties in the United States when these noncitizens are convicted of an aggravated felony has been normalized.<sup>11</sup>

The public expects our government to protect us from dangerous foreign nationals, particularly in the wake of 9/11. However, a closer look at the sweeping mandatory deportation scheme governing criminal grounds for deportation reveals that the aggravated felony category is so broad that it includes many crimes that bear little relation to an actual threat to public safety.<sup>12</sup> Thus, the distorted effect of current deportation laws results in automatic deportation for convictions as minor as petty theft, urinating in public, or forgery of a check for less than \$20.

#### A. Deportation Provisions: Crimes Involving Moral Turpitude

Lawful permanent residents and refugees who have been convicted of certain crimes, or who have committed certain "bad acts" without being convicted, can be removed. Problems with drugs; crimes involving moral turpitude, prostitution, and firearms; sexual crimes; and a host of other offenses can cause problems. Even very minor offenses can lead to catastrophe.

An immigrant can be deported based on one or two convictions involving moral turpitude. Only one conviction of a crime involving moral turpitude is needed to render a lawful permanent resident deportable, if the crime was committed within five years after admission and if the offense had a potential sentence of one year. A noncitizen is deportable if convicted of two separate crimes involving moral turpitude at any time, regardless of the sentence and the time since admission.

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<sup>8</sup> David Cheng, *Emigres of the Killing Fields: The Deportation of Cambodian Refugees as a Violation of International Human Rights*, 25 B.C. THIRD WORLD L.J. 221, 223 (2005).

<sup>9</sup> Valerie Neal, *Slings and Arrows of Outrageous Fortune: The Deportation of "Aggravated Felons"*, 36 VAND. J. TRANSNAT'L L. 1619 (2003).

<sup>10</sup> *Yepes-Prado v. U.S. INS*, 10 F.3d 1363 (9th Cir.1993).

<sup>11</sup> Valerie Neal, *supra* note--

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



Moral turpitude crimes include theft and robbery, crimes involving bodily harm, sex offenses, and acts involving recklessness or malice. Passing bad checks, credit card scams, burglary, and even perjury can involve moral turpitude. Assault with a deadly weapon, murder, rape, and arson involve moral turpitude because those offenses require an intent to do great bodily harm. Simple assault, simple battery, and simple driving under the influence generally do not involve moral turpitude. However, a conviction for driving under the influence while the person's license was suspended is a crime involving moral turpitude.<sup>13</sup>

Under a separate deportation provision, aliens who are convicted of any law relating to use or possession of a firearm (e.g., gun) or "destructive device" (e.g., a bomb) are deportable.<sup>14</sup>

#### B. Aggravated Felonies

Many offenses, including murder, certain drug offenses, alien smuggling, and even theft (with a suspended sentence of one year), have been designated as aggravated felonies. These carry the most severe immigration consequences, with little hope of relief from deportation.

Under immigration laws, an alien convicted of an aggravated felony at any time after admission is deportable.<sup>15</sup> An *aggravated felony* is defined as murder, rape, sexual abuse of a minor, any illicit trafficking in any controlled substance (including drugs, firearms, or destructive devices), money laundering, or any crime of violence (except for purely political offenses) for which the term of imprisonment imposed is at least one year. The definition also includes offenses of theft, if the term of imprisonment imposed is at least one year; treason; child pornography; operation of a prostitution business; fraud or deceit in which the loss to the victim or victims exceeds \$10,000; tax evasion in which the loss to the U.S. government exceeds \$10,000; crimes relating to the Racketeer Influenced and Corrupt Organizations (RICO) Act, if the term of imprisonment imposed is at least one year; alien smuggling, except in the case of a first offense involving the assisting, abetting, or aiding of the alien's spouse, child, or parent and no other individual; document trafficking, if the term of imprisonment imposed is at least one year; failure to appear to serve a sentence, if the underlying offense is punishable by imprisonment for a term of five years; and bribery, counterfeiting, or forgery for which the term of imprisonment is at least one year. An attempt or conspiracy to commit any of the crimes just mentioned is also included.<sup>16</sup>

<sup>13</sup> *Matter of Lopez-Meza*, Int. Dec. 3423 (BIA 1999). This holding, concerning an Arizona statute, was overturned by the Ninth Circuit, but just because the Arizona statute also included sitting in a parked vehicle while drunk. *Hernandez-Martinez v. Ashcroft*, 329 F.3d 1117 (9th Cir. 2003).

<sup>14</sup> 8 U.S.C. § 1227(a)(2)(C).

<sup>15</sup> 8 U.S.C. § 1227(a)(2)(A) (2004).

<sup>16</sup> The breadth of aggravated felonies has constantly expanded since the term was introduced in the immigration laws in 1988. See Anti-Drug Abuse Act of 1988, Pub. L. No. 100-690, § 7344(a), 102 Stat. 4181, 4470-4471 (1988). The crimes treated as aggravated felonies prior to the 1996 changes in the law can be found at Immigration and Naturalization Act, § 101(a)(43), 8 U.S.C. § 1101(a)(43) (2003). Prior to

So what we might think of as minor crimes – for example, selling \$10 worth of marijuana or “smuggling” one’s baby sister across the border illegally – also are aggravated felonies. And being convicted of a misdemeanor as opposed to a felony does not automatically preclude aggravated felon status. For example, several offenses are classified as aggravated felonies once a one-year sentence is imposed. These include theft, burglary, perjury, and obstruction of justice, even though the criminal court may classify the crime as a misdemeanor.<sup>17</sup> A misdemeanor statutory rape (consensual sex where one person is under the age of eighteen) will also be treated as an aggravated felony. And a misdemeanor conviction can be an aggravated felony under the “rape” or “sexual abuse of a minor” categories.<sup>18</sup>

Conviction of an aggravated felony results in harsh immigration consequences. For example, an aggravated felon is ineligible for release on bond, is ineligible for asylum (although the person might be eligible for “restriction of removal” or the protections of the Convention Against Torture), is ineligible for discretionary cancellation of removal (see Section 212(c) Waiver section), can be deported without a hearing before an immigration judge (if the person is not a permanent resident), and is not eligible for a waiver for moral turpitude offenses upon admission.

One of the worst effects of aggravated felonies arises if the person returns to the United States illegally. A person who is convicted of an aggravated felony and removed and then returns illegally to the United States can be sentenced to up to twenty years in federal prison just for the illegal reentry.

### III. Section 212(c) Waiver: Its Rise and Fall

Discretionary relief from deportation for long-time lawful permanent residents convicted of serious crimes, even those eventually classified as aggravated felonies, was available from 1976 to 1996. During that time, an immigration judge could consider issues of rehabilitation, remorse, family support in the United States, atonement, and employment opportunities for aggravated

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1996, the aggravated felony ground for deportation was essentially similar to the other grounds for deportation. For example, drug convictions that constituted aggravated felonies were also independent grounds for deportation under a provision for deporting persons convicted of drug crimes. Similarly, any person who had two crimes involving moral turpitude was deportable, so it did not matter if the crimes were aggravated felonies. In some cases, however, the aggravated felony definition served to authorize deportation for a single crime, where the person would not otherwise have been deportable. For example, a person convicted of a murder committed more than five years after entering the country, who had no other criminal record, would have been deportable only as an aggravated felon. A noncitizen is only deportable by reason of an aggravated felony if the conviction occurred after 1988, which is the year in which the aggravated felony deportation ground was added.

<sup>17</sup> See, for example, *United States v. Campbell*, 167 F.3d 94, 98 (2nd Cir. 1999).

<sup>18</sup> *Matter of Small*, 23 I. & N. Dec. 448 (BIA 2002).

felons who had entered as refugees or as immigrants, if they had become lawful resident aliens and had resided in the country for at least seven years.

In 1976, the INA did not contain a provision that would have explicitly provided relief to someone like John or Linda. The language and application of INA § 212(c), however, provided the impetus for an interpretation that benefited many aliens:

Aliens lawfully admitted for permanent residence who temporarily proceeded abroad voluntarily and not under an order of deportation, and who are returning to a lawful unrelinquished domicile of seven consecutive years, may be admitted in the discretion of the Attorney General without regard to the provisions of paragraphs (1) through (25) and paragraph (30) of subsection (a).<sup>19</sup>

Importantly, the “provisions of paragraphs (1) through (25) . . . of subsection (a)” included grounds of exclusion that barred the entry of aliens convicted of serious crimes involving moral turpitude and narcotics offenses.<sup>20</sup> Therefore, under INA §212(c), a lawful permanent resident who had resided in the United States for seven years could proceed abroad voluntarily and be readmitted at the discretion of the attorney general, even if he or she had been convicted of a serious crime that rendered him or her excludable. In essence, INA § 212(c) provided a waiver of exclusion. In practice, the attorney general could grant the waiver in exclusion or deportation proceedings, as long as the person had proceeded abroad voluntarily at some point.<sup>21</sup>

That similar lawful permanent residents convicted of identical crimes would be treated differently only because one had never left the United States after immigrating and the other happened to leave and return after committing the same deportable offense disturbed the Second Circuit Court of Appeals in *Francis v. INS*.<sup>22</sup> The latter person would be eligible for the 212(c) waiver, while the former would not under the Board of Immigration Appeals’ (Board) interpretation of the statute. The Second Circuit ruled that the Board’s interpretation violated equal protection, and, therefore, held the waiver applicable to any lawful permanent resident who had resided in the country for at least seven years.<sup>23</sup> Soon thereafter, the Board adopted the

<sup>19</sup> 8 U.S.C. § 1182(c) (1976).

<sup>20</sup> *Id.* § 1182 (a)(2)(A)(i) (1976).

<sup>21</sup> *In re L*, 1 I. & N. Dec. 1 (BIA 1940).

<sup>22</sup> *Francis v. INS*, 532 F.2d 268 (2d Cir. 1976).

<sup>23</sup> *Id.* at 273 (holding that “[r]eason and fairness would suggest that an alien whose ties with this country are so strong that he has never departed after his initial entry should receive at least as much consideration as an individual who may leave and return from time to time”). In fact, this ruling was consistent with the Board’s own interpretation of a similar provision that was part of the statute decades earlier: *In re A*, 2 I. & N. Dec. 459 (BIA 1946), approved by Atty. Gen. (1947) (holding that an alien had not reentered country following his conviction was not bar to exercise of discretionary relief in deportation proceeding).

*Francis* decision.<sup>24</sup> The result was that a lawful permanent resident who had resided in the United States for seven years could apply for and be granted a waiver under INA § 212(c) in deportation proceedings, thereby allowing the person to remain in the United States as a lawful permanent resident. To be granted the waiver, the person had to persuade an immigration judge to exercise favorable discretion.

In *In re Marin*,<sup>25</sup> the Board summarized the major factors for immigration judges to consider in Section 212(c) cases, although each case was to be judged “on its own merits.”<sup>26</sup> In general, the immigration judge was required to balance the adverse factors evidencing an alien’s undesirability as a permanent resident with the social and humane considerations presented on his or her behalf to determine whether granting of relief appeared “in the best interests of this country.”<sup>27</sup> The alien had the burden of showing that the positive factors outweighed the negative ones. Favorable factors included such considerations as:

[F]amily ties within the United States, residence of long duration in this country (particularly when the inception of residence occurred while the respondent was of young age), evidence of hardship to the respondent and family if deportation occurs, service in this country’s Armed Forces, a history of employment, the existence of property or business ties, evidence of value and service to the community, proof of a genuine rehabilitation if a criminal record exists, and other evidence attesting to a respondent’s good character [for example, affidavits from family, friends, and responsible community representatives].<sup>28</sup>

Factors deemed adverse to an alien included:

the nature and underlying circumstances of the exclusion [or deportation] ground at issue, the presence of additional significant violations of this country’s immigration laws, the existence of a criminal record and, if so, its nature, recency, and seriousness, and the presence of other evidence indicative of a respondent’s bad character or undesirability as a permanent resident of this country.<sup>29</sup>

Section 212(c) relief was not automatic. For example, in *Ashby v. INS*, that the applicant was convicted of three crimes, committed over a six-year period, which involved the use of force and weapons, and was incarcerated for eight years were critical to the Board’s denial, despite twenty-seven years of lawful permanent residence.<sup>30</sup> Also, in *Arango-Arúdondo v. INS*, the Second Circuit upheld the denial of INA § 212(c) relief when the immigration judge carefully

<sup>24</sup> *In re Silva*, 16 I. & N. Dec. 26 (BIA 1976).

<sup>25</sup> *In re Marin*, 16 I. & N. Dec. 581 (BIA 1978).

<sup>26</sup> *Id.* at 584.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.* at 584–585.

<sup>29</sup> *Id.* at 584.

<sup>30</sup> *Ashby v. INS*, 961 F.2d 555, 557 (5th Cir. 1992).

and thoroughly weighed the evidence in the alien's favor (including his drug and alcohol rehabilitation efforts, his long-time residency in the United States, his close family ties, and the hardship he would endure in Colombia given his HIV status and his lack of ties there) against the detrimental evidence (including his sporadic employment record, his failure to file taxes, and, most important, his "very lengthy and very severe" criminal record, together with his long involvement in the drug culture).<sup>31</sup>

As the number of negative factors grew in a Section 212(c) case, the respondent had to introduce offsetting favorable evidence, often labeled "unusual or outstanding equities." Courts required this heightened showing when an alien was convicted of a serious drug offense, particularly one relating to the trafficking or sale of drugs. For example, in *Varela-Blanco v. INS*,<sup>32</sup> a conviction of lascivious acts with a child (sexual abuse of an eight-year-old niece) was a serious crime requiring a demonstration of "unusual or outstanding equities" for Section 212(c) relief.<sup>33</sup> Although the applicant had resided in the United States for eighteen years, the first ten were in an unlawful status. Therefore, employment during his undocumented status was not considered.<sup>34</sup> Furthermore, the presence of family and considerable evidence of rehabilitation was insufficient.<sup>35</sup>

In *Paredes-Urrestarazu v. INS*,<sup>36</sup> the Ninth Circuit upheld a denial of Section 212(c) relief, even though the alien demonstrated unusual and outstanding equities. He entered the United States at age twelve, was married, and had a child and numerous relatives. However, very serious adverse factors, including gang-related armed robberies, general court-martial and dishonorable discharge from the military, false testimony concerning military service, past drug abuse, and an arrest for drug possession (despite completing a diversion program), outweighed the equities.<sup>37</sup>

In *Diaz-Resendez v. INS*,<sup>38</sup> however, the Fifth Circuit found that an applicant who had been convicted of possession of twenty-one pounds of marijuana with intent to distribute met the rigorous standards for Section 212(c) relief. The applicant was fifty-four years old and had been a continuous lawful resident for thirty-seven years. He had been married to a U.S. citizen for twenty-nine years, had three children who were fully dependent on him, faced imminent breakup of his marriage if deported, and otherwise had a clean criminal record except for a drunk driving charge that ended his drinking.<sup>39</sup>

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<sup>31</sup> *Arango-Aradono v. INS*, 13 F.3d 610, 613 (2d Cir. 1994).

<sup>32</sup> *Varela-Blanco v. INS*, 18 F.3d 584 (8th Cir. 1994).

<sup>33</sup> *Id.* at 586.

<sup>34</sup> *Id.* at 587.

<sup>35</sup> *Id.* at 587-588.

<sup>36</sup> *Paredes-Urrestarazu v. INS*, 36 F.3d 801 (9th Cir. 1994).

<sup>37</sup> *Id.* at 817-821.

<sup>38</sup> *Diaz-Resendez v. INS*, 960 F.2d 493 (5th Cir. 1992).

<sup>39</sup> *Id.* at 497.

In contrast, in *In re Roberts*, the Board denied relief to an applicant convicted of a cocaine sale constituting drug trafficking, who was separated from his wife and four children, did not financially support any of them, had an irregular employment history, and had not paid income tax for some time.<sup>40</sup> Similarly, in *Nunez-Pena v. INS*, the Tenth Circuit found that the applicant's ten years of residence, family ties in the United States, progress toward rehabilitation, and record of steady employment did not meet the outstanding equities standard.<sup>41</sup> The applicant, who would be deported to Mexico, had been convicted of a serious heroin offense, had served two years in prison, and involved his brother and common-law wife in his drug activity. The court found it relevant that the applicant was fluent in Spanish and that a sibling and his father lived in Mexico. In *Vergara-Molina v. INS*, the Seventh Circuit approved the Board's finding of no unusual and outstanding equities in a case involving an applicant convicted of two controlled substance violations.<sup>42</sup> Evidence of his rehabilitation, steady employment, service to the community as a drug counselor, and good character were considered, but the court would not second-guess the Board.<sup>43</sup>

The necessity of demonstrating unusual or outstanding equities was not triggered exclusively by serious crimes involving controlled substances. A particularly grave offense also demanded such a showing.<sup>44</sup> Additionally, such a showing could be mandated because of a single serious crime, or because of a succession of criminal acts that, together, established a pattern of serious criminal misconduct. A respondent who demonstrated unusual or outstanding equities, as required, did not automatically obtain a favorable exercise of discretion; but absent such equities, relief would not be granted in the exercise of discretion.<sup>45</sup> There were cases in which the adverse considerations were so serious that a favorable exercise of discretion was not warranted even in the face of unusual or outstanding equities.<sup>46</sup> On the other hand, Section 212(c) relief could not be categorically denied to drug offenders who served fewer than five years of incarceration.<sup>47</sup>

Rehabilitation of the respondent was a critical issue in Section 212(c) cases. The Board noted that an applicant with a criminal record "ordinarily" would be required to make a showing of rehabilitation before relief would be granted as a matter of discretion. Cases "involving convicted aliens [had to] be evaluated on a case-by-case basis, with rehabilitation a factor to be

<sup>40</sup> *In re Roberts*, 20 I. & N. Dec. 294 (BIA 1991).

<sup>41</sup> *Nunez-Pena v. INS*, 956 F.2d 223 (10th Cir. 1992).

<sup>42</sup> *Vergara-Molina v. INS*, 956 F.2d 682 (7th Cir. 1992).

<sup>43</sup> *Id.* at 685.

<sup>44</sup> *Cordoba-Chavez v. INS*, 946 F.2d 1244, 1249 (9th Cir. 1991); *In re Buscemi*, 19 I. & N. Dec. 628, 633-634 (BIA 1988).

<sup>45</sup> *Akrup v. INS*, 966 F.2d 267, 272-273 (7th Cir. 1992); *In re Roberts*, 20 I. & N. Dec. 294, 302-303 (BIA 1991).

<sup>46</sup> *In re Buscemi*, 19 I. & N. Dec. 628, 635-636 (BIA 1988).

<sup>47</sup> *Yepes-Prado v. INS*, 10 F.3d 1363, 1371 (9th Cir. 1993).

considered in the exercise of discretion."<sup>48</sup> In practice, the immigration judge would pay close attention to the testimony or statements from family members, friends, employers, parole or probation officers, counselors in or outside prison, and psychiatrists. The judge would want to discern whether the applicant would engage in criminal activity again and look for evidence that the person's life had changed to the point that such activity was a thing of the past.<sup>49</sup>

Thus, Section 212(c) cases permitted immigration judges to examine the respondent's crime, prison experience, current living situation, demeanor, attitude, job skills, employment status, family support, friends, social network, and efforts at rehabilitation in deciding whether to exercise favorable discretion. Judges were even able to postpone the case to monitor the respondent's behavior before rendering a decision.<sup>50</sup>

In 1996, however, Congress enacted legislation that eliminated Section 212(c)'s second-chance relief as it had been applied for twenty years. In its place, a cancellation of removal provision was added that precluded even the possibility of relief for many who had been able to seek second-chance, discretionary relief from an immigration judge under the prior provision.<sup>51</sup> The new provision, INA § 240A(a), permits the attorney general to "cancel removal" for certain aliens who commit crimes if the alien (1) has been a lawful permanent resident for at least five years, (2) has resided in the United States continuously for seven years after having been admitted in any status, and (3) has *not* been convicted of any aggravated felony.<sup>52</sup> The aggravated felony bar, thus, eliminated relief for many lawful resident aliens who would have been eligible for Section 212(c) relief.

#### A. Revisiting John

I recently had the opportunity to go back and revisit my client John Suey who was granted 212(c) relief back in the 1980s when the relief was available. His story is not surprising. John Suey was born in Hong Kong on March 27, 1956, the fifth of six children. His parents, originally from mainland China, immigrated to Hong Kong after World War II when the Communist Party took over. As tailors, they owned a small business making suits. As such, they

<sup>48</sup> In re Edwards, 20 I. & N. Dec. 191, 191 (BIA 1990).

<sup>49</sup> Bill Ong Hing, HANDLING IMMIGRATION CASES 388 (1995).

<sup>50</sup> When I handled Section 212(c) cases, both as a legal services attorney and in conjunction with law school clinical programs, occasionally judges who were not happy with the two extreme options of deporting the person or granting the waiver would create an in-between option. They would do so by taking some evidence at an initial hearing, and then continuing the matter for several months (sometimes for more than a year) until eventually holding a final hearing. That way, the judge created an informal probationary period, during which time he or she could get a sense of whether the respondent had actually turned his or her life around.

<sup>51</sup> See Katherine Brady, *Recent Developments in the Immigration Consequences of Crimes*, OUR STATE OUR ISSUES: AN OVERVIEW OF IMMIGRATION LAW ISSUES 129 (Bill Ong Hing ed., 1996).

<sup>52</sup> 8 U.S.C. § 1229(a) (2004) (emphasis added).

were able to acquire property and had the time and money to provide for their children. John's aunt, however, lived in the United States and soon convinced John's parents that the United States offered a better future full of opportunity for their children. Thus, they sold all their possessions and decided to leave Hong Kong. Through the sponsorship of John's aunt in the United States, John's family arrived in San Francisco in 1963, when John was only seven years old. They settled down in San Francisco's Chinatown, where John's aunt owned a restaurant. John's parents worked twelve- to sixteen-hour days in the restaurant, mostly washing dishes. They were grateful for the opportunity to work and earn money but found themselves too tired to spend much time with their children. Their search for other work was severely limited by their almost nonexistent English (they could not invest any time in learning the language with their scarce resources). Eventually, both of John's parents were able to use their tailoring skills to obtain employment at a sewing factory and move the family into a two-bedroom apartment. After some time, John's mother remained in the factory, but John's father returned to working in the restaurant.

Life was drastically different in the United States for the Suey family. Thanks to the severe language barrier and resulting job opportunities, the family's socioeconomic status fell from middle class to low class. This made it much more difficult for the parents to support the family here than in Hong Kong. The long working hours kept John's parents from providing much supervision as John and his siblings faced complicated cultural and economic adjustments. Soon even John's siblings started working part time to help, as they were in high school. John felt a little spoiled since he was the youngest boy in the family and had much unsupervised time to do whatever he wanted. In grade school, he found companionship and understanding with neighborhood children who shared a similar background. Their parents were also very busy working and did not have much time to spend with them. Like John, these immigrant children also faced cultural and identity conflicts. John thought it would be easy to become accustomed to his new surroundings, but it turned out to be much more difficult than he had imagined. He had trouble learning English and did not have much outside support for his academics. His parents did not know about tutoring and did not have the time to provide help in school. At school, the American-born Chinese (ABCs) children would pick on the foreign-born kids. John tried to be tough as early as in kindergarten as a result of his treatment from other kids. This created further incentive for John to hang out with children most like him. He performed satisfactorily in school but would get into frequent fights with the ABCs. These fights were not very serious, but they affected the formation of future relationships and ended in the creation of two groups that did not get along. John did not see the rivalries as a racial thing but simply the way things were in the neighborhood in which he grew up.

With little supervision and a group of friends who were struggling to fit in, John gradually lost interest in school. On a typical day, he would go to school to meet his friends and cut classes. They started stealing from local stores for fun. John did not have a sense that what he was doing was wrong or illegal; he just saw that he could obtain free things simply by putting them in his pocket. Because his parents could hardly afford to give him any spending money, this became an easy and exciting way to get the small things he wanted. In time, stealing allowed him to maintain a lifestyle he could not afford otherwise. By selling what he stole, John made enough money to party, go out for dinner, and drink with his friends. Smoking, drinking, and fighting became a regular occurrence in the neighborhood and John was caught participating in these



activities several times. He started hanging out with his friends more often and cut classes in high school to do so. When John first started getting in trouble, his parents would hit him. It soon became clear that they could not control him, however, and they decided to allow the authorities take John to a boys' home in Palm Springs after he was sent to juvenile hall. This home consisted of at least one hundred boys and was structured like a hotel. During his year there, John was driven to school and taken on field trips. Still, he missed his parents and thought he would do better from then on. Unfortunately, this effort was short-lived and John ended up in juvenile hall a total of seven times by the time he reached the age of eighteen, mostly for stealing.

He was also sent to juvenile hall for fighting incidents, where he and his friends got into quarrels with groups of older kids. One day, John witnessed his friends fighting older youth. Although he did not participate, the police chased him just the same. Whereas everyone else successfully escaped, John was smaller than the others. A policeman chased him into an alley, where he tripped on his baggy pants. The policeman proceeded to beat him before taking him to juvenile hall. John served six months for this "offense." During this time, he felt angry that he had been beaten and could not do anything about it. His hatred grew because he felt he had been apprehended for no reason. John grew determined to be tougher once he got out.

The other kids in juvenile hall were of different races and bigger than John. John was forced to stand up for himself because he was constantly picked on by these larger kids. Juvenile hall was similar to a dormitory with many levels. Each level was assigned according to how good the detainee's behavior was. John spent time on every level. The counselors at the time used methods John did not expect: Whenever two kids wanted to fight, the counselors would give them boxing gloves so they could settle their differences. Although there was no smoking allowed within the facilities, sometimes the cops themselves would hand out cigarettes to those they thought merited something extra for good behavior. By the time he was released, John was effectively tougher, and things got worse. John's friends would frequently get into similar trouble. Though the neighborhood did contain gangs that would fight and shoot at each other, John did not belong to any of these. His friends did not consider themselves a gang (they had no gang name and did not function like a typical gang). In fact, some of his friends would join different gangs and would find each other on opposite sides of a fight. John, however, only cared about having fun and making money. These goals and his reckless behavior led him to join a couple of friends in robbing an acquaintance. John was convicted of armed robbery at age nineteen and spent three years at Soledad Prison.

According to John, "If you're not a criminal and you're sent to state prison, you become a criminal." Accustomed to living among others physically like himself, John found himself as part of a tiny 1 percent Asian minority in prison. In comparison, there was a much higher population of African Americans, whites, and Latinos. It was a different world that taught him to sell drugs and offered him a heroin addiction. In this maximum security prison, many of the inmates were serving sentences for murder. John was new and only nineteen, whereas the people around him had been there for years and enjoyed seducing younger inmates. Hardened by his experiences, though, John held his own as a "tough guy." No matter how tough he tried to be, John still knew he needed to ally himself with a group. With the Asians, he made friends who would watch his back even as he did the same for them. At the same time, these friends exposed

John to drugs. Each group (racial, for example, blacks, Asians, whites, Mexicans) had a representative who would organize the group and negotiate to provide whatever the group needed. By way of this organization, many drugs and much money flowed through the prison. Though the Asians did not have as much of a problem with other groups, where there were drugs, there was violence. John was involved in several fights and spent most of his time in lockdowns and solitary confinement. After serving three years in state prison, he was released on parole for good behavior to San Jose, California.

John spent six months at a halfway house, which he considered a rehabilitation period, and was required to report back periodically. If he violated any regulation, he would be sent back to jail. Thus he was drug free and crime free at this time. He received training in electronics and landed a job at General Electric. Soon he was able to move out of the halfway house and rent an apartment in San Jose. The taste of freedom was sweet and he quickly wanted more. Because his family and friends were still fifty miles away in San Francisco, John started commuting frequently and visiting his girlfriend. John grew bored of working and tired of commuting from San Jose to San Francisco to see his girlfriend. He knew that moving back to his San Francisco neighborhood would expose him to strong temptation to return to his old habits, but he missed his family's home cooking and the support that he could only find close to those who knew and cared for him. For him, the pros outweighed the cons. After his parole ended, John quit his job with General Electric and returned to San Francisco. Back in his old neighborhood, he reverted to hanging out with old friends, using drugs, and getting into fights. Prison had exposed him to heavy drugs, so that was what he sought. He was so used to someone supervising his every action, that it was almost like he did not know what to do with so much freedom. Aware that he was slipping and could not afford drugs with his salary, he quit his construction job and started distributing drugs for a drug dealer to earn money. Though he did not consider himself an addict, he needed money and would deliver bags to specified locations. As a middle man, he often did not even look to see what was in the bags. On one such occasion, he was to deliver a brown paper bag to a hotel and pick up a piece of luggage in exchange. Instead, he was caught and arrested.

In 1979, just two years after being released from prison, John was sentenced in the U.S. District Court, Northern District of California, San Francisco. He pled guilty to a violation of Title 21 § 841(a)(1) – possession with intent to distribute heroin – and was sentenced to two years in custody, with a special parole term of five years. John spent the first twenty months in rehabilitation for his heroin addiction. He found out that federal prison was much different from state prison. Before, he was in the company of people who had committed murder or assault. Though state prison was under maximum security, John would witness people killing each other. He had joined a group so he would not be dominated by another group (not so much a racial occurrence but because of drugs and the power associated with them). In federal prison, on the other hand, many of the inmates were educated. These people had not committed violent crimes, but were instead serving time for big time smuggling, embezzlement, and the like (white collar crimes). The environment in the federal prison led John to think more clearly about what he was doing and where he was headed. He completed his GED while serving time and also attended a drug rehabilitation program. This program tested him for drugs regularly. An important byproduct of this program was that it acted as a minimum security area, where John was able to meet “a lot of good people.” One of these people was a seventy-three-year-old man who became

his friend and mentor. This man, an Asian minister, taught John to value his life and the life of others. This great influence on how John viewed himself and the world helped him see the importance of self-discipline. Unfortunately, John learned of his mother's death while he was still in federal prison. This caused him to feel great remorse for what he had done and how he had missed being with those he loved. "It hurt me a lot. I [would always] return [from jail] badder and badder." Upon release in 1981, John, now age twenty-five, decided to do things right.

John's resolution to stay out of trouble was strengthened further by his new role as a husband (he had married his girlfriend right before going to prison). However, he was afraid that nobody would hire him because he was an ex-felon. He applied to any job that was available but was met with only rejection and disappointment. Finally, he applied to a job in city hall, where an old friend helped him secure a job as a clerk for minimum wage. Because the job was only temporary, John continued to apply to all the jobs he could. After a year of working as a clerk, he applied and was accepted into a program for mechanic assistant because of his electrics training. This program trained him for two years to work for the municipal service of San Francisco. Though John found it difficult to maintain a "clean" life, he persevered for himself and his family. He had come to see that he had a lot to lose, and he did not want to take that chance anymore.

Although John's life appeared to be on track, he still faced a final obstacle. Because of his past criminal activity, the INS had a deportation detainer lodged against him. John never thought he would have problems with immigration. He had been in the United States for so long, more than twenty-five years, and thought he had paid for his crimes through serving time in prison. He therefore did not think his immigration status would be affected. "I did my time, I don't deserve getting deported." Since his initial immigration to the United States at the age of seven, John had never returned to Hong Kong. He knew no relatives or friends in that country and would have an extremely difficult time adjusting. His life, his home, his work, and family was in the United States. In addition, John had become the sole provider and caretaker of his elderly father. Dozens of letters supporting John came from friends, family, supervisors, coworkers, his parole officer, and a court-appointed psychologist. In 1985, John Suey was granted Section 212(c) by establishing his rehabilitation and the hardship to himself and his family that would result from his deportation. He was given a second chance to establish a life in the United States.

John not only maintained his status as a lawful permanent resident of the United States, but also applied and became naturalized as soon as he was eligible. He continues to live in San Francisco and has worked with the local transit authority for twenty years now. He is married and has three daughters, currently ages twelve, fourteen, and sixteen. His children are his inspiration – he is clean from all drugs and works daily to keep his life on track. Both he and his wife decided she would stay at home to raise the children because John understood the importance of proper parental supervision. John is eternally grateful for everyone's help.

#### IV. Facing Deportation without the Opportunity for a Second Chance

Obviously, John should be proud of his accomplishments and how he turned his life around. John got a second chance, and as a society, we should be proud that we gave him that second

chance to turn his life around. But after we eliminated the second chance opportunities in 1996 for others like John, we can only wonder what those like those described below would be able to accomplish with a second chance.

#### Jonathan Peinado

Elia Peinado still has fond memories of life in Mexico. Her husband, a photographer and business owner, owned several properties in the province of Durango as well as the home in which the family lived. Along with Elia, they raised their five children with a great deal of care and attention. As a Christian household, they would entertain missionaries as guests, some of whom would tell the family about the United States. These and other friends would often suggest that the family immigrate to the land of which they spoke so highly. Elia's husband decided to visit and see for himself what life in the United States was like and indeed liked what he saw. After some time, the family started making plans to move, selling their properties and those things they didn't need. They obtained the necessary legal papers to immigrate and moved as a family to the United States. Jonathan, Elia's middle child, was only four years old.

Three years after living in their new home, the family went back to Mexico to visit. After that, Elia sometimes returned alone, while the children stayed at home with their father. Her son Jonathan never again visited the land of his birth after that one trip shortly following his arrival in the United States. Jonathan was the product of a happy home. He always had a good character, cheerful and laughing together with his family. He also would join in reading the Bible and singing when Elia gave the children daily biblical lessons. Jonathan's father became a pastor and Jonathan was influenced to attend Riverside Baptist College after his graduation from high school.

After two years in the university, Jonathan decided to return home and start working. He enjoyed construction work and became a skilled finish carpenter employed by The Living Center, an organization that specializes in building and remodeling homes and hospitals. At age twenty-one he married and quickly built up an excellent work record. Everything seemed to be going well, until Jonathan's life took a turn for the worse. After eight years of marriage, Jonathan discovered that his wife had been unfaithful. Although he wanted to continue in the marriage, his wife wanted to be free and they soon divorced. He suffered from this separation and eventually started hanging out with the "wrong crowd."

During this difficult time in his life, Jonathan was convicted of second-degree burglary. This involves stealing or intending to steal or commit a felony inside a building, not an inhabited dwelling place. Elia describes this event as "the incident with the check." "He took a check to see if he could deposit it for a man. The check was bad and he was charged for being involved," she says with sadness. Another man, a friend of Jonathan's also charged with the crime, was concerned about supporting his six children if he went to prison. Jonathan felt sorry for his friend, so he took the blame for the entire ordeal, and the other man was set free. Jonathan received a two-year stayed sentence.

"He is such a good person, that sometimes he is dumb," says Elia, recalling the second conviction her son received. Jonathan became involved with drugs and the people who made

them. He allowed some of his friends to use his apartment, not knowing what they needed it for. These friends ended up using the space as a lab for making drugs. Jonathan was caught having the drugs in his home and was advised to admit his guilt to receive a lighter sentence. He did so and was convicted of manufacturing methamphetamine, a drug trafficking conviction.

After his release from jail, Jonathan decided to pick himself back up. He restrengthened his ties with the community and became president of the Baptist Men's Brotherhood. He occasionally led the service and Bible study at the Baptist Church where his father had been pastor for more than forty years. Elia sadly remembers, "When Jonathan's father died of cancer two years ago, Jonathan took care of everything." Not only did Jonathan see to the burial arrangements for his father, but he also served as the sole provider for Elia, who has suffered from diabetes for forty years. But, even though he returned to work and acted as such a vital figure in his family during difficult times, and his parole and correctional facility officers agreed he was a good man, Jonathan was placed in removal proceedings a year after he was released from jail. This came as a complete surprise, because no one had ever warned him about the possible repercussions his criminal convictions could have on his immigration status.

Unlike his entire immediate family who had naturalized and become U.S. citizens, Jonathan never saw the need to do so. He knew only one home, and he thought that because he had been in the United States as a lawful permanent resident for more than forty years that afforded him the rights of any other American. He soon found out this was a tragically false assumption. With his two convictions, Jonathan was ordered removed to Mexico with no consideration of mitigating circumstances. He knew this would be devastating not only to himself, but also to his whole family. He had recently discovered that his oldest sister was diagnosed with lymphoma, and he began taking her on regular trips to the hospital to receive chemotherapy. He took tests to see if he could be a bone marrow donor for his sister. He was deported to Mexico before the test results were received.

Elia wistfully contemplates her family's situation. "I have a son who was in the air forces and worked as an engineer. He graduated from UC Berkeley. My husband went to school here [in the United States], learned English, and became a pastor. He went to Golden Gate Seminary. My children went to school. None of them has asked for welfare or been a burden for this country. Jonathan just messed up at one point in his life, and this [deportation] happened." With the rest of her children either out of the country or with their own families to sustain, Elia no longer has the strong support Jonathan provided. In fact, she lost most of her savings trying to help her son adapt to life in a strange country. She traveled with Jonathan to Tijuana when he was deported to try and help him find a place to live. At first, Jonathan was very homesick as he faced culture shock. He had no idea how things worked in Mexico, and he barely spoke Spanish. He would call home every week and ask how the family was doing, worried his mother would get sick.

Jonathan has lived in Mexico for two years now. When he first arrived, he barely had enough money to eat. Through a connection with friends, he was able to obtain employment as an English teacher in Puerto Vallarta. Still, he makes only enough money to pay for a small place to live. He struggles daily to survive, worrying about his mom even as she worries about him. "He should've had another chance," is all Elia can say.

### José Luis Magaña

Jesse Magaña still remembers life in Mexico. Overall, the family was happy and everything was going well. Eventually, however, Jesse's dad could no longer find employment and had to find a way to support the family. He soon immigrated legally to the United States and started work in 1959. After years of living apart, Jesse's dad decided to reunite the family and have everyone move to the United States. Jesse was thirteen years old when he arrived in the United States; José Luis, Jesse's younger brother was only two.

Although Jesse speaks perfect Spanish as well as English, José Luis grew up speaking mostly English and thus does not have a strong grasp on the Spanish language. Still, he got along well with everyone he knew. "He was a good kid, he was always happy and he studied well. He didn't have problems with anything," says Jesse of his brother. Jesse and José Luis went to the same schools through high school. During these times, José Luis enjoyed all kinds of sports, showed an interest in the theater, and did not practice any vices. He was an average, calm, and helpful kid.

Upon graduating from high school, José Luis wanted to start working. He did several odd jobs here and there until finally settling on something he really enjoyed – karate. Having learned karate growing up along with a third brother, José Luis was a perfect candidate for karate instructor. He spent several years in this profession, as things started to change.

When José Luis was eighteen years old, he heard the tragic news that his little nephew, who was not even two years old, had been accidentally run over and killed. After that, José Luis started losing sleep and feeling depressed. Eventually, he would have "episodes" where he would talk loudly and sometimes angrily with no apparent provocation. Although José Luis became verbally and sometimes physically aggressive during his episodes, he never injured anyone. Jesse recalls that José Luis would say he was Bruce Lee and start yelling. He would also try to defend himself if anyone tried to restrain him. However, he would never attack another person. José Luis was suffering from severe bipolar disorder with manic psychotic features. From then on, he was taken periodically to the hospital, all but once involuntarily. These hospitalizations usually followed an emotionally charged event, such as the break up with a girlfriend or the death of a friend. They also usually resulted from a failure to take his prescribed medication. He would spend from one month to six weeks in the hospital, on heavy medication and looking very tired. His family would frequently visit him. Once back home, José Luis would resume acting normally and being the friendly, calm person everyone knew.

In 1999, José Luis was convicted of interference with a flight crew by assault or intimidation, in violation of 49 U.S.C. § 46504, for which he received a two-year prison sentence. Various doctors studied and tested José Luis, submitting their reports to the federal court dealing with what was essentially a hijacking case. These reports showed that the incident occurred while José Luis was in the midst of an emotional crisis, and he was probably insane at the time of the offense. He was acutely psychotic and in an extreme state of mania in which his attitude, thinking, and behavior were all substantially abnormal. One doctor described José Luis as suffering from manic grandiosity and irrational thinking that deprived him of the capacity to

appreciate the wrongfulness of his actions under the insanity test. Another doctor's professional opinion was that José Luis would clearly be considered legally insane under the American Law Institute criteria, which includes the inability to adhere to right, even if the individual knew his or her actions were wrong. Two psychiatrists indicated that José Luis's medication helped but did not necessarily prevent him from experiencing his delusions and other symptoms of his mental disorder. He had a great deal of difficulty remembering what happened on the day of the incident as well as what he was thinking and feeling at that time. Despite these reports, José Luis was sentenced to jail time. No one ever told him the conviction could have immigration consequences.

Over the years, José Luis's parents and four brothers had all naturalized to become U.S. citizens. José Luis also attempted to naturalize but missed his scheduled interview appointment. He never tried again. After all, he had been in the United States since he was two, he barely spoke any Spanish, and he had never been back to Mexico. He had never known a world outside of the United States, so he never expected having to live elsewhere. This sense of security came crashing down soon after his release from jail. His family eagerly awaited his return, though they were notified that José Luis would have to present himself to a rehabilitation home six months after being free. Instead, when the time came for José Luis to come home, the family was told that he had been transported to Arizona for removal proceedings. It turned out that his two-year sentence made his crime an aggravated felony, for which even his legal permanent resident status could not protect him from automatic deportation.

José Luis does not have a criminal background, but he suffers from an ongoing mental disability. Despite the fact that deportation and exclusion from his home, where he has lived ever since he was a two-year-old child, away from his family and friends and while suffering from a chronic mental disability would be devastating and probably life-threatening to him, José Luis was deported to Mexico. Today, he lives in an apartment by himself in the Mexican province of Michoacan, focusing all of his energies on surviving. His family sends him the money they can spare. Although he has access to medicine and seems to be doing well emotionally, they worry about the next time his depression triggers uncontrollable episodes. They can no longer be by his side. José Luis is now in his thirties.

#### José Velasquez

The case of José Velasquez is a compelling example of the harsh criminal alien deportation statutes. Velasquez was born in the Republic of Panama to a member of the Panamanian diplomatic service in 1947. His mother was a U.S. citizen and Velasquez frequently accompanied his father to the United States for extended visits. At the age of thirteen, Velasquez was admitted to the United States as a lawful permanent resident and completed his high school education at West Catholic High School in Philadelphia. For many years, Velasquez operated a delicatessen and owned a home with his wife in Pennsylvania. Both of his older siblings are U.S. citizens, as are his wife of thirty-six years and his three adult children.

In 1998, deportation proceedings were initiated against Velasquez when he returned to the United States after a trip to Panama. Nearly two decades earlier, Velasquez pled guilty to two charges, conspiracy to sell and the sale or delivery of a controlled substance. The grounds of his

removal were INA § 212(a)(2)(C), which renders excludable “an alien who has been, or has aided or conspired with, an illicit trafficker in a controlled substance,” and INA § 212(a)(2)(C)(A)(i)(II), which renders excludable “an alien who has been convicted of . . . a violation of, or a conspiracy to violate, a state or federal law relating to a controlled substance.”

In 1980, Velasquez was approached by a friend at a party who asked him if he sold cocaine. Velasquez answered that he did not but pointed out another man at the party who did. No evidence suggested that Velasquez expected compensation for any subsequent transaction between his friend and the man who Velasquez pointed to as a possible source of the drug. Upon his guilty plea, Velasquez was fined \$5,000 and sentenced to five years’ probation. As a result, Velasquez is subject to removal because his old conviction amounted to an aggravated felony under current immigration law. Neither an immigration judge nor the Board of Immigration Appeals has discretionary power to allow him to stay because of the 1996 changes to the law. Had INS addressed Velasquez’s criminal convictions while the Section 212(c) waiver was still available, there is little doubt the immigration court would have found outstanding circumstances and equities for relief from deportation.

#### Manuel Garcia

The case of Manuel Garcia also illustrates the harsh effect of current deportation laws. Manuel Garcia is a forty-year-old citizen of Mexico who has lived in the United States since 1983. Mr. Garcia graduated from high school in Mexico and then went on to a three-year technical college in 1983 to study economics and biochemistry. At the age of nineteen, he qualified for the special agricultural worker legalization provision in the Immigration Reform and Control Act of 1986, and intended to learn English and return to Mexico someday to become a teacher. Garcia soon realized, however, that he could not afford to attend school. He did agricultural work for many years, as well as work in a slaughterhouse and a mill. During this time, Garcia married and had a son in 1986. With roots firmly planted in the United States, Garcia became a lawful permanent resident in 1990.

In an unfortunate turn of events, Garcia’s father passed away in Mexico. Unable to gather enough money for travel to Mexico, Mr. Garcia became depressed and frustrated. A neighbor who sold drugs, aware of the Garcia’s financial hardship, approached him with the prospect of selling drugs to earn money. Garcia accepted the offer. Unbeknownst to him, the police were watching Garcia’s neighbor. Garcia completed three illegal drug transactions and each was tracked by the police. In 1996, Garcia delivered approximately eight grams of methamphetamine and was arrested. He pled guilty to delivery of a controlled substance for consideration and was sentenced to thirty days in jail, drug evaluation, community service, and three years’ probation. Garcia served twenty-seven days and successfully completed the other sentencing requirements.

Garcia went on to graduate with an associate’s degree in Human Services and Substance Abuse. He also worked as a bilingual/bicultural substance abuse counselor. In 2003, DHS authorities arrested Garcia at his house, detained him, and initiated removal proceedings. DHS charged Garcia as removable for commission of an aggravated felony. The immigration judge ordered Garcia removed to Mexico, in spite of all his friends, family, and a good job.



### Juan López

Another case involves Juan López, who arrived in the United States with his parents at the age of thirteen. López is a lawful permanent resident of the United States, is married to a U.S. citizen, and has two U.S. citizen children. In addition, López is part owner of a six-chain Mexican restaurant in the Twin Cities metropolitan area of Minnesota, is a member of the Chamber of Commerce, and gives antidrug lectures to Latino children in his community. In 1997, López pled guilty and was convicted of sale of controlled substances. He served one year in workhouse (work release from jail) and completed probation early. Years later, while at the police station to help a family member, López ran into an immigration agent who checked López's alien registration number. López was arrested and placed him in proceedings as an aggravated felon. As a result, he faced removal for his prior conviction under INA § 237(a)(2)(A)(iii).

In 2003, López was granted an extraordinary pardon by the Minnesota Board of Pardons because of the substantial and convincing evidence of his rehabilitation, because the crime was an unusual act in an otherwise law-abiding life, and because of the strong support that he had in his community. In addition, López also had his original sentence modified by a sentencing judge classifying his offense as a misdemeanor. As a result of the pardon, the aggravated felony ground of removability does not apply. However, López is still subject to removal under the controlled substance ground of removability.

### Cambodian Refugees

#### *Many Uch*

The deportation of Cambodian refugees convicted of aggravated Felonies began in the summer of 2002 after Cambodia signed a memorandum of understanding with the United States. Many Uch is awaiting removal to Cambodia. Many believes that prison saved his life. Sadly, he had a better chance to survive and learn in prison than growing up in his poor Seattle neighborhood. Yet even after overcoming his past and winning his freedom, Many is again being threatened with deportation. Under the aggravated felony provision, he now faces deportation to the country he left as a young boy.

At the age of seven, Many, his mother, and his two older brothers came to the United States under horrific conditions. After their home country of Cambodia was pulled into war when the United States began bombing along the Vietnam/Cambodia border, the brutal Khmer Rouge regime came to power. Many's family was captured by the Khmer Rouge army, separated from their father, and forced from their home into the jungle. There they spent almost an entire year roaming around and foraging for just enough food to survive. In 1980, Red Cross workers found the family among the sick and the dead and placed them in a refugee camp.

Over the next four years the family bounced around from camp to camp, uncertain of their fate or the fate of loved ones left behind. They assumed the worst. When Many's family made it to a refugee camp in the Philippines, he began to pick up English and realized he was "a pretty smart kid." Yet life in the camps was dreary and they were willing to sit through incomprehensible "Jesus movies" just to take their mind off tragedy.

On April 14, 1984, Many's family arrived to the United States as refugees. Their first destination was Richmond, Virginia, a place where Many realized nobody there was like them. Scared and alone, their first days in the country came without any acculturation assistance. In their strange new environment, they were placed in low-income housing, given a welfare check, and left to fend for themselves.

A year later Many's family decided to move to Seattle where other Cambodians they knew had been placed. There they sought solace among others who understood their trauma. Though these bonds helped, they could do little to assist Many when it came to actually succeeding in America.

Refugees, Many says, face many more obstacles than immigrants who willingly come here to work. Being forced from their homes to escape death, they are often unprepared for adjusting and still troubled by the sufferings of war. For Many, this abrupt move was especially tough because he came from a country of very different traditions. Because his mother could not speak English and did not understand American customs, she could not advise him about school nor could she easily seek help from others. She had never been educated and most of the other elders had been farmers back home. None of them knew what dreams he could have here.

Life at school was not much better for Many either. After his experiences with learning in the refugee camps, Many found the "alternative school" he was placed in completely unfit to teach him. "I didn't learn anything there, it was just too damn easy. They didn't expect anything from us, just to not cause any trouble." He notes that half the girls there were pregnant and almost all the guys were involved in something illegal. "How do I fit in with that?" he questioned.

Meanwhile in his neighborhood, Many faced the frustrations of poverty and discrimination. He always wondered why he could not have the things that other kids had. Kids at school would pick on Many for being different and poor. Riding the bus home from school, they would make fun of him for getting off in the "projects." They would also tell him to "go back to his country." Many didn't know how to respond so sometimes he would get into fights over it.

In his elementary school ESL class Many befriended a group of guys from similar backgrounds who had comparable problems. Growing up together, they became very close. As other kids would pick on them, they would stand up for each other. "If our friend got jumped, we didn't think twice. We'd go get those guys." Soon Many fell into the "tough mentality." If he did not fight, the other guys might look at him as weak. Sometimes he would have to steal to prove himself. And if someone would get in trouble with the law, he would never snitch.

Many and his large group of friends went everywhere together, something he says is common among Cambodians. To him they were a much-needed support group, but to police they were a gang. In the late 1980s, when gang life in Los Angeles was being popularized, the hysteria attached to Many and his friends. "We were never a gang, that title was given to us," he explained.

As Many became older, life on the street grew continually faster paced and he found himself committing worse crimes to get by. Fighting and stealing were not optional for Many, but rather a way of life. "You don't really think you're wrong 'cause everyone in the neighborhood is doing the same things," he explained. As the life of crime escalated, Many

found himself trapped. To get the increasing amounts of money he needed, Many began to get involved with drugs and guns. When Many was eighteen, he drove the getaway car in a home invasion. The victim was held at gunpoint and threatened with death along with her nephew and two nieces. Many was caught for a robbery and sent to prison.

Over the next six years Many was in some form of detention. He spent three plus years in prison and more than two in immigration detention. Sad but true, it was here that he would have the opportunity to cultivate himself while he had been unable to in his own neighborhood. Many took advantage of the opportunity. In prison he read books, went to school, and learned the law. Later he used this knowledge to petition for his release. After a tough battle, Many eventually won his freedom.

In many ways, Many is a success story of the ambivalent criminal rehabilitation system. Ironically, though, the same system he has persevered and succeeded through is the one threatening to take away the legitimacy he has earned by it. Since 2002 when the United States forced Cambodia to sign a repatriation agreement, the government has deported many people like Many and is threatening to deport him. He finds the damage from breaking up such families unnecessary, especially after the offender's debt to society has been paid.

Many has not let this threat stop him from working to improve lives of kids from his neighborhood who might fall victim to the same troubles he did. He has started a little league baseball league for Cambodian youngsters and also tutors students at a local elementary school. "I want to show them the options nobody showed me. These kids relate to me 'cause I know what they're going through."

Many's life now is quite different than it was before. He is now married, has a daughter, and owns his own delivery business. Growing up, Many never realized how tough life was in his neighborhood because his only other benchmark was a life of war. Now when he goes back the ills are painfully blatant to him. In July 2010, the governor of Washington granted Many a pardon—a significant step that could eventually allow him to remain in the United States. Though he has prepared himself to be separated from his family, for others he says, "it would be a disaster." That's why he works tirelessly to help them. "I just wish someone would've gave me these tools back then, I really think I could have made it."

#### *Touch Rin Svay*

The parents of Touch Rin Svay were among those who fled the killing fields of the Pol Pot regime, ending up in a Thai refugee camp. Touch was born in that camp, and, like thousands of other Cambodians, his family was eventually admitted to the United States as refugees. Touch grew up in Portland, Maine, and joined the Marines. At the age of twenty-two, however, Touch's life took a disastrous turn. He crashed his car while driving drunk, and his own sister, a passenger, was killed. In an awful twist that is one of those "only-in-America" stories of justice, Touch was convicted of manslaughter. The tragedy does not end there. Once Touch completed a term of eighteen months in prison, he faced deportation Cambodia, a land with which he is totally unfamiliar.<sup>53</sup>

#### *Mao So*

<sup>53</sup> Seth Mydans, *Dead End for Cambodians Who Grew So American*, NY TIMES, Aug. 9, 2002, at A3.

Mao So was one year old when he left Cambodia in 1979. His grandmother took him across the border to Thailand, and from there, to the United States. Growing up, he always believed that she was his mother. Only when he was about to be deported did she tell him that his real mother was living in Cambodia. When he was fourteen, he began to sell drugs to fellow students at Santa Ana High School. At fifteen, he could make \$500 in a day. He joined a gang and dropped out of school. He worked his way up in the gang until he was handling drug deals throughout the United States. Mao had twenty armed men working for him and sold cocaine, ecstasy, and “anything you can think of.” Eventually, he was caught after he paid cash for an Integra. He pleaded guilty to drug charges and served two and a half years of a five-year sentence. By the time of his arrest, a rival gangster had put a price of \$225,000 on his head. Mao was eventually deported in December 2002.<sup>54</sup>

*Sor Vann*

Not all the potential Cambodian refugee deportees are murderers, drug dealers, or gang members. One returnee, Sor Vann, was a thirty-four-year-old construction foreman in Houston who was charged with indecent exposure – for urinating in public.<sup>55</sup> He was placed on six years’ probation. He was caught urinating in public again just one month before his six-year probation was completed. Although the offense was only a misdemeanor, violating probation was a felony, and he served four years in prison.<sup>56</sup> He has a wife and two young children in Houston, Texas. Before he entered the United States as a refugee, the Khmer Rouge murdered his parents.<sup>57</sup>

*Louen Lun*

Louen Lun, who escaped the killing fields as a baby, committed a crime as a teenager: He fired a gun in a shopping mall as he fled a group of black teens.<sup>58</sup> Charged with second-degree assault, he served eleven months in county jail. For the next six years, he lived as a model American, building a family and maintaining steady employment.<sup>59</sup> Louen decided to apply for citizenship, and after two years he thought that the INS would finally approve his application. When he showed up at the INS office, he was incarcerated and held for deportation because of his prior conviction.<sup>60</sup> Within two weeks of his arrest, Cambodia signed the repatriation agreement, and, in May 2003, the United States deported Louen to Cambodia – twenty-two

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<sup>54</sup> See Richard C. Paddock, *Cambodia’s Black Sheep Return to Fold*, LA TIMES, Mar. 28, 2003, at A27.

<sup>55</sup> Mydans, *supra* note 53; Genevieve Roja, *Strangers in a Strange Land*, HYPHEN MAG., Summer 2003, at 35.

<sup>56</sup> Paddock, *supra* note 54.

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

<sup>58</sup> Deborah Sontag, *In a Homeland Far From Home*, NY TIMES, Nov. 16, 2003, § 6, at 48.

<sup>59</sup> *Id.*

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

years after he first arrived in America.<sup>61</sup> For Louen, leaving the United States forever means being separated not only from his mother, but also from his wife and two young daughters.<sup>62</sup>

*Yuthea Chhoueth*

Yuthea Chhoueth grew up in a rough Sacramento neighborhood. At eighteen, his attempt to rob a bank was foiled, but that was enough to get him a three-year stint in federal prison.<sup>63</sup> After his release, U.S. immigration authorities required him to check in on a regular basis and to stay out of trouble.<sup>64</sup> More than a dozen years later, Yuthea was caught driving without a license. Ironically, he was traveling to the INS for his routine visit.<sup>65</sup> The problem was that the traffic infraction made him a parole violator, and he had to go back to jail. To make matters worse, the violation made him deportable. When travel documents are obtained, authorities plan to remove Yuthea back to Cambodia – the land he fled as a toddler.<sup>66</sup>

The examples do not end there. Most potential deportees are men who are the primary wage-earners for their families, who have lived in the United States for more than twenty years.<sup>67</sup> Some Cambodian refugees facing removal, however, are women. For example, one woman faces deportation after serving three years in jail for disciplining her children with unlit incense sticks. She is a single mother whose parents have died; the father of her children abandoned the family. Her children, who were born in the United States, will be placed in foster care when she is deported.<sup>68</sup>

The environment that many young immigrants and refugees fall into on their arrival in the United States is a far cry from images of America that their parents have in their minds prior to arriving. Consider the world experienced by many young Cambodian refugees. Criminality in the Cambodian and other Southeast Asian refugee communities presents a serious challenge. Even back in 1990, when Southeast Asians made up only 1.5 percent of California's population, of the roughly 9,000 wards of the California Youth Authority (the state's most incorrigible

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<sup>61</sup> Id.

<sup>62</sup> Id.

<sup>63</sup> Shonda Swilley, *Deported to Cambodia: A Love Story: A Sac State Student Follows the Man She Loves as He Returns to a Homeland He Doesn't Know*, SACRAMENTO NEWS & REVIEW, Dec. 12, 2002, at <http://www.newsreview.com/sacramento/Content?oid=oid%3A13780>.

<sup>64</sup> Id.

<sup>65</sup> Id.

<sup>66</sup> Id.

<sup>67</sup> Josie Huang, *Cambodians Fear Worst for Deportees*, PORTLAND PRESS HERALD, May 25, 2002, at 1A. One of the early returnees was an eighty-year-old man. Chris Decherd, *Home Isn't Sweet for Cambodians Deported from U.S.; Law Says Noncitizen Criminals Cannot Stay Here*, SEATTLE TIMES, Jan. 14, 2003, at A10.

<sup>68</sup> Stephanie Ho, *Cambodia, U.S. Agree on Deportation of Criminals*, Voice of America, Jan. 2, 2003, at <http://cambodiatoday.bravepages.com/Returnees.htm>.

youth), 4.5 percent were Southeast Asians.<sup>69</sup> Reflecting California's gang wars, many were young Cambodians. By 2000, an analysis of juvenile arrests in San Francisco and Alameda (including the city of Oakland) counties in California disclosed that Cambodian and Vietnamese youth have "higher arrest and recidivism rates as compared to most other racial and ethnic groups."<sup>70</sup>

What explains the relatively high levels of criminality in the Cambodian refugee community? Criminologists, social scientists, parents, and the criminals themselves offer a variety of explanations. All of these explanations seem to flow from refugee status itself.

*Refugee Camp Environment and Experience.* The experience and environment for refugees at the camps prior to entering the United States was not positive. Food and simple shelter was provided by a staff that was overwhelmed.<sup>71</sup> Activities were scarce and there was little opportunity to be productive.<sup>72</sup> Men, the traditional "rulers" of the home, had lost control, and as one said: "I watch my children grow up behind barbed wire. . . . We [have been] here two years. And what can I do? What do I do? Nothing."<sup>73</sup>

*Post-Traumatic Stress Disorder.* The task of acculturation is enormous for many newcomers, but Cambodians, who are ethnic Khmer, arrived with other challenges.<sup>74</sup> Many parents who survived the trauma of Pol Pot's autogenocide were in shock and continue to suffer from post-traumatic stress disorder (PTSD).<sup>75</sup> Some refugees suffered long instances of starvation, which caused long-term mental deterioration.<sup>76</sup> Many children are left unsupervised because their parents experience depression.<sup>77</sup> Even when at home, a parent may remain isolated in a corner, still depressed over the loss of a loved one in Cambodia.<sup>78</sup>

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<sup>69</sup> *Id.* Southeast Asians also made up 8.5 percent of the 1991 incoming freshman class at the University of California, Davis. *Id.*

<sup>70</sup> See Thao Le et al., NOT INVISIBLE: ASIAN PACIFIC ISLANDER JUVENILE ARRESTS IN ALAMEDA COUNTY 43 (July 2001); Thao Le et al. at 45.

<sup>71</sup> Patrick Du Phuoc Long, THE DREAM SHATTERED, VIETNAMESE GANGS IN AMERICA 111 (1996).

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

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

<sup>74</sup> *Id.* at 5.

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

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

<sup>77</sup> Susanna J. Ko, *Examining the Contribution of Ethnic Attitudes, Collective Self-Esteem, and Spirituality to Delinquent Behavioral Outcomes among Cambodian Adolescents: An Exploratory Study* (2001) (PhD dissertation, University of Massachusetts) (on file with author).

<sup>78</sup> One teen spoke with bitterness of his mother, who lost her husband in Cambodia and now spends much time sitting quietly alone. Seth Mydans, *As Cultures Meet, Gang War Paralyzes a City in California*, NY TIMES, May 6, 1991, at A1.

*Disruption of the Family.* Refugee status itself can disturb the conventional family relationships and structures. Individual members negotiate new surroundings without familiar cultural cues.<sup>79</sup> The rates at which different family members adapt may be poles apart, placing strain on relationships and producing discord.<sup>80</sup>

*Cultural Challenges to Parental Control.* The new environment into which Cambodian refugees to the United States are thrust could not be more different than from where they came. Their family oriented, Southeast Asian farming civilization was based on a "highly stratified social order."<sup>81</sup> Gender roles, deference to elders, and respect for parents were understood, and children accepted, without question, that they were permanently indebted to their parents.<sup>82</sup>

*Poverty.* Cambodian refugees are poor. They earned \$5,120 per person in 1990, compared to \$14,143 for all Americans, and \$18,709 for other Asian Americans.<sup>83</sup> A decade later, there was little improvement, as 37 percent of Cambodian households were making less than \$12,000 a year.<sup>84</sup> The 2010 U.S. Census reveals that 11.3 percent of Americans overall live in poverty compared to Cambodian Americans who had a poverty rate of 18.2 percent.<sup>85</sup> Lacking higher valued human capital skills in the U.S. labor market, many adults had to take on more than one minimum-wage job, at the expense of time to supervise their children.<sup>86</sup> Socioeconomic and immigrant status often combine to exacerbate the problem of delinquency as parents work long hours and are thus unavailable to their children.<sup>87</sup> The limited English-speaking ability, financial pressures, and traumatic effect of war on parents add up to serious emotional separation in families. "[R]efugee youth may feel reluctant to burden mothers and fathers with problems that seem unimportant compared with their parents' need to make a living in a strange country, and to deal with a past filled with suffering that the children only dimly comprehend."<sup>88</sup>

<sup>79</sup> Ko, *supra* note 77, at 24.

<sup>80</sup> *Id.*

<sup>81</sup> *Id.* at 26.

<sup>82</sup> *Id.*

<sup>83</sup> Dori C. Cahn & Jay W. Stansell, *From Refugee to Deportee: How U.S. Immigration Law Failed the Cambodian Community* (2004) (citing Office of Surgeon General, 1999).

<sup>84</sup> *Id.* (citing Khmer Health Advocates, 2002).

<sup>85</sup> SEARAC, *Pew Center's Research on Asian Americans Does Not Fully Capture Southeast Asian American Experiences*, June 19, 2012, available at: <http://www.searac.org/new/pew-center%E2%80%99s-research-asian-americans-does-not-fully-capture-southeast-asian-american-experience>.

<sup>86</sup> *Id.* at 5 (citing Hyman et al., 2000).

<sup>87</sup> Ko, *supra* note 77, at 34.

<sup>88</sup> Cahn & Stansell, *supra* note 83, at 6 (citing Hyman et al., 2000).

*Low-Income Neighborhoods.* Because of refugee status, the resettlement process, and poverty, most Cambodian refugees live in low-income neighborhoods.<sup>89</sup> Not surprisingly, the neighborhood environment has a great impact on how children develop, especially when the neighborhood is dangerous.<sup>90</sup> When danger lurks, seeking out a strategy that provides protection is natural.<sup>91</sup> The poverty rate among Southeast Asians is comparable to that of blacks and Latinos, and the rate for Cambodians is the lowest.<sup>92</sup> Some researchers have identified the connection between poverty and delinquency: “socioeconomic status is consequential for violent offending primarily because it affects the cultural contexts encountered by youths (e.g., family and peer contexts) and thus indirectly shapes the learning of cultural definitions about violent delinquency.”<sup>93</sup>

*Poor Academic Performance.* Youngsters who get bad grades, who are unenthusiastic about school, and who are truant are more likely to show signs of delinquency.<sup>94</sup> Little formal education was afforded to refugee children while they were in the camps. After arriving in the United States, few were provided with bilingual education or ESL classes in school.<sup>95</sup> Many Cambodian youth simply did not have happy experiences in school or in other social environments because they looked and sounded “foreign.”<sup>96</sup> In addition, parents were clueless as to their children’s experiences.<sup>97</sup>

*The Gang As Family.* The comradery of gangs offers a surrogate family for many Cambodian youngsters.<sup>98</sup> As many children reject their parents’ culture, but also do not find themselves a part of the American culture, they may become disillusioned.<sup>99</sup> They search for acceptance and often find a sense of common understanding with their peers who are experiencing similar feelings of ostracism from mainstream and Cambodian culture.<sup>100</sup> Once they find a place where they have a sense of belonging or feel comfortable, they may assume the ethics of their friends, rather than those of their elders.<sup>101</sup> Sometimes those values are not good and can lead to

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<sup>89</sup> Alex Tizon, *A New World of Crime and Gangs – The Lure of the Streets is Stealing away the Children of Southeast Asian Refugees*, SEATTLE TIMES, Feb. 8, 1994, at A1.

<sup>90</sup> Ko, *supra* note 77, at 18.

<sup>91</sup> *Id.*

<sup>92</sup> *Id.* at 34.

<sup>93</sup> *Id.* at 34–35 (citing K. Heimer, *Socioeconomic Status, Subcultural Definitions and Violent Delinquency*, 75 SOCIAL FORCES 799–833 (1997)).

<sup>94</sup> Ko, *supra* note 77, at 85.

<sup>95</sup> Cahn & Stansell, *supra* note 83, at 6.

<sup>96</sup> *Id.*

<sup>97</sup> *Id.*

<sup>98</sup> Ko, *supra* note 77, at 37–38.

<sup>99</sup> *Id.*

<sup>100</sup> *Id.*

<sup>101</sup> *Id.*



delinquency.<sup>102</sup> For many Cambodian teens, the popularity of gangs is a response to feeling isolated from their families as well as from their peers of other backgrounds. Often, young Cambodians cite the need for protection as a reason for joining gangs.

#### V. Alternatives to Deportation

The current deportation process should include alternatives to automatic removal from the United States. Rehabilitation of individuals with criminal convictions was a critical issue in Section 212(c). Immigration judges were able to consider the testimony of friends, family, employers, probation officers, and counselors to decide if the person had sufficiently rehabilitated his or her life. Naturally an individual's crime, time spent in prison, current living situation, character, family support, employment, and personal efforts at rehabilitation came into consideration. Unlike their U.S. citizen counterparts, noncitizens face double punishment for their crimes. First, they must complete their sentence and second, they are exiled from their home and family. Deportation is the most final and permanent punishment an individual can face.

To implement a more passionate removal process, space should be provided, at the very least, for the voice of the respondent and his or her family and community to be heard. The reinstatement of Section 212(c)-type relief is a starting place. In this way, the immigration judge, who is in a good position to assess the individual facts, can consider evidence of rehabilitation, atonement, remorse, family support, and prospects for the future.

Those who supported eliminating Section 212(c) relief for aggravated felons in 1996 were frustrated with the way in which immigration judges exercised discretionary relief.<sup>103</sup> "The per se bar for some felons can be seen as a legislative attempt to control the exercise of discretion by saying that no circumstances could justify relief from deportation when the crime is one classified as an 'aggravated felony.'"<sup>104</sup> Much of that concern was overblown. In fact, as the pre-1996 cases demonstrated, obtaining Section 212(c) relief was not automatic.<sup>105</sup> Furthermore, immigration judges who granted Section 212(c) relief routinely warned respondents that if they recidivated, the exercise of favorable discretion again in the future was unlikely and deportation would be ordered.

Yet, the concern that opponents of Section 212(c) relief had that immigration judges were too lenient, should make us wonder if some other options ought to be available to immigration judges. Under the pre-1996 framework, the judge handling the case of a long-term resident (at least seven years) who was convicted of an aggravated felony had two choices: to deport or to grant Section 212(c) relief.<sup>106</sup> In either scenario, the respondent had no further contact with

<sup>102</sup> *Id.*

<sup>103</sup> Nancy Morawetz, *Rethinking Retroactive Deportation Laws and the Due Process Clause*, 73 N.Y.U. L. REV. 97, 110-111 (1998) (citing *Mojica v. Reno*, 970 F. Supp. 120, 178 (E.D.N.Y. 1997)).

<sup>104</sup> *Id.* at 157.

<sup>105</sup> See notes 25 to 50, and accompanying text.

<sup>106</sup> When I handled Section 212(c) cases, both as a legal services attorney and in conjunction with law school clinical programs, occasionally judges who were not happy with these two extreme options would

government officials after the order was enforced. One wonders whether something short of deportation could be created that would address concerns raised by both the proponents and opponents of deportation.

Given the special challenges faced by groups such as Cambodian refugees and other low income immigrants, a system that adopts a rehabilitative approach to justice might be most appropriate. A relationship-building theme ought to be central to that approach, because their children need assistance with relationship-building in the family and with community. What some term relational justice<sup>107</sup> – with the goal of avoiding injustice and promoting legitimacy and good relationships – makes a good deal of sense as a set of guiding principles for the removal process. This set of principles is capable of being translated into practice. Experts in relational justice may approach criminal justice from diverse backgrounds and philosophies. They share an understanding, however, that problems result from relationships that have failed, “between individuals, between individuals and institutions, and between individuals and communities,” and that societal justice is all about repairing those relationships.<sup>108</sup>

A relational or restorative approach is premised on the goal of rehabilitating the individual, sometimes using group therapy, counseling, and even job training.<sup>109</sup> Studies have demonstrated that although socioeconomic factors such as poverty may lead to crime, families, schools, and “informal social bonds” could play important roles in changing individual paths:

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create an in-between option. They would do so by taking some evidence at an initial hearing and then later continuing the matter for several months (sometimes for more than a year) until eventually holding a final hearing. That way, the judge created an informal probationary period, during which time he could get a sense of how the respondent would behave. The experience of other immigration attorneys was similar:

The award of a [212(c)] waiver depended not only on the nature of the criminal conduct, but also on the immigrant’s life after committing the crime. Like a parole board, the immigration judge would look at whether the individual had genuinely rehabilitated. As in the case of an inmate who will face a parole board, the immigrant could conform his or her conduct to the expectations of the reviewing body. But unlike in the parole board context, where reviews take place during the course of a sentence, the waiver of deportation process could also serve as a forum for considering the long term record of those persons against whom deportation proceedings were initiated years after they had committed their crimes and served any criminal sentences. This waiver process protected the interests of the immigrant who may have built a life of work, family, and community based on the understanding that his or her past conviction would not lead to deportation. It also protected the interests of all of those whose lives were intertwined with that of the immigrant, including family members, employers, and the employees of immigrants who operated businesses. In practice, approximately half of the long time permanent residents who sought relief from deportation were granted such relief.

Morawetz, *supra* note 103.

<sup>107</sup> See Jonathan Burnside, *Tension and Tradition in the Pursuit of Justice*, in RELATIONAL JUSTICE: REPAIRING THE BREACH 42 (Jonathan Burnside & Nicola Baker eds., 1994).

<sup>108</sup> David Faulkner, *Relational Justice: A Dynamic for Reform*, RELATIONAL JUSTICE: REPAIRING THE BREACH 159, 159 (Jonathan Burnside & Nicola Baker eds., 1994).

<sup>109</sup> Anthony Bottoms, *Avoiding Injustice, Promoting Legitimacy and Relationships*, in RELATIONAL JUSTICE: REPAIRING THE BREACH 54 (Jonathan Burnside & Nicola Baker eds., 1994).

Consistent with a sociological theory of adult development and informal social control, . . . we found that job stability and marital attachment in adulthood were significantly related to changes in adult crime – the stronger the adult ties to work and family, the less crime and deviance occurred. . . . Despite differences in early childhood experiences, adult social bonds to work and family had similar consequences for the life trajectories of the 500 [identified juvenile] delinquents and 500 controls [i.e., non-delinquents in adolescence]. In fact, the parameter estimates of informal social control were at times nearly identical across the two groups.<sup>110</sup>

Focusing on restoring relationships apparently is time well spent in terms of reducing recidivism.

In contrast to the incapacitation view of justice as simply an “instrument of social control for protecting the innocent from the guilty,” relational justice is premised on a belief that individuals are capable of change:

to improve if they are given guidance, help and encouragement; to be damaged if they are abused or humiliated. It emphasizes respect for human dignity and personal identity. It looks more toward putting things right for the future and to make things whole than to punishing the past (although the latter may sometimes be part of the former).<sup>111</sup>

This philosophy seems quite relevant in the deportation context, where the respondent has already served and completed a sentence for the criminal offense. The deportation setting is all about the future. That is where guidance and encouragement to become reincorporated into the community makes so much sense.

Relational justice recognizes that conventional criminal justice institutions (i.e., courts, police, probation departments, community agencies), who, hopefully, would understand the approach, are not solely responsible. “Informal networks,” including family, friends, neighbors, employers, and perhaps even victims, must step up to make the process work.<sup>112</sup>

Proponents of relational justice point to an additional set of values that needs to be engrained in the system if it is to work properly:

[A]ll those involved in the criminal justice process should treat people with whom they come into contact – in whatever situation or capacity – with courtesy, dignity and respect. This may seem obvious, but it is all too easily overlooked in practice. It requires people to be prepared to stop and listen, to answer questions and hear arguments or complaints, and to give reasons for decisions. . . . It seeks to preserve a sense of being valued as a human being, and of some hope for the future, even if the person has done something dreadfully wrong. . . . It tries to respond not only to situations as they present themselves, but also to look for unspoken signs that a person may need an explanation or reassurance, and to remember those who may be worrying unnoticed or unseen.<sup>113</sup>

The current removal process for aggravated felons who have grown up in the United States contains none of these components or values. Relief is altogether foreclosed for them.

<sup>110</sup> *Id.* at 63.

<sup>111</sup> Faulkner, *supra* note 108, at 160–161.

<sup>112</sup> *Id.* at 162.

<sup>113</sup> *Id.* at 162–163.

Information on their lives, their families, their community, and their rehabilitation are deemed irrelevant. The immigration laws have made deportation an extension of the criminal justice process.

Although a rehabilitative approach to deportable immigrants and refugees should inspire new, creative options, the criminal justice system itself provides some examples that might be considered. Some standard options are available prior to trial, while others may be considered after a finding of guilt. Consider the use of probation office reports and recommendations, pretrial diversion programs, group therapy, anger management, drug rehabilitation programs, and community service options. Some jurisdictions have adopted restorative justice or relational justice programs that have an underlying premise that may be particularly appropriate to consider as an alternative to the deportation of noncitizens. If one assumes that an immigrant and refugee-receiving country bears some responsibility to assist in the adjustment of newcomers to their new culture, then a program that responds to criminal behavior in a manner that seeks to repair damage to the community and/or to encourage the respondent to take responsibility for his or her actions on the road to rehabilitation is worthy of consideration.

The probation officer or department entity that is such a critical part of the criminal justice system offers ideas to consider. Probation is a postconviction process that serves as an alternative to incarceration. Its fundamental *raison d'être* is the reformation of the defendant in the society in which he or she must eventually live. The defendant is released under the supervision of a probation officer and is subject to reasonable court-imposed conditions.<sup>114</sup> Probation officer reports are critical to the process: "A probation report is a written account of the probation officer's investigations, findings, and recommendations regarding the defendant's fitness for probation. The purpose of this report is to assist the sentencing judge in determining an appropriate disposition of the defendant's case after conviction."<sup>115</sup>

Besides information on the basic facts of the case and crime, the report can include information on prior criminal conduct, the defendant's social history, family, education, employment, income, military service, medical and psychological history, an evaluation of factors relating to the disposition, recommendations, and a reasoned discussion of aggravating and mitigating factors affecting sentence length or whether imprisonment is even necessary.<sup>116</sup> The use of probation-type reports may even satisfy the harshest enforcement supporters. Congressman Smith, one of the critics who dismantled the old Section 212(c) relief, subsequently acknowledged that deportation should not always result. He suggested that immigration officials exercise prosecutorial discretion and not seek deportation in hardship cases. Furthermore, he suggested that agents should identify hardship aliens who would not be deported.<sup>117</sup>

In diversion programs, criminal cases are "diverted" out of the criminal justice system. In such programs, courts generally require offenders to participate in a treatment or rehabilitation

<sup>114</sup> David. H. Melnick, Comment, Probation in California: Penal Code Section 1203, 50 CAL. L. REV. 651, 652-53 (1962).

<sup>115</sup> 5 Cal. Crim. Def. Prac.: Sentencing and Prob., Posttrial Remedies § 90.03[3](1)-(11) (2004).

<sup>116</sup> *Id.*

<sup>117</sup> See Anthony Lewis, *Cases that Cry Out*, N.Y. TIMES, Mar. 18, 2000, at A15.

program in lieu of being incarcerated. Criminal charges are dropped upon successful completion of diversion programs, relieving offenders from being stigmatized with a criminal conviction. Either the prosecution or defense counsel may offer diversion to offenders. Defense counsel may wait until a defendant's first court appearance and ask the judge to order an "evaluation for diversion." Those referred to diversion meet with a probation officer who conducts an investigation and prepares a report regarding the suitability for diversion. The recommendation may specify the type of program most suitable for the offender.

Requiring offenders to perform community service is another alternative. Here, courts assign offenders to work, uncompensated, for nonprofit organizations or for governmental organizations instead of serving jail time. Requiring community service holds offenders accountable by making them repay society and encourages a more positive connection with the community. Local community service coordinators or probation officers administer community service orders. The orders often involve work in community centers. Community service is usually imposed in conjunction with other forms of punishment, such as probation, fine, or restitution.

In another option, courts order offenders out of their homes for a fixed term and place them in group living arrangements, such as a residential treatment facility. Under this scheme, clinical and counseling staff provide regular mentoring, counseling, and treatment for drug abuse to offenders. Clients receive treatment for substance addiction and alcoholism. The program may offer one-on-one counseling, group therapy, educational lectures, relapse prevention groups, and individualized treatment. The goal is for residents to learn to become self-sufficient, contributing members of society.

The world of corporate fraud prosecutions also suggests an interesting tool that could be useful in developing alternatives to deportation for criminal aliens. In response to the extent of corporate scandals, federal prosecutors have adopted strategies to manage the complexity of prosecutions and to foster better behavior on the part of corporations.<sup>118</sup> For example, by using prosecution guidelines set forth in the Department of Justice's famous McNulty Memorandum, prosecutors can elect to defer prosecution in cases where the corporation cooperates with investigatory agents and takes remedial actions to remedy its illegal behaviors.<sup>119</sup> This culminates in a deferred prosecution agreement (DPA) between the government and the corporation, which is essentially a form of probation, or "pretrial diversion," where the government suspends charges against the company if all the details of the agreement are fulfilled.<sup>120</sup>

Prosecutors agree not to pursue the charges and to dismiss them with prejudice after a period of time (generally between one and two years) if the corporation honors all of the terms of the agreement. In return, corporations undertake reforms, pledge active and complete cooperation with the ongoing investigation, and pay substantial civil penalties and victim restitution. Companies will often be required to engage the services of a monitor or examiner

<sup>118</sup> See Lisa Kern Griffin, *Compelled Cooperation and the New Corporate Criminal Procedure*, 82 NYU L. REV. 311 (2007).

<sup>119</sup> *Id.*

<sup>120</sup> *Id.*

during the diversion period to review and report on compliance efforts.<sup>121</sup>

DPAAs provide tremendous rehabilitative incentives to the corporations that are party to them. This innovation in the world of corporate scandal where billions of dollars may be involved and the lives of officers, board members, employees, and shareholders are at stake is adaptable to the criminal immigrant deportation setting. Why not monitor and impose conditions on such individuals for a reasonable period of time to see if rehabilitation is possible? Why not provide government attorneys or immigration judges with the authority to implement similar behavioral conditions?

The idea behind many of these options is not simply that imprisonment may not be appropriate, but that rehabilitation is a real possibility. In the same vein, analogous options in the immigration enforcement context ought to recognize that rehabilitation is not only a possibility, but ought to be promoted given the background and circumstances of groups like refugees and other noncitizens who resettled in challenging environments. Beyond the benefits to the individual, the family, the community, and the entire society stand to gain from a constructive rehabilitative approach. In contrast, the destructive forces of deportation wreak havoc on all the parties and their relationships.

#### V. Conclusion

In a review of the highly acclaimed film *The Boys of Baraka*, a documentary about a group of at-risk, inner-city boys from Baltimore who are transplanted to a rural two-year boarding school in Kenya, *LA Times* movie critic Kenneth Turan wrote:

[The film's] greatest service is in shining a light on a problem many people don't want to talk about: our willingness to throw away the lives of kids who grow up in dangerous neighborhoods far from quality schools. The enormous potential of these children, how eagerly they respond to the kinds of educational opportunities more fortunate young people take for granted, should make us wonder how society let things get this bad.<sup>122</sup>

By deporting noncitizens who have grown up here, we essentially "throw away" their lives. Ridding the country of noncitizen criminals may have the ring of an admirable goal at first blush; however, the policy overlooks several considerations when it comes to long-term residents. The first is the impact the policy has on family members and employers. Second, many deportable foreign nationals have resided in the United States since infancy. Third, the policy suggests that the criminal justice system is a failure for noncitizen criminals who already served their sentences, implying that they continue to pose a public security threat.

Rethinking removal and developing reasonable approaches to the challenges presented by criminality in immigrant communities from a community-based perspective may seem complicated. But something is terribly wrong with a system that results in the deportation of individuals who entered the country as infants and toddlers, when their criminality is the product

<sup>121</sup> *Id.*

<sup>122</sup> Kenneth Turan, *The Light Beyond the City's Dead End: "The Boys of Baraka" Examines How a Kenya School Is Used to Help African American Boys in Baltimore*, *LA TIMES*, Jan. 20, 2006, at E4.

of their U.S. environment. Short of a total bar on deportation (that actually may be appropriate for some categories like refugees), policymakers should be urged to provide a discretionary alternative to deportation – especially one that helps to build community. If we are interested in taking responsibility as a society for the environment that has resulted in high crime rates among certain immigrant and refugee communities, we have to roll up our sleeves and move forward, rather than remain paralyzed by the difficulty of the task.

In our hearts, we know that deportation is not always appropriate, especially when our country bears culpability for creating the problem. In our souls, we know that when we repatriate refugees and immigrants who have grown up in our society, we further destroy a family at a time when the family needs, more than ever, to be whole. The right response requires the involvement of the family, community, school, neighborhood, and government institutions. But policymakers must first provide the opportunity for us all to assume our responsibilities by giving the potential deportees a second chance.



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**WRITTEN STATEMENT OF  
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South Asian Americans Leading Together (SAALT)**

**"America's Immigration System: Opportunities for Legal Immigration & Enforcement of  
Laws Against Illegal Immigration" Hearing**

**UNITED STATES HOUSE OF REPRESENTATIVES  
COMMITTEE ON THE JUDICIARY**

**FEBRUARY 5, 2013**

South Asian Americans Leading Together (SAALT) welcomes the opportunity to submit a statement for the record for the February 5, 2013 hearing on "America's Immigration System: Opportunities for Legal Immigration and Enforcement of Laws Against Illegal Immigration" before the House Judiciary Committee. Given the impact of immigration reform on South Asian Americans, it is important and timely for the House Judiciary Committee to examine avenues of immigration options and the state of enforcement measures. In this statement, SAALT focuses on the importance of holistic immigration reform for South Asian Americans, particularly through the family- and employment-based immigration system, and the impact of enforcement measures that profile our community.

SAALT is a national, nonpartisan, non-profit organization that elevates the voices and perspectives of South Asian individuals and organizations to build a more just and inclusive society in the United States. SAALT works with a base of individual members and advocates and is the coordinating entity of the National Coalition of South Asian Organizations (NCSO), a network of 41 organizations across the country that provide direct services to, organize, and advocate on behalf of South Asians in the United States.

South Asian Americans are the fastest growing major ethnic group in the United States, increasing by 81% from 2000 to 2010 to approximately 3.4 million people.<sup>1</sup> As almost three-quarters of South Asian Americans are foreign-born,<sup>2</sup> our community is made up of undocumented immigrants, dependent and temporary workers on various visas, refugees and asylum-seekers, lawful permanent residents, and United States citizens. According to the

<sup>1</sup> South Asian Americans Leading Together (SAALT), *A Demographic Snapshot of South Asians in the United States* (July 2012) available at <http://saalt.org/wp-content/uploads/2012/09/Demographic-Snapshot-Asian-American-Foundation-20121.pdf>.

<sup>2</sup> See Gryn, Thomas and Gambino, Christine, U.S. Census Bureau, *Asia: 2011 American Community Survey Briefs* (October 2012) available at <http://www.census.gov/prod/2012pubs/acsbr11-06.pdf>; Asian American Center for Advancing Justice, *A Community of Contrasts: Asian Americans in the United States: 2011* available at [http://www.advancingjustice.org/pdf/Community\\_of\\_Contrast.pdf](http://www.advancingjustice.org/pdf/Community_of_Contrast.pdf).



Department of Homeland Security, there were approximately 240,000 undocumented Indians alone in 2011, making India the seventh-highest country of origin for undocumented individuals in the United States.<sup>3</sup> Additionally, South Asians, especially those from Bangladesh, India and Pakistan, are often separated from their families for years at a time as a result of the family and employment visa backlogs. As a result, immigration reform is of the utmost importance to the South Asian community and it is essential that such reform encompass large-scale change that unites families, provides individuals and their family members with options to obtaining visas and citizenship, and ends unjust enforcement measures that have resulted in racial profiling of our community members, particularly in the past decade.

The United States is a nation that was built by and thrives upon the hard work of immigrants. Socially, culturally, and economically, South Asian Americans and all immigrants contribute to the strength of our nation and its success both nationally and internationally. The happiness and success of our community directly contributes to that of the country and without just and humane avenues towards these goals, our nation does not move forward as a whole. SAALT urges that comprehensive immigration reform make all-encompassing changes because only then will we create an immigration system that is just and humane for South Asian Americans, all immigrants, and the country as a whole.

**COMPREHENSIVE IMMIGRATION REFORM MUST BE HOLISTIC IN ORDER TO TRULY BENEFIT SOCIETY**

South Asian Americans contribute to our society in numerous capacities, socially, culturally, and economically. Our community members fill the gaps in low- and high-skilled jobs, start their own businesses, provide support to their loved ones, and desire an education and opportunity like any other American. Unfortunately, the current immigration system often does not allow South Asian Americans the opportunity to achieve these goals for the betterment of themselves, their families, or our society. Not only do they face numerous barriers to obtaining status, but they are often separated from their families, not provided with effective worker protections, suffer the consequences of harsh enforcement measures frequently based in racial and religious profiling, and denied due process, basic human rights, and ancillary services and benefits, such as health care. All of these issues make it increasingly difficult for South Asian Americans as well as many other immigrants to successfully contribute to our country and therefore, impinge upon our progress as a nation.

In order for South Asian Americans to effectively contribute to society, these barriers and penalties must be eradicated. SAALT urges that immigration reform (1) creates accessible and affordable pathways to legalization and citizenship for all undocumented individuals; (2) keeps families together, eliminates visa backlogs, and increases caps for family and employment visas; (3) creates legislation that provides equal immigration benefits and protections to and prohibits discrimination against same-sex couples; (4) provides avenues and protections for immigrant workers and their families; (5) rejects enforcement-only approaches to immigration and terminates racial and religious profiling; (6) ensures due process and human rights standards for

<sup>3</sup> Hoffer, Michael, Rytina, Nancy, and Baker, Bryan, U.S. Department of Homeland Security, *Estimates of the Unauthorized Immigration Populations Residing in the United States: January 2011 (March 2012)* available at [http://www.dhs.gov/xlibrary/assets/statistics/publications/ois\\_ill\\_pe\\_2011.pdf](http://www.dhs.gov/xlibrary/assets/statistics/publications/ois_ill_pe_2011.pdf).

immigrants, including within the detention and deportation system; (7) creates policies that support the empowerment of women, including victims of domestic violence and trafficking; (8) provides access to services and benefits, including health care, regardless of immigration status; and, (9) promotes support for integration programs, including English as a Second Language, and naturalization.<sup>4</sup>

It is only with this holistic approach to immigration reform that South Asian Americans and all other immigrants will be able to effectively contribute to our society in a way that allows our nation to flourish, prosper, and succeed.

#### **EMPLOYMENT-BASED IMMIGRATION CAN ONLY BE EFFECTIVE IN CONJUNCTION WITH FAMILY-BASED IMMIGRATION & OTHER REFORMS**

A significant portion of the South Asian community in the United States is made up of both low-wage and high-skilled immigrants. These community members often face a range of immigration challenges that inhibit their ability to stay in the country, be reunited with family, and seek opportunities to advance their careers and establish new ventures. In particular, South Asian Americans make up significant portions of H-1B visa holders;<sup>5</sup> H-2B visa holders; L-1 visa holders;<sup>6</sup> science, technology, engineering and math graduates; and, entrepreneurs in the science and technology industry. Unfortunately, many of these immigrants face poor workplace conditions, sometimes including wage discrimination and theft,<sup>7</sup> barriers to job mobility,<sup>8</sup> delays in background checks, visa caps, and long wait times for employment-based green cards.<sup>9</sup> It is essential that immigration reform eliminate these restrictions that impinge on the development of our society by eliminating the backlog and country quotas, increasing visa caps where relevant,

<sup>4</sup> These standards of comprehensive immigration reform have been called for by the National Coalition of South Asian Organizations (NCSO), a coalition of 41 groups around the United States that works closely with South Asian immigrants, including aspiring citizens. National Coalition of South Asian Organizations, *South Asian Organizations Call for Just and Humane Reform of the Immigration System* (February 1, 2012) available at <http://saail.org/wp-content/uploads/2012/09/South-Asian-Organizations-Call-for-Just-Humane-Immigration-Reform.pdf>.

<sup>5</sup> In 2011, approximately 147,290 Indian nationals alone were admitted under the H-1B program. U.S. Department of Homeland Security, Office of Immigration Statistics, *2011 Yearbook of Immigration Statistics* (September 2012) available at [http://www.dhs.gov/sites/default/files/publications/immigration-statistics/yearbook/2011/ois\\_yb\\_2011.pdf](http://www.dhs.gov/sites/default/files/publications/immigration-statistics/yearbook/2011/ois_yb_2011.pdf).

<sup>6</sup> In 2010, approximately 35,000 Indian nationals alone were issued L-1 visas. U.S. Department of State, Nonimmigrant Visa Statistics, *Nonimmigrant Visa Issuances by Visa Class and Nationality* (2010).

<sup>7</sup> National Council of Asian Pacific Americans, *2012 Policy Platform: Framing Issues and Recommendation to Improve the Lives of Asian American, Native Hawaiian and Pacific Islander Communities* (2012) available at [http://ncapsonline.org/index\\_116\\_705981300.pdf](http://ncapsonline.org/index_116_705981300.pdf).

<sup>8</sup> For example, H-1 and L-1 workers face difficulties changing jobs or obtaining promotions because their immigration status and green card application are tied to their sponsoring employer for a specific position. See e.g. U.S. Citizenship and Immigration Services, *Interim Guidance for Processing I-140 Employment-Based Immigration Petitions & I-485 & H-1B Petitions Affected by the American Competitiveness in the Twenty-First Century Act of 2000* (2005) available at [http://www.uscis.gov/USCIS/Laws/Memoranda/Static\\_Files/Memoranda/Archives%201998-2008/2005/ac21intrm122705.pdf](http://www.uscis.gov/USCIS/Laws/Memoranda/Static_Files/Memoranda/Archives%201998-2008/2005/ac21intrm122705.pdf).

<sup>9</sup> See U.S. Department of State, *Visa Bulletin for February 2013*, No. 53, Volume IX (February 2013) available at [http://www.travel.state.gov/visa/bulletin/bulletin\\_5856.html](http://www.travel.state.gov/visa/bulletin/bulletin_5856.html).

allowing for visa portability, expanding the number of annual employment-based green cards, and ensuring worker protections, to name a few.

However, these changes alone will not fix the problematic nature of our immigration system. In fact, changes to the employment-based immigration system alone do not necessarily benefit applicants in a holistic way. Many applicants for employment-based status also have family members for whom they would like to petition and the contributions of whom allow the worker applicant to further succeed and contribute to American society in a cultural, social, and economic manner. Family-based immigration is essential to ensuring the continued vitality of our society because America benefits when immigrant families come together and support each other.<sup>10</sup>

Immigration reform must unite families, not separate them and keep loved ones apart for months or years. As of November 2012, approximately 4.5 million people were awaiting their family-based immigration visas and approximately 4.6 million were awaiting their employment-based immigration visas.<sup>11</sup> Of these millions, approximately 332,846 are Indian, 161,896 are Bangladeshi, and 115,903 are Pakistani.<sup>12</sup> Though the available statistics are limited to the countries with the highest application rates, these numbers mean that more than 610,645 of the immigrants separated from their families while awaiting the resolution of these backlogs are South Asian. Additionally, some South Asian Americans have been known to wait nearly ten years for certain employment visas and eleven years before obtaining their green cards from a sponsoring U.S. citizen sibling.<sup>13</sup> For our community members without family or support in the United States, this waiting period is even more detrimental to their integration and success in this country. Furthermore, individuals from Bangladesh, India, and Pakistan are no longer eligible for diversity visas in 2013 because they have reached the cap over the last five years.<sup>14</sup>

Immigrants come to the United States to improve their lives and contribute their skills to the American economy. They work hard, pay taxes, buy property, and greatly contribute to the American economy, as well as our culture and diversity. However, many of their efforts are thwarted by our current immigration system. In order for our country to fully benefit from the strength of the South Asian community, families must not be divided – they must be united; workers, skilled and unskilled, must have immigration options; same-sex couples must be given the same immigration opportunities. In truth, all of the previously mentioned reforms must happen in order for our society to fully benefit. To invoke some change without others or worse, at the expense of others, will not solve the issue. It will only deepen the already existing problem and hinder our success as a nation.

<sup>10</sup> See Asian American Justice Center, *The Economic Impact of Family-Based Immigration* available at <http://www.advancingequality.org/attachments/wysiwyg/7/FamilyImmigrationEconomy.pdf>.

<sup>11</sup> U.S. Department of State, *Annual Report of Immigrant Visa Applicants in the Family-sponsored & Employment-based Preferences Registered at the National Visa Center* (November 1, 2012) available at <http://www.travel.state.gov/pdf/WaitingListItem.pdf>.

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

<sup>13</sup> U.S. Department of State, *Visa Bulletin for February 2013*, No. 53, Volume IX (February 2013) available at [http://www.travel.state.gov/visa/bulletin/bulletin\\_5856.html](http://www.travel.state.gov/visa/bulletin/bulletin_5856.html).

<sup>14</sup> U.S. Department of State, *Instructions for 2013 Diversity Immigrant Visa Program* (2013) available at [http://travel.state.gov/pdf/DV\\_2013\\_instructions.pdf](http://travel.state.gov/pdf/DV_2013_instructions.pdf).

**ENFORCEMENT-ONLY APPROACHES ARE DETRIMENTAL TO SOCIETY, PARTICULARLY WHEN THEY ENGAGE IN PROFILING**

For a significant amount of time, immigration enforcement has been on the rise, particularly in the last decade. While there have been fewer border apprehensions, this decrease seems to be a result of fewer people crossing the border under the current patrol programs.<sup>15</sup> On the other hand, deportation rates are now at their highest with over 400,000 people were deported in 2012 alone.<sup>16</sup> Similarly, the number of individuals in detention almost doubled from 2001 to 2010, rising to almost 392,000 individuals in 2010.<sup>17</sup> In fact, from 2009 to 2011, the number of Indian national detainees has almost doubled every year, rising to approximately 3,438 in 2011.<sup>18</sup> By next year, it is estimated that more than two million people will have been deported in the last six years – that will be more deportations than there were from 1892 to 1997.<sup>19</sup> Additionally, these deportations frequently separate families, often through enforcement against the parents of U.S. citizen children.<sup>20</sup> In fact, more families have been separated under enforcement measures over the last five years, than have ever been separated, rising to almost one-fourth of the total number of deportations from July 2010 to September 2012.<sup>21</sup> As previously mentioned, separating families only hinders the success of immigrants in the United States. Enforcement measures must be just and humane, not focusing on those who commit minor criminal offenses or unnecessarily separating families. Otherwise, these actions only further misdirect our resources and inhibit our success as a nation.

Specifically, enforcement-only methods that target minority and immigrant communities through racial and religious profiling not only violate our community's civil rights, but also destroy relationships with law enforcement and other government agencies and make all communities less safe. For example, programs such as 287(g) and Secure Communities allow local law enforcement agents to enforce federal immigration laws or check fingerprints of individuals against immigration databases with the Department of Homeland Security, respectively. In 2010, 27,871 individuals were deported through 287(g)<sup>22</sup> and, in 2011, 78,246 people were

<sup>15</sup> Golash-Boza, Tanya, *Mapping the Shift from Border to Interior Enforcement of Immigration Laws During the Obama Presidency* (January 25, 2013) available at [http://stopdeportationsnow.blogspot.com/2013/01/mapping-shift-from-border-to-interior\\_7232.html](http://stopdeportationsnow.blogspot.com/2013/01/mapping-shift-from-border-to-interior_7232.html).

<sup>16</sup> U.S. Department of Homeland Security, *Removal Statistics, Immigration & Customs Enforcement* available at <http://www.ice.gov/removal-statistics/>.

<sup>17</sup> National Immigration Forum, *The Math of Immigration Detention: Runaway Costs for Immigration Detention Do Not Add Up to Sensible Policies* (August 2012) available at <http://www.immigrationforum.org/images/uploads/MathofImmigrationDetention.pdf>.

<sup>18</sup> Simanski, John and Sapp, Lesley M., U.S. Department of Homeland Security, *Annual Report: Immigration Enforcement Actions 2011* (September 2012) available at [http://www.dhs.gov/sites/default/files/publications/immigration-statistics/enforcement\\_ar\\_2011.pdf](http://www.dhs.gov/sites/default/files/publications/immigration-statistics/enforcement_ar_2011.pdf).

<sup>19</sup> Golash-Boza, Tanya, *Mapping the Shift from Border to Interior Enforcement of Immigration Laws During the Obama Presidency* (January 25, 2013) available at [http://stopdeportationsnow.blogspot.com/2013/01/mapping-shift-from-border-to-interior\\_7232.html](http://stopdeportationsnow.blogspot.com/2013/01/mapping-shift-from-border-to-interior_7232.html).

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> U.S. Department of Homeland Security, *287(g) Identified Aliens for Removal, U.S. Immigration and Customs Enforcement* (2010) available at <http://www.ice.gov/doclib/foia/reports/287g-masterstats2010oct31.pdf>.

deported through Secure Communities.<sup>23</sup> Additionally, local laws like Arizona S.B. 1070 and similar copycat laws allow law enforcement to ask individuals about their status where there is “reasonable suspicion” that the individual is undocumented.

These programs and thereby their resulting deportations are frequently the result of racial and religious profiling. Individuals in the South Asian community are likely to be stopped or asked about their status at disproportionate frequency based on stereotypes regarding those that are “foreign” or “un-American.” Already, stories have emerged of those who are stopped for minor violations which are later dismissed, but only after removal proceedings are commenced, sometimes separating families for over a year. The South Asian community has already suffered many years of targeted enforcement, particularly post-9/11, which has furthered stereotypes about South Asians and pushed community members into the shadows. For example, following 9/11, the National Security Exit-Entry Registration System (NSEERS) required certain male nationals from predominantly Muslim and Arab countries to report to immigration authorities for interviews and processing. As a result, approximately 13,000 men were placed in removal proceedings, though not one was ever prosecuted for a terrorism-related crime.<sup>24</sup> This type of immigration enforcement program that results in profiling has proven ineffective in the past and diverts our limited governmental resources. Additionally, these programs deter South Asian Americans from reporting crimes, sharing information, or serving as witnesses based on their valid fears of being profiled and deported. They destroy our community’s relationship with law enforcement and government generally, thereby, preventing us from reporting hate crimes and incidents of domestic violence. In turn, if immigrants are afraid to seek out the assistance of law enforcement and do not trust government agencies, this lack of communication and collaboration only makes it harder for law enforcement and government to do their jobs and thereby, make all of our communities and society less safe.

Additionally, programs such as employment verification have a detrimental impact on the South Asian workers and business owners as well as all workers regardless of immigration status, and therefore, further negatively impact our economy. The reliance that these programs place on government databases is highly problematic as these databases have a high error rate. For example, the Social Security Administration estimates that 17.8 million of its records contain discrepancies related to name, date of birth, and citizenship status, 12.7 million of which involve U.S. citizens.<sup>25</sup> Due to these errors, foreign-born lawful workers are thirty times more likely than native-born U.S. citizens to be incorrectly identified and unauthorized for employment.<sup>26</sup> On top of these issues with verification programs, there is also the risk that employers will misuse the verification process to violate workers’ rights under the threat of reporting them to

<sup>23</sup> U.S. Immigration and Customs Enforcement, U.S. Department of Homeland Security, *Secure Communities: IDENT/LAFIS Interoperability, Monthly Statistics through September 20, 2011* (October 14, 2011) available at [http://www.ice.gov/doclib/foia/sc-stats/nationwide\\_interoperability\\_stats-fy2011-to-date.pdf](http://www.ice.gov/doclib/foia/sc-stats/nationwide_interoperability_stats-fy2011-to-date.pdf).

<sup>24</sup> South Asian Americans Leading Together (SAALT), *In Our Own Words: Narratives of South Asian New Yorkers Affected by Racial and Religious Profiling* (March 2012) available at <http://saalt.org/wp-content/uploads/2012/09/In-Our-Own-Words-Narratives-of-South-Asian-New-Yorkers-Affected-by-Racial-and-Religious-Profiling.pdf>.

<sup>25</sup> Office of the Inspector General, Social Security Administration, *Congressional Response Report: Accuracy of the Social Security Administrations Numident File* (December 2006) available at <http://oig.ssa.gov/sites/default/files/audit/full/pdf/A-08-06-26100.pdf>.

<sup>26</sup> *Id.*

immigration or unjustly fire immigrant workers. These verification programs are counter-productive to our nation's economy and sustainability in that they negatively impact all workers regardless of their status and disproportionately impact immigrant workers.

Finally, worksite enforcement actions, such as workplace raids, create increasing risk and harm to all workers from U.S. citizens to visa holders to undocumented workers. With the current state of labor violations and the lack of worker protections, these actions drive down wages and labor conditions, interfere with workers' ability to enforce their rights, encourage employers to violate workplace conditions and wages under the threat of deportation, undermine the prosecution of labor violations, and discourage work sites from employing immigrants.<sup>27</sup> Without sufficiently protecting worker rights and enforcement mechanisms, these mechanisms only inhibit the ability of immigrants to work and further damage our economy.

Like that of employment-based immigration, enforcement mechanisms must be addressed with a holistic response to immigration reform. The problems within the current system must be addressed as a whole in order for immigration reform to truly benefit American society socially, culturally, and economically. To amplify an already enforcement heavy immigration system that engages in activities that profile immigrant communities, particularly the South Asian community, would be counter-productive and volatile to effective immigration enforcement as well as the safety of our nation. Immigration reform must reject these enforcement-only approaches to immigration, terminate racial and religious profiling, and ensure due process and human rights standards for immigrants, including within the detention and deportation system. Only with the combination of these changes to immigration enforcement and the previously mentioned pieces of immigration reform might our society move forward economically, socially, and culturally.

#### RECOMMENDATIONS

Clearly, the current immigration system is more than flawed, damaging our ability as a nation to move forward successfully. This system must be reformed in a comprehensive and holistic manner in order to truly allow our society and economy to succeed. To reform pieces of the system such as employment-based immigration or enhance enforcement that is already detrimental to immigrant communities would only deepen the problem without providing holistic solutions.

In order to thoroughly address these issues, SAALT urges that comprehensive immigration reform take a broad-scale approach to immigration by:

- (1) Creating accessible and affordable pathways to legalization and citizenship for all undocumented individuals;
- (2) Keeping families together, eliminating visa backlogs, and increasing caps for family and employment visas;

<sup>27</sup> The American Civil Liberties Union, *ICE Worksite Enforcement: Up to the Job?*, (January 26, 2011) available at [http://www.aclu.org/files/assets/ACLU\\_Statement\\_re\\_Worksite\\_Enforcement.pdf](http://www.aclu.org/files/assets/ACLU_Statement_re_Worksite_Enforcement.pdf).

- (3) Creating legislation that provides equal immigration benefits and protections to and prohibits discrimination against same-sex couples;
- (4) Providing avenues and protections for immigrant workers and their families;
- (5) Rejecting enforcement-only approaches to immigration and terminating racial and religious profiling;
- (6) Ensuring due process and human rights standards for immigrants, including within the detention and deportation system;
- (7) Creating policies that support the empowerment of women, including victims of domestic violence and trafficking;
- (8) Providing access to services and benefits, including health care, regardless of immigration status; and,
- (9) Promoting support for integration programs, including English as a Second Language, and naturalization.

Together, we can ensure that our country creates immigration reform that is holistic, just, and humane for South Asian Americans, all immigrants, and society as a whole. Thank you for the opportunity to submit this statement for the record.

*For further information about the comprehensive immigration reform as it relates to the South Asian community, please contact Manar Waheed, SAALT's Policy Director at [manar@saalt.org](mailto:manar@saalt.org) or (301) 270-1855.*

Testimony of Alan van Capelle

Chief Executive Office

Bend the Arc Jewish Action

With Respect To

A Just and Equitable Immigration System

At a Hearing of the

House Judiciary Committee

on

**“America’s Immigration System: Opportunities for Legal Immigration and Enforcement of Laws against Illegal Immigration.”**

February 5, 2013

From the moment that Abram received the call from God “go forth from your homeland”, to the centuries of slavery in Egypt, to subsequent settlements in Babylonia, Europe, North Africa, America, and elsewhere, the Jewish people have been wanderers and immigrants throughout the world. In response to this experience, Jewish law establishes protections for the *ger*—the sojourner whose precarious position in the community puts him or her at risk of exploitation.

In America today, immigrants, especially those without documentation, similarly find themselves subject to exploitation by employers, unable to secure social services, and afraid of the personal risks of demanding basic rights. Within the political and public discourse, the debate about appropriate border control and visa policies often overshadows the daily reality of the estimated 11 million Americans in waiting who are vital to the health of the US economy, but who enjoy insufficient legal protections and who are often targeted by the same hate groups that perpetuate anti-Semitism, racism, and homophobia.

We remember that many of our own families were able to enter America either as a result of the welcoming immigration policies of an earlier era, or through other means, and were able to move into the middle class largely as a result of the availability of living wage jobs and access to good public education. We also acknowledge the labor of so many immigrant workers, who care for our children, clean our homes and workplaces, prepare our food, and otherwise play a crucial role in lives, our economy, and our nation.



We at Bend the Arc Jewish Action believe that our immigration system is broken and needs repair. The tools essential for this repair are not barbed wire and drones, but rather justice and equality.

Justice calls out for an immigration system that includes a roadmap to citizenship for those aspiring citizens already living in America and visa policies that allow new immigrants to enter the United States legally. Justice requires that visa applications will be considered within a reasonable period of time, and that minimum wage laws and other worker protections will be enforced, regardless of the immigration status of the worker. Justice necessitates that we deal fairly with those who were brought here as children, empowering them to live out their dream, the American dream, as our own ancestors were able to do.

And of course, justice demands that we treat our gay and lesbian brothers and sisters with the full equality under the law that they and their families deserve. U.S. citizens and lawful permanent residents with a same-sex partner must have the same ability as any other American or legal resident to seek a visa on the basis of a permanent relationship and to bring their families together. America's immigration policy must look forward to a future of justice and equality.

Alan van Capelle

Chief Executive Officer

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### **The Need for LGBT-Inclusive Comprehensive Immigration Reform**

#### **Testimony Submitted to U.S. House Committee on the Judiciary**

**Hearing:** "America's Immigration System: Opportunities for Legal Immigration and Enforcement of Laws against Illegal Immigration."

Tuesday February 5, 2013

#### **Statement of Rachel B. Tiven, Esq., Executive Director, Immigration Equality**

Immigration Equality is a national organization that works to end discrimination in U.S. immigration law, to reduce the negative impact of that law on the lives of lesbian, gay, bisexual, transgender ("LGBT") and HIV-positive people, and to help obtain asylum for those persecuted in their home country based on their sexual orientation, transgender identity or HIV-status. Immigration Equality was founded in 1994 as the Lesbian and Gay Immigration Rights Task Force. Since then we have grown to be a fully staffed organization with offices in New York and Washington, D.C. We are the only national organization dedicated exclusively to immigration issues for the LGBT and HIV-positive communities. More than 38,000 activists, attorneys, faith leaders, and other constituents subscribe to Immigration Equality's emails and action alerts, and our website has over 380,000 unique visitors per year. The legal staff fields over 3,700 inquiries a year from individuals throughout the entire U.S. and abroad via telephone, email and in-person consultations.

We applaud the House Judiciary Committee for convening this hearing today and hope that Comprehensive Immigration Reform ("CIR") will be given the serious consideration that it deserves. CIR is of vital importance to the LGBT community. LGBT immigrants are part of many immigrant sub-communities, from brilliant entrepreneurs, to loving spouses, to youth who have seen themselves as Americans their whole lives, to asylum seekers fleeing desperate situations to stay alive, to undocumented individuals who came to the U.S. for a better life and are now living in the shadows with no means to legalize their status. Immigration Equality recognizes the need for truly Comprehensive Immigration Reform which addresses the myriad needs of the immigrant community and the parallel needs of the LGBT immigrant community.

#### **CIR Must Include the Uniting American Families Act**

Although Immigration Equality works on many issues affecting the LGBT immigrant community, no issue is more central to our mission than ending the discrimination that gay and lesbian binational couples face. Because there is no recognition of the central relationship in the lives of LGBT Americans, they are faced with a heart-rending choice that no one should have to make: separation from the person they love or exile from their own country. Inclusion of the Uniting American Families Act

(“UAFA”)<sup>1</sup> within CIR would provide a pathway to legalization to LGBT families.

Family unification is central to American immigration policy because Congress has recognized that the fundamental fabric of our society is family. Family-based immigration accounts for roughly 65% of all legal immigration to the United States.<sup>2</sup> Family ties transcend borders, and in recognition of this core value, the American immigration system gives special preference for the spouses of American citizens to obtain lawful permanent resident status without any limit on the number of visas available annually. Lesbian and gay citizens are completely excluded from this benefit.

An analysis of data from the 2000 Decennial Census estimated that approximately 36,000 same-sex binational couples live in the United States.<sup>3</sup> This number is miniscule compared to overall immigration levels: in 2011, a total of 1,062,040 individuals obtained lawful permanent resident status in the United States.<sup>4</sup> Thus, if every permanent partner currently in the U.S. were granted lawful permanent residence in the U.S., these applications would account for .03% of all grants of lawful permanent residence.

The couples reported in the census are, on average, in their late 30s, with around one-third of the individuals holding college degrees.<sup>5</sup> The average income level is \$40,359 for male couples and just over \$28,000 for females. Each of these statistics represents a real family, with real fears and real dreams, the most fundamental of which is to remain together.

One of the striking features of the statistical analysis performed of the 2000 census is how many same-sex binational couples are raising children together. Almost 16,000 of the couples counted in the census – 46% of all same-sex binational couples – report children in the household.<sup>6</sup> Among female couples, the figure is even more striking, 58% of female binational households include children. The vast majority of children in these households are U.S. citizens.<sup>7</sup> Behind each of these statistics is a real family, with real children who have grown up knowing two loving parents. In each of these households, there is daily uncertainty about whether the family can remain together, or whether they will have to move abroad to new schools, new friends, and even a new language.

Every day Immigration Equality hears from lesbian and gay couples who tell us painful tales of trying to maintain their families despite almost impossible odds. For example:

*Adi Lavy and Tzila Levy are a loving, married couple, living in Brooklyn, New York. Adi is a U.S. citizen and Tzila a citizen of Israel. The couple met in 2010 and recently married in Brooklyn, New York. Adi has suffered from chronic kidney disease since the age of seventeen. Tzila is Adi’s primary source of care and emotional support, and she entered the U.S. on a visitor’s visa in order to care for her wife while Adi receives life-saving treatment from a respected expert in her illness. Because their marriage is unrecognized by the federal government, no other visa was available to Tzila.*

*Adi's health has continued to deteriorate and she has been placed on the kidney transplant list. Tzila extended her visitor visa to remain at Adi's side, but as the end of Tzila's authorized stay approached, Adi and Tzila were left without a permanent solution for their family. In November 2012, the couple submitted a spousal petition for a green card. In January 2013, the family's request was denied because Adi and Tzila's family ties are not recognized under U.S. immigration law. Adi fears that she and her wife could be torn apart. She fears being left alone to face her chronic health issues without her primary caregiver and emotional support. Without a lasting immigration solution, this family will continue to face a life filled with uncertainty and fear.*

The lack of recognition of same-sex relationships affects not only the individual family, but the larger community as well. In many instances, large companies are unable to retain talented workers who are forced to leave the United States to maintain their relationships. That is why a growing number of businesses have endorsed the Uniting American Families Act. On January 1, 2013, a diverse group of businesses signed onto a letter to the House and Senate supporting passage of UAFA or CIR that includes UAFA stating:

“We have each worked to help American employees whose families are split apart because they cannot sponsor their committed, permanent partners for immigration benefits. We have lost productivity when those families are separated; we have borne the costs of transferring and retraining talented employees so they may live abroad with their loved ones; and we have missed opportunities to bring the best and the brightest to the United States when their sexual orientation means they cannot bring their family with them.”<sup>8</sup>

The coalition includes over 30 businesses, such as American Airlines, Dow Chemicals, Intel, Nike, and Goldman Sachs. To these companies it is clear that respecting relationships across international boundaries is not only the right thing to do, it also makes economic sense and helps to recruit and retain the most talented employees in their companies. There are currently at least 19 countries that allow their citizens to sponsor long-term, same-sex partners for immigration benefits.<sup>9</sup>

No Comprehensive Immigration Reform can be truly comprehensive if it leaves out thousands of LGBT families. We urge the House to include UAFA language in any CIR bill.

#### **CIR Must Include the DREAM Act**

There is a broad consensus that CIR must include a swift pathway to legalization for undocumented young people who were brought to the United States as children, attended school here or joined the military, and see themselves as Americans in every way other than their legal documents. LGBT activists have been at the forefront of the brave young people who have been fighting tirelessly for passage of the DREAM Act.<sup>10</sup> Unlike their heterosexual counterparts, lesbian and gay young people have grown up knowing that, under current law, they do not have the ability to marry an American

citizen and legalize their status through that relationship. Moreover, many LGBT DREAM activists have described the dual painful experiences of “coming out” twice – once as LGBT and then again as undocumented – to loved ones, employers, friends and educators. Pulitzer Prize winning journalist Jose Antonio Vargas broke new ground by coming out to the world as undocumented and gay in the New York Times Magazine.<sup>11</sup> LGBT undocumented youth face discrimination at every turn and have fought hard to ensure that CIR is inclusive of their multiple identities.<sup>12</sup> In short, the DREAM Act is critical to the LGBT community and CIR would not be truly comprehensive without providing a fair and fast pathway to legalization for those who qualify for the DREAM Act.

#### **CIR Must Provide a Definite and Reasonable Pathway to Citizenship for the Undocumented**

There are currently an estimated 11 million undocumented immigrants living in the United States. Like all Americans and aspiring Americans, they want nothing more than to regularize their status so that they can feel secure that they will not be separated from their families and can work and travel lawfully. Conservative estimates state that 3.8% of the United States population identifies as lesbian, gay or bisexual.<sup>13</sup> Applying this percentage to the estimated 11 million undocumented immigrants in the United States means that there are approximately 418,000 undocumented lesbian, gay and bisexual immigrants. It is essential to this part of the LGBT community that CIR include a clear pathway to citizenship. There should be a roadmap to legalization put in place immediately by CIR and not be contingent on any “trigger” enforcement events whose contested parameters could delay implementation indefinitely.

#### **CIR Must Increase the Numbers of Family Visas Available**

One of the many failings of the current immigration system is the absurdly long wait to sponsor some family members under the current family preference system. Some of those waiting in the backlogs are LGBT individuals, waiting for a parent or sibling’s petition to become current.<sup>14</sup> Those parents and siblings are also the grandparents, aunts, and uncles of many LGBT young people. For LGBT youth – many of whom are vulnerable to bullying in their schools – the support of extended family is crucial. The impact of decade-long waiting periods can have a cascading effect on families, and change is needed. LGBT immigrants are rightly and proudly included in the Reuniting Families Act, to be introduced by Congressman Mike Honda this month. That bill makes sensible, necessary changes to the family visa system: changes that must be incorporated in CIR.

#### **CIR Must Repeal the One Year Filing Deadline for Asylum Seekers**

Each year Immigration Equality represents more than 400 LGBT asylum seekers through direct representation and partnerships with pro bono attorneys. These brave individuals literally leave everything behind to seek freedom from persecution, violence, and abuse simply because of who they are and whom they love. Since the 1996 enactment of the Illegal Immigration Reform and Immigrant Responsibility Act, asylum seekers have been required to submit their application within one year of

arriving in the United States. There are only two narrow exceptions to this rule: “changed circumstances” and “extraordinary circumstances,” and lack of knowledge of the one year filing deadline or of asylum itself is not considered a valid exception. While many political dissidents are aware that if they reach the United States they can seek political asylum, there is no way for most LGBT people to know that asylum is potentially available to them based on their sexual orientation or gender identity.<sup>15</sup> The primary reason that Immigration Equality’s attorneys decline otherwise meritorious cases for legal representation is that the asylum seeker has missed the one year filing deadline.

For those in removal proceedings who have no viable exception to the one year deadline, it may be possible to obtain withholding of removal and thus avoid removal to a country in which they fear persecution. But the standard for withholding is much higher than for asylum with an applicant required to prove that it is “more likely than not” that she will be persecuted rather than demonstrating a “well-founded fear” of future persecution. Thus individuals who miss the deadline yet cannot meet the higher standard for withholding can be removed even if they have clearly met the threshold of “well-founded fear” of persecution required under asylum law.

Moreover, an individual who is granted withholding remains in a permanent limbo status, with a final order of removal entered against him. An individual with withholding status can never travel outside the U.S., can never apply for lawful permanent residence or citizenship, must renew his Employment Authorization Document annually, and can be required to have regular check-ins with a deportation officer forever. Thus an individual who missed the one year filing deadline can never fully integrate into American society.

The one year filing deadline was initially enacted to prevent individuals who do not have legitimate asylum claims from filing for asylum solely to obtain work authorization. Since the enactment of the deadline, other changes to the asylum law – including a waiting period to obtain employment authorization, mandating that cases be resolved faster, and the imposition of strict penalties for filing a frivolous application – have caused a marked decrease in the number of asylum applications.<sup>16</sup> Thus there is no legitimate reason to continue to deny applicants with valid claims based on an artificial application deadline.

We therefore urge the House to repeal the one year filing deadline as an important part of CIR. We recommend that CIR include the Refugee Protection Act.

#### **CIR Must Reduce Mandatory Detention and Provide Greater Protections to Vulnerable Detainees**

LGBT individuals are among the most vulnerable people held in immigration detention.<sup>17</sup> Every week, Immigration Equality hears from LGBT individuals who are subjected to verbal and physical abuse while detained. For transgender, as well as lesbian, gay, and bisexual asylum seekers who have suffered trauma in their home country, being housed in prison-like conditions while awaiting an immigration hearing is terrifying. We frequently hear from transgender detainees who are placed in administrative

segregation – solitary confinement – purportedly to protect them from potential abusers. There, transgender detainees are isolated from all other detainees, denied access to vital programs, and often denied reasonable access to counsel. If transgender individuals must be detained, they must be detained safely, in housing that protects them from harm without blaming the victim for abuse.

Current record levels of immigration detention are linked to funding by Congress for specific numbers of detention beds as well as mandatory detention rules that can prevent individuals with minor crimes from being considered for bond or alternatives to detention. The current detention system unnecessarily costs U.S. taxpayers billions of dollars a year and treats violators of civil immigration laws as if they were criminals, yet with no right to counsel. For LGBT detainees and others, CIR must change the inhumane and wasteful immigration detention system.

**Any E-Verify Program or Biometric Identification Card that CIR Implements Must not Discriminate against Transgender Individuals**

If CIR requires employers to check employment eligibility through an E-verify system and/or if CIR implements social security cards or other national identification cards with biometric information, these measures should include only that personal information which is truly essential to employment verification. These measures should not make use of unnecessary personal information that invades the privacy of and could cause real harm to individuals. To cite just one example, for an estimated 700,000 to 1 million transgender people – Americans and newcomers alike – a system that flags gender discrepancies as suspicious will result in job loss and may threaten personal safety. Other personal data, such as a worker’s former name, could also “out” individuals as transgender and make them vulnerable to discrimination which remains pervasive today. The Social Security Administration does not require the use of gender for employment verification, and the agency itself recommends that employers not submit gender markers for employees. We therefore believe that these systems should not include unnecessary personal information, such as gender markers, and should include strong privacy protections for all workers.

**CIR Must Provide Protections for Immigrants Living with HIV**

The current frameworks for CIR state that individuals with provisional legal status, that is those who are in the process of legalizing their status, will not be eligible for certain federal benefits, including certain aspects of the Affordable Care Act. For many individuals living with HIV, ranging from U.S. citizens to undocumented immigrants, federally funded programs such as the AIDS Drug Assistance Program and Ryan White funding are literally life-saving. These core public health programs not only benefit individuals, they benefit entire communities by reducing HIV transmission. It is crucial that CIR increase access to health care for people living with HIV rather than decreasing it.

### Conclusion

We applaud the House for convening this hearing and for considering needed immigration reforms. Too many individuals in the United States – lesbian, gay, bisexual, transgender, and straight – cannot fully access the American dream because of our antiquated immigration system. For LGBT families with young children, undocumented youth, and asylum seekers, it is time to pass rational, humane, *comprehensive* immigration reform that fully respects the unique needs and contributions of LGBT immigrants.

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<sup>1</sup> UAFPA would add “permanent partner” as a category of “immediate relative” to the INA. “Permanent partner” is defined as any person 18 or older who is:

1. In a committed, intimate relationship with an adult U.S. citizen or legal permanent resident 18 years or older in which both parties intend a lifelong commitment;
2. Financially interdependent with that other person;
3. Not married to, or in a permanent partnership with, anyone other than that other person;
4. Unable to contract with that person a marriage cognizable under the Immigration and Nationality Act; and
5. Not a first, second, or third degree blood relation of that other individual.

As with current marriage-based petitions, permanent partners would be required to prove the bona fides of their relationships and would be subject to strict criminal sanctions and fines for committing fraud.

<sup>2</sup> In 2011 family-based immigration accounted for 688,089 grants of lawful permanent resident status, Department of Homeland Security, Annual Flow Report, April 2012, Table 2, at 3 available at [http://www.dhs.gov/xlibrary/assets/statistics/publications/lpr\\_fr\\_2011.pdf](http://www.dhs.gov/xlibrary/assets/statistics/publications/lpr_fr_2011.pdf)

<sup>3</sup> Family, Unvalued: Discrimination, Denial, and the Fate of Binational Same-Sex Couples Under U.S. Law, joint report by Human Rights Watch and Immigration Equality, 2006, at 17, 3 available at <http://www.hrw.org/en/reports/2006/05/01/family-unvalued>.

<sup>4</sup> Department of Homeland Security, Annual Flow Report, March 2009, available at [http://www.dhs.gov/xlibrary/assets/statistics/publications/lpr\\_fr\\_2008.pdf](http://www.dhs.gov/xlibrary/assets/statistics/publications/lpr_fr_2008.pdf).

<sup>5</sup> Family, Unvalued, at 176.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* In female binational households, 87% of the children were U.S. citizens; in male households, 83% were U.S. citizens

<sup>8</sup> Available at [http://immigrationequalityactionfund.org/images/3businessCoalition\\_signonletter.pdf](http://immigrationequalityactionfund.org/images/3businessCoalition_signonletter.pdf).

<sup>9</sup> These countries include Australia, Belgium, Brazil, Canada, Denmark, Finland, France, Germany, Iceland, Israel, the Netherlands, New Zealand, Norway, Portugal, South Africa, Spain, Sweden Switzerland, and the United Kingdom.

<sup>10</sup> The Development, Relief, and Education for Alien Minors or “DREAM Act,” provides a pathway to lawful permanent residence to undocumented young people who were brought to the United States as minors. The 2009 Senate version of the bill requires applicants to: Have proof of having arrived in the United States before age 16, Have proof of residence in the United States for at least five consecutive years since their date of arrival; If male, have registered with the Selective



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Service; Be between the ages of 12 and 35 at the time of bill enactment; I have graduated from an American high school, obtained a GED, or been admitted to an institution of higher education; Be of good moral character.

<sup>11</sup> Jose, Antonio Vargas, "My Life as an Undocumented Immigrant" *New York Times* June 22, 2011, [http://www.nytimes.com/2011/06/26/magazine/my-life-as-an-undocumented-immigrant.html?\\_r=4&ref=magazine&pagewanted=all&](http://www.nytimes.com/2011/06/26/magazine/my-life-as-an-undocumented-immigrant.html?_r=4&ref=magazine&pagewanted=all&)

<sup>12</sup> See, for example, Jorge Gutierrez, "I Am Undocuqueer: New Strategies for Alliance Building for the LGBTQ and Immigrant Rights Movements," [http://www.huffingtonpost.com/jorge-gutierrez/i-am-undocuqueer\\_b\\_2521339.html](http://www.huffingtonpost.com/jorge-gutierrez/i-am-undocuqueer_b_2521339.html).

<sup>13</sup> See "LGBT Identity: A Demographer's Perspective," by Gary J. Gates, June 2012, available at <http://williamsinstitute.law.ucla.edu/research/ccensus-lgbt-demographics-studies/lgbt-identity-a-demographers-perspective/>

<sup>14</sup> Department of State Visa Bulletin, available at [http://www.travel.state.gov/visa/bulletin/bulletin\\_5856.html](http://www.travel.state.gov/visa/bulletin/bulletin_5856.html).

<sup>15</sup> See, "The Gay Bar: The Effect of the One-Year Filing Deadline on Lesbian, Gay, Bisexual, Transgender, and HIV-Positive Foreign Nationals Seeking Asylum or Withholding of Removal" by Victoria Neilson & Aaron Morris, 8 *New York City Law Review* 233 (Summer 2005), discussing the disproportionate impact of the one year filing deadline on LGBT applicants.

<sup>16</sup> The number of asylum applications filed with the Department of Homeland Security, that is affirmative applications, dropped from 64,644 in 2002 to 24,988 in 2011. See United States Government Accountability Office, U.S. Asylum System, September 2008, at 58 available at <http://www.gao.gov/new.items/d08940.pdf> and DHS Annual Flow Report: Refugees and Asylees 2011, May 2012 available at [http://www.dhs.gov/xlibrary/assets/statistics/publications/ois\\_rfa\\_fr\\_2011.pdf](http://www.dhs.gov/xlibrary/assets/statistics/publications/ois_rfa_fr_2011.pdf).

<sup>17</sup> See, National Immigrant Justice Center, "Stop Abuse of Detained LGBT Immigrants," <http://www.immigrantjustice.org/stop-abuse-detained-lgbt-immigrants>

Mr. BACHUS. Mr. Chairman, could I have unanimous consent to introduce an article that appeared in Saturday's Wall Street Journal on our declining birth rates?

Mr. GOODLATTE. Without objection, that will be made a part of the record as well.

[The information referred to follows:]

**Is Another Bear Market Around the Corner?**  
 If you have a \$500,000 portfolio, you should download the latest report by Forbes columnist Ken Fisher's firm. It tells you where we think the stock market is headed and why. This must-read report includes our latest stock market forecast, plus research and analysis you can use in your portfolio right now. [Click Here to Download](#) Full Disclosure

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**THE WALL STREET JOURNAL**  
 WSJ.com

THE SATURDAY ESSAY | Updated February 2, 2013, 7:10 p.m. ET

## America's Baby Bust

*The nation's falling fertility rate is the root cause of many of our problems. And it's only getting worse.*

By JONATHAN V. LAST



Americans are not reproducing enough, and the long-term consequences are dire, says Jonathan V. Last, author of "What To Expect When No One's Expecting," in a discussion with WSJ Weekend Review editor Gary Rosen.

For more than three decades, Chinese women have been subjected to their country's brutal one-child policy. Those who try to have more children have been subjected to fines and forced abortions. Their houses have been razed and their husbands fired from their jobs. As a result, Chinese women have a fertility rate of 1.54. Here in America, white, college-educated women—a good proxy for the middle class—have a fertility rate of 1.6. America has its very own one-child policy. And we have chosen it for ourselves.

Forget the debt ceiling. Forget the fiscal cliff, the sequestration cliff and the entitlement cliff. Those are all just symptoms. What America really faces is a demographic cliff: The root cause of most of our problems is our declining fertility rate.

The fertility rate is the number of children an average woman bears over the course of her life. The replacement rate is 2.1. If the average woman has more children than that, population grows. Fewer, and it contracts. Today, America's total fertility rate is 1.93, according to the latest figures from the Centers for Disease Control and Prevention; it hasn't been above the replacement rate in a sustained way since the early 1970s.

The nation's falling fertility rate underlies many of our most difficult problems. Once a country's fertility rate falls consistently below replacement, its age profile begins to shift. You get more old people than young people. And eventually, as the bloated cohort of old people dies off, population begins to contract. This dual problem—a population that is disproportionately old and shrinking overall—has enormous economic, political and cultural consequences.

For two generations we've been lectured about the dangers of overpopulation. But the conventional wisdom on this issue is wrong, twice. First, global population growth is slowing to a halt and will begin to shrink within 60 years. Second, as the work of economists Esther Boserups and Julian Simon demonstrated, growing populations lead to increased innovation and conservation. Think about it: Since 1970, commodity prices have

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America's Baby Bust - WSJ.com

continued to fall and America's environment has become much cleaner and more sustainable—even though our population has increased by more than 50%. Human ingenuity, it turns out, is the most precious resource.

Low-fertility societies don't innovate because their incentives for consumption tilt overwhelmingly toward health care. They don't invest aggressively because, with the average age skewing higher, capital shifts to preserving and extending life and then begins drawing down. They cannot sustain social-security programs because they don't have enough workers to pay for the retirees. They cannot project power because they lack the money to pay for defense and the military-age manpower to serve in their armed forces.

There has been a great deal of political talk in recent years about whether America, once regarded as the shining city on a hill, is in decline. But decline isn't about whether Democrats or Republicans hold power; it isn't about political ideology at all. At its most basic, it's about the sustainability of human capital. Whether **Barack Obama** or Mitt Romney took the oath of office last month, we would still be declining in the most important sense—demographically. It is what drives everything else.

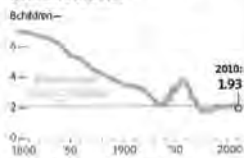
If our fertility rate were higher—say 2.5, or even 2.2—many of our problems would be a lot more manageable. But our fertility rate isn't going up any time soon. In fact, it's probably heading lower. Much lower.

America's fertility rate began falling almost as soon as the nation was founded. In 1800, the average white American woman had seven children.



97% of the world's population now lives in countries where the fertility rate is falling

#### Average number of children per woman in the U.S.



Source: Robert B. Adams, *Capital Mobility: National Center for Health Statistics, The Wall Street Journal*

(The first reliable data on black fertility begin in the 1850s.) Since then, our fertility rate has floated consistently downward, with only one major moment of increase—the baby boom. In 1940, America's fertility rate was already skirting the replacement level, but after the war it jumped and remained elevated for a generation. Then, beginning in 1970, it began to sink like a stone.

There's a constellation of reasons for this decline: Middle-class wages began a long period of stagnation. College became a universal experience for most Americans, which not only pushed people into marrying later but made having children more expensive. Women began attending college in equal (and then greater) numbers than men. More important, women began branching out into careers beyond teaching and nursing. And the combination of the birth-control pill and the rise of cohabitation broke the iron triangle linking sex, marriage and childbearing.

This is only a partial list, and many of these developments are clearly positive. But even a social development that represents a net good can carry a serious cost.

#### The Saturday Essay

Bill Gates: My Plan to Fix The World's Biggest Problems (01/26/2013)

The Guerrilla Myth (11/19/2013)

In Defense of the CEO (11/12/13)

Have We Lost the War on Drugs? (1/05/13)

The Future of Medicine Is Now (12/29/12)

The End of the Map (12/22/12)

Who Can Still Afford State U? (12/15/12)

By 1973, the U.S. was below the replacement rate, as was nearly every other Western country. Since then, the phenomenon of fertility collapse has spread around the globe: 97% of the world's population now lives in countries where the fertility rate is falling.

If you want to see what happens to a country once it hurls itself off the demographic cliff, look at Japan, with a fertility rate of 1.3. In the 1980s, everyone assumed the Japanese were on a path to owning the world. But the country's robust economic facade concealed a crumbling demographic structure.

The Japanese fertility rate began dipping beneath the replacement rate in 1960 for a number of complicated reasons (including a postwar push by the West to lower Japan's fertility rate, the soaring cost of having children and an overall decline in the marriage rate). By the 1980s, it was already clear that the country would eventually undergo a population contraction. In 1984, demographer Naohiro Ogawa warned that, "Owing to a decrease in the growth rate of the labor force...Japan's economy is likely to slow down." He predicted annual growth rates of 1% or even 0% in the first quarter of the 2000s.

From 1950 to 1973, Japan's total-factor productivity—a good measure of economic dynamism—increased by an average of 5.4% per year. From 1990 to 2006, it increased by just 0.63% per year. Since 1991, Japan's rate of GDP

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Getty Images  
Today, America's total fertility rate is 1.93, below the replacement rate of 2.1.

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growth has exceeded 2.5% in only four years; its annual rate of growth has averaged 1.03%.

Because of its dismal fertility rate, Japan's population peaked in 2008; it has already shrunk by a million since then. Last year, for the first time, the Japanese bought more adult diapers than diapers for babies, and more than half the country was categorized as "depopulated marginal land." At the current fertility rate, by 2100 Japan's population will be less than half what it is now.

Can we keep the U.S. from becoming Japan? We have some advantages that the Japanese lack, beginning with a welcoming attitude toward immigration and robust religious faith, both of which buoy fertility. But in the long run, the

answer is, probably not.

Conservatives like to think that if we could just provide the right tax incentives for childbearing, then Americans might go back to having children the way they did 40 years ago. Liberals like to think that if we would just be more like France—offer state-run day care and other programs so women wouldn't have to choose between working and motherhood—it would solve the problem. But the evidence suggests that neither path offers more than marginal gains. France, for example, hasn't been able to stay at the replacement rate, even with all its day-care spending.

Which leaves us with outsourcing our fertility. We've received a massive influx of immigrants from south of the border since the late 1970s. Immigration has kept America from careening over the demographic cliff. Today, there are roughly 38 million people in the U.S. who were born elsewhere. (Two-thirds of them are here legally.) To put that in perspective, consider that just four million babies are born annually in the U.S.

If you strip these immigrants—and their relatively high fertility rates—from our population profile, America suddenly looks an awful lot like continental Europe, which has a fertility rate of 1.5, if not quite as demographically terminal as Japan.

Relying on immigration to prop up our fertility rate also presents several problems, the most important of which is that it's unlikely to last. Historically, countries with fertility rates below replacement level start to face their own labor shortages, and they send fewer people abroad. In Latin America, the rates of fertility decline are even more extreme than in the U.S. Many countries in South America are already below replacement level, and they send very few immigrants our way. And every other country in Central and South America is on a steep dive toward the replacement line.

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The 80 Million-Pilgrim March  
The Secret Genius of Dogs

That is what's happened in Mexico. In 1970, the Mexican fertility rate was 6.72. Today, it's just at replacement, a drop of 72% in 40 years. Mexico used to send us several hundred thousand immigrants a year. For the last three years, there has been a net immigration of zero. Some of this decrease is probably related to the recent recession, but much of it is likely the result of a structural shift.

As for the Hispanic immigrants who are already here, we can't count on their demographic help forever. They've been doing the heavy lifting for a long time: While the nation as a whole has a fertility rate of 1.93, the Hispanic-American fertility rate is 2.35. But recent data from the Pew Center suggest that the fertility rate for Hispanic immigrants is falling at an incredible rate. To take just one example, in the three years between 2007 and 2010, the birthrate for Mexican-born Americans dropped by an astonishing 23%.

In the face of this decline, the only thing that will preserve America's place in the world is if all Americans—Democrats, Republicans, Hispanics, blacks, whites, Jews, Christians and atheists—decide to have more babies.

The problem is that, while making babies is fun, raising them isn't. A raft of research shows that if you take two people who are identical in every way except for childbearing status, the parent will be on average about six percentage points less likely to be "very happy" than the nonparent. (That's just for one child. Knock off two more points for each additional bundle of joy.)

But then, parenting has probably never been a barrel of laughs. There have been lots of changes in American life over the last 40 years that have nudged our fertility rate downward. High on the list is the idea that "happiness" is the lodestar of a life well-lived. If we're going to reverse this decline, we'll need to reintroduce into American culture the notion that human flourishing ranges wider and deeper than calculations of mere happiness.

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We'll need smart pronatalist policies, too. The government cannot persuade Americans to have children they do not want, but it can help them to have the children they do want. Here are three starting points:



Codie Photo Illustration by Keith A. Webb/The Wall Street Journal  
Immigration has helped make up for America's dropping birth rate.

**Social Security.** In the U.S., the Social Security system has taken on most of the burden for caring for elderly adults, a duty that traditionally fell to grown-up children. A perverse effect of putting government in the business of eldercare has been to reduce the incentives to have children in the first place. One RAND study suggested that Social Security depresses the American fertility rate by as much as 0.5.

Looking to dismantle this roadblock, some analysts have suggested flattening the tax code to just two brackets and significantly raising the child tax credit. Others suggest exempting parents from payroll taxes for Social Security and Medicare while they are raising children—perhaps by a third for their first child, two-thirds for the second, and then completely for a third child. (Once the children turn 18, the parents would go back to paying their full share.)

Regardless of the particulars, the underlying theory is the same: To reduce the tax burden for people who take on the costs of creating new taxpayers (otherwise known as children).

**College.** Higher education dampens fertility in all sorts of ways. It delays marriage, incurs debt, increases the opportunity costs of childbearing and significantly increases the expense of raising a child. If you doubt that the economics of the university system are broken, consider this: Since 1960, the real cost of goods in nearly every other sector of American life has dropped. Meanwhile, the real cost of college has increased by more than 1,000%.

If college were another industry, everyone would be campaigning for reform. Instead, politicians are trying to push every kid in America into the current exorbitantly expensive system. How could we get college costs under control? For one, we could begin to eliminate college's role as a credentialing machine by allowing employers to give their own tests to prospective workers. Alternately, we could encourage the university system to be more responsive to market forces by creating a no-frills, federal degree-granting body that awards certificates to students who pass exams in a given subject.

**The Dirt Gap.** A big factor in family formation is the cost of land: It determines not just housing expenses but also the costs of transportation, entertainment, baby sitting, school and pretty much everything else. And while intensely urban areas—Los Angeles, New York, Washington, Chicago—have the highest concentrations of jobs, they come with high land costs. Improving the highway system and boosting opportunities for telecommuting would go a long way in helping families to live in lower-cost areas.

These ideas are just a start; other measures certainly will be needed to avert a demographic disaster in the U.S. If we want to continue leading the world, we simply must figure out a way to have more babies.

—Mr. Last is a senior writer at the *Weekly Standard* and author of "What to Expect When No One's Expecting: America's Coming Demographic Disaster" (Encounter), from which this essay is adapted.

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Mr. GOODLATTE. And while we are at it, if the gentlewoman will suspend, we will give you your full 5 minutes, but I would also ask unanimous consent that a joint statement by the Comprehensive Immigration Reform Coalition and the National Hispanic Christian Leadership Conference, of which Dean Staver is a member, be also made a part of the record. Without objection, all of these documents will be put in the record.

[The information referred to follows:]



**Joint Statement by CfCIR and the NHCLC  
For the Hearing Record on February 5, 2013  
United States House of Representatives - Committee on the Judiciary  
*America's Immigration System: Opportunities for Legal Immigration and  
Enforcement of Laws against Illegal Immigration***

The Conservatives for Comprehensive Immigration Reform coalition, and the National Hispanic Christian Leadership Conference, wish to commend this Committee for convening this important hearing. Our organizations stand committed to advocating for a comprehensive reform of our Nation's antiquated and thoroughly broken system of immigration. It is our sincere and deeply held belief that in order for America to continue to lead the world as an exceptional Nation, we must strive to have policies in place that are, in fact, exceptional. We are convinced that our current immigration laws are perpetuating a system that is not in any way exceptional, and we call on Congress and the President to lead us in an effort to re-write the laws so that they benefit America economically, socially, and morally; leading to a system that eradicates our current immigration issues, streamlines the process for the future, and fully respects the rule of law.

In order for our Nation to have an exceptional immigration policy, we must look for opportunities to revise our legal immigration system in a way that maximizes our economic growth, while also holding to our Nation's tradition of intact, extended families.

Furthermore, we can and must look to pass legislation that can be enforceable tools that discourage and eliminate all illegal immigration. This legislation must include the securing of our Nation's borders, and a mandatory and enforceable worksite employment verification system.

Additionally, our organizations are firm in our belief that any revision of our Nation's immigration laws must treat the current and large population of undocumented individuals strictly yet humanely. We believe that our Nation has a moral obligation to treat these people with dignity and respect, even while we determine that they must submit to a strict regimen of fines, background checks, and other remedies under the law that can lead to a state of eventual earned legality for those who qualify.

Finally, we note that several members of the Senate have recently proposed a bipartisan outline that suggests legislative remedies that could accomplish the goals as outlined above, and we are in favor of a

plan that generally conforms to their suggested blueprint. We are looking forward to working with members of the House as they lead our Nation toward an exceptional immigration system, one that reflects our remarkable Nation of immigrants.

Signed:

Robert Gittelson, President, Conservatives for Comprehensive Immigration Reform

Rev. Samuel Rodriguez, President, National Hispanic Christian Leadership Conference

Dr. Mathew Staver, Chairman, Liberty Counsel Action

Dr. Richard Land, President, Southern Baptist Convention, ERLC

Dr. Carlos Campo, President, Regent University

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Mr. GOODLATTE. And the gentlewoman is recognized for 5 minutes.

Ms. LOFGREN. Thank you, Mr. Chairman. And, you know, it has been so interesting to listen to the questions so far. You know, in fact, a person can be found deportable now not just if you are convicted of an offense, but if you have admitted to committing all the elements of a criminal offense even though you haven't been con-

victed. So in the hypothetical that was earlier posed, you wouldn't have to change the law to deal with that situation.

You know, I think we have a unique opportunity here to come together and come up with a situation where another Congress 20 years from now won't be dealing with this same problem. Dr. Richard Land, who was the president of the Southern Baptist Convention, was a witness before the Subcommittee a number of years ago, and I always quote him because I don't want to steal his line. He said for many years there were two signs of the southern border: One said "No Trespassing," and the other said "Help Wanted."

And our situation after 1986, we did the Reagan amnesty, but we made no provision to meet the economic or familial needs of the country. And so you have a situation now where we have 2 million migrant farm workers, and, like, 80 or 90 percent of them are here without their papers. They are providing a vital service to the United States. You could do E-Verify and find out they are not properly here, and American agriculture would collapse. So that is not going to be helpful.

What we need to do is provide a system that will actually meet our needs both in the economy, whether it is high tech, whether it is agriculture, and that also respects the needs for American families to be united.

And I would just add, it is not my belief that my son and daughter are chain migration. My son and daughter are part of my nuclear family, and I think that is true for Americans who have sons and daughters abroad.

I think it would be such a tragedy if we became sidetracked on whether or not the 11 million here who responded to the help wanted sign at the border can never become right with the law and never have the aspiration to become an American.

We are not talking about giving U.S. citizenship to anybody. What we are saying is over some period of time that is arduous, you might gain legal permanent residence in the United States, and then if you pay thousands of dollars, learn everything there is to know about the American Government, learn English so well you can pass the test, and then swear to defend the Constitution and be willing to go fight for your country, only in that case could you become an American citizen.

So I just think that looking back to Mat Staver, the dean, in today's newspaper article, he said that we should include appropriate penalties, waiting periods, background checks, evidence of moral character, a commitment to full participation in American society through learning English, but yet for hard-working, undocumented neighbors who aspire to be fully American, it must end with citizenship, not a permanent second-class status. I hope that people will read Dean Staver's op-ed, because it is really very compelling.

Now, I would like to ask you—and first, thanks to all the people for being here, you have all been excellent witnesses—but, Mayor Castro, you have talked about immigration. Your grandparents, I guess, just like mine, were immigrants. But one of the arguments that has not been made here, but it is made some sometimes in the country, is that somehow today's immigrants are different than the old immigrants, the good immigrants from before. I mean, the German immigrants, it was said when they came, wouldn't really learn



English; or, you know, the Irish didn't need to apply; the Italians were somehow morally not the same as the people they were joining. Now that all seems preposterous.

Have you seen any evidence that today's immigrants from Latin America are any less meritorious than the immigrants from our American past, any less willing to learn English, become patriotic Americans? Can you guide us on that question?

Mr. CASTRO. Thank you for the question, Representative. This generation of immigrants, I am convinced, is just as hard-working, just as patriotic, just as faith-oriented as the immigrants of generations before that helped build up the great country that we live in today. I know that there has been sometimes, unfortunately, that type of characterization, but in San Antonio I see folks like Benita Veliz, who graduated as valedictorian of her high school class, National Merit scholar, graduated from college at the age of 20, big dreams, wants to be productive for the country. That is the caliber of immigrant, whether it is someone like Benita or it is someone who is working very hard in the agriculture industry, working 12, 14 hours a day. These are hard working folks that are positively contributing to the progress of our Nation.

Ms. LOFGREN. Thank you. And I see my time has expired, Mr. Chairman. I don't want to abuse your patience.

Mr. GOODLATTE. I thank the gentlewoman.

The Committee is going to take a very brief recess, so those of you who need to accommodate yourselves, you will have 5 minutes to do so. So we will stand in recess until—well, make it until 12:20.

[Recess.]

Mr. GOODLATTE. The Committee will reconvene. We will continue our questioning by Members of the Committee, and the Chair now turns to the gentleman from Iowa Mr. King for 5 minutes.

Mr. KING. Thank you, Mr. Chairman.

I thank the witnesses for your testimony. And this has been an engaging hearing, and I am looking forward to your answers and the rest of the testimony.

I would turn first to Mr. Wadhwa. And yours was, I think, Mr. Wadhwa—I am over here on your left—yours was, I think, the most engaging, and when you talked about the inspiration that comes from the inventions that we have and how it can transform not just American society, but global society, and has. But what I notice in dialogue, it has crept in almost all of American society, is we are not separating the term—the term “immigrant” now means, as I listen to the panel, if I were just a casual observer here, I wouldn't know whether we are talking about legal or illegal immigrants, and I didn't actually know whether you were. And so could you define that for me and let me know what your intentions were in your testimony.

Mr. WADHWA. You know, what I have been researching and talking about are the people who came here lawfully, came through the front door, came on student visas or H-1B visas, who started companies, who boosted entrepreneurship. I have documented the statistics, you know, 52 percent Silicon Valley, 25 percent nationwide. With the number having dropped, our research is recently that we are strangling our immigrant entrepreneurship because we won't give them visas. I am talking about lawful, skilled immigrants.

Now, you know, we keep talking about the 11 million, 10 million undocumented, unskilled workers, illegal workers; we don't talk about the 1 million skilled immigrants who are trapped in limbo who are doctors, scientists, lawyers who can't get visas.

Mr. KING. So really as I listen to your testimony, I should be focusing on you are talking about legal immigrants and their contribution as skilled workers?

Mr. WADHWA. Exactly.

Mr. KING. And the Chairman mentioned about 10 percent of our legal immigration is based upon merit, and the balance of that is really out of our control. And I remember the hearings that we have had here in this room, that number falls pretty good. It is between 7 and 11 percent. I agree with that. And your advocacy is that we should take a number of legal immigrants and focus on the skilled worker side of this, which would be STEM, which I support. I think that is the right direction to go.

And I turn to Mayor Castro, and I recall you mentioning that it is not a zero-sum game, that we can have both skilled workers and unskilled workers and family reunification. And so a zero-sum game always gets my attention, because we have about, what, 6.3 billion people on the planet, so that would be the universe that you have addressed, I think. But do you believe that there should be a limit to the number of people brought into the United States, especially if we could all have them be legal, and what is that number?

Mr. CASTRO. Thank you for the question. First let me say that, you know, I won't say that I could set a number for you right here, Representative King. I will say, of course, like every country, there are only a certain number of folks who will be permitted to enter the United States, but I just don't believe that it is a zero-sum game. I do think that the answer is to increase the number of high-skilled immigrants that we have, but also to put the folks who are already here on a path to citizenship.

Mr. KING. But, Mayor Castro, then what I am hearing here is that you wouldn't put a limit on any of those groups, you would just fill up those categories essentially by the demand, and that demand is potentially the entire population of the planet.

Let me ask you another question, and that is do you believe that an immigration policy in this country should be established to enhance the economic, social and cultural well-being of the United States?

Mr. CASTRO. Well, I think that you and I agree that our immigration policy should enhance the economic, social well-being of the United States.

Mr. KING. Thank you. And I have found that—

Mr. CASTRO. And I believe that it has been shown that immigrants, high-skilled immigrants and what you would consider low-skilled immigrants, do benefit the economic progress of the United States.

Mr. KING. Thank you.

And I turn to Mr. Teitelbaum. And I just recall the gentle lady from California saying that the agriculture would collapse if all of a sudden we didn't have the, quote, "immigrant labor" to do that.

Did you agree with that, or do you care to illuminate that subject a little for us, please?

Mr. TEITELBAUM. Again, this is my comment, not the Commission's comment, but if you suddenly removed the entire workforce of fruit and vegetable agriculture in California and the Southwest, it would collapse. But that is not the question. The question really is should you continue to depend on continuing inflows of people to be the workforce of that industry.

Mr. KING. Would you agree, Mr. Teitelbaum, that there are many businesses in this country that have been predicated upon the presumption that there would be unskilled and often illegal labor to fill those ranks, and that our economic structure that we see in the United States would be dramatically different if the promise of the 1986 Amnesty Act had been upheld?

Mr. TEITELBAUM. Yes, there are. There are many industries. I have talked to a lot of the farmers in those areas, and they tell me that they make their decisions about what crops to plant based upon the assumption they will continue to have access.

Mr. KING. I watched it happen in my district.

Thank you to the witnesses.

Thank you, Mr. Chairman. I yield back.

Mr. GOODLATTE. I thank the gentleman.

The Chair recognizes the gentlewoman from Texas

Ms. Jackson Lee for 5 minutes.

Ms. JACKSON LEE. I thank the Chair very much.

Let me particularly thank all of you for your time here today. It is a very important process that we are going through, and if I have ever felt the spirit of the greatness of America and what we are capable of doing, it is today, and it is now, because of all of your testimony.

I want to put into the record quickly that in this year 2012, relating to border security—and I also serve on the Homeland Security Committee—that Border Patrol agents have apprehended 356,873 in 2012 under President Obama's administration, and the budget has doubled from 6.3 billion to 11.7 billion. So I think that is an important note to make for this record as we look at how we balance security and comprehensive immigration reform.

I absolutely believe, in spite of your different interests, that we cannot suffer a piecemeal process. It must be a comprehensive process.

So, Mr. Wadhwa, let me thank you for your intellect and genius and let me ask these questions very quickly. Those individuals who have come, who are now technological giants, many of them were trained in America's institutions of higher learning; is that not accurate?

Mr. WADHWA. That is correct.

Ms. JACKSON LEE. And so the likes of—these two are American citizens—Mark Zuckerberg went through Harvard. I think he paused a little bit. Bill Gates went through Harvard, but a number of those that you speak, Google, Yahoo, et cetera, went through the Nation's institutions of higher learning. Could it not also be that the children of those who have different skills ultimately go through the Stanfords, Harvards, Princetons and ultimately be the same kind of geniuses that immigrants have been, or when I say

immigrants, those youngsters that you speak of? So that if you happen to be the child of an unskilled, undocumented person, you could also ascend to genius by going to those schools?

Mr. WADHWA. I 100 percent agree, and my children are going to outdo me.

Ms. JACKSON LEE. Is it also true that many flock to the United States because of institutions of higher learning that have the excellent professors, such as yourself?

Mr. WADHWA. Absolutely.

Ms. JACKSON LEE. And is it also the commitment of American to make sure that those individuals that may not necessarily be the children of first-generation of immigrants but those who look at this hearing and say, what is going to happen to me, should we look to the promise of America for everyone, African Americans, Asians, Hispanics, Anglos, should that be the promise of America?

Mr. WADHWA. I agree with that as well.

Ms. JACKSON LEE. And would you commit then, when you educate technological phase—our geniuses, that they should look to making sure everyone has an opportunity?

Mr. WADHWA. There is no disagreement on any of these points.

Ms. JACKSON LEE. So when we talk about comprehensive immigration reform, is it an important message that no one be left out?

Mr. WADHWA. I agree, but the issue of timing. Right now the skilled immigrant issue is critical because, we are bleeding. We need the talent. We need innovation to cure the economy. And this is why I emphasized this over everything else.

Ms. JACKSON LEE. And we thank you for that. Let me make you a commitment. I am right there with you. We put the skilled immigrants right there with the comprehensive immigration reform, and we will roll forward together. You are absolutely right. You have my commitment.

Mayor Castro, if I might ask you a question about two issues. Working with immigrant issues, let me first of all say how endearing the DREAM Act youngsters are. I spent a lot of time with them in my office, literally saw a mother fall on the ground, screaming, in my office when we were able to say that we might have a deferred circumstance; tragically saw a person who had a serious neurological issue be expelled from one of our public hospitals while her husband paid taxes, sales taxes, other taxes of which that hospital facility was built on, and her child was a documented individual.

Can you speak to the horror of us not doing comprehensive immigration reform, the pains of those kind of stories? If we put a face on those kind of stories, and can you relate it to the diversity of your city that includes African American and others who have come together and worked together and have shown productivity when we work together?

Mr. CASTRO. Yeah, well, I am very proud of San Antonio over the years. You have people from many backgrounds. Many immigrants have come up and built up one of the Nation's leading cities today.

But you are right. I hear the stories. I met with the dreamers of folks oftentimes who are doing great in high school. They find out that they are not here documented. They call the United States home. America is the only country that they have ever called home.

They are as patriotic as anybody else. They worry every day about their parents. They worry about themselves and whether they are going to be trapped with very little future, despite the fact that they have great talent and a lot to offer the country.

It rips families apart at the seams to be in this kind of limbo, and it injures communities because we are not fully able to take advantage of the brain power of those young people. I believe that brain power is the currency of success in this 21st century economy. I also agree with you that that brain power comes from many different quarters. And my grandmother came to San Antonio through Eagle Pass, Texas, in 1922 as a 6-year-old orphan. She wasn't a high-skilled worker. But two generations later, you know, her grandson is the mayor of the city and the other grandson is the Congressman from San Antonio. These are the stories that we have to pay heed to when we think about the need to do this comprehensively.

Mr. GOODLATTE. The time of the gentlewoman has expired.

The gentleman from Texas, Mr. Gohmert, is recognized for 5 minutes.

Mr. GOHMERT. Thank you, Mr. Chairman, and thank you to the witnesses for being here today.

Yeah, I am down here on the Chairman's far right, imagine that.

Mayor, you are right. We do have to put faces on things and like when I saw the President with children gathered around him as he is often doing now, I think about the financial burden we are putting on our children. First generation in American history that is actually making things worse for future generations. Instead of sacrificing ourselves, we are spending money like crazy.

And part of it is health care. We have just had Obamacare a couple of years ago passed, and now seniors are seeing the massive cuts that are affecting their ability to get health care.

One of the problems it seems with our economy, the overspending with the burden on health care, is that even though people in business, the Chamber wants to look the other way sometimes on people coming in illegally if they are working providing cheap labor, is that the rest of Americans are paying the health care of those who come in, if they are coming in illegally. And so the health care, it is free to those individuals, but somebody is paying it.

I just wondered about, you know, as we hear farmers—and apparently, it is essential that they have immigrant workers come in, harvest crops. We have heard that over and over. Would any of you have any problem with saying, okay, you want to bring in temporary workers to harvest your crop, then you need an umbrella health insurance policy that covers the people that you are bringing in to work temporarily?

I am looking for grounds for compromise, where we could work something out so we accommodate those who need temporary workers and yet not continue to bust the system. Would anybody be offended by a requirement that an employer to bring in temporary workers provide an umbrella health insurance policy? Anybody?

Mr. CASTRO. Well, I would just say, Representative Gohmert, that, you know, I had not given that thought, but I do believe that

we need to address the 11 million folks who are already here. And with regard to future workforce needs—

Mr. GOHMERT. Well, and I understand that, Mayor, but that is not the direction of my question. And since my time is limited, I do need to move on. But you have all agreed that our policy should be what is in the best interest of the United States. We have heard before there may be—I am sorry, 1.5 billion that want to come to the United States. Obviously, that would overwhelm our system, and then nobody would want to come here because we would be bankrupt.

But we often talk about all of those who cross our borders illegally. But as the Chairman has pointed out before, 40 percent of the people who are unlawfully in the country right now came in lawfully and have overstayed their visa, their means of coming in legally.

Does anybody on the panel believe we should advertise to the world, if you come in temporarily on a visa, you don't have to leave? I mean, it may sound like a silly question, but that is a concern of mine that we may be advertising. When Steve King and I had gone over to talk with folks about—and they don't like the term "illegal immigration" in England. They told it is "irregular migration." It sounds like something else. But anyway, whether it is irregular migration or illegal immigration, they said they have a law that provides if you come into England, you have to swear that you will not accept any government benefits for a period of 5 years. As they said, since it is all about the best interest of our country, we need to make sure people coming in contribute before they take out.

Would anybody have a problem if we had such a prohibition? We welcome you in, whatever comprehensive agreement gets worked out to have an agreement, you don't get benefits until you are here at least 5 years contributing to the system. Anybody have a problem with that?

Mr. WADHWA. We have to provide medical benefits regardless of who we bring in. That is a must for every human being.

Mr. GOHMERT. Okay, so whoever we bring in, we are going to give free healthcare.

Mr. WADHWA. They have to pay for health care. They pay insurance.

Mr. GOHMERT. So if somebody coming in pays for it, they aren't getting free health care.

Mr. WADHWA. It can't be free. It should be paid for.

Mr. GOHMERT. All right. Thank you.

Mr. CASTRO. I would also just say, Mr. Representative, as you know, legal, permanent residents right now, as I understand, don't qualify for traditional welfare or health care. So I believe that a lot of that has been resolved by the law that is in place.

Mr. GOHMERT. You are probably aware that we do have government agencies that actually go out and recruit people for government benefits, whether they are here legally or illegally, which is something else we need to look at.

But I really appreciate your time. I see my time is expired. Thank you.

Mr. GOODLATTE. Thank the gentleman.

The gentlewoman from California, Ms. Chu, is recognized for 5 minutes.

Ms. CHU. First, let me just reiterate that point. There is a 5-year ban on benefits for legal, permanent residents, so they cannot just come in and get the health benefits. So that is totally a myth that is out there.

But I would like to ask some questions pertaining to families and comprehensive immigration reform.

Mayor Castro, one of the immigration priorities for the Congressional Asian Pacific American Caucus and the Congressional Hispanic Caucus is that comprehensive immigration reform protects the unity and sanctity of families by ensuring that families are reunited. Under the current immigration system, there is a significant backlog. Adult children of U.S. citizens who live in the Philippines have been waiting for 20 years to be reunited with their parents, and adult children living in Mexico have been waiting 19 years to be reunited with families.

Americans really, I believe, shouldn't have to choose between their country and building a life with their children.

So, Mayor Castro, as the grandson of an immigrant and a public servant, how problematic is it that families are being split apart and why are families good for our economy and our Nation?

Mr. CASTRO. Yeah, well, thank you for the question.

This is always—this has long been the policy of the United States for good reason. Families make each individual stronger. That is the basis, I think, of much of the strength of our communities, the economic progress, the moral progress that we have made. You know, we hear stories every now and then of folks who have a dying relative in another country and someone they have been waiting to try and bring over for years or someone who is here undocumented, who is deathly afraid of going across the border to go visit a dying mother or a dying father, just can't do it because they know what the risk is.

We are stronger because we have had this family-based system, and part of what we have to do for folks who are citizens, who are here legally as well, is to clear that backlog. We need to invest to clear that backlog and make sure that we can strengthen this.

Ms. CHU. Thank you for that and I want to ask also about the families of H-1B workers.

Mr. Vivek Wadhwa, you talked about the need for our highly-skilled workers. And I totally agree. Even with unemployment at historically high levels, a large number of jobs are going unfulfilled because of a lack of qualified workers in science, technology, engineering, and math, and that is why I do support the creation of the STEM visas and improvements to the current employment-based green card system.

But in your testimony, you talked about how the family members of H-1B workers or skilled workers live as second-class citizens, that they spouses are not allowed to work, and depending on the State in which they live, they might not be able to get driver's licenses, or open a bank account. And because of this, these workers are getting frustrated and returning home.

So how does the fairness for the families and loved ones of highly-skilled workers impact our ability to bring engineers and sci-

entists to the U.S.? Does it serve as a deterrent not to have something in place?

Mr. WADHWA. Yeah, you know, I hate to say this, but the women in Saudi Arabia have more rights than the spouses of the wives of H-1B workers. It is inhuman the way we treat them. They are highly skilled in many cases. In some States, they can't get driver's licenses, which means that they are confined to the home. What sort of a country is this which brings people in, highly-skilled immigrants, but doesn't give them equal rights? This is wrong. It has to be fixed. And what happens is that after being here 2 or 3 years, they get increasingly frustrated. This is one of the reasons why people leave here, and they have such marital problems because their wives are equally productive people, and they are not allowed to work because of the current laws. It must be fixed.

Ms. CHU. Thank you for that.

Mr. Arora, you had a very compelling story about coming here as one of the best and the brightest students, and then you became a leader in the biotech field, working for Amgen, and now for Genentech. But yet, it took you 15 years to get your permanent status, and yet, you had a wife and now you have two beautiful young children. You talk about certain solutions and that could continue family-based immigration and make sure that immigrant families are able to work together and, through their combined forces, pay taxes, buy homes and start job-creating businesses.

I was interested in one of your solutions, which is that spouses and children of employment-based immigrant visa recipients, that they are exempted from the employment-based caps. Could you talk more about that?

Mr. ARORA. Thank you. When you become a citizen, which of course, in my case, for example, after 15 years, I am now—my character is being checked for the next 5 years to see if I can be a citizen—during this period, and I know people who have been through this, if you get married, for example, and I had a colleague like this, you can't bring your spouse into the country for a period of 5 years because that is the backlog for immediate family. And my family is here with me, so I want to say that I understand the importance of your family being with you. It is really important.

Now, during these very long waits, if you are on an H-1, as Mr. Wadhwa has just stated, there are certain States that will restrict the ability of your spouse to do so much that it becomes difficult as a family unit to continue your work or to continue to stay in a meaningful manner. I count myself as very fortunate. In 2007, for that 1 month when the State Department decided to allow everyone to file adjustment of status, I was able to get employment authorization, which means that my wife could get the same. But anyone on an H-1B status does not have that privilege. Not only that—

Mr. GOODLATTE. Dr. Arora, you are going to have to summarize. Her time has expired long ago.

Mr. ARORA. I agree with you completely. It is a big problem, and I want to echo what Vivek said, but it needs to be fixed.

Mr. GOODLATTE. I thank the gentleman.

The time of the gentlewoman has expired. The Chair would ask the gentleman from Texas, when I recognize you, if you would yield



30 seconds to me. So I might—I recognize the gentleman from Texas. And if you would yield to me.

Mr. POE. Certainly, I will yield 30 seconds.

Mr. GOODLATTE. I appreciate that. I just want to clarify for the record a statement made earlier. Some disagreement here.

We found in writing the STEM visa bill last year that when we extended an additional provision that allowed people who are on waiting lists for visas to come to the United States, we had to provide additional pay-fors, because we looked at Obamacare, the Patient Protection and Affordable Care Act, and found that it provides benefits to anyone who is lawfully present in the United States.

So, even without permanent resident status, this is going to be a major issue we will have to deal with as we look at immigration reform because individuals on that will qualify for benefits, which could be, as you know, for as many as 10 million people, very, very expensive.

And I thank the gentleman and yield back to the gentleman from Texas.

Mr. POE. Thank you, Mr. Chairman.

Thank you, gentlemen, for being here.

The issue of immigration to me covers many questions, not just one or two. There are multifaceted questions to be answered across the board. And I want to focus on a couple of those in the next few minutes. We have the issue of skilled workers coming to the United States. We train them. They go home. They compete against the United States. Now, that is one of the issues that we have.

Specifically, because of my location in the Houston area, Mayor, which you are familiar with, we also had the fact that the system to me is broken. It allows for abuse, and I am not talking about people who are coming here to better themselves. I am talking about the criminals who come in the United States, mainly the drug cartels and their operation, and how they are now become so sophisticated that they can cross the border into Texas; that they have engaged now in human trafficking, and unfortunately, Houston has become one of the hubs in the United States for the disbursement of trafficked people. We had the issue of 20 percent of the people in Federal penitentiaries when they committed the crime, they were unlawfully in the United States. Border security covers those particular issues.

And we have the other issues as well. But I would like to concentrate specifically on trying to secure the border. I am one of those that doesn't believe the border is secure, otherwise we wouldn't have all of those organized crime problems that have now been created in the United States.

At the border in Texas, as you know, there is the ability for a person—different subject—to come in and cross the border daily to go to school, to work; the 25-mile border visa system. And they use some type of card, similar to this, where they are allowed to cross into the United States daily.

Do you think, Mayor, because of your location in San Antonio, that if we had a better legal entry visa, whether it is a card with the biometrics, fingerprint, photograph, the different electronic things that we can put when a person comes into the United

States, slides and glides, so to speak, we know who that person is. They have permission to go to Oregon for 6 months, if that would help the overall issue of specifically knowing who comes in lawfully or not? What do you think about that?

Mr. CASTRO. Well, I certainly think there is room for that as a piece of it, sure. I think that the use of technology, the systems that we have been developing have been improving. I also would say, as you know, that in Texas included, the dedication of boots on the ground of manpower at the border has been accelerated over the last few years under President Bush, and President Obama like never before. And we have doubled the number of enforcement agents down there since 2004, apprehensions are at a 40-year low.

So I would agree that as part of a comprehensive approach, that the kinds of things that you are talking about should be a part of the discussion, perhaps part of the legislation, but that doesn't get to the issue of the folks who are here already.

Mr. POE. Reclaiming my time. I understand that is one of the questions that has to be addressed. But it is not the only question that has to be addressed because there are many, many issues, even legal immigration. My office, because of where we are, our caseworkers spend more time on helping people get here the right way than anything else they do except maybe working with the military. And as has been pointed out by my friends on the other side, that is a big problem where people have to wait for years to just come in the right way. That has to be fixed as well.

One comment I would make on the apprehensions. I know that apprehensions may be down. That doesn't mean that the border is more secure. It just means that apprehensions are down; less people are being apprehended. You can look at that in a couple of different ways. And in Texas, the Governor of the State, as you know, is doing more than ever before in the State to help border security as well.

So anybody else want to weigh in on improving the legal visa system so that it is more secure because that is a concern; as pointed out, many people come into the United States the right way; they never go home. I mean, why would they? They are in Texas. Why would they leave, you know? And they are in San Antonio, or Houston.

Mr. CASTRO. I certainly agree with you there.

Mr. POE. Anybody else want to weigh in on that? I am out of time.

Mr. WADHWA. We may well need a biometric ID system in the United States.

Mr. POE. I can't hear you.

Mr. WADHWA. I said, we may well need a biometric ID system in the United States. India is IDing its entire population of 1 billion people, retina scans and fingerprints. We may need something like that in the United States. I mean, we have enough—right now, there is no such thing as privacy anymore anyway. We might as well face it and say, okay, if you are going to work here, you have to work legally. The Canadians do that. I asked a Canadian minister, how is it that they manage the immigration? He says, because even if the illegal immigrants come here, they can't work.

Therefore, there is pressure on people to legalize and do those things by the book. We might have to bite the bullet over here.

Mr. POE. Thank you, Mr. Chairman, I yield back my time.

Mr. GOODLATTE. The Chair thanks the gentleman, and turns now to the gentlewoman from—you tell me—from California.

The gentlewoman from California, with my apologies, is recognized for 5 minutes.

Ms. BASS. Thank you, Mr. Chair.

I wanted to ask a couple of questions, and this of Mayor Castro, and you may or may not know the answer, but maybe, you know, you can tell me. When we talk about a pathway to citizenship, and we talk about people who are undocumented being here and having to go at the end of the line and what they would have to do, pay their taxes, pay fines, whatever, sometimes I think when that conversation comes up, it is as though that would only take a couple of months. And I think—well, first of all, I do support a pathway to citizenship. I don't want to be shy about that. But I wanted to know if you had some thought as to how long that would take? If somebody goes to the back of the line, it is, you know.

Mr. CASTRO. Thank you for the question. First, I would just say that earlier the question was asked about, well, what is the compromise? The compromise is the fact that this is earned citizenship, that one would be fined. One would have to learn English, pay back taxes, go to the back of the line, and that line is a long line.

Ms. BASS. Right.

Mr. CASTRO. The fact is, as Dr. Arora said, that for folks who were legally applying, that that takes too long right now. It takes sometimes over a decade or longer, and so for anyone who thinks that this would be some sort of automatic application that somebody would be in in a couple of months, that is not the case at all. This is a years-long process, and it is also earned. That is an important point to be made.

Ms. BASS. Thank you. I appreciate that. You know, another area that I am concerned about, and I would like to know how this might be impacting your city, a lot of research, an issue that I work on is foster care. And because of the deportations that have taken place over the last few years, there are anywhere from 5,000 to 6,000 children who have been placed in foster care because their parents have been deported. The children were citizens. And I wanted to know if that is affecting your city, and what your thoughts might be on how we would include a resolution for that situation as we do comprehensive immigration reform.

Mr. CASTRO. Sure. In any community the size of San Antonio, you do have examples of families that have been torn apart, and certainly, I hope that in this legislation, we can find a way in addressing immigration reform comprehensively to deal with those types of situations.

I remember that George Bush, when he was Governor of Texas, used to say that family values don't end at the Rio Grande, and that is certainly true, still; that keeping the family together has been so much a part of the progress of America, and so my hope is that can be addressed.

Ms. BASS. Absolutely, and I think when we talk about family values, we really have to consider this, and so one of the issues that

I would be concerned about is those people that have been deported. How do we reunite them with their children? We did a listening tour in Miami, and I went to a residential facility for foster youth, and there were a group of children that were arriving that day, in Miami, from California, who were being sent to live in Miami. So not only are they completely disconnected from their parents but any environment that they might have known. And what is to happen to those kids? So when we are thinking about resources of our country, our government could wind up supporting those children all of their lives because we have disconnected them from their families. So I think it is an important issue that we factor in when we do comprehensive immigration reform.

Thank you, I appreciate that.

Mr. Teitelbaum, I wanted to ask you a question because you made reference to—one of the previous Members had asked you about the agricultural industry, and coming from California, clearly, that is a major industry. And you said something about how if unskilled workers were not allowed in the country or were removed, that maybe growers would make different decisions about what they would grow?

And I was wondering if you could give a couple of examples, because I can't think of—I can't think of crops that would not require farm workers, and how would a State like California, that feeds a good percentage of the country, then make decisions about certain crops?

Mr. TEITELBAUM. I can give you a very memorable example visiting a farm or ranch that had a very large number of apricot trees that had to be hand picked. And I was talking with the farmer and asking him what his situation was on labor. He said, well, all of these people are undocumented, and I don't pay them very much so I can afford to hand pick these apricots. You have to hand pick apricots. They are a very fragile fruit.

So I said, well, what would you do if you didn't have that labor force or the price went up substantially? He said, well, we are already losing money on our apricots to apricots coming into the port of San Francisco from Turkey that are undercutting what we can sell them for. I am probably going to do this anyway, but if it happened the way you describe, I would certainly do it. I would cut down all of these apricot trees, and I would plant walnuts, walnut trees. They would grow great on this land, and with the walnut tree, you put a tarp under the tree, you bring up a mechanical shaker, you shake the tree, all of the walnuts fall on the tarp and you have harvested the tree in about 10 minutes. You still need some labor, but a lot less labor. That is typical, I think.

Ms. BASS. Okay, so I would just suggest that you would devastate the economy of California if California then only switched over to crops that did not require the labor of farm workers.

Mr. TEITELBAUM. Well, they will require some farm workers always, but the question is, how intensive is the labor needed for a given crop?

Ms. BASS. So walnuts, do you have any other examples of crops that do not require farm workers?

Mr. TEITELBAUM. There are many crops that are labor intensive and many crops that are not. I mean, wheat is not labor intensive.

Ms. BASS. Okay, well, thank you. I yield back the balance of my time.

Mr. GOODLATTE. I thank the gentlewoman.

And the Chair is pleased to recognize the Chairman of the Immigration and Border Security Subcommittee, the gentleman from South Carolina, Mr. Gowdy.

Mr. GOWDY. Thank you, Mr. Chairman.

Mr. Mayor, I want to make sure I understand you correctly and fully. Can you support a path to legal status that does not end in citizenship?

Mr. CASTRO. No, I support a pathway to citizenship. I believe that is—

Mr. GOWDY. So there is no form of legal status that you would support short of full-fledged citizenship?

Mr. CASTRO. I just don't believe that is in the Nation's best interest.

Mr. GOWDY. So the answer is no.

Mr. CASTRO. I believe that a pathway to full citizenship is what the Congress ought to enact, so sure.

Mr. GOWDY. And I think you earlier referenced that as a compromise, and I am curious. A compromise between what? Because I don't hear anyone advocating for full-fledged citizenship without background checks or full-fledged citizenship without back taxes or full-fledged citizenship without fines. So it is a compromise between what?

Mr. CASTRO. Well, I think you would agree with me, Mr. Chairman, that this point that you are at right now that you are talking about, these, you know, the fact that they would have to pay a fine, that they would go to the back of the line, that they would have to learn English, that has been worked up as a compromise between Senators from different parties, and perhaps House Members.

Mr. GOWDY. But my question to you is, that represents a compromise between what? Because I don't know anyone who is advocating against that. So you represent that as being a compromise. A compromise strikes me as a balance between two competing principles. I don't hear anyone advocating for full-fledged citizenship with no conditions precedent at all. So how is that a compromise?

Mr. CASTRO. It is a compromise in my mind because Senators from different parties, as Americans want folks to do from different parties, came together, and put together a framework. I am sure they had their divergent views, so if we went to the beginning of the process, then I am sure there was more divergence in their views. What was put on the table, including the planks that you just stated, represents a compromise position.

Mr. GOWDY. What about those who are currently here who do not desire citizenship? Would it be forced upon them or could they opt out?

Mr. CASTRO. Well, I believe that throughout our history, it you know, has been left up to the individual.

Mr. GOWDY. So you don't have—

Mr. CASTRO. Nobody is talking about forcing folks to become citizens.

Mr. GOWDY. So you do not. Because the polls I have seen, there is a large percentage that just want to work legally. They don't desire to be full-fledged citizens. So you would not force that upon them.

Mr. CASTRO. What I hear are an enormous number of people who want to be full American citizens. They are patriotic people. They want to serve in the military. They want to be productive for the country. They want to be full-fledged citizens, and I believe that that is in the best interest of the Nation. I don't believe that we should—I guess the alternative would be that we—

Mr. GOWDY. And there is not a legal status short of citizenship that you could accept under any compromise. Because the compromise you made reference to is a Senate compromise. There is no compromise short of full-fledged citizenship that you could endorse.

Mr. CASTRO. Well, of course, at the end of the day, this is in your hands, but—

Mr. GOWDY. But I am asking you.

Mr. CASTRO. I know, and I believe that the compromise that has been worked out by the Senators, and maybe worked on by the House Members, that represents a great compromise and that Americans can support that.

Mr. GOWDY. What are some of the elements of the background check that you would be most interested in? Because the word background check means different things to different people. I assume it is more than just an NCIC check to see whether or not someone suffered a felony conviction. What do you mean by background check?

Mr. CASTRO. Well, and I readily acknowledge, you know, I am not a technical expert, not in law enforcement, and so I understand you all are going to have a panel that is going to deal with enforcement.

Mr. GOWDY. But you are an attorney. You are an attorney, very well-trained attorney, so—

Mr. CASTRO. Not very good at law school, though.

Mr. GOWDY. Better than most of the Members of Judiciary, I suspect your grades were. So what would you include in that background check? Because Mr. Forbes asked you, I thought it was a very good question. If you set the bar at felony convictions, that is a pretty high standard. For those who are under investigation by the bureau, or someone else, and you could maybe meet the level of probable cause, but not beyond a reasonable doubt, would you be willing to exclude them from this path?

Mr. CASTRO. Well, I think that what has been discussed does go beyond just folks who have been convicted of a felony. I understand that there may be some instances, but that is going to be case specific. I think that kind of thing needs to be adjudicated. You know, it is, you know, somewhere between assuming that somebody has committed a crime and recognizing that there are circumstances where someone does present a danger to the United States and should not be in the country. I do think that there is leeway there. I would grant you that. And these are the kinds of things that—I don't disagree with the general point that, you know, this is not easy. This is detailed. It is important work, but I believe, at the end of the day, that the compromise, the general principles of the

compromise that have been worked out in the Senate are the ones that are the best option for the United States.

Mr. GOWDY. My very last question to you because I am out of time is this: This is not our country's first foray into amnesty. And you talked about citizenship and all of the benefits that that confers on folks. One of the benefits it confers is that you have the protection of the law. So how would you explain to folks, in my district or Congressman Labrador's, who really do place a high value on respect for the rule of law, why we are doing this again if it hasn't worked in the past?

Mr. CASTRO. Well, I think you and I would agree that, as many folks have said, we are a Nation of laws. We draw our strength from the fact that we are a Nation of laws. At the same time, we are also a Nation of immigrants, and we have progressed as a Nation because we are pragmatic, and we understand that these 11 million folks that are here, that this has to be addressed. It is in our national security interest. It is in our national economic interest. So I do think that we can find a way to punish these folks for not coming in here legally but, at the same time, address the pragmatic issue that is in front of us.

Mr. GOODLATTE. I thank the gentleman.

The Chair recognizes the gentleman from Louisiana, Mr. Richmond, for 5 minutes.

Mr. RICHMOND. Thank you, Mr. Chairman.

Earlier the question was posed to each of you, and you all were given the ability to just say yes or no, and I thought it was unfair. But the question was, should America do what is in America's best interest when talking about immigration. And I guess the question that, the part that was left out is, do you consider a cost-benefit analysis on each person as the only factor in what is in America's best interest?

So if they are only going to come and be very successful business owners and create jobs, is that the only factor we should look at when determining what is in America's best interest? And we can start with you, Mr. Wadhwa.

Mr. WADHWA. There needs to be a balance over here because if we just bring people in and there are no jobs for them, we are going to create a complete mess. They lose and we lose.

What I have been arguing for is bringing in a crop of highly-skilled immigrants who can help this country become competitive, who can create new technologies, who can create jobs, make the pie bigger so we can bring the other people in.

Mr. RICHMOND. But that shouldn't be the only factor, is my question.

Mr. WADHWA. That should not be the only thing because they are going to bring their families in as well.

Mr. RICHMOND. And I will have a follow-up for you, Mr. Teitelbaum. Should it be the only factor?

Mr. TEITELBAUM. No, it shouldn't be. Can I say more than no?

Mr. RICHMOND. If it is quick.

Mr. TEITELBAUM. The family category doesn't have that criteria, and it is the dominant category in legal immigration. So if you focus in on the skills-based or the employment-based, that is a different, that is a small category.

Mr. RICHMOND. No, and I agree with that.

Mr. ARORA. No, I agree with what both of them said. The balance is important. The balance has always been true in this immigration system.

Mr. RICHMOND. And Mr. Mayor?

Mr. CASTRO. We need a balanced approach.

Mr. RICHMOND. And the reason why I posed the question was because, and Mr. Wadhwa, you brought it up first, why don't we just get the skilled labor part done first? Well, politically, and just being very practical about it, if we got the skilled labor part done first, do you think we would ever come behind it and finish the job?

I think it has to be a comprehensive approach, or we will never get to the hard part. So that was probably my biggest concern, especially when I hear the conversation about the category for diversity being maybe reduced or eliminated completely, when diversity adds something to this country, and we should never forget it. And if we go back to the Declaration of Independence, you know, one of the facts that was used to talk about the king was the fact that he was preventing people from coming to the country and being able to migrate here. And then if we look at the Statue of Liberty, when it says, give me your tired, and your poor. What I don't want people to take away from this hearing is that all of a sudden we forgot about the tired and the poor and the people who are striving for a better life.

So those are probably my biggest concerns when we look at just the precedent we are setting. And we have economic problems, and we are getting out of them like we always do. And we will always prosper because we are resilient. But the question becomes, what about the moral ground that we would see if we just say we are going to forget about 11 million people? We are only going to focus on skilled workers. We are not going to take care of spouses and equal protection under the laws, and all those things. Do you worry about that?

Mr. WADHWA. I do, and the thing is, right now, the country is in a mess. Our economy is in horrible shape. We have a brain drain going on for the first time in its history. This has never, ever happened before. We have never, America has always been a land of immigrants, not emigrants. It is happening right now. If we wait 3 years to fix the skill problem, we lose a couple of hundred thousand more great people who could be healing our economy. And unless and until the economy heals, the American public will not be receptive to the unskilled workers.

So it is a mess right now, and all I am talking about is let's agree on what we agree on, get that over and done with. Let's agree on the skill. Let's agree on the DREAM Act. Let's give some kind of a green card to the undocumented workers while we decide on the citizenship. That is so toxic right now that I am not optimistic we can solve that problem. Maybe we will. Maybe I will be wrong, but in the meantime, let's agree on what we agree on and make things easier for everyone.

I am saying give these undocumented workers green cards. My father has a green card, for example. He hasn't gotten his citizenship. He has lived here for 30 years happily without having that



problem. You don't have to have citizenship to, you know, do what is right for people. Let's solve the problem where it can be solved.

Mr. RICHMOND. Mr. Teitelbaum?

Mr. TEITELBAUM. Yes, my wife lived here for 25 years on a green card until she decided to naturalize. And the only difference was she couldn't vote in the school board elections, which annoyed her. The Statue of Liberty is on the cover of all of the Commission on Immigration Reform reports, and on the diversity visas, I think if you look at the composition the national origin and other composition of current legal immigration to the U.S., it is very diverse. When that provision was passed, there was concern it was not diverse enough.

Since then, it has become very diverse. And these are adding 55,000 visas that are getting 8 million applications each year, randomly allocated by computerized lottery. That is a somewhat odd way to set priorities. The commission said we should set priorities, and we should deliver on them. And the diversity visa program, it felt then, and I think would say now, it does not rise to that level of priority compared to the other priorities.

Mr. GOODLATTE. The time of the gentleman has expired.

And the Chair recognizes the gentleman from Idaho Mr. Labrador for 5 minutes.

Mr. LABRADOR. Thank you, Mr. Chairman.

I am excited that we are having this hearing. I think it is important that we modernize our immigration system. I think we all agree that we have a broken immigration system, but we need to find a solution to the problems that we have by being fair. We need to be fair to the millions of Americans that want to follow the rule of law. We need to be fair to the millions of people that are waiting in line to come legally to the United States. And I do think we do have to be fair to the 11 million people or so that are here in the United States illegally.

So I have a few questions about this, but first, I want to go to Mr. Teitelbaum. You spoke about the sibling category in your report. Can you explain? I actually agree with your conclusion in the report. I think we should get rid of the sibling category. Can you just explain a little bit and just short, why you think that is important?

Mr. TEITELBAUM. There aren't enough visas allocated for the huge volume of applications. You have got a 2.5 million person waiting list. And one of the Members has already mentioned what the wait times are, which vary from 12 to 20 years, depending on the country. So if you are not going to manage by backlog, which is what the commission said we should not be doing, that is a category that is being managed by unconscionable backlogs.

Mr. LABRADOR. And we could actually use those visas and allocate them to spouses and—

Mr. TEITELBAUM. To the higher priorities.

Mr. LABRADOR [continuing]. To the higher priorities.

Mr. TEITELBAUM. Yes, indeed.

Mr. LABRADOR. But something that I disagree with you on the report is the guest worker issue. And I am a little bit dumbfounded by it, and I know this report came out a few years ago.

Mr. TEITELBAUM. Fifteen years ago.

Mr. LABRADOR. Yes. You know, in my State, in Idaho, we have a large dairy industry, and at least two Idaho dairy farmers have experienced I-9 audits in the last couple of years. In one, 32 out of the 40 employees didn't qualify to work in the United States; and the other one, 47 out of 57 did not qualify.

They went ahead, fired all of those employees, and they went ahead and asked for people to come work at the dairy. They couldn't find a single person who applied for that position who spoke English. Now, they don't know if the people are legal or illegal, because the people they hired have legal documents, and they haven't done another I-9 audit. But how can you say we don't have a need? I mean, that is a large number of employees that needed to be hired, and not a single person who spoke English applied for the position.

Mr. TEITELBAUM. I don't know the circumstances in Idaho, Congressman. I am sorry, but I would say that it is true that in some agricultural areas, employers, typically in rural areas, which is where agriculture normally is anyway—

Mr. LABRADOR. Typically.

Mr. TEITELBAUM. Well, not always—but have become dependent on the assumption they can recruit from this undocumented workforce, and nobody—

Mr. LABRADOR. But this is different. This is somebody who had to fire everybody who was working at their dairy, and they couldn't find anybody who could be, you know, who could speak English. I don't know what their status was.

I was an immigration lawyer for 15 years and I found the same experience in some of the agricultural areas, in the dairy industry, agricultural industries. It is hard to find American workers who want to do the job. And then your solution is just they should do something else. They should pick almonds instead of something else. But the reality is that we should let the market decide that, shouldn't we?

You know, it seems to me that even in the example that you gave us, the owner of the farm had already decided that he wasn't going to pick the apricots anymore because the market was not working. And I think we need to do something about our guest workers, so I disagree with you there.

Mr. TEITELBAUM. It is the commission.

Mr. LABRADOR. With the commission, I apologize.

Mayor Castro, I believe—I liked your words that we progress because we are pragmatic. But yet, it seems to me that your solution is not pragmatic. You say that it has to be a pathway to citizenship or nothing else. Also, in my 15 years of experience as an immigration lawyer, I talked with thousands and thousands of people who are here illegally. And what they want is, they want to come out of the shadows. They want to be able to be legal. They want to be able to work. They want to be able to travel. They want to feel like they are treated with dignity. Not many people told me I want to be a citizen. I have to be a citizen in order to feel like I am a dignified person.

So if we can find a solution that is a short of pathway to citizenship, short of pathway to citizenship, but better than just kicking 12 million people out, why is that not a good solution?

Mr. CASTRO. Well, I would say that that is not the solution that is in the Nation's best interest. I think that is what I said, and I think that would be the most pragmatic solution. And one of the reasons that I believe that, is that if we don't go down that route, then I am convinced that we are more likely to find ourselves here again in 10 years, 15 years, 20 years. So, you know, if you asked me, would that be better than zero, I wouldn't necessarily disagree with that. But is that sufficient? Does that actually address the issues that we have in front of us? No. It is not a sufficient solution.

Mr. LABRADOR. And my time has run out, but the question that I have for you and for all advocates of immigration reform is whether you want a political solution or a policy solution? If we want to political solution, you guys are going to insist on pathway to citizenship. You are going to beat Republicans over the head on this issue. But if we want a policy solution, I think there is goodwill here in the House of Representatives for us to come together, actually have a pragmatic solution to the current problem that we have, and solve and modernize the immigration system for years to come. But thank you very much.

Mr. GOODLATTE. I thank the gentleman.

The gentleman from Illinois, Mr. Gutierrez, is recognized for 5 minutes.

Mr. GUTIERREZ. Thank you very much, Mr. Chairman. First, I would like to say that while we have been here, every minute, someone has been deported. Most of those deported have committed really no crime other than working in the United States, which is a misdemeanor the last time I checked. They are raising their families. They are contributing. There is always the question about paying taxes. Well, they pay taxes. You can check with the Social Security department. There is this large fund that goes unaccounted for. That means they really don't know who to attribute that money to because people have contributed. I think we need to do comprehensive immigration reform so when they pay taxes, it goes into the right account. And it helps fund and fuel our economy.

I want the mayor and the States and the Federal Government to garner all of those tax dollars and not for it to be in the pocket of some unscrupulous employer that is taxing them, but then not sending the money on.

Plus, given the 1986 legislation, we all know that there was an increase in the earning ability of the undocumented once they became. I mean, everybody keeps talking about, you know, innovation. Let me give you a little innovation. We talk a lot about the uncertainty of the market and what we do as a Congress. The uncertainty about what we do and what that causes for our financial markets.

I just want everybody to think one moment. What do you think about the uncertainty in the life of 11 million undocumented workers when you give them certainty? I will tell you what I believe they are going to do. They are going to go buy that house that they have always been thinking about buying but, since they were undocumented, didn't. They are going to buy that car. We know that 75 percent of our economic activity in the United States is what,

somebody going and purchasing something. I want you to think. I want you to think about people going to insurance agencies and to banks and opening accounts and to invest and to save. And most importantly, as I and other baby boomers, yes, I am 59 years old, and I am part of that group of people that is going to be hopefully soon going into the sunset.

Mr. ISSA. How soon? How soon?

Mr. GUTIERREZ. And while we have a lot of people, we have the largest percentage of people ever before in the history of our Nation that are leaving our workforce in the next 15 years. We need to replace them, and we need to replace these assets. Let me take a moment to say the following: There are undocumented people in this room. There are dreamers in this room. I am happy that the President used his executive authority. Five hundred thousand of them are now safe from deportation; 150,000 of them. One of them is in my office. And I have got to tell you something. He is not a burden. He got legalized. He came to my office. We hired him. He is working. He is paying taxes. He has got health care. How did he get health care; the way most of us get health care. I don't think we should look at immigrants and say, how are they going to get health care?

Well, the same way that Members of Congress get health care. We get health care at our place of employment. That is the same place they are probably going to get health care, and if not. So I want to say to everybody that is here. I want to quickly say to those that have come here, and I am sorry, I am going to butcher your name, Dr. Wadhwa.

Mr. WADHWA. Good enough.

Mr. GUTIERREZ. Good enough. And I want to say to Mr. Arora, to both of you. We have a bill. It was introduced by the gentlelady from California. For 10 years, I insisted that nothing happen on STEM or any other particular part of comprehensive immigration reform unless we did it all. But last year, I think in good faith and to show that we wanted to work with everybody, we said 50,000, I will not object, but they needed to be clean.

We didn't want you to get something while someone else lost something. We wanted to give it to you. And in our bill, 50,000, you get to come from the very first day with your wife. You get to come from the very first day with your children. Because we believe we should welcome you and your talent and at the same time, not have to make a distinction between serving this country and bringing your talent and sacrificing the love and cherishing the fact that your family might not be there with you.

So we think that that is important so I am going to continue to work. And I say to my colleagues on the other side of the aisle, we can resolve this and many other issues.

Lastly, I want to say a special thank you to Mayor Castro. You just lit up our house. My wife, and my daughters, and my grandson, Luisito. You lit us up with your speech at the Democratic Convention, with your leadership as mayor, with your poise, with the way it is you just make us all so proud, and with your story. And I would like to say to you that I am so thankful that America gave your grandparents a chance and that you are here with us today, because I know that not only San Antonio, but Texas, the Nation

is better because of your service. Thank you so much for your testimony here today.

And thank you, Mr. Chairman.

Mr. GOODLATTE. I thank the gentleman.

The gentleman from California, Mr. Issa, is recognized for 5 minutes.

The Committee will have order. This is not the way—this is not the way to make your point. All of those must leave. Just so you are not in doubt about the rules of the Committee.

I want to make sure everybody knows that the House Rules provide that the Chairman of the Committee may punish breaches of order and decorum by censure and exclusion from the hearing.

We just a moment ago did not have order in the hearing room. Members of the audience must behave in an orderly fashion or else they will be removed from the hearing room. And let me just say as an aside, that was not a good accent point to the excellent points made by the gentleman from Illinois.

The way we resolve this is through discussion and careful deliberation about the issues, not by disrupting efforts to educate the Members of this Committee and the public.

And we will resume the hearing. And the gentleman from California is recognized, without penalty to the loss of any of his 5 minutes for that disruption.

Mr. ISSA. Mr. Chairman, can I get an extra minute for this one?

Mr. GOODLATTE. Maybe.

Mr. ISSA. Well, first of all, in several ways I want to associate myself with my good friend from Illinois.

Luis, I am 1 month, 9 days older than you, but that doesn't mean that there is any real difference in us as Baby Boomers. We are going to exit the scene, and I don't want to exit the scene without resolving an immigration problem that predated my entrance and the gentleman's entrance into Congress.

That group of disruptions really didn't understand my politics. I do believe we can get to a substantial, if not complete, immigration reform bill, and I hope, after 12 years on this Committee of trying to get there, it is my fervent hope that this is that window of opportunity.

I do have some concerns from earlier.

Mr. Teitelbaum, I want to associate myself with Ms. Lofgren. I heard you say basically that we should grow different crops in California as a resolution to needing labor that we can't seem to find. Is that pretty well correct?

Mr. TEITELBAUM. No. What I am saying is that farmers and employers in general make decisions incrementally over time based upon the availability of labor at what price.

Mr. ISSA. Absolutely.

Mr. TEITELBAUM. And so we have allowed, we have allowed a system to evolve in which those farmers who have made those decisions based on that assumption are dependent on that continuing flow of labor. That is the nature of both temporary worker programs and undocumented.

Mr. ISSA. I want to challenge that for a moment. As a Californian, I was there in 1986 when the law changed. And I have seen my farmers, some that I represented in the past, some that I still

represent, flowers, tomatoes, strawberries, and then my wife's home up in Salinas County, Monterey County, literally, the lettuce, the majority of all lettuce comes from that one county. The majority of all lettuce in America comes from that one county. If we simply say that we can't have labor to pick that and that we need to make other decisions, it is fertile land. You are absolutely right. We will grow something else, and we will import our lettuce from another country.

If the real question is do we have an effective program that gives opportunity to people outside the U.S. to come to the United States, work for a period of time, and periodically return home in a non-immigrant, in a migrant way, if we have an ineffective program and we could have an effective program, and I think that is the real question.

In the 1990's, when you were studying this, you were studying it at a time in which the problem had been fixed, and it was getting rebroken as we spoke. You had migrant labor who had become under the 1986 law permanent, and they were beginning to either be in the management ranks of agriculture, or they were leaving agriculture, and that is pretty understandable. But isn't it true—true in the 1990's, true today—that there are tens of millions of people outside the U.S. who would stand in line to get good-paying—by their standards—migrant jobs here in America and would do so under a set of rules that were fair to them and fair to us?

Mr. TEITELBAUM. If they were fair, that is a big "if," of course, because temporary worker programs generally have not had that character. And then I would suggest—

Mr. ISSA. Well, let me challenge that, because, you know, I want a successful resolution, and I believe a successful resolution is, one, deal with people already here and in an appropriate and comprehensive way; two, obviously empower us to bring in the people who add to our economy; and three, deal with low-skill jobs that in many cases if people come to this country, they do them for a short period of time.

Is our standard today supposed to be an American wage for an American job—and I want to go to Mr. Wadhwa—or should it be a wage which is completely fair and greater than the wage someone would find in their home country for coming here, and sufficient for them to not only earn a living, but also go home with more money? And if that is the standard, then isn't that an achievable standard where it is a win-win? We can get our crops dealt with in a decent way; they can be better off for it; and we can have a flow of labor for that one portion that, in fact, would not be subject to chain migration.

Mr. TEITELBAUM. The Commission recommendation said that that was an attractive goal, but not possible to achieve, number one. Number two—

Mr. ISSA. Not possible to achieve. I will go back to my premise, and I want to be quick. My premise was that we pay more than they would find in their home country, but not necessarily what we are paying today with all the rules under the AG program of H-2A.

Mr. TEITELBAUM. The other thing, Congressman, you might want to look at is the backlogs that have been generated that have lots

of people who are not particularly skilled waiting. They are entitled in some sense to a visa, but they are in the backlog.

Mr. ISSA. Okay. Well, I hear that you say it couldn't be done then, and it wasn't going to work. But I have worked with Mr. Berman on this Committee believing that it could. Is anyone that has a different opinion there that would like to comment on the ability to take care of that one portion in a way in which Ms. Lofgren and I could see crops that, in fact, people want to eat be grown?

Mr. WADHWA. If you look at Canada, Canada has made their guest worker program work very well. For low-skilled labor, that is not a bad solution. It is actually a good solution. For high-skilled labor, you can't do that because you want the high-skilled labor—

Mr. ISSA. We want them here permanently. Absolutely. Thank you. Anyone else?

Thank you, Mr. Chairman. I appreciate your indulgence.

Mr. GOODLATTE. I thank the gentleman.

The gentlewoman from Washington Ms. DelBene is recognized for 5 minutes.

Ms. DELBENE. Thank you, Mr. Chair.

I come from a district that has lots of technology in the southern part of the district, home of Microsoft and many other technology companies, a lot of biomedical device companies, and also a very rich agricultural industry of dairies and berries and specialty crops. So immigration is very, very important from many different aspects.

I wanted to start with you, Mr. Wadhwa. And we talked a lot about H-1B, but you also talk about a startup visa program, and I wondered if you could elaborate what you think needs to be in such a program and how that would work in conjunction with the H-1B program.

Mr. WADHWA. A startup visa would do wonders for Seattle. It would do wonders for New York and even more for Silicon Valley. There are literally tens of thousands of companies that would be started almost overnight if we gave these entrepreneurs or would-be entrepreneurs the ability to do that. Right now they can start companies. If you are on an H-1B visa, you can start a company, but you can't work for it. It is brain dead. Right? So we would suddenly have a boom in entrepreneurship like we haven't conceived before.

There is no reason not to do it. It should be done independently of everything else we are doing. Just get that done so we can fix the immediate problem.

Then there is the issue of H-1Bs. The big companies are lobbying very hard for it. They need it. I mean, there are debates about whether they take jobs away. In some parts of America, you don't need H-1Bs; in parts where the skilled immigrants are, you do need H-1Bs. The Brookings Institution did a great study on that, so we need those also.

But the more urgent thing there is to give green cards to the million already here on H-1B visas who are stuck in limbo. Let them start their companies. Let them buy houses. Let them enjoy the rights that Americans enjoy.

Ms. DELBENE. We talk a lot about starting up companies, but also a lot of research and a lot of startups and entrepreneurs come

from great basic research that is happening at our universities. And so how do you think the relationship of our immigration program has an impact on the education we are able to deliver both in the medical area as well as in the technology area?

Mr. WADHWA. I think we are completely in sync on that. We need these researchers coming in and doing great research at our universities, and then we need people leaving universities and starting companies. That is the one thing we need to fix in the United States system is to commercialize more research because that would, again, lead to a big boom in startups.

Right now the system doesn't work because the researchers can't get permanent resident visas. It is the same problem that everyone has, that we have basically slowed down American innovations for no reason whatsoever.

Ms. DELBENE. Dr. Arora, we are talking about health care. And obviously we talk a lot about kind of technology, and we forget that there are many needs not just in research and health care, but across the healthcare system. I wondered if you wanted to elaborate on that a little bit.

Dr. ARORA. Yes. It is clear from a number of workforce reports that with the baby boomer generation retiring and with a new healthcare environment, there is a serious shortage of healthcare workers at various levels, physicians, and certainly there is a maldistribution—aside from everything else, there are a number of areas that are simply not medically served appropriately. There are certain specialties that are underserved. There are issues for getting nurses to the right hospitals. So there are a number of issues.

It is also hard when you come in from a pathway like mine—I was on a J-1 exchange visitor visa—to go into a research field, if that is your desire. And it took me several years to make my way out to that because of the kinds of restrictions that I have faced. So we have always advocated that when you go through the immigration pathways, especially the skilled immigration pathways, there should be a great deal of portability and market-based characteristics to this so that people gravitate—people with skills gravitate toward where the demands are, and where their skills are appropriately needed, and where they can contribute best. And health care is no exception to that.

I have had the privilege of working with Senator Conrad's office in the past on his Conrad 30 program, of which I am a graduate, I should say, and they are looking for permanent authorizations. They are looking for physicians who go to underserved areas and provide service not to have to stand in these backlogs at the end of service. And those are all great ideas, and they should be a part of—

Ms. DELBENE. Thank you.

And then we talk about agriculture. We have been talking a lot about seasonal workers. But I know in the example that my colleague from Idaho brought up earlier in the dairy world—and we have many dairy farmers in my district. These aren't seasonal workers, these are year-round workers—that folks are struggling to make sure they have a strong workforce.



So do you feel differently about the ability to address those issues, Mr. Teitelbaum, versus the seasonal workers? I mean, there is an economic driver to this, too.

Mr. TEITELBAUM. If they are year-round, then they are not really temporary workers. Seasonal is more temporary. So I think, again, it is——

Ms. DELBENE. But there is still a gap. There is still an employment gap.

Mr. TEITELBAUM. Yes. And you have got to consider whether the jobs are attractive enough for the underemployed U.S. workforce, who could be attracted if they were attractive. But I don't know what the conditions are in the farms and dairies that you are describing, so I can't comment on that.

Ms. DELBENE. But you think it is merely a financial issue in terms of how much folks are paid versus the types of jobs and the skill involved in those jobs? As Mayor Castro said, these aren't necessarily low-skilled, they are different-skilled.

Mr. TEITELBAUM. Congresswoman, I did pick strawberries in the summer in Oregon not so far from your district.

Ms. DELBENE. I think we went to the same school, actually.

Mr. TEITELBAUM. Did we? I didn't know that.

It was an interesting, difficult, well-paid job for a college student in the summer. I don't think there are any jobs like that anymore. It is a different workforce that does the strawberry picking in Oregon now. So I think you can see that there has been a kind of shift in the origin of the workforce.

Did we really go to the same college?

Ms. DELBENE. We did, in Portland.

But I think I have used all my time. Thank you.

Mr. TEITELBAUM. Thank you.

Mr. GOODLATTE. I thank the gentlewoman.

And the gentleman from Texas Mr. Farenthold is recognized for 5 minutes.

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

And it is good to have Mayor Castro here from San Antonio. San Antonio is a lot like my hometown, Corpus Christi. They just don't have the bay or the beach. But you do have a pretty good basketball team.

And I wanted to visit with you a little bit because I really do sympathize. We have got a big problem here, and I think we all agree that our immigration system is broken. We have done a lot of casework at our office, especially when we still had Brownsville as part of the district that I represent, and my heart is just broken by some of the family issues that I see.

And also my heart is broken by the fact that many people who are in this country without proper documentation are basically an underclass that aren't afforded the full protection of the law. If you are here illegally, and you see a crime on the street, you are afraid to call the police for fear of you getting involved in it. And you are open to exploitation by unscrupulous employers. And it is a real problem, and I think it needs to be addressed.

I have spoken with a lot of my Republican colleagues, some of my Democrat colleagues, and a lot of folks back home about the issue, and it seems like the stumbling block for almost everybody

is the pathway to citizenship that you have been talking about for such a long time. We look at the promises of the 1986 immigration reform when it granted citizenship to so many people, that we were going to seal the border and make sure this—this was a one-time deal is the way. And we see that that has failed.

My question to you is how do we not end up in the same situation 10, 20 years down the road if we do this again? My fear is that what we are saying by a pathway to citizenship is that, all right, you come over here illegally. Let us say we seal the borders 100 percent. Nobody can cross the border illegally. You are still going to have people overstaying their tourist visas. You will still have people overstaying their student visas. And the natural belief is, all right, they have done it twice. I will just wait them out, and they will do it again. And we create this underclass of people who can't have a real job that are selling bootleg DVDs in the flea markets or are working whatever underground economy. How do we craft this so we don't fall into this same trap?

Mr. CASTRO. Thank you very much for the question, Representative Farenthold. It is good to see a fellow Texan here, south Texas.

First, I believe that as a Nation we are stronger because we ask folks to take an oath, take an allegiance to the United States of America.

Mr. FARENTHOLD. No question about it.

Mr. CASTRO. And that involves full participation in the democracy and citizenship. I just cannot imagine an America where we consign these folks to an underclass status. In other words, we would be telling them, you will never, ever, ever become a citizen of the United States.

Mr. FARENTHOLD. So what do we put in the law to not invite people to where we are back doing the same thing again? That is my concern.

Mr. CASTRO. Sure. First of all, I do think that the only way you are going to accomplish that is with a comprehensive approach. The one thing I know is that if you try and piecemeal it, the chances are that you will find yourself here 10, 15, 20 years from now.

But more specifically, I believe that this legislation should include enhanced border security, enhanced interior security, the ability to—

Mr. FARENTHOLD. Would you support the proposal for a national biometric ID?

Mr. CASTRO. Sure, I would support using some technology to help ensure that people are here who say they are going to—who are here are here legally.

Mr. FARENTHOLD. I am not sure I am there on that. But go ahead.

Mr. CASTRO. You know, whether it is that or something like it, there are people more qualified to speak than me on that. But I would say that including an ability for employers to verify the legal status that is better, that is more comprehensive—

Mr. FARENTHOLD. Again, we tried to do that and failed. And you are still going to have the underground employers if you have got people who are overstaying their student visas. And you have answered different variations of this question time and time again.

How do, by granting a very generous pathway to citizenship—and maybe we tighten it up; maybe we find the compromise there—but how do we avoid creating an incentive for people to continue to come here? That is what my constituents and most of the people that I am talking about, that is the big stumbling point here.

Mr. CASTRO. I think what you do is that you solve the issue that you have in front of you, that you improve the ability to keep folks out who shouldn't be here, and to—you know, to ensure that people don't overstay their visas. There are ways to work on that.

Mr. FARENTHOLD. I see I am out of time. I just don't see how do you that without chipping everybody who comes over here to see the Statue of Liberty to track them. I am really concerned about this.

Mr. CASTRO. Throwing our hands up is not an option.

Mr. FARENTHOLD. All right. Thank you very much. I yield back.

Mr. GOODLATTE. The Chair recognizes the gentleman from Florida Mr. Garcia for 5 minutes.

Mr. GARCIA. Thank you, Mr. Chairman.

Mayor Castro, I wanted to ask you, what type of computer repair did your grandparents engage in?

Mr. CASTRO. My grandmother actually ended up working as a maid, a cook, and babysitter.

Mr. GARCIA. There we go. High skill then.

I wonder what this hearing would be like if we were like Canadians, desperately seeking people to come to our country because we simply have no one who wants to be there. It is not like Texas where people just want to be in Texas, or Miami. I worry about it.

You know, I have heard your testimony, Mr. Wadhwa, and I worry about it, because you seem to create a crisis. After saying that our country is a mess, I hope you were just talking about our immigration system because what brings people to our country is precisely that opportunity. You would agree with me, correct?

Mr. WADHWA. I agree. For the moment, we are the only—

Mr. GARCIA. And you agreed with me that that suffering that you are talking about is also being visited on immigrants that are already in this country that don't have documentation, families being separated, people being deported. You would agree that that is a bad situation?

Mr. WADHWA. Agreed.

Mr. GARCIA. Why do you think we should make that decision? Why should we decide on highly technical people which are boring down the door to come into our country and not decide for those who have invested and been here for such a long time?

Mr. WADHWA. We should decide both, but right now the issue of undocumented is toxic. America is divided.

Mr. GARCIA. It is toxic because we give up on it; don't you think? I mean, if you had been given the choice to be fortunate enough to pick strawberries in the paradise of Oregon, would you have taken that choice?

Mr. WADHWA. I might have, depending on my circumstances.

Mr. GARCIA. No, but under your circumstances would you have taken that choice? And the answer is no, correct?

Mr. WADHWA. What I am saying is give them green cards. Legalize them. The green card is a wonderful way of being here. The

only difference between the green card and citizenship is the right to vote.

Mr. GARCIA. It is called taxation without representation. It was an essential element of our country's founding.

Mr. WADHWA. That is why this battle is being fought, because the Republicans know that they are going to lose that battle if we legalize another 11 million people. Let us call a spade a spade over here.

Mr. GARCIA. The problem, Mr. Wadhwa, I think, is that you make a choice——

Mr. WADHWA [continuing]. Choice of a green card now or citizenship 5 years from now, everyone would accept a green card immediately.

Mr. GARCIA. Absolutely, people would choose that, just like people would choose every day.

The other question I would ask for you, do you think there is some kind of paradise about the folks who have been here 10, 15 years picking strawberries, or potatoes, or corn or apricots, that heavenly paradise of being an illegal worker? Do you think that is a particularly good circumstance for the last 10 or 15 years that people do this?

I will ask you, Mr. Teitelbaum. Do you think that that is a good thing? I mean, are they happy to do this? They want to be in this permanent underclass?

Mr. TEITELBAUM. I do not think they——

Mr. GARCIA. Right. And is there a history of any great country in the world that didn't have immigration headed toward its borders?

Mr. TEITELBAUM. Say it again, sir.

Mr. GARCIA. Is there a history ever in human history of a country that was successful and didn't have immigration? I mean, I believe that from the Babylonian empire through the Roman, through the British, and to today, every nation that is a winner nation has immigration, correct?

Mr. TEITELBAUM. The Commission was a strong supporter of a substantial legal immigration system.

Mr. GARCIA. Do you remember what the Statue of Liberty, which is on the cover of your report, says?

Mr. TEITELBAUM. Well, the statue doesn't say it. It is on the pediment. I know the poem by Emma Lazarus. And my first daughter's name is Emma.

Mr. GARCIA. I think we make a mistake here if we engage in this debate and think that there is some paradise.

Mr. Arora, you have spent how many years trying to make your status permanent?

Dr. ARORA. More than 15.

Mr. GARCIA. And you would agree that that is not a particularly favorable place to be.

Dr. ARORA. Right.

Mr. GARCIA. And you would agree that those, even like yourself, who are highly technical, making a good salary, but finding all these impediments is not a good thing for America's productivity.

Dr. ARORA. No, it is not.

Mr. GARCIA. And I would assume that because you want this status for yourself, you would want it for all others who find themselves in a similar situation?

Dr. ARORA. Yes.

Mr. GARCIA. Look, I think that the issue here is that we have mistaken—and the folks on the other side might be missing—is that this is no paradise, that people work awfully hard on the American dream, and all they want is an opportunity. And I want to be clear here: A pathway to citizenship doesn't mean that we are going to sign these guys up to be citizens. That is a choice that is made. I am sure in your city, Mayor, you would love more people to be registered to vote, but yet they are not. And that is a choice people make, just like citizenship, correct?

Mr. CASTRO. Sure. That is correct.

Mr. GARCIA. Thank you, Mr. Chairman. I yield back the remainder of my time.

Mr. GOODLATTE. I thank the gentleman.

And the gentleman from North Carolina Mr. Holding is recognized for 5 minutes.

Mr. HOLDING. Mr. Castro, I recognize your resistance to finding a middle ground or something short of full citizenship. But I would ask you, if you were an illegal immigrant, and the United States was actually in the business of enforcing our immigration laws, and your choice was convicted criminal or almost citizen, you would choose almost citizen, wouldn't you?

Mr. CASTRO. As I said before, do I believe that something is better than zero? Sure. I don't believe it is sufficient. I also don't believe that that addresses the entirety of the problem here.

Mr. HOLDING. Redirecting your attention back to Mr. Forbes' question, which you thought was hypothetical in that if you were given the opportunity to write the law and ensure that it passed, and we found ourselves 10 years later with a large population of illegal immigrants in the country, would you enforce the law, or would you come back and find another pathway to citizenship? I would suggest to you that it is not a hypothetical question, because it is precisely the question that we are dealing with right now.

Twenty-five years ago we passed a comprehensive bill, and here we have a low estimate of 11 million illegals in the country. Some estimates are many millions more.

What is the mistake that we made in 1986 that we do not need to make this time around to ensure that we don't have to do this again?

Mr. CASTRO. Well, I think one of the things that we can do, as was mentioned earlier, is to continue to enhance border security and also to work on interior security. Technology has benefited us during that time. So we have an opportunity here, you have an opportunity here, the Congress has an opportunity to pass a comprehensive, very well-thought-out bill. And, of course, nobody can guarantee, and you are right, there probably will be some folks who fall into that category in the years to come.

Mr. HOLDING. So the mistake that we made was that we didn't enforce the law.

Mr. CASTRO. Well, I think somebody else will have to speak to that. We can't just throw up our hands because we think we are

going to have some challenges later. That is not an option. Doing nothing is not an option.

Mr. HOLDING. I agree doing nothing is not an option, but I also think enforcing the law should have been done and has to be part of the future.

Mr. Wadhwa, my father-in-law is British. He is an engineer, and in the course of his career, he has managed worldwide construction for two pharmaceutical companies, one based in the United Kingdom and one based in Switzerland. And through all the years that I have known him, he has complained the most about the immigration laws in the United States and the difficulty it has been not only for him at times to work in the United States, but for getting team members in from other countries to work on large construction projects, pharmaceutical manufacturing and research facilities here.

You have experience in Australia. Give us just a little snapshot of if one was a U.S. citizen, engineer, and wanted to go to Australia and manage a billion-dollar construction project, how much of a hassle would it be?

Mr. WADHWA. Australia right now makes it very easy to come there. Canada is doing the same. If you are a skilled immigrant, they are welcoming, you know, people as immigrants to come over there. It is harder to get green cards in many other countries.

But the Australia I knew is different than the Australia today. I had to fight to get an Australian permanent residence because there is a White Australia policy. Today they welcome anyone who graduates from their universities. They welcome foreigners to come and start companies.

Your father-in-law is like everyone else in Silicon Valley. They are starved for talent. The companies are starved for talent. They want to hire the best and brightest from all over the world, but we won't let them.

My colleague at Stanford, Dan Siciliano, talks about if the country was a game, if you are playing football in a country, we said, the only people you can hire are people from within the company. We are basically locking out the world's best talent needlessly.

Mr. HOLDING. My district borders on the Research Triangle Park in North Carolina. And there are numerous high-tech companies there, and a number of very large software companies. And I have heard from them that when they have difficulty getting someone in the United States, often what they are able to do is just have them located in Canada and Skype in their input. And they pay the taxes in Canada. They don't pay the taxes in the United States.

Mr. WADHWA. In Silicon Valley that is commonly happening. They are setting up offshoring centers in India, China, in Vancouver, everywhere else in the world except Silicon Valley. We want those people here so they can pay taxes here, they can interact, and they can start more companies after they have finished their projects.

Mr. HOLDING. Thank you very much. I yield back.

Mr. GOODLATTE. The gentleman from New York Mr. Jeffries is recognized for 5 minutes.

Mr. JEFFRIES. Thank you, Mr. Chair.

Dr. Wadhwa, you have indicated throughout your testimony the need, perhaps for reasons of policy or for practical reasons, to emphasize as we tackle this immigration issue highly skilled visas.

Certainly you have distinguished yourself during your time here in America. You have founded a company, 1,000-plus employees. You have contributed to the academy. You have written a book. You have taught at some of our most significant and distinguished universities. You have contributed much to America.

Now, as it relates to our immigration policy, of course, there is an appropriate place to deal with the highly skilled immigrant issue. We also have a history of dealing with refugees with compassion that makes sense for who we are and what we represent, our democratic values. We have a history of making sure we grant visas in recognition of the fact that we need to draw from people from all across the world. That is the premise of the diversity visa program, that that makes us stronger. And, of course, inherently the need to emphasize and promote family unification for reasons of fairness, for reasons of efficiency, for reasons that clearly make sense for the integrity of our democracy as well as the well-being of our economy.

The gentlelady from California already has made the point that some of the most significant startup companies, the Silicon Valley success stories, were started by immigrants—whether that is Yahoo! or whether that is Google, whether that is eBay, Intel—who did not come into this country through the highly skilled immigrant visa program, but through other means of immigration.

Now, I think you gave an interview on November 20, 2012, to a publication at the Wharton School of Business, a very distinguished school in Pennsylvania, where you stated, “I was in New York in the 1960’s as a child, and being in America is quite an experience. I left in the late ’60’s, but I had always wanted to come back. The first chance I got was in 1980, when my father got transferred to the consulate in New York City.”

Would you agree, based on your own experiences here in America, that the notion of family unification, of the unit being together has been and should continue to be an integral part of what we do as it relates to comprehensive immigration reform?

Mr. WADHWA. Without a doubt I agree with that. There is no dispute on that. The only thing I have been arguing is that rather than 120,000, 140,000 visas for skilled immigrants, double it or even triple it for a few years, because we want to bring in an additional pool of skilled talent that can heal the economy and help us take advantage of all these technology advances I talked about.

Mr. JEFFRIES. Am I correct that your own experiences demonstrate the importance of family unification as an immigration value?

Mr. WADHWA. And you are absolutely right that the children of immigrants go much further than their parents do. All of this is absolutely correct. A little bit of balance.

Mr. JEFFRIES. Thank you.

There has been this dichotomy that has been presented as to how we find common ground in terms of the immigration reform debate. On the one hand you have got mass deportation that was presented as an alternative; on the other you have got a pathway to citizen-

ship. But I believe, Mayor Castro, you have indicated you agree that that seems to be a false dichotomy; that the most appropriate construct is, on the one hand, mass deportation; on the other hand, open and unsecured borders. And I believe that on both extremes, the overwhelming majority of Americans believe that neither is appropriate for reasons of humanity or practicality.

And so if that really is the appropriate construct—mass deportation on one hand and, on the other, open, unsecured borders—then the question is how do we find common ground? How do we compromise based on those two wide-ranging extreme alternatives? And would you agree that in that scenario that a pathway to citizenship is one alternative, compromise, tough but possible and ultimately obtainable, firm but humane, and that the only other possible compromise, which was raised by others on this panel, is permanent second-class status, notwithstanding the fact that those permanent second-class residents would have passed a background check, paid back taxes, paid a fine, perhaps gotten an education, perhaps served in the military and gotten to the back of a very long line? Could you just comment, Mayor Castro, on those possible compromise alternatives and what seems to be most consistent with who we are as Americans?

Mr. CASTRO. I believe that you have laid it out well that on the extremes you have mass deportation of 11 million people. That is not going to happen. We are not going to, on the other end, open up our borders. That is not in the national interest by any means. That the bipartisan proposal and the President's proposal represents an effective compromise, remembering that this is earned citizenship, the alternative truly is a recipe for creating a class of second-class noncitizens in the United States.

Mr. JEFFRIES. Thank you.

Mr. GOODLATTE. And last but not least, we have the gentleman from Georgia Mr. Collins recognized for 5 minutes.

Mr. COLLINS. Thank you, Mr. Chairman.

I think one of the good things about being last is that you get to listen. You get to hear a lot of questions. And in this case you get to hear a lot of hyperbole on both ends. And really, that is the question that I am sitting here with right now. I have heard a lot of discussion and a lot of, well, if we don't do this, you know, if we don't pass this, it is horrific, and these kinds of questions.

But just for a brief moment, I come from northeast Georgia, a very agricultural district, but it is also on the border of Atlanta, so we get a lot of what I call the mixed blessing of both the need of immigration, the need for workers, and the need for those industries, dairy, poultry, other things. But we also deal with those of the hard-working taxpayers who have been there—it is a transitional area—who are concerned about their way of life and are also concerned about being fair and honest and open with them. They have a deep faith. I believe contrary to some that have said that the only way you can show your true faith—I am a pastor—is by just opening up your arms and forgiving and not having any rule. I believe you can hold both. I am a lawyer as well. I hold both grace and law. I think we have got to look at that.

The question that comes to mind here is I come from also a State of Georgia who has dealt with this issue. For some in this room,



it may not have been a very good way, but we have dealt with it, and we have dealt with it in a way that is still in progress. And I think it took a step from a State perspective to say, what can we do because the Federal Government has not?

Now, what concerns me here is is I keep hearing, it is definitional. And I am a little bit retentive on some things, and I am the last one, so I will just make these points. Comprehensive immigration reform, what I have become concerned about—and I will start with you, Mayor—is when I hear “comprehensive” in this hearing today, what I hear is is it is comprehensive if it has a specific outcome I like. It is not comprehensive if it doesn’t lead to a specific end. And I just have heard, and just in recent testimony, in questions here, really that compromise between two untenable paths is not compromise. Compromise between two things that would never take place is not compromise. You are taking two extremes and basically saying there is a compromise in the middle, and the reality is you are not compromising because those two would never exist. It is a fantasy.

You also have stated in this that you felt it was in the Nation’s best interests for a pathway to citizenship; that is correct?

Mr. CASTRO. Sure.

Mr. COLLINS. Okay. The question I have here is do you believe that all immigrants come to America across the border legally or illegally for the same reason? Yes or no.

Mr. CASTRO. I believe that the vast majority of them come for the same reason, but I can’t say that every single one of them comes here for the same reason, no.

Mr. COLLINS. Okay. So at least in the process of what we are looking at here, is there at least room for discussion? And, look, even in the diversity of my district, which is very conservative, there is a need for us to deal with all aspects of this, okay, from the security aspect to the legal aspect that we have talked about and where our needs are, but also for the ones who are already here.

The question is, though, if we only insist on comprehensive, and we sort of—I won’t say demonize the process or say that we are not accomplishing what we are here for, if the only way is to have a citizenship ending, then are we not doing a disservice for those who have come here to work and our liberty and have a deep love for the country they came for, but they come here for economic reasons. And to give them something that has been said here, they have lived here for 30 years on a green card. They lived here in a different way. My concern is is compromise, in your mind only, or comprehensive, is the definitional we are using here is comprehensive will only take place with a desired outcome at the end?

Mr. CASTRO. And I use the word “sufficient” or “effective.” I think the only “effective” way to address this is to make it create a pathway to citizenship. Remember also, you are talking about 8 to 10 years before any one of these—

Mr. COLLINS. That was not my question, Mayor. I am dealing with definitional, because this is what is going to get interesting over the next few months and even as we go forward. If we only view comprehensive immigration reform under the guise of an outstanding outcome or an intended outcome, then I have trouble with

that, because what we are setting ourselves up for here is one side may be coming to the table with honest, open ideas for reform, but if in the end all we are hit with is, you didn't do comprehensive because we didn't get a desired result—

Mr. CASTRO. I would disagree with the characterization.

Mr. COLLINS. Well, I think that is what has been testified here to, and especially when you basically state that you believe in this Nation's best interest there is only one path that that should be, and that should be citizenship, when really there are also other alternatives that are out there. It is a best interest, but I don't think from a comprehensive standpoint you can tag the two. And that is what I have heard.

Look, I do not believe circumstances are easy here, as was testified to earlier, for anyone who is here in a status that is not legal or a status in where they are hiding, as has been said, in the shadows. And I think this is whether it is from the high-tech industry or not. But also, the one thing I never want to lose sight of is there are hard-working taxpayers who have been here, who are also having—they do hard work as well. They get up and go to work every day. We have got to find a balance for the two, never forgetting what we are looking at. And that is my concern.

Mr. Chairman, I yield back.

Mr. WADHWA. You know, I believe that if we provided green cards to all the undocumented workers immediately, if we gave their children citizenship, and if we fixed the skilled immigrant problem, there would be consensus nationwide. And we don't have to get into these toxic battles about citizenship or not citizenship. That can be decided a decade from now when the economy has healed, things are different, and America has evolved. It doesn't have to be all or none immediately. It can be done over time.

Right now, these people just want to be legalized. They just want the right to be able to live here with dignity. Let us give it to them immediately without wasting time. We are making this country suffer through needless debates when it can be resolved right now.

Mr. COLLINS. I think we are definitely looking at it from a perspective of overall look, and I appreciate you coming here and testifying from your different point of views. I think, like I said, the main concern we have got to have here is let us not trap ourselves into definitional reasons of comprehensive or other things that exclude or include, and then in the end we say, well, we didn't get it because it didn't fit my definition of what "comprehensive" means.

Mr. Chairman, I yield back.

Mr. GOODLATTE. I thank the gentleman for his questions. And I thank all the Members of the Committee for the questions to this first panel. And I especially thank the members of the panel. You have endured more than 3 hours of questions, and it has been a very enlightening discussion. So thank you for making the trip to Washington to participate, and we will excuse you now and turn to our second panel.

And now if the first panel would make their way to the hallway, they can speak with folks out there. And that way our second panel can take their seats.

Mr. GOODLATTE. Now I will turn to our second group of witnesses. The hearing room will be in order.

Our first witness is Julie Myers Wood, President of Guidepost Solutions LLC, an immigration investigation and compliance firm. Prior to her tenure at Guidepost, she served as the Assistant Secretary for the Department of Homeland Security for Immigration and Customs Enforcement, or ICE, for nearly 3 years. Under her leadership, the agency set new enforcement records with respect to immigration enforcement, export enforcement, and intellectual property rights.

Ms. Wood earned a Bachelor's degree at Baylor University and a J.D. cum laude from Cornell Law School. She is a native of Shawnee, Kansas.

Thank you, Ms. Wood, for taking the time to be with us today.

Our next witness is Mr. Chris Crane, who currently serves as the President of the National Immigration and Customs Enforcement Council 118, American Federation of Government Employees. He has worked as an Immigration Enforcement Agent for U.S. Immigration and Customs Enforcement at the U.S. Department of Homeland Security since 2003. Prior to his service at ICE, Mr. Crane served for 11 years in the United States Marine Corps.

Chris, we thank you for your service and being with us today.

Our third witness of this second panel is Jessica M. Vaughan, Director of Policy Studies for the Center for Immigration Studies. She has been with the Center since 1992, where her expertise is in immigration policy and operations topics such as visa programs, immigration benefits, and immigration law enforcement. In addition, Ms. Vaughan is an instructor for senior law enforcement officer training seminars at Northwestern University's Center for Public Safety in Illinois.

Ms. Vaughan has a Master's degree from Georgetown University and earned her Bachelor's degree in international studies at Washington College in Maryland.

Ms. Vaughan, thank you for your participation today.

And our fourth and final witness of this second panel is Muzaffar Chishti, Director of the Migration Policy Institute's office at the New York University School of Law. His work focuses on U.S. immigration policy, the intersection of labor and immigration law, civil liberties, and immigration integration. Prior to joining MPI, Mr. Chishti was Director of the Immigration Project of the Union of Needletrades, Industrial and Textile Employees (UNITE). Mr. Chishti has served on the Board of Directors of the National Immigration Law Center, the New York Immigration Coalition, and the Asian American Federation of New York. He has served as Chair of the Board of Directors of the National Immigration Forum and as a member of the American Bar Association's Coordinating Committee on Immigration.

He holds degrees from St. Stephen's College in Delhi, India, the University of Delhi, Cornell Law School, and the Columbia School of International Affairs. And we are grateful that he has come to testify before the Committee today. All of you are welcome.

We now have votes, and I think rather than start in the midst of a relatively empty hearing room, we are going to recess the Committee. I will encourage Members on both sides of the aisle to come

back to hear your wise testimony. And the Committee will stand in recess until the conclusion of those votes.

The Committee will reconvene. We are working on encouraging other Members to return for the second panel, but since the day is moving on, we think the hearing needs to move on as well. So having introduced all the members of this panel, we will start with Ms. Wood. Welcome.

**TESTIMONY OF JULIE MYERS WOOD, PRESIDENT,  
GUIDEPOST SOLUTIONS LLC**

Ms. WOOD. Thank you so much, Mr. Chairman and Members of the Committee. I appreciate the opportunity to testify before you today about the enforcement of laws against illegal immigration.

Like many Americans, I believe that our immigration system is broken and needs reform. But like others, I served as the former head of Immigration and Customs Enforcement, the principal agency charged to enforce immigration laws, and so I have an insider's perspective of the challenges that face us and what we must do to make sure that we are not in the same position 20 years from now that we are right now, looking at a broken system put together with Band-Aids and trying to make do.

Since the 1986 amnesty, inconsistent enforcement coupled with an inefficient and restrictive pathway for legal access to the country have left us with this broken system. Many people concluded that it was just far simpler to come here illegally, get a job, and hope that the law would change to let them stay, rather than wait in unreasonably long lines to come here legally. And, of course, for some there was no option to come legally.

Many employers grew very frustrated with the nearly decade-long wait for some petitions for workers with essential skills and just took their chances that enforcement would not target their business.

When considering legislative reform, we must consider how to avoid the mistakes of previous efforts. And these are not new problems. When I first arrived at ICE in 2006, it was apparent to me that there were many areas where the promise of IRCA was not being realized, including managing illegal border crossings, identifying and deporting the illegal criminal alien population, reducing illegal employment, enforcing immigration court orders, and effectively conducting national security enforcement.

And I want to take illegal employment as an example. I know the Chairman talked about this in his opening remarks, and I think this is an area where law enforcement has not effectively addressed the problem. And, you know, when I first started at ICE in 2006, there was virtually no workplace enforcement, although it was common knowledge, everyone knew, that the big magnet to come into the United States was jobs. INS was not focusing on that issue, and ICE also had not focused on it. Fines, if any, were assessed under an outdated structure. They were subject to substantial legal wrangling and ended up being nothing more than just a slap on the wrist. For example, in 2002, the INS' last full year, it brought only 25 criminal cases in worksite investigations and only collected about \$72,000 through the administrative fine process.

So we tried to look at things differently. And we thought, how can we focus renewed effort on it? And we focused on employers, looking at could we bring criminal cases against employers? We also worked to revise the criminal fine structure and requested funding for civil auditors. And so for several years we pursued a path of criminal cases, which led to civil forfeitures in excess of \$30 million each year and prison terms for some egregious employers.

While these investigations were complex and time-intensive, the approach resulted in renewed awareness and cooperation from some high-risk industries. However, many companies in low-risk industries didn't think it was necessary to focus on I-9 or immigration compliance with this targeted approach.

This approach also included the apprehensions and removals of unauthorized workers, who in many cases were using the names and Social Security numbers of U.S. citizens.

The arrest and deportation of unauthorized workers consumed a lot of our time in trying to target employers and pursue this approach. The current Administration has shifted gears. They have focused on a civil fined approach, really kind of adopting an IRS-type model. Under this approach more companies are subject to audits, about 4,000, and the general awareness of immigration compliance has increased significantly.

But this approach is also imperfect. The median cost of a penalty against a business is very small, under \$11,000 per company in fiscal year 2012, and the total civil fines for fiscal year 2011 were about \$10 million.

On occasion, the focus on civil audits has led to some perverse consequences. Some employers with no unauthorized workers at all were fined, while others that had a very high percentage of unauthorized workers didn't even receive a warning notice. Under this new approach the government essentially ignored the illegal workers, allowing them to stay and work in the United States.

While some employers take the civil fine system very seriously, for others it is just a rounding error in their accounting systems.

To address the problem of unauthorized workers more successfully, new legislation shouldn't rely on what we have just done in the past. We have got to look anew at how we can stop illegal employment, and legislation should shift the burden from employers to the government and provide employers with clear guidance on who is work-authorized and who is not.

Of course, E-Verify should be made mandatory for all employees, but we shouldn't stop there. Although E-Verify has improved significantly in the past few years, gaps in the current program have still shifted much of the burden to employers. They have become de facto document detectives. And conscientious employers are effectively faced with a silent tax to pay for immigration compliance services, diverting money that would be far better spent hiring new employees.

More generally, successful reform must also think about the systemic problems that got us into this situation. For too long our agencies have been underequipped to fight the challenge. We haven't had enough people, resources, or technology. We have also had inefficiencies in the removal system. An average case takes over 2 years to get through the courts in California. And we also

have not addressed things regarding fundamental fairness, including protecting the rights of unaccompanied aliens and those with mental competency issues that may need counsel in order to pursue a fair treatment in immigration court.

I appreciate the Committee's interest in these issues and look forward to working with you.

Mr. GOODLATTE. Thank you, Ms. Wood.

[The prepared statement of Ms. Wood follows:]

**“America’s Immigration System: Opportunities for Legal  
Immigration and Enforcement of Laws Against Illegal  
Immigration”**

**Statement of Julie Myers Wood**

**Former Assistant Secretary, Immigration and Customs  
Enforcement (ICE)**

**Before the House Judiciary Committee**

**February 5, 2012**

**Statement of Julie Myers Wood**  
**Former Assistant Secretary, Immigration and Customs Enforcement (ICE)**  
**Before the House Judiciary Committee**  
**February 5, 2012**

Chairman Goodlatte, Ranking Member Conyers, Members of the Committee. I appreciate the opportunity to testify before you today about enforcement of laws against illegal immigration.

My name is Julie Myers Wood, and I am President of Guidepost Solutions, an investigative and compliance firm. In that position, I work with companies on their internal compliance programs, create web-based solutions to assist businesses with export and immigration compliance challenges, and consult with companies that work with the government. I also serve as an Advisory Committee member of the American Bar Association's Commission on Immigration and as a Member of the Constitution Project's Committee on Immigration. I am testifying today solely in my personal capacity and not as a representative of any group or organization.

Like many Americans, I believe that the current immigration system has failed and, in my view, reform is essential. In looking to reform this system, we must make it easier for those who wish to come to our country legally to become productive members of society, and make removal more certain for those who choose to come here illegally.

As the former head of Immigration and Customs Enforcement (“ICE”), the principal agency charged to enforce existing immigration laws, I have an insider’s perspective of the challenges that face us. Since the 1986 amnesty, inconsistent enforcement, coupled with an inefficient and restrictive pathway for legal access to the country, have left us with a broken immigration system. Many people concluded that it is far simpler to come here illegally, get a job, and hope that the law will change to let them stay, rather than to wait in unreasonably long lines to come here legally (and, of course, for some, there was no option to come legally). Many employers grew frustrated with the nearly decade-long wait for some petitions for workers with essential skills and just took their chances that enforcement would not target their business.

When considering legislative reform, we must consider how to avoid the mistakes of previous efforts. We must ensure that the next generation does not end up in the same position as ours, managing a broken system that is held together with band-aids. This is not a new problem. When I first arrived at ICE in 2006, it was apparent that there were many areas where enforcement had lagged for a number of years – that the promise of enforcement post-Immigration Reform and Control Act (IRCA) was not realized in a number of areas.

**Managing Illegal Border Crossings.** By way of example, from 2002 to 2005, the Border Patrol’s apprehension numbers were growing substantially. In 2005, the Border Patrol apprehended more than 1,100,000 individuals.<sup>1</sup> But these record apprehensions weren’t resulting in increased security or deportations. The Border Patrol

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<sup>1</sup> “Apprehensions By the Border Patrol,” available at <http://www.dhs.gov/xlibrary/assets/statistics/publications/ois-apprehensions-fs-2005-2010.pdf>.



followed a practice known as “catch and release,” where they would provide arrested illegal immigrants with a Notice of Appearance (“NTA”), but not turn them over to ICE or provide any sort of way to ensure their appearance at court proceedings. Not surprisingly, many illegal immigrants just took the papers and never showed up in immigration court. Although they were often ordered removed in absentia, for all intents and purposes many just established themselves in the United States and ignored the court order. The Border Patrol’s practice of simply serving NTAs served to encourage, not deter individuals from illegally entering the United States, and discouraged others from waiting in line.

To address this problem, former Secretary Chertoff created the Department of Homeland Security’s (“DHS’s”) Border Security Initiative, which re-engineered the deportation process, and created a more direct method of transferring aliens from Border Patrol to ICE custody. DHS expanded expedited removal, and ICE began to charge some immigrants criminally for entering the country illegally. This led to the end of “catch and release,” and longer term, helped result in a reduction in the illegal immigrants coming into the United States. These enforcement actions resulted in a reduction in the number of apprehensions, down to 460,000 in 2010 (which was the lowest level of apprehension since 1972).<sup>2</sup> The apprehension numbers continued to decrease until 2012, when the numbers started to increase again.

Looking forward, any new legislation that promises either legalization or temporary worker status is likely to serve as a new draw for increased illegal migration into the United States. It is important that such legislation provides a consistent

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

framework and institutionalizes reforms to discourage illegal border crossing, such as expedited removal for border crossers.

**Identifying and Removing Criminal Aliens.** Back in 2006, ICE did not have a good handle on the population of criminal aliens in jails and correctional institutions, despite its obligation to monitor the criminal alien population and reduce releases into society. Although ICE had various programs in many state, federal and local correctional institutions, the programs were not uniform and ICE was not represented at many facilities. The success, failure, or even mere existence of the criminal alien programs depended almost entirely on the relationships between the relevant ICE officials and the federal, state or local correctional personnel.

Given this gap in coverage, ICE created the Secure Communities program to more comprehensively manage the criminal alien population. Congress played a critical role in urging the agency to improve its efforts in this regard, through the 2008 and 2009 DHS Appropriations Act. Secure Communities was designed to remove the randomness, create uniformity and to ensure that all individuals who were arrested by local or state law enforcement would not simply fade back into society without a review by ICE.

Over the past several years, ICE has made significant strides in implementing Secure Communities, and will have expanded it nationwide by the end of 2013. Through August 2012, ICE has removed more than 166,000 individuals identified through Secure Communities.

Any new reform legislation must ensure that Secure Communities continues and is fully funded. It is also important that legislation help ensure that ICE does not

knowingly permit criminal aliens to simply return to the streets with no follow up or monitoring of any kind. Although it makes sense for the agency to do a classification based on offenses criminal aliens were convicted of, the agency must be careful to avoid treating certain offenses as always “unimportant” or certain activities to always pose no risk. This picking and choosing of criminal convictions risks creating a “conviction of the day” mentality where the government is only focused on the previous threat.

**Stopping Illegal Employment.** When I started at ICE in 2006, there was virtually no workplace enforcement. Although it was common knowledge that jobs drove many individuals to enter the United States illegally, the agency had not focused on how to prevent this behavior. Fines, if any, were assessed under an outdated structure, were subject to substantial legal wrangling and ended up being nothing more than a slap on the wrist. The focus of the old INS was simply not on criminal violations. For example, in 2002, the INS’s last full year, it brought only 25 criminal cases in worksite investigations and only collected \$72,585 through the administrative fine process.

In an attempt to focus renewed effort on this area, in 2006, ICE developed a focus on employers, focusing on criminal cases, revising the civil fine structure, and also requesting funding for auditors to begin civil audits. For several years, we conducted criminal investigations where we obtained civil forfeitures in excess of \$30 million each year and prison terms for some egregious employers. While these investigations were complex and time intensive, this approach resulted in renewed awareness and cooperation from some high-risk industries. However, many companies in lower-risk industries did not think it necessary to focus on I-9 and immigration compliance with this targeted approach. This approach also included apprehensions and removals of the unauthorized

workers, who in many cases were using the names and social security numbers of authorized workers and U.S. citizens. The arrest and deportation of unauthorized workers consumed considerable ICE resources in worksite enforcement cases.

The current Administration has focused primarily on civil immigration audits, adopting an IRS-type approach. Under this approach, more companies have been subject to audits, and the general awareness of immigration compliance has increased significantly. This approach is also imperfect, however. The average cost of the penalty was still miniscule - under \$11,000 per company in fiscal year 2012. Total civil fines for last fiscal year were only \$10 million. On occasion, the focus on civil audits resulted in perverse consequences – some employers with no illegal workers were fined, while others that had a high percentage of civil workers didn't even receive a warning notice. Under this new approach, the government essentially ignored the illegal workers, allowing them to stay and work in the United States. While some employers take the civil fine system seriously, others have begun to write the cost of immigration compliance off as another rounding error.

To address the problem of unauthorized workers more successfully, new legislation must not just rely on what has been done in the past. Legislation should shift the burden from employers to the government, and provide employers with clear guidance on who is work authorized and who is not.

E-Verify should be made mandatory for all employers, but that alone cannot solve illegal employment. Although E-Verify has improved significantly in the past several years, gaps in the current program have still shifted much of the de facto enforcement

responsibility to employers. This has created far too many amateur document detectives, and keeps employers guessing as to whether the steps they are taking are enough to ensure compliance or leave them crossing the “discrimination” line with unintended consequences. As a result, conscientious employers are slapped with a “silent tax” to pay for immigration compliance services, diverting money that would be better spent hiring new employees.<sup>3</sup>

**Ignoring Immigration Court Orders.** As part of the incomplete enforcement post-IRCA, the number of absconder or fugitive aliens – aliens who were ordered removed but failed to do so – had been steadily going up until 2006. The orders of Immigration Judges were routinely ignored, and immigrants built and created substantial equities long after being ordered to return to their home country. To address this, after 9/11, the INS and then ICE created fugitive operation teams to identify and arrest those individuals. The teams made some significant progress, first stabilizing and then reducing the fugitive numbers by 2008. In the current Administration, the focus has shifted from arresting fugitives to identifying whether they have equities that would warrant cancellation of removal or other relief. Although this makes sense in many cases given the long history of lax enforcement, it is compounding the problem and continuing to encourage immigrants to abscond.

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<sup>3</sup> Giving employers more concrete tools is particularly important given the failure to fully implement Real ID. Driver’s licenses in many states remain unsecure and a biometric component to establish identity is more important than ever. Whatever tool is ultimately given to employers—it must be mandatory, and the implementation strategy must be realistic to ensure successful adoption by all.

Going forward, any new legislation must ensure that once immigrants receive a final order of removal, procedures are in place, which ensures that these individuals actually return home. For example, compare two individuals – one from Japan and one from Argentina – who entered the United States on non-immigrant visas for vacation and overstayed those visas. ICE arrests both individuals. The Japanese individual has already waived his right to review before an immigration judge as part of the visa waiver program (as would have individuals from the 26 other visa waiver countries). The Argentinean’s visa issuing process did not contain a waiver of the right to review, and he can tie up the immigration courts for years fighting removal. This makes no sense. Congress should normalize the system so that all aliens who come into the United States on these types of non-immigrant visas agree to waive any deportation proceedings as part of the visa-issuing process.

**National Security Enforcement.** After 9/11 exposed significant security vulnerabilities in the visa and immigration system post-IRCA, ICE moved to a national security strategy that included an emphasis on “routine” enforcement. As part of a layered enforcement strategy, the goal was to ensure that illegal immigrants could not be sure that they were escaping authorities at any time.

The current Administration has explicitly moved away from this layered approach to focus almost exclusively on “convicted criminals.” The Administration has issued guidance that provides that illegal immigrants who have committed crimes only relating to their entry and illegal stay in the United States may be excused from deportation and obtain work authorization in certain cases. The difficulty, of course, is that individuals

who may want to cause harm to the United States may not be previously convicted criminals. This Administration's deferred prosecution guidance could cover individuals like several of the 9/11 hijackers, who "merely" lied to obtain state identification documents or on their visa applications. The idea that routine immigration or documentation violations should be ignored, or considered insignificant poses a potentially serious threat to our system. It sends a message to those that seek to cause harm: if they can come in the United States illegally, but not immediately commit any additional crimes, they are likely to be left alone. Left alone to plan, take steps, cause harm. This explicit movement away from the New York policing model of addressing small and large violations – where even the turnstile jumpers were held accountable – should be closely watched as it may have broad implications for the ability of law enforcement to effectively prevent serious abuses in the immigration system.

Any new legislation should consider whether ICE should engage in layered enforcement, at least in part. It should also ensure that ICE continues to continuously reassess intelligence and threat streams to determine whether any particular category of visa holders or method of illegal entry is of highest risk, and initiate targeted investigative initiatives to address those. It would be unwise to ignore the connections to national security and vulnerabilities posed by misuse of our immigration system.

**Additional Areas for Consideration.** Beyond the items highlighted above, it is critical that any new immigration legislation also consider broad enforcement issues to avoid long-term problems.

First, any reform effort must clearly support and fund our enforcement agencies to ensure full compliance of our immigration laws going forward. For the last several decades, immigration agencies have been woefully understaffed, given their significant mission. ICE has only 7,000 agents, for example, far less than several city police departments, but the agency has a nationwide mission to combat immigration and customs violations. To compound the staffing challenges, if new legislation provides additional opportunities for adjustment, there will be significant attempts to fraudulently adjust. Congress must consider the necessary enforcement footprint that will be required following reform to avoid the failures of the past.

Next, new legislation should also create or provide enhanced incentives to increase the efficiency of the removal process. For example, the agency should increase use of the program that places individuals in immigration proceedings while they are serving time in federal or state correctional institutions (known as the Institutional Removal Program). By strategically funding courtrooms, judges, and immigration lawyers (including virtual courtrooms) in federal, state and local institutions with a high population of illegal aliens, the government could reduce excess time that criminal aliens spend in immigration custody after release from criminal custody.

During legislative reform, the partial expansion of expedited removal should be considered. Expedited removal may be utilized for aliens who lack proper documentation or have committed fraud or willful misrepresentation of facts to gain admission into the United States, unless the aliens indicate either an intention to apply for



asylum or a fear of persecution.<sup>4</sup> Under expedited removal processes, administrative and judicial review are restricted to cases in which the alien claims to be a citizen, or was previously legally admitted under certain circumstances.

By statute, expedited removal may be utilized for individuals that have been in the country for up to two years.<sup>5</sup> However, the executive branch has not utilized the full statutory authority provided for expedited removal, but instead applied certain arbitrary limitations, including the most recent requirement that the alien be apprehended no more than 100 miles from the border and has spent less than 14 days in the country. There is no reason that the government could not take steps to administratively expand the current use of expedited removal, by, for example, focusing on certain known smuggling routes beyond 100 miles or slightly extending the current time period for eligibility (30 days vs. 14 days, for example). Another alternative would be to apply extended time and range limits for the use of expedited removal for immigrants who are convicted of a crime by state or local law enforcement.

Any extension of expedited removal would have to be managed closely to ensure that the existing credible fear process for asylum seekers continues to be strictly followed and appropriate training is provided for DHS officers. In addition, individuals processed under expedited removal procedures are subject to mandatory detention, so administrative expansion under current authorities would have to be carefully coordinated to avoid problems with ICE detention space.

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<sup>4</sup> 8 U.S.C. § 1225.

<sup>5</sup> *Id.*

New legislation could also expand qualifications and use of the voluntary departure program. A voluntary departure is a mechanism by which eligible immigrants agree to leave the country and avoid many of the bars associated with stipulated removal or formal removal orders.<sup>6</sup> In the 2010 EOIR Statistical Yearbook, DOJ reported that 17% of all removals in the immigration court system are now voluntary departures, up from 10% only five years prior to that.<sup>7</sup> With support from Congress, ICE could administratively create mechanisms to more uniformly notify individuals of the option of voluntary removal immediately, so that appropriate candidates might consider this option at the very outset of proceedings (rather than waiting till a master calendar hearing, or afterwards).

Finally, any new legislation should include a serious look at ways to improve the immigration court system. Having a strong judicial framework ensures the integrity of enforcement efforts. One way to increase immigration court efficiency is to reduce the number of cases that must come before immigration courts for full hearings, without reducing overall removal numbers. This can be done by formally endorsing forms of appropriate prosecutorial discretion, as well as by encouraging voluntary and mandatory mechanisms to remove appropriate cases from full immigration hearings while effectuating removal.

The enforcement agencies should continue to exercise appropriate prosecutorial discretion to ensure that resources are not wasted on inappropriate or ill-considered cases. As set forth in the current ICE memos on prosecutorial discretion, it is reasonable for the

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<sup>6</sup> 8 U.S.C. §1229c.

<sup>7</sup> See Executive Office for Immigration Review, U.S. Department of Justice, FY 2010 Statistical Yearbook, at Q1.

immigration enforcement agencies to consider whether there is a pending petition that could have a likelihood of success when determining whether initiating removal proceedings is appropriate. The active involvement of ICE attorneys early in the process can assist in ensuring the agencies make an appropriate determination, and avoid wasting court or detention resources on cases where adjustment is likely, the government is unlikely to prevail, or extenuating circumstances support discretion.

At the same time, it is important that the discretion be carefully tailored so that the agency is not creating incentives for individuals to come here illegally and break the law. A fact-based analysis must ensure that the prosecutorial discretion doesn't grant a wholesale exemption on whole categories of individuals without the approval of Congress, or make an executive branch decision to simply defer action on broad sections of immigration violators.

In addition, in any new legislation, Congress should consider taking steps to assist indigent and vulnerable aliens to retain counsel at government expense. This is particularly important for unaccompanied minors and immigrants with competency issues. Although ICE attorneys and immigration judges regularly identify legitimate claims by aliens who are not represented by attorneys, the system should not rely on the ability of opposing counsel or overworked judges to locate valid claims.

As a former enforcement chief and veteran of the last immigration reform debate, I am very encouraged by the interest this Committee has in ensuring effective immigration enforcement. Only by acknowledging and learning from the incomplete enforcement efforts of previous legislation will we be able to avoid a repeat of past problems and ensure a solid immigration system.

Mr. GOODLATTE. Mr. Crane, welcome.

**TESTIMONY OF CHRIS CRANE, PRESIDENT, NATIONAL IMMIGRATION AND CUSTOMS ENFORCEMENT COUNCIL 118, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES**

Mr. CRANE. Thank you, sir. Good afternoon, Chairman, and Members of the Committee.

In 2009, I reported supervisor misconduct directly to DHS Secretary Janet Napolitano and ICE Director John Morton. Almost immediately after I filed that report, I applied for a promotion. ICE managers retaliated for my earlier reports to Napolitano by claiming that I had lied about my military training on my resume. The investigation that followed required that I provide military documents to prove that I had not lied on my resume. I provided the documents, and I was cleared of all charges. So as an officer who had already been through stringent background investigations, ICE and DHS still investigated me and still made me provide documentation to substantiate claims I had made on my resume.

But as ICE agents go into jails every day and encounter illegal aliens arrested by local police, agents are under orders from DHS and ICE—the same DHS and ICE that investigated me—to simply take the word of the illegal alien that he graduated from college or high school, or that he has a GED. And without investigation, without requiring the alien to provide a diploma or a transcript, the alien will simply be released under DACA without first proving he even qualifies for it.

Since ICE doesn't investigate these claims or require proof from the alien, is it any big surprise that many ICE agents report that everyone they encounter in jails claims they are somehow qualified under DACA, and that most are released because ICE agents are powerless to make the aliens prove they actually qualify? One agent recently told me a story of how he overheard one alien coaching another on how to get released by lying to ICE agents about having status under DACA.

Is this our answer, our big immigration reform, to make law enforcement a joke and let everyone lie to us and then release them? ICE Director John Morton, DHS Secretary Janet Napolitano, as leaders of law enforcement agencies, should be demanding that this stop and that the agency get back to sound law enforcement principles, but they won't because this is not about effective law enforcement, it is not about fixing our immigration system. Clearly letting people lie to us and then allowing them to remain in the U.S. based on those lies doesn't fix the system. This is about politics.

We currently have 11- to 20 million illegal aliens in the United States. They got here one of two ways: They entered the United States illegally, or they came here legally with a visa and never left.

So what is ICE doing about visa overstays and illegal entry as both lie at the very heart of our broken immigration system? ICE has essentially prohibited its agents from enforcing these laws. ICE agents can't arrest aliens solely because they entered the United States illegally or because they overstayed their visa. It is basically

not illegal anymore, generally speaking, not unless the alien has been convicted of a criminal offense.

Messaging is critical to any effort aimed at curbing illegal immigration. So what message do ICE practices send to the world? The message is, we don't enforce our laws. Come on over, and if you do get caught, just lie to us. Lie about the day and year you entered. Lie about going to high school. You won't be required to prove anything.

While there is certainly much more to be said on these and other issues, in closing I would like to provide a few bullet points on the state of ICE as an agency. Internally the agency, in my opinion, is falling apart. Morale is at an all-time low according to recent Federal surveys. The agency refuses to train our officers on these new policies, resulting in mass confusion and frustration. Everybody is doing something different. Nobody really knows what is going on. As our officers are investigated by ICE for enforcing U.S. immigration law, as they see other officers threatened with suspensions for making lawful arrests, increasingly officers feel that they have become the enemy of this Administration, which certainly is not a healthy sign for any law enforcement organization.

That concludes my testimony. Thank you.

Mr. GOODLATTE. Thank you, Mr. Crane, for that compelling testimony.

[The prepared statement of Mr. Crane follows:]

**Prepared Statement of Chris Crane, President, National Immigration and Customs Enforcement Council of the American Federation of Government Employees**

The results from the most recent morale survey for Federal agencies were released in December 2012. ICE dropped in the rankings to 279 out of 291 Federal agencies surveyed leaving only 12 agencies that ranked lower in employee morale and job satisfaction than ICE. By comparison, the U.S. Marshals Service was ranked 82 in the survey, and the FBI ranked 107. The ICE employee morale survey included ICE managers as well as officers, agents and administrative personnel.

As agency morale falls each year, each year ICE leadership finds new excuses to justify the low morale, never taking responsibility and never making reasonable efforts to identify and address causative issues. This, even after the tragic shooting in a Los Angeles ICE office last year, in which an ICE Agent shot his own supervisor and was himself shot and killed by another ICE employee.

To prevent incidents like the one in Los Angeles, ICE must begin efforts to address problems within the agency. While both internal and external factors contribute to the morale problems within ICE, proper leadership from ICE headquarters could make sweeping and effective changes throughout the agency. It is the responsibility of ICE leadership to maintain the highest possible morale within the agency regardless of the situation and regardless of the factors involved; whether it is addressing gross mismanagement and overall corruption within the agency, or addressing the impact of internal or external politics.

While ICE employees are frequently demonized by special interest groups and media outlets, it should be known that many ICE employees are themselves the sons and daughters of immigrants, or grandsons and granddaughters of immigrants; or are married to immigrants, or are the proud parents of adopted babies born outside the U.S. For many of our officers and agents, English was not their first language, or they grew up in a bilingual household. ICE employees represent the full spectrum of races and religions that make up our great country. They are moms and dads, public servants, and many are veterans of the United States Armed Forces. ICE agents are not monsters as some would portray them.

However, ICE agents do believe in law enforcement and the rule of law. Most Americans going about their daily lives believe that ICE agents and officers are permitted to enforce the laws of the United States. However, ICE agents and officers would tell America a much different story.

The day-to-day duties of ICE agents and officers often seem in conflict with the law as ICE officers are prohibited from enforcing many laws enacted by Congress; laws they took an oath to enforce. ICE is now guided in large part by the influences of powerful special interest groups that advocate on behalf of illegal aliens. These influences have in large part eroded the order, stability and effectiveness of the agency, creating confusion among all ICE employees. For the last four years it has been a roller coaster for ICE officers with regard to who they can or cannot arrest, and which Federal laws they will be permitted to enforce. Most of these directives restricting enforcement are given only verbally to prevent written evidence from reaching the public.

Most Americans would be surprised to know that immigration agents are regularly prohibited from enforcing the two most fundamental sections of United States immigration law. According to ICE policy, in most cases immigration agents can no longer arrest persons solely for entering the United States illegally. Additionally, in most cases immigration agents cannot arrest persons solely because they have entered the United States with a visa and then overstayed that visa and failed to return to their country. Essentially, only individuals charged or convicted of very serious criminal offenses by other law enforcement agencies may be arrested or charged by ICE agents and officers for illegal entry or overstay.

In fact, under current policy individuals illegally in the United States must now be convicted of three or more criminal misdemeanors before ICE agents are permitted to charge or arrest the illegal alien for illegal entry or overstaying a visa, unless the misdemeanors involve the most serious types of offenses such as assault, sexual abuse or drug trafficking. With regard to traffic violations, other than DUI and fleeing the scene of an accident, ICE agents are also prohibited from making an immigration arrest of illegal aliens who have multiple convictions for traffic related misdemeanors.

Thus far, ICE's new arrest methodology of prohibiting the arrest of illegal aliens convicted of certain unspecified misdemeanors has simply created more confusion among those tasked with enforcing immigration law. During conversations with ICE officers, agents and prosecuting attorneys, none were able to identify the criminal misdemeanor offenses that ICE leadership has identified as "insignificant." Important to note, no training or list of "insignificant" misdemeanor offenses was ever provided to ICE employees.

DACA, or Deferred Action for Childhood Arrivals, which prevents the deportation of many aliens brought to the U.S. as children, is for the most part applied by ICE immigration agents to adults held in state correctional facilities and jails pending criminal charges. News has spread quickly through illegal alien populations within jails and communities that immigration agents have been instructed by the agency not to investigate illegal aliens who claim protections from immigration arrest under DACA. ICE immigration agents have been instructed to accept the illegal alien's claim as to whether he or she graduated or is attending high school or college or otherwise qualifies under DACA. Illegal aliens are not required to provide officers with any type of proof such as a diploma or transcripts to prove that they qualify before being released. Even though the immigration officer generally has no proof that the alien qualifies under DACA, officers may not arrest these aliens unless a qualifying criminal conviction or other disqualifier exists. As one immigration agent stated last week, "every person we encounter in the jails now claims to qualify for release under DACA."

With all of the restrictions placed on ICE immigration agents in enforcing U.S. immigration laws, it is also important to understand the broader law enforcement practices of the Agency and the associated impact on immigration enforcement. With approximately 20,000 employees at ICE, approximately 5,000 officers and agents handle the majority of immigration work within the agency, to include the arrests, case processing, detention, and removal of approximately 400,000 aliens each year. Within this group of 5,000 officers, two separate officer positions exist. While all officers have exactly the same training, the two officer positions have different arrest authorities, one position with a more limited arrest authority than the other. For obvious reasons, this antiquated separation of arrest authorities among officers is unnecessary, especially as no additional training is necessary, and clearly prevents the best use of the limited resources available for immigration enforcement. Requests for ICE Director John Morton to issue a memorandum providing full arrest authority to all officers as a force multiplier within the agency have been refused by the Director without explanation. As the Administration states publicly that it is pushing for stronger enforcement and optimal utilization of limited enforcement resources, these actions appear to indicate otherwise.

Also important to understand, pressures from special interest groups have resulted in the majority of ICE agents and officers being prohibited from making

street arrests. Most officers are only allowed to work inside of jails hidden from public view, and may only arrest certain individuals who have already been arrested by police departments and other Federal agencies. As a general rule, if ICE agents or officers are on duty in a public place and witness a violation of immigration law, they are prohibited from making arrests and from asking questions under threat of disciplinary action.

Several hundred officers and agents assigned to special teams across the nation do have a limited ability on a day-to-day basis to make public arrests outside of jails. For the most part, these officers and agents are restricted to arresting specific targets only after each case goes through a lengthy authorization process that must eventually be approved by a supervisor in writing.

As stated previously, new ICE arrest policies clearly appear to conflict with not only the law but also with the legal training provided new officers and agents in the academy and on the job at their offices in the field. Years of training and experience are not easily undone, especially as ICE refuses to provide training to officers regarding its new enforcement policies. As a result, officers are confused and unsure about the new policies, and often find themselves facing disciplinary action for following the law and their academy training instead of the confusing and highly misunderstood and ever changing new policies.

In Salt Lake City, Utah, three ICE agents witnessed an individual admit in open court to a Federal Immigration Judge that he was in the United States illegally. ICE agents waited until the alien left the hearing and then politely asked him to accompany them, never using handcuffs in the course of the arrest. An immigration attorney and activist called the ICE Field Office Director in Salt Lake City verbally complaining that ICE officers had arrested an illegal alien. The ICE Field Office Director responded by ordering that all charges against the illegal alien be dropped and that the alien be released immediately. While the ICE Director ordered the immigration violator be set free, the Director also ordered that all three ICE agents be placed under investigation for no other reason than arresting an illegal alien.

In Dover, Delaware, ICE agents conducted surveillance of a vehicle registered to an ICE criminal fugitive. When a man attempted to enter the vehicle and depart, ICE agents discovered that while not their arrest target, the man was an illegal alien with multiple convictions for driving without a license. Still without a license and attempting to drive, ICE agents considered the man a threat to public safety and arrested him. ICE supervisors ordered that the illegal alien be released without charges. When one agent attempted to bring immigration charges against the alien as the law and his oath requires, the agent's managers released the illegal alien and instead brought formal charges against the agent proposing the agent be suspended for 3 days. If the suspension was sustained, a second "offense" by the agent would likely result in the agent losing his job. The officer has been an immigration agent for 18 years and is a 5 year military veteran.

In El Paso, TX, ICE agents arrested an illegal alien at a local jail who was arrested by sheriff's deputies earlier that same morning and charged with assault causing bodily injury to a family member and interfering with a person attempting to make an emergency phone call for assistance. When ICE agents attempted to transport the 245 lbs. subject he resisted and attempted escape, injuring one agent before being taken back into custody. When agents returned to their office in El Paso they were ordered by ICE managers to release the alien as a "Dreamer." ICE managers did not question the criminal alien and conducted no investigation to ensure that charges for assaulting an officer were not warranted. Instead ICE managers ordered that the illegal alien immediately be released without investigation in accordance with the President's new immigration policies, reportedly stating to employees that "ICE's mission now is to identify aliens and release them."

With regard to assaults in general, assaults against ICE officers and agents continue to rise as ICE arrestees become increasing more violent and criminal in nature. Of the approximately 400,000 aliens removed by ICE each year, over 90% come from jails and prisons according to agency officials at ICE Headquarters. However, unlike almost every state and Federal law enforcement agency in the nation, ICE agents and officers are prohibited from carrying life saving protective equipment such as tasers. ICE will not approve this equipment for its agents and officers for political reasons. Death or serious injury to ICE officers and agents appears more acceptable to ICE, DHS and Administration leadership, than the public complaints that would be lodged by special interest groups representing illegal aliens. While unthinkable for most American's that the Federal government would approve the use of tasers on criminals who are U.S citizens, but deny tasers to law enforcement officers who arrest criminal aliens, it appears to be the case. As we have reported in the past, ICE, DHS and the Administration work exclusively with special interest groups to establish security and arrest protocols throughout the agency while ex-

cluding input from employees and operational managers in the field. As a result, many special considerations exist exclusively for criminal aliens in ICE custody compromising operations and costing the agency millions each year.

In closing, while deeply concerned by the actions of our agency, as well as the current state and future of immigration enforcement, we are optimistic and confident that all of these matters can be successfully resolved with the assistance of members of Congress. Please do not hesitate to contact us at any time with any request as we are always ready and willing to assist you.

Mr. GOODLATTE. Ms. Vaughan, we are glad to have your testimony.

**TESTIMONY OF JESSICA M. VAUGHAN, DIRECTOR OF  
POLICY STUDIES, CENTER FOR IMMIGRATION STUDIES**

Ms. VAUGHAN. Thank you for the opportunity to speak today on the enforcement of laws against illegal immigration. My remarks are going to focus on the extent of illegal immigration law enforcement today and also on enforcement at the workplace.

There is no more important responsibility of our Federal Government than to secure our borders, and this includes enforcing laws against illegal immigration, which imposes enormous economic, fiscal, and security burdens on American communities. In addition to displacing American and legal immigrants from jobs and depressing their wages, illegal immigration costs taxpayers about \$10 billion a year at the Federal level and even more at the State and local level. So every dollar invested in border security and immigration enforcement has both a public safety benefit and a fiscal benefit.

We don't know exactly how much the Federal Government spends on immigration enforcement. DHS and its predecessor, INS, have never tracked immigration enforcement separately from the other responsibilities. We do know that in 2012, DHS received about \$20 million to fund CBP, ICE and US-VISIT. This allocation is about half of the amount that is spent on all other nonmilitary Federal law enforcement activities. But only a small share of the \$20 million was spent on immigration law enforcement. Much of what CBP and ICE do is customs enforcement. At many of the ports and field offices, most of what they do is customs-related, whether it is cargo inspections or admission of visitors. So it is difficult to analyze how much immigration law enforcement is occurring simply by looking at what we spend on the agencies that perform that function.

And I would like to just touch on some of the other metrics. The Border Patrol has traditionally used the volume of Southwest border apprehensions as a key indicator. It is interesting. For a while we did see a sustained decline in the number of Southwest border apprehensions, which some have held as a proxy for the number of illegal crossing attempts. But if that is the case, then we have reason for concern again. According to statistics just released by CBP, last year Southwest border apprehensions went up by 9 percent.

For ICE, we can look at prosecutions to gauge the volume of their work. Here again, according to various Federal sources, after years of increases the numbers of immigration court filings have declined 25 percent since last year and 30 percent since 2009.



The main metric used by the Obama administration to measure enforcement activities is the number of deportations, but as the President has said, these numbers are deceptive. First of all, it is not clear that 400,000 is actually a record since the methodology has changed so much over the years. And it must be noted that the truly dramatic recent increases actually occurred between 2005 and 2009. Since then the numbers have flattened out noticeably; and ICE arrests, as opposed to deportations, have been declining since 2008.

When it comes right down to it, though, the only metric that really counts is not how many are coming and going, but how many are actually staying. And according to our research, that number has remained stubbornly high. In my view, one reason for that is because one key type of immigration law enforcement has been conspicuously lacking, and that is workplace enforcement.

In 1986, workplace enforcement was a key part of the grand bargain of IRCA. The American people were promised that after the amnesty, future illegal flows would be prevented by the implementation of employer sanctions. As we know, the Federal Government was quick to implement the amnesty program, but never followed through with enforcement. Instead it deliberately created a system that was built to fail.

Many blamed Congress, but executive branch officials were equally complicit. The regulations and policies they established essentially sandbagged the enforcement process from the beginning in favor of the unscrupulous employers who hired the illegal aliens. The result was that employers failed to take the sanctions seriously and were able to absorb any meager penalties as a cost of doing business.

Under the Clinton administration, it got worse. The number of special agents in the Investigations Division was cut from 750 to about 500. By 2004, worksite enforcement actions dropped from few to almost none. That year only three employers were fined over the entire year in the entire country.

Finally, Congress stepped in to provide an infusion of funding to revive the program, and activity gradually increased over the next several years, peaking in 2008. It didn't last long. Soon after President Obama took office, new policies were adopted, and worksite enforcement went the way of fugitive operations and local partnerships. New policies focused on conducting paperwork audits at more companies, while deliberately avoiding contact with the illegal workers.

By almost every measure, arrests, indictments, convictions, and investigative hours, worksite enforcement for substantive violations of the law have dropped dramatically. The number of audits and fines have gone up a lot, but most of these sanctions are for paperwork violations to the extent we can tell because little information is actually released by ICE.

By failing to rigorously enforce the laws against hiring illegal aliens, the Obama administration, like others before it, is tacitly encouraging more illegal immigration that displaces U.S. workers, causes their wages to decline, and erodes their quality of life. Judging by their record, we can expect a similar result if lawmakers sign on to another so-called comprehensive immigration reform

plan that gives amnesty first in exchange for promises of enforcement that will not be kept.

Mr. BACHUS. Thank you.

[The prepared statement of Ms. Vaughan follows:]

**Prepared Statement of Jessica M. Vaughan, Director of Policy Studies,  
Center for Immigration Studies**

Chairman Goodlatte, Ranking Member Conyers, I thank you for the opportunity to testify today on the enforcement of laws against illegal immigration.

There is no more important responsibility of our federal government than to secure our borders. It is critical that we provide the agencies that are tasked with this mission with the resources they need to keep us safe, to prevent the entry of terrorists and criminals, to manage the entry of legitimate trade and travel, and to keep illegal immigration in check.

Illegal immigration imposes enormous economic, fiscal and security burdens on American communities. In addition to displacing American and legal immigrants from jobs and depressing their wages, illegal immigration costs taxpayers about \$10 billion a year at the federal level<sup>1</sup>, and even more at the state and local level. For this reason, every dollar invested in border security and immigration enforcement has a public safety benefit and a fiscal benefit.

IMMIGRATION AGENCIES' FOOTPRINT IN FEDERAL LAW ENFORCEMENT

The federal government, appropriately, allocates a significant share of taxpayer dollars to the immigration agencies that carry out this important work. It is impossible to determine exactly how much the federal government has spent on immigration enforcement over the years, because the Department of Homeland Security and its predecessor, INS, have never tracked these activities. In 2012, the Department of Homeland Security (DHS) received about \$20 million to fund Customs and Border Protection (CBP), Immigration and Customs Enforcement (ICE), and US-VISIT for the missions of immigration and customs enforcement and foreign visitor data collection and analysis. This represents about half of overall federal law enforcement expenditures (not counting most military and intelligence service law enforcement nor Coast Guard), which totaled about \$39 billion in 2012.<sup>2</sup>

That might sound like we are spending an enormous sum on immigration law enforcement. But the immigration agencies' work encompasses far more than immigration law enforcement. Customs enforcement represents a huge share of these agencies' budgets, especially at the ports of entry, along with intellectual property enforcement; transnational gang suppression; child pornography investigations; fighting human trafficking; returning stolen antiquities; doing cargo inspections; and interdicting drugs, weapons, bulk cash, and other contraband that is smuggled across our borders.

Immigration and customs enforcement overlaps with the mission of many other federal law enforcement agencies, and sometimes even surpasses them in productivity. For example, in 2012, CBP agents seized 4.2 million pounds of illegal drugs—more than three times the amount seized by the Drug Enforcement Administration in the previous year. In the last eight years, under the auspices of Operation Community Shield, ICE has arrested 27,600 gang members; no comparable statistics could be found for the FBI, but there is no doubt that ICE plays a leading role in addressing this serious public safety problem. In addition, both ICE and CBP routinely make significant seizures of illegal weapons and currency from criminal organizations trying to enter or already operating in the United States.<sup>3</sup>

<sup>1</sup>Steven A. Camarota, *The High Cost of Cheap Labor: Illegal Immigration and the Federal Budget*, Center for Immigration Studies, August, 2004, <http://www.cis.org/High-Cost-of-Cheap-Labor>.

<sup>2</sup>Figures are taken from official agency budget summaries from the last two years. Other federal law enforcement agency budgets tallied include: FBI, DEA, ATF, US Marshals, Secret Service, Bureau of Prisons, US Attorneys Offices, Transportation Security Administration, Diplomatic Security Service, IRS Criminal Investigation Division, Treasury Inspector General for Tax Administration, US Mint Police, Pentagon Force Protection, DoD OIG, Bureau of Indian Affairs Police, Bureau of Land Management Office of Enforcement and Security, National Park Service Police, Fish & Wildlife Office of Law Enforcement, Forest Service Law Enforcement and Investigations, USDA OIG, NOAA Fisheries Office of Law Enforcement, FDA Office of Criminal Investigations, Education OIG, Veterans Affairs Police, US Capitol Police.

<sup>3</sup>All data is available on these agencies' web sites.

In addition, a major part of CBP's effort and resources are used to facilitate the entry of legitimate visitors and goods, for example, through routine inspections of people and goods and through trusted traveler programs.

While outlays for border security and immigration enforcement have reached historic highs, it is important to remember that the immigration enforcement mission was woefully underfunded for decades; meanwhile, the threat from international terrorism and transnational criminal organizations is also greater than ever before. Illegal immigration has risen steadily since the 1980s. While our research shows that new illegal entries have slackened somewhat since 2007, there are signs that the tide could be shifting again. According to numbers just released by CBP, in 2012 southwest border apprehensions, which the agency has used as an indicator of the number of illegal crossings, went up by nine percent.

Transactional data collected by a project at Syracuse University reportedly shows that CBP and ICE together refer more cases for prosecution than other federal law enforcement agencies, which some have interpreted to mean that these agencies have been hyperactive and overzealous in their work. But another reliable source, the U.S. Sentencing Commission, reports that immigration cases represent a much smaller share of the federal criminal justice docket. The Commission's 2011 annual report says that immigration offenders were 35% of all those sentenced in federal court that year, meaning there were twice as many sentenced offenders from non-immigration agency prosecutions than from CBP and ICE.<sup>4</sup> However, this same report notes that 10% of murderers, 31% of drug traffickers, 34% of money launderers, 64% of kidnappers, and 28% of food and drug offenders sentenced that year were non-citizens, so it's easy to see why immigration enforcement should be such a high priority in federal law enforcement. Obviously these two sets of data are measuring different things—referrals for prosecution and sentenced offenders—but they are equally valid measures of the immigration agencies' footprint in the federal criminal justice system.

Some observers also have raised concerns about the number of individuals in immigration detention (429,000 in 2011). However, immigration detention is of relatively short duration (average 29 days) compared to the federal prison system, where only two percent stay less than one year. There are far fewer immigration detainees than federal prisoners at any one time; the average daily immigration detainee population is about 33,000, compared to about 218,000 inmates in the Bureau of Prisons system.<sup>5</sup> Immigration offenders make up only 12 percent of the federal prison population, although 26.5 percent of federal prisoners are non-citizens. But the immigration detention system is not at all like the federal prison system in purpose or nature. Immigration detention is more comparable to the local jail system, which has an average daily population of about 750,000 inmates.

Obama administration officials have pointed to what they claim is a record number of removals and returns—409,000 in 2012, out of more than 11 million illegal residents—as evidence that the government is doing as much as it can, perhaps even more than enough, immigration enforcement. But as the president has said, these numbers are “actually a little deceptive.”

- The 2012 deportation numbers are not a record, using the current methodology of counting both removals and returns. According to the annual yearbook of immigration statistics, in 1996 removals and returns numbered more than 1.6 million, up from more than 1.3 million in 1995.
- The “dramatic” recent increases in deportations, removals and returns actually occurred between 2005 and 2009; since then, the numbers have flattened out noticeably.<sup>6</sup>
- It has been established that recent deportation statistics are heavily padded with cases that were not previously counted as such.<sup>7</sup>

<sup>4</sup>U.S. Sentencing Commission, 2011 Sourcebook of Federal Sentencing Statistics, <http://www.ussc.gov/Data and Statistics/Annual Reports and Sourcebooks/2...>

<sup>5</sup>The total federal prisoner population is comparable to an average daily population, because nearly all of the federal prisoners are serving long sentences of more than one year.

<sup>6</sup>DHS Immigration Enforcement Actions, 2011, <http://www.dhs.gov/immigration-enforcement-actions-2011>.

<sup>7</sup>Rep. Lamar Smith, <http://www.washingtontimes.com/news/2012/sep/26/obama-puts-illegals-ahoa...>

- ICE arrests have been trending downward since 2008, after a sharp rise that year. It's hard to understand how deportations can be rising when apprehensions are falling.<sup>8</sup>

#### THE MEAGER HISTORY OF ENFORCEMENT AT THE WORKPLACE

But the most conspicuous void in immigration law enforcement has been in the area of workplace enforcement. Enforcement of immigration laws at the workplace is essential to gaining control of illegal immigration and to addressing the most significant negative effects of immigration, namely the displacement of legal workers and the deterioration in wages for those U.S. workers who must compete with illegal workers.

Workplace enforcement is as important as securing the border itself, for several reasons. Illegal immigration occurs in many ways, including illicit border crossing, overstaying a legal visa, and using false documents. Any strategy that relies solely on securing the border is doomed to fail, because it will miss as many as half the illegal entrants. Secondly, border security is limited by the physical challenges of the terrain and by the government's financial resources. And, as long as there are employers willing and able to hire illegal workers, the workers will try to come.

An effective workplace strategy provides employers with the tools to enable them to comply voluntarily and also holds them accountable for their violations and their role in sending the message that illegal workers are welcome. Routine, frequent and thorough enforcement discourages illegal workers by creating an expectation that they could be subject to arrest and removal at any time. Such policies of strict enforcement of the laws against illegal employment have been shown to be effective, both in reducing the flow of new illegal immigrants and in reducing the size of the settled illegal immigrant population.

In 1986, Congress attempted to address the illegal immigration problem with a grand bargain: a large share of the resident illegal population would receive amnesty, and future illegal flows would be prevented by the implementation of employer sanctions, to be enforced by the Immigration and Naturalization Service (INS). For the first time, it became expressly illegal to knowingly hire, recruit, or refer for a fee someone who was not authorized to work in the United States. Employers were required to check documents presented by new hires to establish that they were authorized to work, and record the information on form now known as the I-9. The sanctions included fines and possible prison time for the act of illegal hiring and for not properly checking the status of new employees.

The federal government was quick to implement the amnesty program, but never followed through with the enforcement of employer sanctions. In fact, it seems that they were never intended to be allowed to work at all.

Many have blamed Congressional drafters for deliberately creating a clumsy system in which employers were required to ask new hires for documentation, but not expected or required to verify the information (and there was no easy way for them to do so anyway). The law allowed for more than a dozen different forms of identification to establish work authorization. As a result, many workers simply began providing false documents, and a booming trade in false identification for employment purposes was born.

But executive branch officials, under the influence of political appointees with ties to major business, agricultural, and industrial special interests, were equally complicit in creating a workplace enforcement system that was built to fail.

First, it was decided that a significant share of the INS enforcement resources would be directed toward an "employer sanctions education mandate." It was essentially an outreach program to inform the nation's employers of the new law and their new responsibilities. This outreach was to be performed primarily by the agency's corps of special agents—and had the effect of taking the sworn law enforcement officers who were trained and empowered to investigate violations off their beat.

Next, the agency leadership crafted the regulations in such a way as to ensure that very few employers would actually be subjected to sanctions that were painful enough to deter illegal hiring. The regulations included the following provisions:

- Employers were to be notified three days in advance of agents arriving to audit the personnel forms (I-9s), providing employers with a chance to create the appearance of compliance;
- Before sanctioning an employer, whether for knowingly hiring illegal workers or for improper paperwork, agents had to obtain advance clearance from both the operational supervisors and the general counsel's office in headquarters.

<sup>8</sup>DHS Immigration Enforcement Actions, 2011.

These two offices put every single notice of intent to fine through a such a wringer of review that very few sanctions were ever approved;

- In the event that an employer fine was approved, the case was handed off to the agency lawyers in the field, who typically preferred to negotiate settlements with the employers that knocked down the fines to literally pennies on the dollar. Agents were not allowed to participate in the settlement negotiations to provide input on the seriousness of the illegal hiring practices, or make the case for tough sanctions.

The result was that employers failed to take the sanctions seriously and were able to absorb any meager penalties as a cost of doing business. Nevertheless, each year the INS completed thousands of employer investigations. According to the agency's statistical yearbooks, each year between 1992 and 1998, agents completed 5,000 to 7,000 employer investigations resulting in between 7,500 and 17,500 arrests. But even these efforts were a drop in the bucket relative to the scale of illegal hiring at the time.

These policies remained in place until the demise of the INS. Under the Clinton administration, the situation worsened. During the tenure of Commissioner Doris Meissner, the size of the corps of special agents in the Investigations division (comparable to today's Homeland Security Investigations division, without the customs, intellectual property, and counterfeit goods responsibilities) shrank to about 500 (compared to about 7,000 today). Worksite enforcement and employer sanctions ranked as no more than a footnote in the agency's priorities, and most agent productive hours were directed toward casework such as drugs, gangs, and alien smuggling.<sup>9</sup>

Under the Bush administration, initially, INS priorities were focused on primarily on streamlining the processing of immigration benefits applications, until the events of 9/11, when the focus became national security, and the agency was dismantled and its enforcement functions assigned to CBP and ICE. Given the national security focus that pre-occupied the agency at that time, in the early years of ICE, worksite investigations were at first focused mainly on critical infrastructure work places such as airports.

In 2005, the GAO issued a report noting that competing priorities at ICE had brought worksite enforcement to a near stand-still.<sup>10</sup> The auditors found that between 1999 and 2004, the number of employers fined either for substantive or paperwork violations had declined from 417 to 3.

Following this report, ICE received an infusion of funding to hire additional compliance officers, agents, and managers to devote to this program. Activity gradually increased over the next several years. Field offices planned and carried out carefully-executed raids and made a record number of arrests of illegal workers at meatpacking plants, factories, and even smaller employers such as restaurants and retail establishments. The number of administrative and criminal arrests in worksite operations seems to have peaked in 2008, when there were more than 5,000 administrative arrests and more than 1,000 criminal arrests.<sup>11</sup>

In early 2009, the Obama administration adopted new policies on worksite enforcement, placing the focus on conducting paperwork audits of more companies while deliberately avoiding contact with illegal workers. It is difficult to evaluate the productivity of this new approach, because ICE no longer publishes detailed worksite enforcement statistics, and the few statistics that are released are not comparable with earlier years. But judging from various limited records I have reviewed that were released through the FOIA process, there is a great deal of inconsistency among ICE investigative field offices in how they go about worksite enforcement. Some offices target employers that are suspected of egregiously hiring large numbers of workers; others tend to select employers where few suspected illegal workers are found in the paperwork, but they can still claim to have completed many audits. Some offices push hard to impose large fines, others prefer to issue mainly warnings, even in cases where large numbers of suspected illegal workers were found on the payroll.

In addition, I have found some inconsistencies in the way ICE apparently is classifying its investigations, which leads me to wonder if they might be manipulating case reporting statistics in order to give an inflated impression of the level of worksite enforcement. Listed under the "Worksite" section of the ICE Newsroom

<sup>9</sup> Andorra Bruno, "Immigration-Related Worksite Enforcement: Performance Measures," Congressional Research Service, 7-5700, June 24, 2010.

<sup>10</sup> Government Accountability Office, "Immigration Enforcement: Weaknesses Hinder Employment Verification and Worksite Enforcement Efforts," GAO-08-813, August, 2005.

<sup>11</sup> Bruno.

page, I found several press releases about investigations that were clearly criminal in nature, and could not reasonably be classified as “worksite enforcement.” So-called “worksite” cases I found included prosecutions of the leaders of a prostitution ring in Florida and the owner of a motel in El Paso used as a drop house for 5,000 smuggled aliens.

On the other hand, some of my sources report of another multi-state prostitution ring investigation (reportedly involving underage girls) that was initiated by the Border Patrol and later turned over to ICE was reportedly dropped because it would have led to discoveries of widespread illegal hiring practices at dairy farms in northern Vermont.

The one consistent theme of worksite investigations in recent years seems to be that arrests of workers are to be avoided at all costs. This raises legitimate questions as to the value of an audits-only approach.

Our research shows that there are advantages, disadvantages and trade-offs to raids and audits, and the most effective approach is probably a blend of both. Raids are very effective for the purposes of penalizing both workers and employers. Both employers and workers can be caught red-handed, making it easier both to apprehend and remove the workers and to prosecute the employers, in large part because the workers can testify against the employer. In addition, the negative publicity associated with a raid can be a deterrent to illegal hiring. On the other hand, some consider the raids to be excessively intimidating to both workers and employers, as ICE agents will use customary law enforcement procedures in order to maintain order and prevent escape or violence. The raids are costly to the U.S. government as, depending on the size of the operation, they may require hundreds of agents, months of preparation, and complex logistics.

Audits, on the other hand, are largely a paperwork exercise and enable ICE to examine the practices of a much larger number of employers than is possible through raids. Audits might be part of a full investigation that culminates in a raid, but it is also possible to perform an audit without the business disruption of a raid. The auditors can, for the most part, easily determine which employees lack authorization using the standard verification tools. On the other hand, the audits may not detect employees working under the table. The audits offer no opportunity for ICE to apprehend the illegal workers. The employer is required to terminate an unauthorized worker discovered by the audit, but the worker is free to find employment elsewhere. In general, the audits result in lesser sanctions on employers who are found to be violating the law. Without the testimony of the workers, it can be very difficult for ICE to make a case or press charges on an employer for knowingly hiring illegal workers.

**Conclusion.** Enforcement of immigration laws at the workplace is not a substitute for border enforcement, but is ultimately a more effective approach. Since a significant number of illegal aliens enter legally on visas as well as illegally over the land borders, any strategy to control illegal immigration must operate beyond the border and disrupt the magnet of employment, which is what causes most illegal immigrants to settle here. Workplace enforcement accomplishes that by targeting and deterring the employers of illegal workers and by penalizing the workers who are apprehended at the workplace. Workplace enforcement is flexible, with a variety of layers including both voluntary compliance on the part of employers and sanctions against egregious or knowing violators. Finally workplace enforcement provides a direct benefit to U.S. workers by opening up job opportunities and improving wages and working conditions as a direct result of the enforcement action.

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Mr. BACHUS [presiding]. Mr. Chishti.

**TESTIMONY OF MUZAFFAR A. CHISHTI, DIRECTOR, MIGRATION POLICY INSTITUTE'S OFFICE AT NEW YORK UNIVERSITY LAW SCHOOL**

Mr. CHISHTI. Thank you, very much, Mr. Chairman and other Members of the Committee who are here this afternoon. I will do my testimony in two parts, first about immigration enforcement. We at the Migration Policy Institute recently issue a comprehensive report on immigration enforcement in the United States. I would urge that this be admitted into the record.

Mr. BACHUS. Without objection.\*

Mr. CHISHTI. Based on that report, by almost any metric that is publicly available, from staffing all the way to apprehensions and worksite enforcement, the level of immigration enforcement in the United States now stands at a record high. Nearly \$18 billion was spent in fiscal 2012 in the Federal Government's two main immigration enforcement agencies, ICE and CBP, and the US-VISIT program. It is exactly \$17.9 billion, i.e. 24 percent greater than the combined fiscal 2012 budgets for all other principal criminal Federal law enforcement agencies—from the FBI, DEA, ATF, Secret Service and U.S. Marshals. These major resource enforcements have lead to notable results.

Perhaps, most significantly, Mr. Chairman, Border Patrol apprehensions fell by 78 percent between fiscal 2000 and 2012. That is from about 1.6 million to 365,000 people.

There has been a dramatic increase in the number of non-citizens deported from the United States. The DHS removed just under 392,000 people in 2011, more than double the number carried out by the INS in fiscal 2002.

Since 1990, more than 4.4 million non-citizens have been deported from the United States; 42 percent of which, i.e. 1.9 million, have occurred since 2008. Increased deportation has been accompanied by a paralleled trend in increased prosecutions for criminal immigration offenses, and these are mostly illegal entries and illegal reentries.

Today, immigration prosecutions make up more than half of all the Federal criminal prosecutions initiated. CBP alone refers today more cases for prosecution than the FBI, and CBP and ICE together refer more cases for prosecution than all the Department of Justice's law enforcement agencies combined.

The number of employers enrolled in the E-Verify program has gone up from 6,000 in 2005 to more than 353,000 today.

Finally, and equally important, yet less visible change has been the development of new technology and databases that link immigration enforcement agencies' programs and systems. The system, called IDENT, administered by US-VISIT, has now become the world's largest biometric law enforcement database.

It contains more than 148 million individual fingerprint records, grows at 10 million new entries per year and reflects more than 2 billion individual entry events. The new databases and their interoperability have been critical in the government's enforcement mission.

Quickly let me turn to three key weaknesses associated with the Immigration Reform and Control Act of 1986, the last time Congress dealt with a comprehensive immigration reform.

A key drawback of IRCA's legalization component was the law disqualified those who had arrived in the U.S. after January 1, 1982, and did not provide an opportunity for immediate family members of newly legalized population to obtain status. This com-

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\*The Migration Policy Institute (MPI) report submitted by Mr. Chishti titled Immigration Enforcement in the United States, the Rise of a Formidable Machinery, by Dorris Meissner, Donald M. Kerwin, Muzaffar Chishti, and Claire Bergeron, is not reprinted in this hearing record but is on file with the Committee. The report can also be accessed at:

<http://www.migrationpolicy.org/pubs/enforcementpillars.pdf>.

bination left a large number of people in mixed-status families and created the nucleus of the sizeable post-1986 unauthorized population.

For any new legalization program to be successful, Mr. Chairman, it should be as inclusive as possible. The law should not disqualify large sections of unauthorized population, as doing so both invites fraud and fails to address the full scope of the problem.

IRCA's ultimate failure was its narrow focus. The law did not anticipate or make provisions for future labor needs, especially in the low-skilled labor markets. A mechanism for including flexibility and establishing the types and numbers of admission for future flaws does not exist.

To meet that need, we have recommended the creation of a provisional worker program which sort of bridges temporary and permanent immigration, and the creation of an independent commission on immigration, which would set the level of people we need on a regular basis.

Lastly, IRCA failed to have a good defensible implementation program for the worksite. In the absence of a reliable mechanism, employers honored verification documents as presented, but those were frequently fraudulent. The development of E-Verify, along with declines in the system's error rate, I think provides us today a real opportunity of improving E-Verify. But for us to make it mandatory, I think is a big step. Today only 350,000 employers are currently enrolled in E-Verify. That covers only a small percentage of the Nation's 7 million employers and more than 140 million workers. Extending it to all workplaces should be done in stages to show that it is not unduly burdensome to employers and provides protection to lawful workers.

In conclusion, Mr. Chairman, the Nation has built a formidable immigration enforcement machinery in recent years. The enforcement-first policy that has been advanced by many inside and outside the Congress as a condition for looking at larger reform has de facto become the Nation's dominant immigration policy.

Important as this enforcement is, enforcement alone is not sufficient to answer the broad challenges that both legal and illegal immigration pose for our society, our economy, and for America's future. Looking forward, answering these challenges depends not only on effective enforcement but also on enforcing the laws that address both inherent weaknesses in the immigration system and better align our immigration policy with the Nation's economic and labor market needs and future growth.

Thank you for allowing me to testify. I will be willing to answer any questions.

[The prepared statement of Mr. Chishti follows:]





Testimony of

Muzaffar A. Chishti  
Director, Migration Policy Institute's office at  
New York University School of Law

*America's Immigration System: Opportunities for Legal Immigration and Enforcement of  
Laws Against Illegal Immigration*

Before the  
Committee on the Judiciary  
U.S. House of Representatives  
Washington, D.C.

February 5, 2013

Chairman Goodlatte, Ranking Member Conyers and Members of the Committee:

My name is Muzaffar Chishti. I am a lawyer and Director of the Migration Policy Institute's office at New York University School of Law. Thank you for the opportunity to testify before you on the topic of "America's Immigration System: Opportunities for Legal Immigration and the Enforcement of Laws Against Illegal Immigration."

Since enactment of the 1986 Immigration Reform and Control Act (IRCA), which ushered in the current era of immigration control policies, the United States has allocated unprecedented levels of funding, manpower and technology to immigration enforcement. Fueled by frustration over high levels of illegal immigration in the 1990s as well as post 9-11 national security concerns, the past two decades have seen strong and sustained bipartisan support for increased border security and new and enhanced interior immigration enforcement measures. The result has been the creation of a complex, cross-agency immigration enforcement "machinery" that is interconnected in an unprecedented fashion.

This testimony outlines several aspects of the current immigration enforcement regime, including current levels of manpower and funding, as well as outcomes on apprehensions, removals, criminal prosecutions of immigration-related crimes, detention and worksite enforcement. I will then turn to several of the main criticisms associated with IRCA, the United States' last major law combining a legalization program for unauthorized immigrants with increased border security and interior enforcement. I conclude with several recommendations for avoiding the pitfalls of IRCA, should Congress choose to once again take up the issue of comprehensive immigration reform.

## I. Record High Levels of Immigration Enforcement

As the Migration Policy Institute (MPI) found in our recent report, *Immigration Enforcement in the United States: The Rise of a Formidable New Machinery*, by almost any available metric, the level of immigration enforcement in the United States now stands at a record high. In fiscal 2012, spending for the federal government's two main immigration enforcement agencies, U.S. Customs and Border Protection (CBP) and U.S. Immigration and Customs Enforcement (ICE), as well as its primary immigration enforcement technology initiative, the US-VISIT program, reached \$17.9 billion.<sup>1</sup> This amount is nearly 15 times greater than the adjusted budget of the former Immigration and Naturalization Service (INS) in 1986 — and 24 percent greater than the combined fiscal 2012 budgets of all other principal criminal federal law enforcement agencies: the Federal Bureau of Investigation (FBI), Drug Enforcement Administration (DEA), Secret Service, US Marshals Service and Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF).<sup>2</sup>

The Border Patrol, which has received the lion's share of increased funding in recent years, stood at 21,370 agents as of February 2012 — double its size in 2004. In addition, 21,186 full-time employees were staffing the nation's ports of entry as of February 2012. As of that date, the combined staffing of ICE, CBP and US-VISIT had reached over 81,000 full-time employees.

<sup>1</sup> Doris Meissner, Donald M. Kerwin, Muzaffar Chishti, and Claire Bergeron, *Immigration Enforcement in the United States: The Rise of a Formidable Machinery* (Washington, D.C.: Migration Policy Institute, 2013): 21, [www.migrationpolicy.org/pubs/enforcementpillars.pdf](http://www.migrationpolicy.org/pubs/enforcementpillars.pdf).

<sup>2</sup> *Ibid.*

Major new resource infusions have led to notable immigration enforcement results. These include: deportations at record highs; Border Patrol apprehensions at 40-year lows; more non-citizens held in immigration detention over the course of a year than are serving sentences in federal Bureau of Prisons facilities; and criminal prosecutions for immigration-related crimes that now make up more than half of all criminal prosecutions initiated by the federal government.

Thus, from the standpoint of resource allocations, case volumes and enforcement actions, which represent the only publicly available measures of the system's performance, immigration enforcement can be seen to rank as the federal government's highest criminal law enforcement priority.

#### A. *Drop in Apprehension Levels*

Perhaps the most significant immigration enforcement trend of recent years has been the dramatic drop in the number of non-citizens apprehended by the Border Patrol. Between FY 2000 and FY 2012, total apprehensions fell by 78 percent, from a post-IRCA peak of more than 1.6 million in FY 2000 to 365,000 in FY 2012. The most precipitous drop occurred between 2008 and 2011, when apprehensions declined by 53 percent.<sup>3</sup>

As many have pointed out, the use of apprehensions for measuring border effectiveness is problematic, because apprehensions speak only to the number of arrests made of non-citizens crossing the border; they do not provide an estimate of the total size of the illegal flow. However, due in large part to the use of new and improved technologies along the border, the Border Patrol is now increasingly able to develop additional data that captures broader trends in border control effectiveness. Independent analyses of these data, like the apprehensions data, also point to a fundamental change in border control and effectiveness in recent years.

For example, a 2012 report from the Congressional Research Service (CRS), which analyzed data stored in US-VISIT's IDENT database, concluded that the number of unique individuals intercepted by the Border Patrol fell from 880,000 in FY 2000 to 269,000 in FY 2011.<sup>4</sup> CRS also noted a significant decline in the share of those individuals crossing the border who constituted "recidivist" crossers — meaning persons who had previously been caught crossing the border illegally, and who were attempting to cross again. According to the CRS analysis, the prevalence of recidivists as a share of total crossers fell from a peak of 28 percent in FY 2007 to 20 percent in FY 2011.<sup>5</sup>

More recently, the Government Accountability Office (GAO), in a December 2012 report, looked at Border Patrol measurements of "estimated illegal entries," which CBP calculated by using cameras, sensors and radars, as well as agent observation, to combine total apprehensions with an estimated number of "turn-backs" (individuals who cross back into Mexico before the Border Patrol can

<sup>3</sup> Department of Homeland Security (DHS) Office of Immigration Statistics, *2011 Yearbook of Immigration Statistics* (Washington, D.C.: DHS Office of Immigration Statistics, 2012): 95.

[www.dhs.gov/sites/default/files/publications/immigration-statistics/yearbook/2011/ois\\_yb\\_2011.pdf](http://www.dhs.gov/sites/default/files/publications/immigration-statistics/yearbook/2011/ois_yb_2011.pdf).

<sup>4</sup> Marc R. Rosenblum, *Border Security: Immigration Enforcement Between Ports of Entry* (Washington, D.C.: Congressional Research Service, 2012): 25.

[https://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=1883&context=key\\_workplace](https://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=1883&context=key_workplace).

<sup>5</sup> *Ibid.*

apprehend them) and "got-aways" (individuals who proceed into the interior of the United States after unlawfully crossing the border). GAO found that between FY 2006 and FY 2011, apprehensions at the border as well as estimated illegal entries declined significantly in all nine Border Patrol sectors along the U.S.-Mexico border. In the Tucson sector alone, the number of estimated illegal entries decreased by 69 percent during that timeframe, while the number of apprehensions fell by 68 percent.<sup>6</sup>

#### **B. Rise in Formal Orders of Removal**

Increased immigration enforcement has also led to a dramatic increase in the number of non-citizens deported from the country under formal orders of removal, thus barring them from legal re-entry for between five and 20 years. According to the DHS Office of Immigration Statistics (OIS), DHS effectuated a total of 391,953 removals (the formal term for deportations) in FY 2011, more than double the number carried out by the INS in FY 2002 (165,168).<sup>7</sup> Also in FY 2011, for the first time in 70 years, the total number of non-citizens formally removed by DHS pursuant to final orders of removal (391,953) exceeded the number of non-citizens who left the country pursuant to some form of voluntary return (323,542).<sup>8</sup>

Since 1990, more than 4.4 million non-citizens, primarily unauthorized immigrants, have been deported from the United States. During this time frame, 42 percent (1,940,154) of all deportations occurred between 2008 and 2012.<sup>9</sup>

DHS makes extensive use of its administrative authority to remove non-citizens. In FY 2011, more than 60 percent of the removals carried out by DHS occurred without a formal hearing before an immigration judge. Roughly one-third of these removals occurred through the expedited removal process, which allows DHS to issue removal orders immediately for certain individuals who are found near the border or who present fraudulent documents, unless they express a fear of return.<sup>10</sup> An additional 33 percent of removals constituted removal "reinstatements" — old removal orders that are reactivated when a deported non-citizen re-enters the country. Thus, the number of noncitizens removed pursuant to an administrative order exceeds the number ordered removed by immigration judges. In FY 2011, immigration judges issued 161,354 orders of removal, while DHS

<sup>6</sup> Government Accountability Office (GAO), *Border Patrol: Key Elements of New Strategic Plan Not Yet in Place to Inform Border Security Status and Resource Needs* (Washington, D.C.: GAO, 2012):11-12, [www.gao.gov/products/GAO-13-25](http://www.gao.gov/products/GAO-13-25).

<sup>7</sup> DHS Office of Immigration Statistics, *2011 Yearbook of Immigration Statistics*, 101.

<sup>8</sup> *Ibid.* The Office of Immigration Statistics defines a "removal" as the "compulsory and confirmed movement of an inadmissible or deportable alien out of the United States based on an order of removal." A "return" is defined as the "confirmed movement of an inadmissible or deportable alien out of the United States not based on an order of removal."

<sup>9</sup> MPI analysis of data from the DHS Office of Immigration Statistics, *2011 Yearbook of Immigration Statistics*, 101; and Immigration and Customs Enforcement (ICE), "Removal Statistics," [www.ice.gov/removal-statistics/](http://www.ice.gov/removal-statistics/).

<sup>10</sup> John Simanksi and Lesley M. Sapp, *Immigration Enforcement Actions: 2011* (Washington, D.C.: DHS, Office of Immigration Statistics, 2012): 5, [www.dhs.gov/sites/default/files/publications/immigration-statistics/enforcement\\_ar\\_2011.pdf](http://www.dhs.gov/sites/default/files/publications/immigration-statistics/enforcement_ar_2011.pdf).

removed 391,953 people.<sup>11</sup> This current trend is the opposite of what it was in 1996, when immigration judges issued 147,652 orders of removal, while the INS removed just 69,680 people.<sup>12</sup>

DHS has also in recent years prioritized the removal of individuals with criminal convictions: 48 percent of those ordered removed in FY 2011 had criminal convictions, compared with 27 percent in FY 2008, 33 percent in FY 2009 and 44 percent FY in 2010.

With increasing numbers of removals has come increasing numbers of non-citizen detentions. ICE reported detaining 429,247 people in FY 2011 — more than double the number detained by immigration authorities in FY 2001 (204,459), and more people than are serving sentences in federal Bureau of Prisons facilities.<sup>13</sup>

### C. *Increased Prosecutions for Immigration-Related Crimes*

Increased deportations have been accompanied by a parallel trend in increased prosecutions for criminal immigration offenses. While offenses such as re-entry following an order of removal and illegal entry have long been criminal offenses, INS and its successor agencies in DHS historically referred only egregious immigration violators for criminal prosecution. Over the course of the past decade, however, the number of criminal prosecutions for immigration-related violations has grown at an unprecedented rate, helped in part by programs like Operation Streamline, introduced in 2005, which refer a high proportion of illegal border crossers in a given area for criminal prosecution.

Between FY 2000 and FY 2003, prosecutions for immigration-related criminal offenses accounted for between 17 and 21 percent of all federal criminal prosecutions initiated.<sup>14</sup> By FY 2008, and for every fiscal year that followed, immigration prosecutions have accounted for roughly 50 percent of all federal criminal prosecutions filed.<sup>15</sup> The vast majority have been for illegal entry, a criminal misdemeanor, and illegal re-entry following a prior order of removal, a felony. Prosecutions for illegal entry rose more than tenfold between FY 2000 and FY 2011 (from 3,900 to 39,305), while prosecutions for illegal re-entry following a prior order of removal more than quadrupled (from 7,900 to 36,040) during the same time period.<sup>16</sup>

Partly as a result of these increases, the total number of cases referred for criminal prosecution by CBP and ICE now exceeds referrals by all Department of Justice (DOJ) law enforcement agencies combined.<sup>17</sup> CBP alone now refers more cases than does the FBI.<sup>18</sup>

<sup>11</sup> Meissner et. al, *Immigration Enforcement in the United States: The Rise of a Formidable Machinery*, 126.

<sup>12</sup> *Ibid.*

<sup>13</sup> ICE, "Report on ERO Facts and Statistics," December 12, 2011, [www.ice.gov/doclib/foia/reports/ero-facts-and-statistics.pdf](http://www.ice.gov/doclib/foia/reports/ero-facts-and-statistics.pdf); Meissner et. al, *Immigration Enforcement in the United States: The Rise of a Formidable Machinery*, 132.

<sup>14</sup> Transactional Records Access Clearinghouse (TRAC), "Going Deeper" data tool, data on file with the Migration Policy Institute.

<sup>15</sup> *Ibid.*

<sup>16</sup> *Ibid.*

<sup>17</sup> *Ibid.*

<sup>18</sup> *Ibid.*

#### D. *Shifting Worksite Enforcement Policies*

The Obama administration has shifted the focus of worksite enforcement so as to primarily target employers who hire unauthorized immigrants, rather than the workers themselves.<sup>19</sup> While ICE has not publicly released data on the number of employers targeted under this new strategy, an analysis by CRS indicates that the number of final orders for civil monetary penalties issued to employers has increased in recent years (rising from zero orders in FY 2006 to 385 orders in FY 2011), as has the level of administrative fines imposed on employers (which rose from \$0 in 2006 to \$10,463,988 in FY 2011).<sup>20</sup> DHS has reported that since January 2009, ICE has audited more than 8,079 employers, debarred 726 companies and individuals and imposed more than \$87.9 million in financial sanctions.<sup>21</sup>

The number of employers enrolling in E-Verify, the federal government's electronic system for checking employment eligibility of workers, has also increased, from 5,899 in 2005 to 353,822 in 2011.<sup>22</sup> In addition, 20 states now have laws requiring some or all employers to enroll in the E-Verify program.<sup>23</sup> This has broadened the opportunity to test the viability of expanding the E-Verify program, and for continuing to remedy the weaknesses in the system.

#### E. *The Development of an Interconnected System*

Although dramatic changes in Border Patrol apprehensions, levels of removals and criminal prosecutions are perhaps the most obvious signs of strengthened immigration enforcement, an equally important yet less visible change has been the development of new technology and databases that connect and link immigration enforcement agencies, programs and systems, and that also permit screening against criminal law enforcement and intelligence databases.

Database screening now accompanies virtually all key interactions between non-citizens and the federal government — whether in interviews at U.S. consulates overseas or as they fly to the United States, and once here, during the arrival at airports, the processing of immigration benefits, booking into local jails and more. Immigration databases capture biographical information (e.g. name, date of birth and country of origin) and provide information on past entries to the country, immigration status records, criminal history and possible terrorist connections. Increasingly, data systems also

<sup>19</sup> See Memorandum from Marcy A. Forman, Director, ICE Office of Investigations, "Worksite Enforcement Strategy," (to Assistant Director, Deputy Assistant Directors and Special Agents in Charge, ICE, April 30, 2009), [www.ice.gov/doclib/foia/cra\\_policy\\_memos/worksite\\_enforcement\\_strategy4\\_30\\_2009.pdf](http://www.ice.gov/doclib/foia/cra_policy_memos/worksite_enforcement_strategy4_30_2009.pdf).

<sup>20</sup> Andorra Bruno, *Immigration-Related Worksite Enforcement Performance Measures* (Washington, D.C.: Congressional Research Service, 2012): 6, [www.fas.org/sgp/crs/homesecc/R40002.pdf](http://www.fas.org/sgp/crs/homesecc/R40002.pdf).

<sup>21</sup> Statement of Homeland Security Secretary Janet Napolitano before the House Judiciary Committee, hearing on "Oversight of the Department of Homeland Security," July 17, 2012, [www.dhs.gov/news/2012/07/17/written-testimony-dhs-secretary-janet-napolitano-house-committee-judiciary-hearing](http://www.dhs.gov/news/2012/07/17/written-testimony-dhs-secretary-janet-napolitano-house-committee-judiciary-hearing).

<sup>22</sup> U.S. Citizenship and Immigration Services (USCIS), "E-Verify History and Milestones," [www.uscis.gov/portal/site/uscis/menuitem.c91d1c2a3c510ac892243c6a7543f611u/?vgnextoid=84979589c6b76210VgnVCM100000b92ca60aRCRD&vgnextchannel=84979589c6b76210VgnVCM100000b92ca60aRCRD](http://www.uscis.gov/portal/site/uscis/menuitem.c91d1c2a3c510ac892243c6a7543f611u/?vgnextoid=84979589c6b76210VgnVCM100000b92ca60aRCRD&vgnextchannel=84979589c6b76210VgnVCM100000b92ca60aRCRD).

<sup>23</sup> National Conference of State Legislatures, "E-Verify," December 18, 2012, [www.ncsl.org/issues-research/immig/everify-faq.aspx](http://www.ncsl.org/issues-research/immig/everify-faq.aspx).

collect and screen against fingerprints and digital photographs for purposes of identity assurance. Such screening may soon include iris scans, voice matching and facial recognition.

Of particular importance for immigration enforcement purposes is the Automated Biometric Identification System (IDENT), administered by US-VISIT. IDENT contains more than 148 million individual fingerprint records, grows by 10 million new entries per year and reflects more than 2 billion individual entry events.<sup>24</sup> IDENT, which is the world's largest biometric law enforcement database, forms the backbone of the US-VISIT travel screening program, through which the biographic and biometric information of arriving non-citizen visitors is captured and screened against immigration and national security databases. Because IDENT is interoperable with the FBI's Integrated Automated Fingerprint Identification System (IAFIS), which stores criminal history information, officers checking IDENT may also learn whether an arriving non-citizen has a criminal history in the United States.

Another key development that has occurred as a result of IDENT/IAFIS interoperability is the rapid expansion of ICE's Secure Communities program. The program utilizes IDENT and IAFIS to screen the fingerprints of all individuals arrested by state and local law enforcement officers in enrolled jurisdictions for criminal and immigration history. Since the program's launch in seven jurisdictions in October 2008, ICE has rapidly expanded the reach of Secure Communities. As of August 2012, Secure Communities had been activated in more than 3,000 jurisdictions in all 50 states, representing 97 percent of all jurisdictions across the country.<sup>25</sup> The program is expected to be operational in all jurisdictions by March.

#### ***F. Remaining Weaknesses in the Current Immigration Enforcement Regime***

While the bulwark of a modern, well-resourced, multi-layered immigration enforcement system is now fundamentally in place, there are several key areas where additional improvements are needed.

The first is the E-Verify program, DHS's electronic verification system for confirming the work authorization of new employees. Since 2007, U.S. Citizenship and Immigration Services (USCIS) has made a number of significant updates to the E-Verify system. These include requiring employers to re-check the information that they have entered for data-entry errors, automatic checks against USCIS' naturalization records database and against passport databases, the collection of driver's license information and new fields that record additional information collected from foreign passports. Recent reports also suggest that substantial progress has been made in reducing E-Verify error rates. According to the GAO, DHS reduced the percentage of cases receiving initial tentative non-confirmation notices from 8 percent during June 2004- March 2007 to 2.6 percent in FY 2009.<sup>26</sup> More recent USCIS statistics indicate that in FY 2011, 98.3 percent of the cases submitted through

<sup>24</sup> Meissner et. al, *Immigration Enforcement in the United States: The Rise of a Formidable Machinery*, 71.

<sup>25</sup> ICE, "Activated Jurisdictions," [www.ice.gov/doclib/secure-communities/pdf/sc-activated2.pdf](http://www.ice.gov/doclib/secure-communities/pdf/sc-activated2.pdf).

<sup>26</sup> Richard M. Stana, *Employment Verification: Federal Agencies Have Taken Steps to Improve E-Verify, But Significant Challenges Remain* (Washington, DC: Government Accountability Office, 2010): 16, [www.gao.gov/new.items/d11146.pdf](http://www.gao.gov/new.items/d11146.pdf).

E-Verify were automatically confirmed as work authorized, and just 0.28 percent were erroneously initially flagged as not authorized to work.<sup>27</sup>

Nevertheless, other reports suggest that E-Verify, much like the I-9 verification system overall, often fails to identify unauthorized workers who present the identification documents of other, authorized workers. Westat, an independent consulting firm hired by DHS to evaluate E-Verify, estimated that between April – June 2008, 54 percent of the unauthorized workers who submitted biographic information through E-Verify were incorrectly confirmed as work authorized.<sup>28</sup> While USCIS has introduced a photo matching tool in hopes of combating fraud within the program, the tool's effectiveness is limited by the fact that it can only be used for certain types of documents. The tool's ultimate effectiveness also depends on the good-faith efforts of employers to certify that the photo on an identity document presented by a worker matches the stored digital version that appears in the E-Verify system.<sup>29</sup>

A second area of concern is DHS's limited ability to determine when lawfully admitted individuals have overstayed their authorized periods of admission. There have been two authoritative studies on visa overstays, one done by INS in 1997 and a second by the Pew Hispanic Center in 2006.<sup>30</sup> These studies indicated that up to 40-50 percent of the unauthorized population is comprised of individuals who entered the United States lawfully but overstayed their authorized periods of admission. Estimates of the visa overstay population have not been updated since the recession.

Moreover, despite congressional mandates dating to 1996 that require DHS to implement exit controls to verify that individuals entering the country with temporary visas leave before their authorized periods of admission expire, DHS has yet to launch a biometric exit verification system. Preliminary testing of exit verification programs in 2009 was labeled of limited value by GAO because the programs did not define standards for gauging the pilot programs' performance, and biometric screening was frequently suspended to avoid departure delays.<sup>31</sup>

Finally, the physical infrastructure needs at land ports of entry (POEs) have not kept pace with advances in documentation and screening developments. Many land POEs are now equipped with technology that permits 100 percent license plate reading and document scanning. However, when traffic delays exceed 60 minutes, inspectors may "flush" traffic through, pulling aside only obvious high-risk crossers.<sup>32</sup> One underlying reason for the lack of infrastructure development may be the fact that funding streams for land port infrastructure come not from the main DHS budget, which has received record high levels of funding, but rather from the budget for the General Services Administration (GSA), which has seen more modest resource increases.

<sup>27</sup> USCIS, "E-Verify Statistics,"

[www.uscis.gov/portal/site/uscis/menuitem.cb1d1c2a3e5b9ac89243c6a754386d1a/?vgnextoid=7c579589cdb76210VgnVCM100000b92ca60aRCRD&vgnextchannel=7c579589cdb76210VgnVCM100000b92ca60aRCRD](http://www.uscis.gov/portal/site/uscis/menuitem.cb1d1c2a3e5b9ac89243c6a754386d1a/?vgnextoid=7c579589cdb76210VgnVCM100000b92ca60aRCRD&vgnextchannel=7c579589cdb76210VgnVCM100000b92ca60aRCRD)

<sup>28</sup> Westat, *Findings of the E-Verify Program Evaluation* (Rockville, MD: Westat, 2009): 117,

[www.uscis.gov/USCIS/E-Verify/E-Verify/Final%20E-Verify%20Report%2012-16-09\\_2.pdf](http://www.uscis.gov/USCIS/E-Verify/E-Verify/Final%20E-Verify%20Report%2012-16-09_2.pdf)

<sup>29</sup> Marc R. Rosenblum, *E-Verify: Strengths, Weaknesses, and Proposals for Reform* (Washington, D.C.: Migration Policy Institute, 2011): 9, [www.migrationpolicy.org/pubs/e-verify-insight.pdf](http://www.migrationpolicy.org/pubs/e-verify-insight.pdf)

<sup>30</sup> Pew Hispanic Center, *Modes of Entry for the Unauthorized Migrant Population* (Washington, D.C.: Pew Hispanic Center, 2006), <http://pewhispanic.org/files/factsheets/19.pdf>

<sup>31</sup> GAO, *Homeland Security: US-VISIT Pilot Options Offer Limited Understanding of Air Exit Options* (Washington, D.C.: GAO, 2010): 4-5, [www.gao.gov/products/GAO-10-860](http://www.gao.gov/products/GAO-10-860).

<sup>32</sup> Meissner et al., *Immigration Enforcement in the United States: The Rise of a Formidable New Machinery*, 40.



## II. Key Problems Associated with the Last Comprehensive Immigration Reform Effort — the Immigration Reform and Control Act

High levels of resources, manpower and technology devoted to border and interior enforcement have resulted in an historic transformation of the country's immigration enforcement system. Nevertheless, concerns persist that a legalization program may strain enforcement resources and lead to future increases in illegal immigration. Some of this concern stems from perceived weaknesses in the 1986 Immigration Reform and Control Act (IRCA), which combined a legalization program with increased border security and workplace enforcement.

For the remainder of my testimony, I would like to describe three of the key weaknesses associated with IRCA, as well as offer recommendations for avoiding similar problems in the current environment.

### A. Failure to Deal with the Entire Unauthorized Population

The legalization component of IRCA was largely seen as a successful program. More than 2.7 million formerly unauthorized immigrants — three-quarters of the estimated total eligible population — became lawful permanent residents through the two legalization programs enacted under IRCA.<sup>33</sup>

IRCA did not, however, wipe the slate clean with regards to illegal immigration, as the law was intended to do. The number of unauthorized immigrants rose from an estimated 4 million in 1986, pre-IRCA, to an estimated 12 million in 2007, before the onset of the recession. Illegal crossings also increased, adding an estimated 500,000 individuals per year to the size of the resident unauthorized population through the 1990s until the mid-2000s.<sup>34</sup>

A key drawback of IRCA's legalization component was that the law disqualified those who had arrived in the United States after January 1, 1982. Thus, at the time of the law's implementation in 1987, anyone who had arrived in the United States during the past five years was automatically excluded from the legalization program and remained in unauthorized status. Additionally, IRCA did not provide an opportunity for immediate family members of the newly legalized population to obtain lawful status. The combination of these two factors left large numbers of people in mixed-status families, where one member of the family gained lawful immigration status, while another remained unauthorized. And when newly legalized IRCA beneficiaries filed petitions for their relatives in existing family preference categories, the result was enormous increases in the backlogs

<sup>33</sup> The Immigration Reform and Control Act created two separate legalization programs for unauthorized immigrants: a general legalization program for unauthorized individuals who had been continuously present in the United States since January 1, 1982, and a second program, with more generous provisions, for individuals performing seasonal agricultural work. See Betsy Cooper and Kevin O'Neil, *Lessons from the Immigration Reform and Control Act of 1986* (Washington, DC: Migration Policy Institute, 2005), [www.migrationpolicy.org/pubs/PolicyBrief\\_No3\\_Aug05.pdf](http://www.migrationpolicy.org/pubs/PolicyBrief_No3_Aug05.pdf).

<sup>34</sup> Jeffrey Passel, *Size and Characteristics of the Unauthorized Migrant Population in the U.S.* (Washington, D.C.: Pew Hispanic Center, 2006), [www.pewhispanic.org/2006/03/07/size-and-characteristics-of-the-unauthorized-migrant-population-in-the-us/](http://www.pewhispanic.org/2006/03/07/size-and-characteristics-of-the-unauthorized-migrant-population-in-the-us/).

for family-sponsored immigrants, and wait times that spanned years, or even decades. All of these factors created the nucleus of a sizeable post-1986 unauthorized population.

For any new legalization program to be successful, it should be as inclusive as possible. The law should not disqualify large sections of the unauthorized population, as doing so both invites fraud and fails to address the full scope of the problem.

#### ***B. Failure to Address Future Flows***

IRCA's major failure was its narrow focus. By addressing only issues of illegal immigration, it failed to anticipate or make provisions for future labor needs in the United States, especially in the low-skilled labor market. Without such provisions, hundreds of thousands of individuals who were drawn to the U.S. job market in the late 1980s and mid-1990s sought to enter the country illegally.

Demand for workers in low-skilled jobs did fall dramatically with the onset of the recession in 2008. However, as the economy recovers, pressures for low-skilled immigration can be expected to rise. New immigration reform measures should provide appropriate mechanisms for dealing with increased labor demand.

One notable lesson from the aftermath of IRCA is that IRCA, too, was originally crafted during years of economic downturn. By the time of the law's implementation, however, the economy had recovered, labor demands had increased and a lack of available legal channels for low-skilled workers spurred increased illegal immigration. Demographic and economic changes in Mexico, combined with much improved enforcement measures in the U.S. all point to a decreased tendency for illegal migration in the current era.

At present, both temporary and permanent work-related immigration channels for low-skilled workers are exceedingly limited. While the H-2A and H-2B temporary visa programs allow employers to sponsor foreign workers for temporary or seasonal work, there are almost no permanent visas — fewer than 5,000 — available for ongoing, non-temporary positions that require less than a bachelor's degree or two years of experience. In recent years, and even during the middle of the recession, employer demand for H-2B visa holders far exceeded the annual statutory cap of 66,000 visas. In addition, employers have voiced concerns over the arduous nature of the H-2A and H-2B sponsorship process, which may discourage widespread use of the program.

The rules governing any new visa channels for low-skilled immigrants must balance the need to make legal work-based immigration sufficiently attractive to employers with the need to maintain adequate wage and working conditions for low-skilled immigrants and the U.S. workers working alongside them. Lawmakers will be forced to confront a variety of issues related to this balance, including whether to create a new visa that allows for the admission of low-skilled workers in non-temporary positions, whether low-skilled visas should be portable from one employer to another and whether to allow all or some portion of individuals admitted on such a visa to adjust status to become lawful permanent residents.

A number of proposals for managing future flows have been advanced. The one to which I would like to draw the committee's attention calls for establishing a Standing Commission on Labor Markets and Immigration. Such a commission was proposed by the Independent Task Force on Immigration and America's Future, which was convened by the Migration Policy Institute, and has

been endorsed by other distinguished groups and individuals.<sup>35</sup> This nonpartisan commission - staffed by labor and immigration experts - would be responsible for making recommendations to Congress every year or two for adjusting immigration levels, based on analyses of labor market needs, unemployment patterns, and changing economic and demographic trends.

For those admitted to the U.S. in occupations that are not seasonal or temporary in nature, the Task Force further recommended creating a new kind of visa, known as a provisional worker visa.<sup>36</sup> The provisional worker visa would bridge the frequently artificial distinction between temporary and permanent immigration and build a system that is more closely aligned with how migration flows and labor markets work in practice. It would respond to the needs of employers and protect the interests both of U.S. and foreign workers. The number of provisional visa workers admitted every year would be based on the recommendations made by the Standing Commission to Congress.

Provisional workers in all occupations would be allowed to enter the country, sponsored by employers, for two renewable three-year periods. But workers would be free to change employers after an initial period. They would be allowed to be accompanied by their immediate family members. Workers would be guaranteed labor rights and protections on par with U.S. workers, including the right to bring legal actions against employers. Provisional workers could return to their countries of origin after working for a period of time and return to the U.S. at a later time for another temporary period, thus potentially promoting greater circular migration. Or, in cases where over time they met a set of conditions that include a track record of employment, future employment opportunities and the acquisition of language skills, they could become eligible to adjust to permanent residence.

Employers of provisional workers would participate in a well-regulated labor attestation process. Employers who consistently comply with labor and immigration laws could be pre-certified for sponsoring workers, a privilege they would lose if found non-compliant. Employers would contribute to a fund which could be used to meet a variety of immigration and workplace enhancement capacity building needs.

### *C. Failure to Provide Employers with a Reliable Means of Determining Employment Eligibility*

One final failure of IRCA's design and implementation was the absence of a reliable mechanism for employers to verify the authenticity of identification documents presented by would-be employees. Without a way to verify these documents, employers found it easy to comply with the letter of the law, and unauthorized workers found it easy to procure false and fraudulent documents which indicated that they were work authorized.

The development of E-Verify, along with the earlier mentioned improvements in the system's technology, provides a promising new option for tackling part of this problem. The current version

<sup>35</sup> Doris Meissner, Deborah W. Meyers, Demetrios G. Papademetriou and Michael Fix, *Immigration and America's Future: A New Chapter*, Report of the Independent Task Force on Immigration and America's Future (Washington, D.C.: Migration Policy Institute, 2006), [www.migrationpolicy.org/tiffaf/finalreport.pdf](http://www.migrationpolicy.org/tiffaf/finalreport.pdf).

<sup>36</sup> Demetrios G. Papademetriou, Doris Meissner, Marc R. Rosenblum and Madeleine Sumption, *Aligning Temporary Immigration Visas with Labor Market Needs: The Case for a New System of Provisional Visas* (Washington, D.C.: Migration Policy Institute, 2009), [www.migrationpolicy.org/pubs/provisional\\_visas.pdf](http://www.migrationpolicy.org/pubs/provisional_visas.pdf).

of E-Verify, however, requires significant improvements in its ability to verify the true identity of job applicants. A good place to start would be to test a variety of options involving biometric scanning, more secure documents, and pre-verified personal identification numbers (PIN numbers) assigned to and managed by individual workers.<sup>37</sup> These should be tested in the field alongside the current system to determine the best approach for improving E-Verify.

Any expansion of the program should also be accompanied by its close monitoring to ensure that it strengthens due process protections and compensates workers when system errors result in the wrongful termination of lawful workers. There should also be monitoring to ensure that the system does not result in discrimination against foreign-looking or foreign-sounding employees, which has been a source of concern in the implementation of the program in the past.

While the time to expand the electronic employment verification system has arrived, making it mandatory is a major undertaking and has to be done cautiously. Even though more than 350,000 employers are currently enrolled in E-Verify, the system covers only a small percentage of the nation's more than 7 million employers and more than 140 million workers.

Extending E-Verify will require a major commitment by employers, workers' representatives and the government. It requires a realistic timeline. It would be best to phase it in over several years. Universal enrollment in the program could depend, for example, on certification by the Homeland Security Secretary that mandatory participation will not cause undue burdens on employers or lead to violations of worker protections. DHS would be wise to empanel a group of employer and worker representatives and other stakeholders to help it monitor and advise on the progress of the E-Verify program during various stages of enrollment.

A mandatory electronic verification system will ultimately be successful only if it is part of larger immigration reform. The critical elements of that reform would have to include a broad legalization program for the current pool of unauthorized immigrants and the creation of a new, expanded, employment-based immigration stream for future flows. These two elements are critical to reducing the pool of unauthorized workers in the US labor market—a critical foundation for a successful workplace verification and enforcement effort.

### III. Conclusion

The nation has built a formidable immigration enforcement machinery in recent years. The “enforcement-first” policy that has been advocated by many inside and outside of Congress as a condition for considering broader immigration reform has de facto become the nation's dominant immigration policy.

Important as this enforcement effort is, enforcement alone is not sufficient to answer the broad challenges that both legal and illegal immigration pose for our society, our economy and for America's future. Looking forward, answering those challenges depends not only on effective enforcement, but also on enforceable laws that address both inherent weaknesses in the immigration system and better align our immigration policy with the nation's economic and labor market needs and future growth and well-being.

<sup>37</sup> Doris Meissner and Marc R. Rosenblum, *The Next Generation of E-Verify: Getting Employment Verification Right* (Washington, D.C.: Migration Policy Institute, 2009), [www.migrationpolicy.org/pubs/verification\\_paper-071709.pdf](http://www.migrationpolicy.org/pubs/verification_paper-071709.pdf).

Mr. BACHUS. Thank you.  
 Ms. Wood, I think your testimony, could I summarize part of it, is that our enforcement mechanism is failing?  
 Ms. WOOD. Yes, I think that—I think that we have not done all we need to do, and I think the long period of inconsistent enforcement has caused people to build up, who are here illegally, to build

up very sympathetic equities and put us in a bad position. So if we are going to do this again, we have got to get enforcement right and get it right from the get go; otherwise, we will be in the same position.

Mr. BACHUS. You know, I have talked to people in the construction industry that have bid against companies that were using or companies that were hiring large numbers of illegal workers, and sometimes bidding jobs for half million dollars less because of their savings on their wages alone. And of course, that undermines what our own citizens who work in the trades can make.

And you mentioned \$10,000 as a fine, and I can tell you that I actually saw that about 2 years ago, in Alabama, a firm that had a several million dollar construction contract was, about a third of their employees were illegal, and they were fined \$10,000; although the profit from that job was probably close to a million dollars. So that, obviously, so many of the fines are sort of a slap on the wrist and just a part of doing business. Would that be correct?

Ms. WOOD. Yeah, I think that is the case. I think what the civil fines have done is broaden awareness, and so I think early on, in the Administration, you know, we did see increased awareness from companies across a broad spectrum of industries. And construction, you know, historically, has had a lot of problems in this area, but I think now, as a number of employers have gone through the audit process and end up with very low fines, they think, well gee, it is just easier to keep going as is versus getting on to E-Verify, paying attention, fully training our workers and so on.

You know, but I do think shifting the burden back to the government would make a big difference because you are asking these, your document clerks, who are often earning \$10, or \$11 an hour to, you know, look at, does this driver's license and Social Security card look good? It went through E-Verify okay, but do I think it is good? You know, that is a lot to ask, and the government should be doing this versus the employers.

Mr. BACHUS. I see where it says, one of the reasons that ICE increased worksite enforcement efforts under your leadership to give the American people the confidence that enforcement component of any proposed comprehensive immigration reform would in fact be implemented. What can Congress do to best assure that that continues, or that that is the case?

Ms. WOOD. It is so that we have confidence in our enforcement system.

Mr. BACHUS. Uh-huh.

Ms. WOOD. I think to look at our system overall and see kind of, how is it funded? Is it funded appropriately? Do we have the tools and technology we need, not only at the border but in the interior? You know, do things like an exit system, you know, things like that. What are we doing to make sure that we have the tools that we need?

ICE has about 7,000 agents. That is fewer than many city police departments. And so with all respect to the great work done with MPI, we have a huge, huge, ICE has a huge, huge task. And so, you know, how can we give them the tools that they need?

And then I think looking at, are there inefficiencies in the removal system? It shouldn't take 2 years to get, you know, a hearing

date in California to determine whether or not I am in the country illegally. You know, the system should move more quickly.

There are things that we can do including, you know, potentially expanding the use of voluntary returns. Expanding the use of expedited removal in other cases, you know, I think would also make a difference and, you know, build confidence.

Mr. BACHUS. All right.

Mr. Crane, your testimony was fascinating, and part of it was that you actually have been given instructions and you are a member of—you are a representative of an enforcement officers union, and is that a widespread practice for them to verbally tell you just to assume that everyone has a high school diploma or qualifies to be here?

Mr. CRANE. Yes, sir, I mean, to some degree especially, and I have testified about this before, over the last 4 years it has been a day-to-day roller coaster for us about who we can and cannot arrest. And for the most part, those instructions do come verbally because they know that what they are doing isn't right, and they don't want the American public to know what they are doing.

Mr. BACHUS. And those instructions are basically, don't make arrests?

Mr. CRANE. Absolutely. And you know, a lot of people don't know this, but ICE agents, at least in the group that I work with, that handle the immigration issues, we are not allowed to go out and make arrests on the street. If I am on duty and I walk into a restaurant or something and I see an immigration violation in front of me, I can't do anything about that. If I do, I will be disciplined for it, and I will be disciplined for it again, until I lose my job. And that is how it works.

And people don't understand that if we are ever going to fix this immigration problem, we have to empower these officers to do their jobs. It is all about politics. They don't want something to be in the newspapers.

Mr. BACHUS. Tell me a little about your lawsuit again, that—the basis of the lawsuit that you and other ICE agents filed against Homeland Security in the Federal District Court in Texas?

Mr. CRANE. Well, just basically, it is a lawsuit that says the Federal Government won't let us do our jobs. They won't let us enforce the laws that are on the books, and they have put us in this, you know, between a rock and a hard spot, basically, to where we can either enforce the law and be disciplined and lose our jobs, or we can ignore the law.

So we tried to work with the Administration on this. We tried to work at the folks up at ICE and DHS, and they wouldn't work with us, and we had no other choice but to file a lawsuit.

Mr. BACHUS. Okay, thank you.

Ms. Lofgren.

Ms. LOFGREN. Thanks to this panel.

I agree that the workplace fines ought to be increased after we reform the law, so it works. And I think it has been stated that people who cheat, you know, end up getting an advantage—excuse me—over people who don't cheat, and that is not right. So—excuse me—I think that is something that we ought to come together to solve on a bipartisan basis.

I would note, however, that the amount of fines are way up. Ten million may not be a lot, but in 2006, the amount of fines was zero. So it is better than it was and needs to be improved.

I am also interested, Mr. Chishti, on—your institute has done scholarly work on that, on this whole issue.

Mr. CHISHTI. Thank you.

Ms. LOFGREN. And that is hard to get information that isn't politicized, in a way, because you just get the numbers. And one of the questions that we have had here today, is why didn't the IRCA work? And I think the assumption is that it was lack of enforcement, and in fact, sometimes enforcement was lacking, but that is not currently something we are seeing. And many of us think part of the problem, just as Dr. Land said, was that we didn't have any way for people who wanted to legitimately work to come in. I mean, people say, get to the back of the line. There is no line to get into. And so that I think is one of the major defects.

Some say, however, that the H-2A program was in and of itself sufficient to deal with all of the future flow issues. Do you think that is correct?

Mr. CHISHTI. I mean, I cut my teeth in the 1986 law, and I know for sure that no one that I know of talked that the H-2A program or the replenishment agricultural worker program that was going to follow it was supposed to be the comprehensive response to our future labor market needs. That was confined to the needs of the agricultural sector. And as you know full well, Congresswoman, not a single person was admitted under the law's program.

The real weakness of IRCA was that it was too narrow. It just focused on the issues of illegal immigration, and we were in a bit of a recession at the time in 1986. But soon after IRCA was signed by President Reagan, there was a post-recession period, when there was significant demand for all sectors of employment in the United States, and there were no legal channels for people to come. But the supply and demand matched post-1986, but instead of using legal channels, the workers that we needed here were increasingly using illegal channels to meet the demand, and that is precisely the nucleus of our present 11 million unauthorized population.

Ms. LOFGREN. So now we have a mess on our hands, and the question is, I really think, how do we clean up the mess we have found ourselves in and then create a system so no future mess is created for some future Congress to have to deal with? And I think that is the challenge that we face.

Part of that is how we treat employment-based immigration. I think there is broad agreement that somebody that has just gotten their Ph.D. in electrical engineering is going to go out and create companies and the like, but there are plenty of parts of the employment sector where we know, because there have been tests, because of enforcement, that Americans are not lining up to do the work. I mean, for example, the easiest example is migrant farm work. I mean, when you do enforcement actions, farmers end up plowing over their fields.

I think what we have learned is that after IRCA was enacted, with its reliance on employer sanctions, there were evasive tactics taken. For example, employers created so-called contract employers, where they used labor contractors, or other middle men. Do

you have advice for us, as we craft future flow requirements, to avoid, you know, tricks to avoid employers going to those evasions so that we have a system that works for America and that is enforceable and will not lead to evasion?

Mr. CHISHTI. Yeah, thank you so much. And I think it is also the kind of question that we saw on the first panel today, Congressman Labrador's point about what did we do wrong in 1986 and why can't we be in the same place? I mean, part of the reason is exactly the response to your question, is that we didn't have laws that matched reality. And we know one thing about law making: If you have laws that do not correspond to reality, they do not work. We enacted laws in 1986 to clean up the slate. We thought about the people who wanted to be legalized, but we created no mechanism for future flows. We created an employment verification system but put huge amounts of loopholes in it, including the loopholes that the Congresswoman just talked about, where people, employers, were able to circumvent the requirement of E-Verify by hiring contractors, contract workers, by hiring, you know, people off the books.

Now, if we are going to tackle the same problem this year, we have to learn from 1986. First, we have to build robust new streams of people to come exactly to meet the real labor market needs of the United States, which I think, you know, is the whole spectrum of our occupations, from high end to the low end. And they should be measured on the basis of real labor market needs and America's needs for economic growth.

On the E-Verify, clearly, there are good employers and bad employers. The good employers are following E-Verify. The bad employers, I would suggest to you, Congresswoman, are exactly the same who violate the sanctions, but also those who violate our tax laws, who violate the labor protection laws. The important thing is to go after those employers, and one of the things I would recommend is that you build certain amount of labor protections in your next round of legislation.

It has sort of been the stepchild in this debate so far: about labor protections. And I would suggest that the least we have to do is that an employer should not be able to invoke the defense of employer sanction when they are violating labor laws of the country. We all know the Supreme Court issued a major decision on that case in *Sure-Tan*, whereby undocumented workers were not found eligible for back pay. All that does is provide incentive for employers to hire undocumented workers. That kind of incentive has to be taken away in our legal mechanism, and I would say Congress should legislatively try to remedy *Sure-Tan*.\*

Mr. BACHUS. Thank you.

Mr. King.

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\*Mr. Chisti revised his testimony as follows:

It has sort of been the stepchild in this debate so far: about labor protections. And I would suggest that the least we have to do is that an employer should not be able to invoke the defense of employer sanction when they are violating labor laws of the country. We all know the Supreme Court issued a major decision on that case in *Hoffman Plastic*, whereby undocumented workers were not found eligible for back pay. All that does is provide incentive for employers to hire undocumented workers. That kind of incentive has to be taken away in our legal mechanism, and I would say Congress should legislatively try to remedy *Hoffman Plastic*.



Mr. KING. Thank you, Mr. Chairman.

I thank the witnesses for your testimony. It raises a series of questions for me, and listening to Mr. Chishti and your testimony, I would be curious if you talked about the violation of our tax laws and our labor laws. And I am curious if you believe that employers should be able to deduct as a business expense wages and benefits that they pay to people that cannot lawfully work in the United States.

Mr. CHISHTI. Well, I think with respect to taxation, all laws should be uniformly applied. If they are hiring people, whether they are hiring unauthorized or whether they are hiring people who are lawfully here, they should be subjected to the same tax regime.

Mr. KING. Okay, so the same tax regime?

Mr. CHISHTI. Otherwise, all you are doing, Congressman, is creating incentives to hire unauthorized.

Mr. KING. So, Congress should clarify current law that it is unlawful to knowingly and willfully hire people that can't lawfully work in the United States, and that those expenses paid as wages and benefits would not be deductible. If we did that and brought the IRS into this equation to help enforce the rule of law, wouldn't that be constructive, even to your testimony?

Mr. CHISHTI. If it does not create a further incentive for employers to hire unauthorized people, I think we should look at those alternatives.

Mr. KING. And if we gave the employers safe harbor if they used E-Verify, then we wouldn't have it mandatory, as I think you have suggested we should not, that would allow it to be voluntary and the employer could determine whether he wanted to take the IRS risk, could he not?

Mr. CHISHTI. Congressman, I am sorry.

Mr. KING. I wanted to give you an opportunity to examine this more thoroughly, but I imagine you will now at this point.

And I wanted to point out, or ask the question of Mr. Crane, and that being, I just listened to the gentlelady from California. She said, after we reform the law so it that it works. That causes me to ask you this question: If we had enforced the laws that exist, would it work?

Mr. CRANE. You are actually kind reading my mind right now. I was sitting here pondering that idea that I don't think we really even know that the laws that we have on the books right now weren't good laws. We just never enforce them. Until we decide that we are going to enforce whatever laws we have or make in the future, it is never going to work.

Mr. KING. Thank you.

And Ms. Wood, welcome back. I appreciate your testimony. And I heard Mr. Chishti talk about accumulated data of millions of people who were deported. When you hear that testimony, do you think of people that were—that left the United States and actually left the United States, or are they just adjudicated for deportation? Did you break down that data in your own mind as to what really happens with the population that he references in his testimony?

Ms. WOOD. Well, I can't speak specifically to the numbers he provided in his testimony, but a big problem is, a lot of times people

are deported, and they don't go home and so the number of absconders, you know, as you know, went up to over 500,000 in 2006. And, you know, the question is, are we then looking for those individuals? Are we arresting them, and are we ordering them to leave the country?

And in some cases, they may have very substantial equity so there may be very sad stories, or are we telling those people now they have a pass? And that is where I can't break down his numbers to address which situations are involved there.

Mr. KING. But we might hear the term "deportation" and think of it in terms of it is always something that is physically forced, when actually, it is an adjudication process that might not cause a person to go anywhere except outside the courtroom. Is that true?

Ms. WOOD. Yeah, and someone can be ordered deported and then stay in the United States, yes. And I don't know from his statistics which he is talking about.

Mr. KING. I just remembered. I hate to go back on this, but I got my curiosity answered on that, and I just recall some data at one of the ports of entry where they asked them to go back and run the fingerprint data to see, and there was one individual that had reentered—or had reentered 27 times back into the United States. So it isn't always a situation that something gets solved here either.

Ms. WOOD. That is exactly right. And you know, sometimes the Border Patrol would deport, you know, somebody or apprehend somebody 10 or 11 times in one night. It would all count toward apprehensions. So a lot of the numbers and statistics that the agencies use, you have to take that into account.

Mr. KING. It might be more frustrating to be a Border Patrol agent than an ICE agent then, rhetorically.

Ms. WOOD. I don't know about that. I think ICE agents have an incredibly hard job.

Mr. KING. I agree. And I appreciate the work of all of our agents. But I wanted to turn in the seconds I have to Ms. Vaughn and ask you that, we have an E-Verify program now and a proposal to make it permanent that would not allow an employer to use E-Verify to check their current or legacy employees. And would you care to comment on that philosophy? And mine is, I think an employer should be able to at least voluntarily use E-Verify to verify their current employees as well as new hires. And I believe they also should be able to use E-Verify on prospective hires with a legitimate job offer.

Ms. VAUGHN. From what I have heard about from a number of employers who are interested in using E-Verify, they would very much like—especially staffing agencies. They say that it, you know, it creates some difficulties for them to not be able to be sure if they can send someone out to a workplace while waiting for the E-Verify process to play out. So they would like to be able to use it prospectively.

And I think, yes, ultimately, we should build a system that it is phased in so that, at some point, employers are able to go through their entire payroll and vet all of their existing employees.

But there is already a system in place that allows them to do that, and that is SSNVS. A number of government agencies around

the country have mandated use of that program, and they have, frankly, been quite surprised at what they have found of the number of people already on the payroll who shouldn't be.

Mr. KING. I appreciate you putting that into the record, thank you.

Mr. Chairman, I yield back.

Mr. BACHUS. Thank you, Mr. King.

Ms. Jackson. Sheila Jackson Lee.

Ms. JACKSON LEE. Thank you very much, Mr. Chairman.

First of all, I want to thank Mr. Crane for his service, and I want to thank also all of you for being here today. And I want to again ask the Chairman if I might put into the record the entire article, "Janet Napolitano, DHS Secretary, Touts Immigration Enforcement at Mexican Border."

Mr. BACHUS. Without objection.

[The information referred to follows:]



February 5, 2013

HUFF POST POLITICS

## Janet Napolitano, DHS Secretary, Touts Immigration Enforcement At Mexican Border

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By **ELIOTT SPAGAT, THE ASSOCIATED PRESS**

**SAN DIEGO** — U.S. Homeland Security Secretary Janet Napolitano toured the Mexico border Monday to trumpet increased enforcement as she campaigned for an overhaul of immigration laws.

The former Arizona governor highlighted "incredible" spending on border enforcement, 40-year lows in "illegal immigration numbers" and relatively low violent crime rates in major border cities like San Diego and El Paso, Texas.

"What we have seen now compared to 20 years ago is like the difference between a rocket ship and a horse and buggy," Napolitano said at a news conference after a helicopter tour.

Napolitano continues her border tour Tuesday in El Paso, while the House Judiciary Committee holds a hearing on immigration reform. The House panel includes several immigration hawks.

A bipartisan group of senators wants assurances on border security as Congress considers proposals that would bring the biggest changes to immigration law in nearly three decades. Last week, a bipartisan group of senators released a blueprint that would bring a path to citizenship for people living in the U.S. without documents, but they demanded assurances on border security first.

President Barack Obama does not endorse such a linkage in his own immigration proposal. But Republicans in the Senate group, including John McCain of Arizona and Marco Rubio of Florida, say they cannot support an immigration bill that doesn't make a pathway to citizenship conditional on a secure border.

"I believe the border is secure. I believe the border's a safe border. That's not to say everything is 100 percent," Napolitano said.

Peter Nunez, chairman of the Center for Immigration Studies, which advocates a restrictive immigration policy, acknowledged substantial increases in border spending over 40 years but said it was impossible to declare whether the border is secure because there are no easy metrics.

"How are you going to define secure?" said Nunez, a former U.S. attorney in San Diego. "It's a subjective thing. It's just nonsense."

The Border Patrol made 356,873 apprehensions on the Mexican border during the 2012 fiscal year, up 8.9 percent from the previous year but still hovering near 40-year-lows. U.S. Customs and Border Protection's budget nearly doubled to \$11.7 billion in 2012 from \$6.3 billion in 2005, according to figures from the Migration Policy Institute.

Ms. JACKSON LEE. And again, those numbers indicate 356,873 apprehensions on the Mexican border in 2012, up almost 9 percent. And I thank the Chairman for that.

I just wanted to hear from Mr. Crane. I did not hear, you said you had to sue the Federal Government for what reason?

Mr. CRANE. I am sorry, ma'am, I didn't hear what you said.

Ms. JACKSON LEE. You had to sue the Federal Government for what reason, I am sorry?

Mr. CRANE. Essentially because the agency has told us that you can't enforce U.S. immigration law, and if you attempt to enforce that law, we will discipline you, basically repeatedly, until you lose your job, until you are terminated.

Ms. JACKSON LEE. And is that dealing with the deferred adjudication for DREAM Act children, that order that came out?

Mr. CRANE. Adjudication for what, ma'am?

Ms. JACKSON LEE. Did that deal specifically with the deferred adjudication for the DREAM Act children? Is that the particular order you are speaking of.

Mr. CRANE. We are speaking in the lawsuit about the prosecutorial discretion memorandum as well as DACA.

Ms. JACKSON LEE. And that is a prioritization that you focus more on those who would do us harm in deportation as opposed to separating families. That was the intent of that order, as I recollect, but that is the order that you speak of, where you were asked to prioritize the deportations?

Mr. CRANE. I guess if you want to put it that way, like I gave in my testimony earlier, we are actually going into jails and applying it to adult males. We don't go to schools. ICE agents can't go to schools. We don't mess with kids. We are going into jails, and we are applying this rule, or this new policy to criminals, and we are taking their word for it and not even requiring them to provide proof that they even qualify for the policy itself.

Ms. JACKSON LEE. If we pass comprehensive immigration reform and we established once and for all the parameters of the law, and it was the law, that would be more helpful to law enforcement such as yourself, is that not correct?

Mr. CRANE. I guess in theory it would be, ma'am. I guess it would, again, like everyone has testified today, what does comprehensive immigration reform really mean?

Ms. JACKSON LEE. It means that you would know the distinction between those who were here in the country legally, and those who were not. Those who complied had green cards, had status, and so you would know the difference and you wouldn't have to speculate.

Mr. CRANE. Well, I don't speculate, ma'am. I am trained. I know who is here legally and who isn't here legally.

Ms. JACKSON LEE. But you know that, sir, by the laws that the Congress of the United States passed.

Mr. CRANE. Yes, ma'am.

Ms. JACKSON LEE. So if we were to pass a comprehensive immigration reform that included border security, had enforcement aspects delineated, so that as a trained ICE officer, you would know the distinction, that would be better for you?

Mr. CRANE. The more distinction that we have under the law is always going to be better for us. But at the same time, we have

to have political leaders stay out of our business, essentially, and let us enforce the laws that are on the books, which is what is not happening right now.

Ms. JACKSON LEE. Well, political leaders dictate what the laws are on the books, and I appreciate that. As I said, I am grateful for your service, work very well with ICE officers and CBP. I am Ranking Member on the Border Security Committee and Homeland Security and look forward to working with you extensively. But my question again, and I just need a yes or no, if we have laws on the books that are clear to you as a law enforcement officer and help distinguish between those who were here not to do us harm, families that need to be reunited, and make it clear so you understand the distinction of enforcement and what your laws are, that would help you do your job, is that not correct?

Mr. CRANE. If I understand the question correctly, yes, it would, ma'am.

Ms. JACKSON LEE. Thank you.

Mr. Chishti, let me pose a question to you very quickly. I have legislation that introduces something called the visa family visa appeals board. As you well know, on the enforcement end, when we separate families, we don't give any option other than possibly through the court system, as opposed to giving an option for an appeal where they can actually deliberate and not be deported, provide the facts before they get into court. You have already mentioned that our courts are literally at a stranglehold. Would an interim visa appeal board on family reunification be a helpful process?

Mr. CHISHTI. Well, you know, I think some review of decisions made by administrative agencies is always important. I think, right now, I think most of those cases actually do not go to immigration courts. I don't think that is where the backlog is. I think we probably would do well with a review at an interim level within the agency, which would look at denials of that kind. I think more important probably, and this is actually the decisions that are made by counselor posts abroad because we don't right now have any counselor review which is meaningful. I think those changes of the law also need to take place.

Ms. JACKSON LEE. And then the thrust of the board of these appeals would relate to that process as well because that is where they are denied.

Mr. CHISHTI. I think that would be helpful.

Ms. JACKSON LEE. Thank you very much.

With that, Mr. Chairman, I would just like to put these facts into the record, please, if I might. Just want to indicate from Texas, there are 1,022,000 undocumented workers; 7.2 percent of the workforce of Texas, which is 24 million. They generate 14.5 billion in tax revenue from undocumented workers and 77.7 billion gross State product of undocumented workers. It indicates that if we work with enforcement and work with a comprehensive approach, we can find ways for these individuals to invest in America and to add to America's growing economy. I think we cannot separate one from the other, and we cannot suggest that we must do one or the other. I thank you.

Mr. BACHUS. All right, without objection.

Ms. JACKSON LEE. I yield back.

Mr. BACHUS. And I think you want to introduce into the record the testimony that 7 percent of the workforce in Texas is—

Ms. JACKSON LEE. Yes, sir. The document is the effects of mass deportation versus legalization, and it is produced by the—

Mr. BACHUS. Thank you.

[The information referred to follows:]



Mr. BACHUS. Mr. Labrador.

Ms. JACKSON LEE [continuing]. Immigration development center, UCLA. I ask unanimous consent, thank you.

Mr. BACHUS. Thank you, Mr. Labrador.

Mr. LABRADOR. Thank you, Mr. Chairman.

Thank you panel for being here today. I want to see some immigration reform happen, but I want to make sure that we prevent

having the problems that we had with the last immigration reform, and that is my main concern. You know, we spent a lot of time here talking about the 12 million and that is not the only issue that we are facing. We need to have a robust, modern immigration system that works and speaking especially to the people working in the law enforcement.

As I have spoken to the ICE agents in my district, they are concerned that any kind of immigration reform will actually lead to more fraud, lead to more document fraud, all of those different things. So I am a big supporter of E-Verify. I am a big supporter of making sure that we have a robust, you know, document system.

How can we prevent the fraud in the future if we are going to allow some immigration reform to happen here in Congress? What steps can we take to make sure that we don't have the problems? And I will ask all of the panelists: What do you think we can do to make sure that we don't have the document fraud that we had in the past? I still dealt, as an immigration lawyer—for the 15 years I was an immigration lawyer, I was dealing with cases that were 20 years old, 25 years old. They were still dealing with the documents that they submitted when they initially applied for, you know, for the initial amnesty in 1986. So could you all address that?

Ms. WOOD. Well, I think a couple of things could make a big difference. First, you know, a biometric identification, you know, considering that for all individuals certainly could help reduce, you know, the fraud. Even without that, you could improve E-Verify and really, again, put the burden on the government and not on the employer to wait out and review the driver's license and the Social Security card. That could also reduce fraud.

Mr. LABRADOR. Can you stop there? How do you put the burden on the government more than—

Ms. WOOD. Right now the burden is on the employer to do the I-9.

Mr. LABRADOR. Correct.

Ms. WOOD. And so they submit the documents through E-Verify. E-Verify can come back. If I submit my driver's license from Kansas and my Social Security number, it can come back and say I am work authorized, even if I am using Chris Crane's, you know, driver's license information, and Social Security. So, in certain States, E-Verify now has that information, not in every State, and so a big problem for employers with high-risk workforces is that people pretend to be other people. And so the burden is on the document clerk—

Mr. LABRADOR. Correct.

Ms. WOOD. So then when it comes back employment authorized, it doesn't really mean that. It means maybe. The government thinks that, but you, document clerk, you need to look and see, what does the font look like on the Social Security number? You know, on the card, does that card look bad? Should I, you know, so that is a lot of burden that is unfair to do. And so I think improving E-Verify and some of the proposals in Congressman Smith's and other bills, it really makes a difference, getting rid of the I-9 system and moving to where the government provides the verification.



A second I think really critical thing would be, when we move to a mass adjustment or legalization, is making sure for people who commit fraud in the system, that ICE has access to that information. One of the big problems in the prior amnesty is that, as you know, is that the enforcement agents didn't have access to that information. That is a big, big problem. And you want to make sure, as Agent Crane has noted, that also that people have to prove things up, too. So you are not kind of enabling fraud. So you want to make sure that the verification for people who go through the legalization process is legitimate verification.

And then finally, resources. You know, you probably know better than I do how many ICE agents are in Iowa. I used to know Kansas because it was my home State, and it is two major alien smuggling routes are in Kansas, I-70 and I-35, and we had less than, you know, 20 ICE agents in the whole state. That is a problem. You know, that means they are not going to be effective. So I think looking at, do we have resources we need to prevent fraud, to go out and enforce the law? So those are the four core things I would focus on.

Mr. LABRADOR. Thank you. And it is Idaho, but that is okay. I am from Idaho.

Ms. WOOD. I don't know. I am sorry, I don't know your number, but thank you, Congressman.

Mr. LABRADOR. Mr. Crane.

Mr. CRANE. Yes, sir. Well, the first thing I would say is that, you know, virtually, almost probably 90 percent of the illegal aliens that we apprehend actually have fraudulent documents with them, Social Security cards—

Mr. LABRADOR. You might want to turn on your microphone.

Mr. CRANE. Phony Social Security cards, phony lawful permanent residence cards, et cetera. They are oftentimes engaged in some type of identity theft to some degree, and we do nothing about it. We stack them up like they are decks of cards. We get so many fraud docs, and we do absolutely nothing about it, and the agency won't let us prosecute it 99.9 percent of the time.

I think that one of the things that is absolutely within our power to do here, is take something like fraud and identify it as being a lifetime bar, you know, and removal so that everybody knows that if I get caught doing this, if I get caught with fraud docs, I am going to be removed from the United States. There is no two ways about it, and I have a lifetime bar.

And as you know as a former immigration attorney, we already have laws like that, and I think it would be extremely effective in our struggle to stop immigration fraud.

Mr. LABRADOR. Mr. Chairman, my time has expired. Could the two other witnesses answer the question?

Mr. BACHUS. Yes.

Mr. LABRADOR. Ms. Vaughn.

Ms. VAUGHN. Thank you for addressing this problem. IRCA was called one of the biggest frauds ever perpetrated on the United States Government. And I know they are still cleaning up a lot of the fraud from some of the other amnesty-like programs that were passed in the 1990's. We actually know a fair amount about the benefits fraud that occurs from programs that were built into

USCIS, quality control programs, site verification programs, benefits fraud assessments, they call it. And they found—there is double-digit fraud in some of our legal immigration programs now.

And we have to have a system that has integrity to have the confidence to go forward. And I agree with a lot of what my colleagues on the panel said. I would just also add that there needs to be an interview process at a certain point in the system. We can talk about where that best fits in, but we can't have a system that is an honor system where people are just taken at their word.

We can—and putting the burden of proof on the applicants is important; using technology to verify claims that people make. I agree wholeheartedly that there cannot be a strict confidentiality provision in this. That is a deal breaker.

And we can't prosecute all benefits fraud, so we have to have the ability to let an administrative process play out with those cases that are not going to go to a U.S. attorney or be prosecuted by ICE. We have to let USCIS use its authority and tools like administrative removal to make sure that the people who are denied are not allowed to stay here anyway.

That is a huge weakness in our benefits programs right now. And these are not small numbers of people that are benefiting from the fact that we tolerate so much fraud in this process.

Mr. LABRADOR. Thank you, Mr. Chishti.

Mr. CHISHTI. In deference to the little time you have, let me just be very brief. I mean, in the report that we published about immigration enforcement, we did identify big gaps. And one of the biggest gaps, I think, is frankly in the E-Verify program about the fraudulent identity issue; that we do not have a mechanism where we can say to the employer the person who is in front of him or her is the person that the identification document says it is. We need to drastically improve that identification variable. It can be done by biometric scanning. It can be done by doing better and more secure documents. And that is high on the agenda.

Let me—a lesson from IRCA about fraud was that when you provide incentive for people to commit fraud, they commit fraud. And when you remove the incentive, people behave. As I said in my earlier statement, that one of the drawbacks about IRCA was that we had left the eligibility date about 5 years earlier than the date of enactment. Now, what is that? That creates incentive for people to say they were here 3 years earlier.

If we had just made it very inclusive and drawn the line at the date of enactment, that incentive would have gone down. Those are the kind of realities I think we need to leave in mind as we write the next generation of legalization.

Mr. GOODLATTE [presiding]. The time of the gentleman has expired.

The gentlewoman from California, Ms. Chu, is recognized for 5 minutes.

Ms. CHU. Thank you, Mr. Chair.

First, I would like to recognize that there are quite a few groups that are very interested in making sure that comprehensive immigration reform happens, and they would like to have their positions submitted into the record. So I ask unanimous consent to submit for the record the position papers of the Asian American Justice

Center, the Coalition for Humane Immigrant Rights of Los Angeles, and the Congressional Asian Pacific American Caucus.

Mr. GOODLATTE. Without objection, they will be made a part of record.

[The information referred to follows:]



February 5, 2013

The Honorable Robert W. Goodlatte  
Chairman  
House Committee on the Judiciary  
U.S. House of Representatives  
Washington, D.C. 20515

The Honorable John Conyers Jr.  
Ranking Member  
House Committee on the Judiciary  
U.S. House of Representatives  
Washington, D.C. 20515

**Re:** The House Committee on the Judiciary hearing on "America's Immigration System: Opportunities for Legal Immigration and Enforcement of Laws against Illegal Immigration"

Dear Chairman Goodlatte and Ranking Member Conyers:

On behalf of the Asian American Justice Center, a leading non-profit, non-partisan organization representing the Asian American and Pacific Islander community on civil and human rights issues, and our affiliate members of the Asian American Center for Advancing Justice, we write concerning today's House Committee on the Judiciary hearing: "America's Immigration System: Opportunities for Legal Immigration and Enforcement of Laws against Illegal Immigration."

The Asian American Justice Center and its affiliates strongly urge the Committee to focus its inquiry on positive solutions that ensure the family- and employment-based immigration systems are functioning complementarily and to the benefit of our nation.

The family immigration system is a critical part of our immigration system and a very important issue to the Asian American community. U.S. immigration policy has directly impacted our community dating back to 1882 when Congress explicitly prohibited Chinese Americans from settling in the U.S. It would take Congress another 80 years before fully repealing these exclusionary laws. As a result, approximately 60% of Asian Americans are foreign born, the highest proportion of any racial group nationwide. Asian Americans make up a growing population of 6% in the U.S., and they sponsor more than one third of all family-based immigrants.

Our current system disproportionately harms Asian American families, resulting in massive backlogs and heartache. Of the almost 4.3 million close family members of U.S. citizens and legal permanent residents waiting to be reunited with their loved ones, nearly two million are Asian American and Pacific Islander and many are Latino and African. Of the top five countries with the largest backlogs, which include potential active members to our society including high-skilled and low-wage workers, four are Asian nations.

Immigrants like Marichris Arce from the Philippines, now a naturalized U.S. citizen, know firsthand the impact of the broken family system. Ms. Arce was separated from her parents and younger siblings for six years while she waited for her visa to be processed. She later married

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and lived an ocean away from her husband for seven years for the same reason. Due to the difficulty in obtaining a visa, Marichris' husband missed the birth of their first child and only saw his daughter for six weeks each year for the first four years of their daughter's life.

Furthermore, as your committee discusses those that are currently waiting abroad to reunite with their families, we urge you to keep in mind aspiring citizens who are already in the U.S. Nearly 1 in 11 aspiring citizens are Asian American, and 1 and 10 are undocumented Asian American youth waiting in limbo for commonsense solutions. We need immigration reform that keeps all families together.

Protecting and strengthening the current family-based immigration system is economically sound policy for the U.S. Family-based immigration has significant economic benefits, especially for long-term economic growth. Family-based immigrants foster innovation and development of new businesses, particularly small and medium-sized businesses that would not otherwise exist, creating jobs for American workers. Rather than pitting immigrants against each other, America benefits the most when the family- and employment-based systems are working effectively. We can and should strengthen both systems for a robust American economy.

Our American values demand a strong family-based system. Family unity is the cornerstone of America's immigration laws. Since our country's founding, entire families would immigrate to the U.S. in search for opportunity. Forcing families to live apart for years and even decades is simply un-American. Imagine living apart from your spouse or daughter or son for years, decades even. An immigration system that truly reflects our nation's values must recognize that strong families, including LGBT families, create a much-needed foundation for our communities and our economy to grow and prosper.

Sincerely,



Mee Moua  
President & Executive Director  
Asian American Justice Center

On behalf of:  
Asian Pacific American Legal Center  
Asian Law Caucus  
Asian American Institute



## COALITION FOR HUMANE IMMIGRANT RIGHTS OF LOS ANGELES

February 4, 2013

Members of Judiciary Committee  
California Delegation

The Honorable Zoe Lofgren  
U.S. Congress, District 19  
1401 Longworth House Office Building  
Washington, DC 20515

The Honorable Karen Bass  
U.S. Congress, District 37  
408 Cannon HOB  
Washington, DC 20515

The Honorable Judy Chu  
U.S. Congress, District 27  
1520 Cannon HOB  
Washington, DC 20515

### RE: JUDICIARY HEARING ON IMMIGRATION

Dear California Members of Judiciary Committee:

The Coalition for Humane Immigrant Rights of Los Angeles (CHIRLA) is a regional organization whose mission is to advance the human and civil rights of immigrants and refugees in Los Angeles. CHIRLA advocates on behalf of this community through policy & advocacy, organizing, education and community building. **On behalf of CHIRLA, I am writing to express our views on the upcoming hearing on immigration to be held on February 5 in the Judiciary committee.**

We all agreed that we must fix our broken immigration system. We are pleased that both Senate and President are listening to mandate of the public after the elections to work together to fix our broken immigration system and have released their framework on immigration reform:

This is the first hearing in U.S. House Judiciary on immigration. We hope that the issues that would be discussed in the hearing would be positive and seek to bring solutions to fix our broken immigration system. We hope that the focus on the discussion would be on:

- **Create a road map to Citizenship for the 11 million families in the United States.**
- **Maintaining and Keeping immigrant families together**
- **Advance Immigrant Integration**

The American people overwhelming support immigration reform that includes a road map towards immigration system. Most Americans reject mass deportations and believe that aspirin Americans citizens already here and should be able to out of the shadows.

By fixing in our immigration systems will help our economy grow, a report by the University of Los Angeles (UCLA) indicates immigration reform would add \$1.5 trillion to our economy over the ten years, create millions of jobs, and increase consumer spending by \$5 billion per year.

In the past decade, immigration enforcement has been amplified. Thus, far about 1.5 million immigrants have been deported. California has 19% of nationwide deportations. According to a report released this week by the American Immigration Lawyers Association finding that the enforcement benchmarks of the past immigration reform bills (2006, 2007, and 2010 Senate bills) have been met or exceeded. Further, California residents have felt the aggressive enforcement programs that are being implemented and are having a devastating impact onto immigrant families.

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*\*Organizations have been  
listed for identification  
purposes only.*



## COALITION FOR HUMANE IMMIGRANT RIGHTS OF LOS ANGELES

The roll-out of new enforcement programs such as Secure Communities are leading to the deportations of 85,000 deportations in California most of them have no criminal background, but are rather victims of domestic violence, street vendors, and U.S. citizens. This program is flawed and has driven a wedge between the Los Angeles law enforcement and immigrant communities that jeopardize police work and public safety. The following are some examples of individuals who are victims of domestic violence, street vendors and U.S. citizens and have been affected by Secure Communities

### **Isaura**

20-year-old Los Angeles resident who was arrested by LAPD in February after she called 911 a domestic dispute. Police demanded that she speak in English and asked her what country she was from and whether she had a green card. Police arrested her rather than her abusive boyfriend, despite fact that she had call for help and she had bruises on her body demonstrating that she had been attacked. She fainted at time of arrest, police took her to the hospital, doctor examined her, found bruises, and released her with paperwork saying she was a domestic violence victim and referring her to services. Police took her into custody anyway. When she was booked, her fingerprints triggered ICE hold while in LAPD custody. She was placed in deportation proceedings.

### **Adan**

He is Los Angeles resident with no criminal history who on was arrested by police for street vending and not having an ID. His fingerprints triggered an ICE hold when booked into custody. No charges were filed against him, but he was transferred to ICE. He was released that day on bond. He is now in deportation proceedings.

### **Romy**

A 19-year-old U.S. citizen in 2011 was arrested on a petty theft charge. ICE immediately issued an immigration detainer to the Torrance Police for her detention. As a result, the Police Department continued to detain her until she appeared in court. Ms. Campos pled guilty to the charge and was sentenced to ten days in County custody. Women sentenced to ten days in jail generally do not serve that time due to lack of jail space. However, on the authority of the immigration detainer, Police transferred Ms. Campos to the another local jail for days, Ms. Campos' parents and Public Defender tried to get ICE agents to lift the erroneous immigration detainer by sending them copies of her birth certificate. The agents disclaimed their ability to do anything about the detainer and said Ms. Campos would have to wait until she was transferred to ICE custody to prove her citizenship.

In the discussion of debating what types of program should be implemented to verify the immigration status of workers, we need to take into account some serious problems of current programs.

### *E-Verify is Expensive for Everyone*

E-verify places unnecessary burdens and costs on California businesses. The system requires employers' compliance with the system and holds employers responsible for verifying employee's work authorization. Doing so requires extensive training and changes in human resource policies and a practice, going beyond what is currently required under Federal Law. According to Bloomberg News Service, the cost to small businesses if E-verify were mandated nationwide would be \$2.6 billion.



## COALITION FOR HUMANE IMMIGRANT RIGHTS OF LOS ANGELES

Mandating the use of E-Verify has serious implications for California's economy. According to the Center for American Progress, it is projected that the current unemployment rate in California which is at 11.8% will likely increase as a result of mandatory E-Verify. As a result of this flawed system, over 90,000 U.S. citizens and lawful workers in California alone would potentially lose their jobs due to the receipt of an erroneous final non-confirmation.<sup>1</sup> At a time when California's economic recovery is so fragile, it is critical to ensure that we keep as many workers employed and that we provide businesses in California with the support they need to fuel the economy and keep as many Californians employed.

### *E-Verify is a Terribly Flawed System*

The Government Accountability Office (GAO) finds that the Department of Homeland Security and Social Security Administration databases, which E-Verify are checked against, remain deeply flawed. Each year thousands of workers wrongfully receive "tentative non-confirmations" (TNC's) based on discrepancies in the E-Verify databases and employer misuse. According to the report, of the nearly 25,000 (TNC's) issued in fiscal year 2009 based on name mismatches alone, more than 75% were issued to US Citizens. As a result, US citizens are wrongfully kept from work or wrongfully fired, decreasing both worker and business productivity.

Today is the year for Democrats and Republicans to work together to bring immigrants out of the shadows. CHIRLA looks forward toward working with you for an immigration reform.

Best,

Joseph Villeda  
Policy & Advocacy Director



### **Priorities on Immigration Reform for the Asian American & Pacific Islander Community**

Creating a common sense immigration process is a top priority for the Congressional Asian Pacific American Caucus (CAPAC) and the diverse constituencies that we represent. America has always been a nation of immigrants. Over the last few years, Asians have become the single largest demographic of new immigrants moving to the U.S. and make up the fastest growing racial group in the country.

The Members of CAPAC are committed to working towards fair, bipartisan solutions for our broken immigration system. We support comprehensive immigration reform and believe it must:

#### ***1. Provide a Roadmap to Citizenship for Aspiring Citizens***

Of the estimated 11 million undocumented immigrants residing in the U.S., 1.4 million identify as being of Asian or Pacific Islander descent. Asian Americans and Pacific Islanders also account for one in ten youth who would qualify for the DREAM Act.

Immigration reform must include a roadmap to permanent residency and citizenship for immigrants who work hard, pay their taxes, and undergo criminal and national security background checks. This is especially true for those who were brought to this country at a young age through no fault of their own, and who are already Americans in every sense except for on paper.

#### ***2. Support America's Long-standing Tradition of Family-Based Immigration***

In November 2012, there were 4.3 million people in the family immigration backlog, nearly half of whom were from Asian countries. Asian Americans and Pacific Islanders sponsored over 40 percent of all family-based visas in 2010. Some Asian immigrants have been forced to wait as long as 23 years to be reunited with their families in the United States, largely due to the limitations and inefficiencies of our legal immigration system.

Any effort to address immigration reform must prioritize the unity and sanctity of families. We need to reduce visa backlogs, reunite divided families, and recognize same-sex, bi-national partnerships as family ties and permanent relatives.

#### ***3. Strengthen the U.S. Economy and Workforce***

Immigration is not a threat to the U.S. economy – if anything, it makes us stronger. Immigrants fill critical gaps in our workforce, invest in new businesses, and bring much needed skill sets in science, technology, engineering, and math (STEM). In 2010, nearly one in five Fortune 500 companies had at least one immigrant founder. In 2007, Asian-owned small businesses alone had sales and receipts of over half a trillion dollars and employed 2.8 million people.

Any plan for immigration reform should include provisions to attract and retain the best talent from around the world, especially those with backgrounds in much needed STEM fields. It must also provide legal routes through which aspiring citizens can fill gaps in the U.S. workforce, as well as labor protections to prevent employers from exploiting and abusing immigrant workers.



#### **4. Promote the Integration of New Americans**

Nearly three-fourths of Asian American adults are foreign born and more than 4.6 million Asian Americans report speaking English "less than very well."

Our immigration process must promote the full integration of new Americans by supporting programs that provide for English language acquisition, civic education, and affordable healthcare and social services.

#### **5. Establish Smarter, More Effective Enforcement**

Immigration enforcement should be focused on keeping our borders secure, targeting serious criminals, and stopping those who pose threats to our public safety and national security.

Smart enforcement should avoid imposing burdensome mandates on local police forces, prohibit the use of racial profiling, and end practices that place undue strain on legitimate travel and commerce. Enforcement policies should also reflect our values by respecting the civil liberties of those who are detained, reducing undue hardships on children and families, and operating with full transparency and accountability. Similarly, the use of mandatory employment verification systems should only be implemented widely after important privacy, civil liberty, budgetary, and technological flaws have been resolved.

**Comprehensive immigration reform is the right thing to do for our national security, our economy, and our values as a nation. The Congressional Asian Pacific American Caucus is committed to working towards a fair and viable solution that honors our nation's founding principles and furthers the interests of all Americans.**

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*The Congressional Asian Pacific American Caucus (CAPAC) is comprised of Members of Congress of Asian and Pacific Islander descent and Members who have a strong dedication to promoting the well-being of the Asian American and Pacific Islander (AAPI) community. Currently chaired by Congresswoman Judy Chu (CA-27), CAPAC has been addressing the needs of the AAPI community in all areas of American life since it was founded in 1994.*

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Ms. CHU. Thank you very much.

I would like to address a couple of questions to Mr. Chishti, one is on border security, and the other is on the exploitation of workers. First, on border security, I took a congressional bipartisan trip

to the border because I wanted to see for myself what was going on down there, and we actually traveled along miles of the border. We looked at tunnels. We looked at the Coast Guard boats. We talked to border security, and we looked at the detention centers.

And to my stunned amazement, there was capacity for hundreds, but there were only maybe five or six people there that were being detained. And the border security agent said that this had been going on for months. And it became apparent to me from that trip that we have poured billions of dollars into immigration enforcement along the border. We spend more money per year on immigration enforcement than all other Federal law enforcement agencies combined. The Border Patrol has nearly doubled the number of its agents from 2004 to 2012, and apprehensions at the border at 2012 were at the lowest in 40 years, yet many lawmakers continue to call for achieving operational control of the border, which would mean effectively sealing the border.

The GAO and CBP have said that such a standard is unrealistic and outdated. So, at this point, is there even more to do to make the border more secure, or are we really just talking about keeping it secure?

Mr. CHISHTI. Again, reflecting on the findings that we made in our report, I think we have done a lot and much better at the border than we have done in a long time. I think most people recognize that. And the level of staffing, the technology that is being employed and the declined apprehensions all speak to that.

We did note that in our findings, that there is one area in the border enforcement that still is a weakness, and that is ports of entry. That the ports of entry actually have not kept up in the infrastructure development at par with the needs of the ports of entry. And I think if you were to focus on improving anything on the border security, then obviously, that is one place to look at.

And did you have—was there a follow-up question?

Ms. CHU. Yes, I—well, is that—another topic, but is that it on border security?

Mr. CHISHTI. Yes.

Ms. CHU. Okay, so I also wanted to ask you about the exploitation of workers. Immigrant workers in my district regularly face exploitation at the hands of their employers. They are threatened with deportation when they stand up for their labor rights. For example, day laborers, like Jose Diaz, who worked to rebuild our Nation after a hurricane and when asked about—when he asked for proper safety equipment, he faced deportation. Or Abi Raju, who was a guest worker under the H-2B program, who bravely exposed the labor trafficking occurring at his workplace, and when he asserted his rights, he was experiencing intimidation, surveillance, and monitoring.

And when their employers make them work overtime without pay or save money by not buying them needed safety equipment, this undercuts American workers by driving down wages and allowing firms to break the law by outbidding their competitors. If unscrupulous employers are getting away with this, then this can of course undermine our whole system here. How can we protect workers so that they don't fear standing up against such exploitation?

Mr. CHISHTI. Well, as I said, I think earlier, the issues of labor protection are one of the less looked at provisions with respect to the immigration debate. I think whatever new regime of labor flows we are going to have, labor protection has to be central to that, both with respect to the protection of U.S. workers and the protection of foreign workers.

In many of our temporary worker programs today, which is why they have gotten the bad name they have, they are lacking in very basic fundamental protections. Like, in the H-2B program, you cannot sue an employer. The worse you can do is go to the Department of Labor, which is already highly understaffed, to deal with those kind of complaints. So I would recommend strongly that when you look at any regime of future flows, that labor protections have to be at par with U.S. workers.

And the important elements of that, A, is that no matter what kind of program we pick, workers should have the right to move from one employer to the other, what some people in the parlance call portability, because then you are not tied to an abusive employer. Two, is that you should get exactly the same wages, same protections under the labor law that a U.S. worker does. You should have the same access to courts as U.S. workers do. And ultimately, you should have the right to become permanent resident, because otherwise you will constantly be in an exploitable situation.

Ms. CHU. Thank you, I yield back.

Mr. GOODLATTE. I thank the gentlewoman.

I am going to recognize myself for a few questions.

I apologize to the panel for not being here the entire time, but I have a number of questions that I want to ask you. And as I do that, I would ask that you be brief, so I can get all of them in.

First of all, to you, Ms. Wood, former Immigration and Naturalization Service Commissioner Meissner has stated that prosecutorial discretion should be exercised on a case-by-case basis and should not be used to immunize entire categories of non-citizens from immigration enforcement, which appears to be what is being done with the discretion that the President has given under current circumstances.

Do you believe that prosecutorial discretion is properly utilized when it exempts entire classes of individuals from enforcement of the immigration laws, and how did you exercise that discretion when you were director of ICE?

Ms. WOOD. Yeah, I think it is really tough to say that you are exercising true prosecutorial discretion when you exempt whole classes and categories of people. I certainly understand the frustration. A lot of people have been waiting for the immigration laws to change. You know, a lot of equities, a lot of care, but it is not really prosecutorial discretion if you exempt whole classes out without going through a case-by-case basis.

You know, when I was at ICE, we did use prosecutorial discretion, and we did it on a case-by-case basis. It is important in my view, institutionally, that ICE retain that ability to have prosecutorial discretion because there are some cases that you can't legislate for ahead of time. And so ICE has to have the ability to exercise discretion in appropriate circumstances.

Mr. GOODLATTE. In your testimony, you state that a number of ICE officers have been put under investigation or are subject to formal charges for enforcing the immigration laws as written but apparently in a manner inconsistent with current Administration policy. In fact, the Federal judge in your lawsuit, Mr. Crane, has concluded that the plaintiffs' face the threat of disciplinary action if they violate the commands of the directive from Secretary Napolitano regarding deferred action by arresting or issuing a notice to appear to a directive eligible alien.

Could you first explain that, and then ask what has been the department's stated basis for these investigations and charges?

Mr. CRANE. Well, first of all, I am not certain what you are asking me to explain, sir, I apologize, as far as the NTA part goes.

Mr. GOODLATTE. Yeah, the basis of the lawsuit that is pending against you.

Mr. CRANE. Well, I think you pretty accurately stated the basis of the lawsuit, Mr. Chairman. Our officers are prohibited from enforcing U.S. immigration law under threat of repeated disciplinary actions up and to including removal. If we don't enforce those laws—I want to be very clear in saying that it is definitely not prosecutorial discretion, most importantly, because we are under orders not to enforce certain laws. Prosecutorial discretion is something completely different, and what is happening right now are clear orders not to enforce the law.

Mr. GOODLATTE. And Ms. Vaughn, do you believe that the resources Congress currently gives ICE are sufficient to control the illegal immigration into the interior of the United States, if those funds were used with the maximum effectiveness?

Ms. VAUGHN. That is a hard question because so much of it depends on the second part of your question, which is the caveat, which is, if they were used as efficiently as possible. Yeah, I think that the agency could use some more funding for some specific purposes. For example, funding for detention space seems to be an issue, although I would also argue that we could do a better job at streamlining the removal process so people don't need to be in detention as long or perhaps not at all if we make more use of things like expedited removal, stipulated removal, judicial orders of removal.

I mean, many of these cases simply shouldn't be in immigration court at all. But yes, I think even if—they could use an infusion of resources if Congress could be certain that they would be used effectively.

Mr. GOODLATTE. And Mr. Chishti, you state in your testimony that the combined budgets of the U.S. Immigration and Customs Enforcement, U.S. Customs and Border Protection and US-VISIT exceed by about one quarter the combined budgets of all other principal law enforcement agencies, Federal law enforcement agencies, and that most of the increased immigration funding has gone to the Border Patrol.

Assuming that these figures are fair comparisons, do you believe that Border Patrol manpower should be cut, if so, by how much?

Mr. CHISHTI. Mr. Chairman, we don't make any recommendations for cutting anything. We don't make a case that there is too much spending done on border. We don't make a case that too

much stopping is done on border. All we present is how much we have done, a good part by congressional appropriations. And that may reflect why enforcement has been so effective.

I think all we just want to point out is that, given the budgetary realities that at some point, there is not going to be an unlimited expansion of these programs; that Congress and you all will have to make a decision that it is a straight-line cutting on these things, where those cuts will have to take place. And we would suggest that if they have to take place, they take place in a very strategic way. That you don't cut things where people—where things are working very well, and really look at things where they are not working as well.

Mr. GOODLATTE. Well, let me do that with one last question here before we turn to our next Member for questioning.

And that is this: I don't believe we should cut the funding for border enforcement at all. But I very much believe that we are not doing enough to address the enforcement of the law in the interior of the country. Forty percent, some say, maybe a little less, but whatever, of the people unlawfully here entered legally, and so the border is irrelevant to their status. They came in, probably mostly on airplanes, and they overstayed their student visas, or visitor visas, or business visas, and there is not, in my opinion, very much enforcement going on at all in the interior of the country. And I will ask each of you to tell me how you would solve that, but do it concisely.

Mr. CHISHTI. Exactly. In our report, we actually did identify three areas where there is a gap in enforcement, and there is need for tremendous amount of improvement. Two of those do relate to interior enforcement. One is the E-Verify program. It has been improving, but it has a big drawback about identification issues. That has to be better because otherwise, there will always be a loophole in that system. We have to do better in terms of biometric scanning or secure documents to improve that identification.

Second is that I think the US-VISIT program, which was given the mandate of both looking at people who enter but also who exit, which is how you would control the presence of overstay. That part has been lacking. That hasn't happened. So, clearly, there has to be much more effort on the overstays in the country.

In fact, I think you are right. We may reach a situation where the number of overstays actually is larger than the number of people who cross illegally, which would be a reversal of the historical trend. And one of the ways to control that is to improve our exit-entry system in the US-VISIT program.

Mr. GOODLATTE. Thank you.

Ms. Vaughn.

Ms. VAUGHN. Yes, I would definitely agree. We need to move forward in finishing the entry-exit system that Congress asked for back in 1996. One key part of that that many don't talk about is the lack of adequate entry screening at the land ports which, after all, is where the largest number of visitors enter. We need to make sure that land visitors get the same level of screening that visitors who are coming in on airplanes and on boats do.

I think more attention to workplace enforcement would also help address the overstay problem. Because after all, if there is no in-

centive to stay over your visa, we are not going to have as large of a problem.

Another cost-effective way to get more bang for our immigration enforcement buck is to increase the number of partnerships that ICE has with local law enforcement agencies, because there are many communities, law enforcement agencies and local and State governments that would like to assist ICE in its mission and need the opportunity to do so. And they are willing to put their own resources toward that. And we should be encouraging those partnerships, instead of shutting them down, as has been the case recently.

Mr. GOODLATTE. Mr. Crane, I know you are focused at the border, but what is your perspective on the interior of the country?

Mr. CRANE. I am not, sir. You are right in my ballpark here. I am an ICE agent on the interior. I work out of Salt Lake City, Utah. This is something very near and dear to my heart, so just two comments on Ms. Vaughn's comments. I strongly agree with her comments on the worksite enforcement.

With regard to the partnerships, we have to be careful about those partnerships because what has happened in some situations is those partnerships result in sheriff's department not wanting to fulfill all of their obligations. And those things fall back on our folks, and that force multiplier quickly dissipates when things like that happen. So this has to be very carefully structured, and they have to be carefully monitored and managed.

Mr. GOODLATTE. But you don't object to the concept?

Mr. CRANE. No, sir, not at all. I think it is great. In fact, what we tried to do in Utah at one point was see if the agency would do the task force type situation, to where they would have people working directly with our officers and agents as a force multiplier, so we strongly support that.

However, with regard to ICE, we have approximately 20,000 employees at ICE. Of those 20,000, approximately 5,000 are the immigration agents that do the lion's share of the immigration work within 50 States, Puerto Rico, Guam, Saipan, I mean, it is a tremendous workload for those 5,000 people to be, you know, arresting, taking these folks through proceedings in the immigration courts, and actually removing them each year. So we definitely need more resources on the interior enforcement part.

And when you compare us to the Border Patrol, we really haven't grown since 9/11; whereas the border patrol has basically almost tripled since 9/11.

Another interesting fact about those 5,000 ICE agents that do the immigration work, they are actually split into two job positions. Both of them don't have the same arrest authority. We all have the same training, but we don't have the same arrest authority. So there is a quick force multiplier right there, and even that, you know, if we could make something like that happen even would be a great start to getting more increased interior enforcement.

In addition to that, with those 5,000 people spread out all over the Nation, this handful of officers, we have got people working in facilities that have this full immigration arrest authority, and they are not doing immigration enforcement work. Why? You know, when we only have so many of those resources, and they are lim-

ited, and we desperately need them, why aren't we using them to be out on the streets or be inside of jails, making immigration arrests?

Mr. GOODLATTE. Thank you.

Ms. Wood.

Ms. WOOD. I would second the points raised by my colleagues on an entry-exit, a more effective entry-exit program and enhancing worksite enforcement. But there are two other things I would do with overstays.

First, I would increase the number of fugitive operation teams and have them target, kind of, recent overstays. And so really target those individuals to go out and find them.

And the second thing I would do is to make sure that people who enter from visa waiver countries and non-visa waiver countries are treated the same. So if, you know, I come in on vacation from a visa waiver country, I have waived some of my rights for review. If I come in from a non-visa waiver country, I don't. And I can tie up the immigration court for years fighting my deportation when I stayed over on my vacation. And that makes no sense. So I would really move to kind of streamline and have that be the same in both instances, which I think would be helpful.

Mr. GOODLATTE. That is a very good suggestion. Thank you.

The Chair now recognizes the gentleman from North Carolina, Mr. Holding, for 5 minutes.

Mr. HOLDING. Thank you, Mr. Chairman.

I had the very good fortune of being the United States Attorney for eastern North Carolina for a number of years.

Ms. Wood, you were in the Department when I was in the Department as well.

Eastern North Carolina has one of the fastest growing illegal immigrant populations in the country. Along with that comes the ever increasing gang violence, drug crimes, and violent crimes that you have when you have a community of people who are under the radar, so to speak. It is very easy for criminals to hide within that community, gang members to hide within that community, because no one is going to call the local sheriff and say, "Hey, there is something suspicious going on next door," because they are illegal.

We had a zero tolerance policy. We would prosecute every immigration crime that was brought to us. For the most part, those immigration crimes arose in the context of a drug crime or a violent crime, and they just happened to be illegals. We had very little enforcement of overstays, because, as you know, when you are the prosecutor, you can only prosecute the cases that are brought to you. And the problem we ran into is the ICE agents that we had, who were all very dedicated, did not have time to do the internal enforcement, because they were too busy. They were participating in task forces. They were cracking down on drug crimes or, as you say, ferrying people back and forth between our five different court-houses in eastern North Carolina.

At the end of the day, if we are going to enforce our laws, how much of a magnitude increase of resources do you really think it would take to enforce the laws that are on the books right now?

Ms. WOOD. Are you saying that first we would address the 11 million or so that are already here and we would start out with kind of zero individual—

Mr. HOLDING. Well, that is the second part of the question, but if we didn't address the 11 million, we just addressed them with the laws that we have on the books now, I mean, how much resources do you think that would take?

Ms. WOOD. Well, you know, there are people who have done the math probably sitting on this panel who can—you know, if you look at kind of our current number of deportations and then the stream, obviously you have to look at the stream of kind of individuals coming in, but it would take a lot of years.

And I think one of the things—one of the reasons that I support reforming the system is I have not seen commitment to really fund the agency like it needs to. And because there was not enforcement over such a long period of time, people do have these equities and very kind of sad stories, and it is not a great situation.

So I think, you know, if you could start out being somewhere where people who were able to legalize legalized, and then you would say, now it is zero tolerance, now we really are sending everyone home, now we have enough resources, now we can streamline, that would make a lot of sense. But I don't know if someone on the panel may have, you know, the math that has been done a bunch of times on how many additional resources you would need, but it is a lot. And I think you could make some tweaks to the immigration laws that would help, even if you are dealing with the population that is currently here.

Mr. HOLDING. But to your point of if we did do something about the 11 million illegals that are in the country now and started from zero, do we even have enough resources in place as is to enforce the laws going forward if we started from zero?

Ms. WOOD. I don't believe we do. I think that ICE and the Border Patrol are under-equipped and that we need to kind of look at resources. They may be more temporary resources, because you know there is going to be a large migration of people coming in, I mean, illegally trying to get kind of in right under the radar so they can adjust. And maybe that would change over time if we had like a strong verification, employer verification system, things would change over time, but I think immediately you would need to build up the agencies, build up the support at the agencies, all of the resources, the court resources. The fact that you have to wait for 2 years to get your case heard in some parts of the country is ridiculous to decide whether or not you are in the country legally.

So I think we are under-equipped, and then there are too many inefficiencies. And I think legislation could fix a lot of them, expanding—mandating expedite removal, maybe expanding the use of voluntary returns would also be helpful, and reducing the number of cases that kind of come into the system. I think those could all make a big difference.

Mr. HOLDING. Thank you very much.

I yield back.

Mr. BACHUS [presiding]. Mr. DeSantis.

Mr. DESANTIS. Thank you, Mr. Chairman.

I thank you witnesses for your testimony.



My first question is for Mr. Crane and Ms. Wood. A lot of this debate is centered around the idea of obviously focusing on 11 million people who are not legal and then legalizing them, and then we will provide these enforcement measures. Some people say we should have a trigger before the legality.

And I guess just, based on your experience, I mean a guy like me who is considering this stuff, how much confidence should I have, based on your experience, that the enforcement mechanisms that are promised by people advocating this legislation and by Congress will actually end up coming to fruition? Because it just seems like, you know, we talk about certain enforcement since 1986, and now we are promising certain things. Obviously, the executive has a certain amount of discretion whether they can enforce the law. So what advice would you give me about whether I should believe that we are going to finally start enforcing the law?

Ms. WOOD. Well, I wouldn't be surprised if your confidence level is low, given kind of, you know, the history of problems. But I would say that the opposite of doing something is not that we will be in a perfect system. The opposite, you know, waiting around here, it is, you know, we are not fixing this problem magically now. And so I think that is the compelling reason to look, can we get a meaningful trigger? Can we do something? Can we try to create a better system.

But what we have is I think everybody on both sides of the aisle agree the system is broken, and so we have to see, can we do something that is meaningful?

And I think, you know, Congress can make a big difference by having a trigger that is as meaningful as possible and then by putting as much as we can in the law to make things for a better day. But if a law doesn't change, if a law doesn't pass, you know, the next head of ICE is going to come up here and say, the system is broken; we don't have enough people; there is still a lot—you know, problems will continue.

Mr. CRANE. It is funny you ask me that question, sir, because I am actually going to be up here next week, and I intended to come up and ask you folks, how do you put something into our legislation that, you know, will guarantee that we are actually going to be able to enforce the laws, because, I mean, you are talking to somebody right now that we filed a lawsuit to try to be able to do our job. So my confidence level right now, at least with the Administration, is zero that we are going to be able to do our jobs now or in the future. So I am very interested in hearing what Congressmen have to say about how do we—something has to change. Something different has to be done this time.

Mr. DESANTIS. Great.

Ms. Vaughn, I hear the term there is 11 million people who are in the country illegally, without documents, depending on which side of the aisle you are on, I guess you say. But where does that figure come from? How much confidence do you have in it? Is it possible that there are many million more? Is it possible that there are some less? Just can you give me a little bit of background on the number, because I have noticed since I have been in Congress that people repeat things over and over again, and it just kind of—

you know, then you just stop questioning it, oh, yeah, this or that. So can you speak to that?

Ms. VAUGHAN. I think there actually is a fair amount of consensus around the number. The number we are using now is 11.5 million. The way our staff demographer, our director of research, Steven Camarota, calculates that is to use Census Bureau data to count the number of people who are here and subtract from that and adjust for mortality and return migration, subtract the number of people that we know came here legally, because we do have good information on that. And, you know, it is basically a very complicated subtraction problem.

And actually, our figures are very close to what the Department of Homeland Security has and also the Pew Hispanic Center. So we feel very confident that that is a pretty accurate number.

There is no exact count, because, you know, our—but we have found that most people who are here illegally do fill out a census form, and we do adjust for undercounts as well.

Mr. DESANTIS. My final question is just I know in 2006 when this was debated, I think the Congressional Budget Office came out with an estimate that said, actually, it would be beneficial for the economy to do some type of legalization. Now, obviously, we have a different social welfare system, because we have this new healthcare law that is going to be kicking in. So what is your organization's position on the costs that this would mean for taxpayers if you went forward with a comprehensive plan that resulted in essentially instant legalization?

Ms. VAUGHAN. If we move forward with the kind of comprehensive reform package that has been proposed, the two different proposals this week, it would be enormously costly, because the people who would be legalized are people who have not had full access to our social welfare system, face pretty modest chances of being able to improve their earnings because of their education levels, and so they are not likely to be able to contribute enough in taxes to cover what they would be using in the way of social services. And we don't have—we are thinking, you know, tens of billions of dollars a year additional if we were to legalize the entire population, as has been proposed.

Mr. DESANTIS. Thank you.

Yield back.

Mr. BACHUS. Thank you.

Ms. Vaughn, I was reading your testimony, and it says that ICE, Mr. Crane's agency, had arrested 27,600 gang members in the past 8 years.

Does that sound about right to you, Mr. Crane?

Mr. CRANE. That might be what they have stats on, but I would say that it is probably far higher than that. We have all kinds of folks that we encounter in jails and prisons, and you know, they don't make any admissions of gang affiliations.

Mr. BACHUS. And these are illegal immigrants, I guess. Is that right?

Mr. CRANE. Yes, sir.

Mr. BACHUS. So we have 11 million, 11 and a half million immigrants, and more than 27,000 of them have been arrested for being gang members?

Ms. VAUGHAN. Yes. Not all of them are illegal immigrants. Some of them are people that we have given green cards to, but they are still removable. Some of them are people who have temporary protected status, for example. It is a serious—

Mr. BACHUS. But non-citizens?

Ms. VAUGHAN. Yes.

Mr. BACHUS. Okay. I noticed, and I was doing some calculation, I bumped it up when you went from 11 million to 11.5 million, but taking 11.5 million, that is 3.4/3.5 percent of our population, or maybe let's just round it up to 3.5 percent of our population, yet the U.S. Sentencing Commission, this is on page 2 of your testimony, 64 percent of the kidnappers convicted in Federal court were non-citizens. So you are talking about—and let's just say that for every illegal immigrant, there is a non-citizen that is here legally, although we know that that figure is more somewhere closer to 5 or 6 million, I think. Right? Maybe 10?

Ms. VAUGHAN. The legal immigrant population is more like, I think, 20-some.

Mr. BACHUS. Okay. That is both, legal and illegal?

Ms. VAUGHAN. No. It is 30-some, about 35 million combined, non-citizens.

Mr. BACHUS. And that—but that includes naturalized citizens, does it not? I think that is foreign born.

Ms. VAUGHAN. That is foreign born.

Mr. BACHUS. Yeah. So you have to take—you have to back out a third of that, so just say 3.5 and 3.57 percent. Now, that includes illegal and legal residents who have not been naturalized citizens, yet 31 percent of drug traffickers in Federal court are in that 6 percent or 7 percent, which is a pretty high number; 34 percent of all money laundering cases.

You have 6 percent of the population, 7 percent, and yet 64 percent of the kidnappers, 34 percent of the money laundering, 31 percent of the drug traffickers prosecuted in Federal court come from that population.

So, you know, when we talk about giving citizenship to 11 million non—illegal immigrants, we are talking about a lot of people who have been convicted—I mean, not the majority, not even a large percentage of the minority—but you are talking about a good number of people that have committed felonies.

Now, Mr. Crane, is that correct? Am I correct there?

Ms. VAUGHAN. That is what the U.S. Sentencing Commission has on its Web site, so I have pretty good confidence in that.

Mr. BACHUS. So that is according to the U.S. Government officials.

I noticed that, Mr. Crane—and this is really disturbing, and I really empathize with you. I mean, I can't imagine what it is like, but the two main laws that you are supposed to enforce are people being here illegally or overstaying their visa, but your testimony is that ICE policy is that you can't arrest someone for being here illegally? Is that correct?

Mr. CRANE. Yes, sir. And it is pretty clear, if you look at the December 21st, 2012, detainer policy that ICE just put out, it specifically says, you know, one, they are illegally in the United States

and, two, they did one of the following, and it starts going through a laundry list of—

Mr. BACHUS. Serious felonies?

Mr. CRANE. Yeah. Felonies, serious misdemeanors. Excludes many other insignificant misdemeanors, which none of us really know what that means, but the bottom line is that, you know, you cannot simply arrest someone, even in a jail, for being a visa overstay or illegal entry, unless they have done something, committed a felony.

Mr. BACHUS. So the 3 percent that were actually deported, according to the Administration, would have been those 3 percent who committed a felony or committed at least a DUI, leaving the scene of an accident? Not just traffic—you know, reckless driving doesn't—you can't convict them for that. You can't convict them of being in an automobile accident causing injury, unless they leave the scene. Is that correct?

Mr. CRANE. Well, I would have to check on all the math, sir, but one thing that I have been thinking about as you have had this discussion is that I don't remember what exactly the President put out this year in terms of number of convicted criminals that were part of these numbers that we had this year, but they are extremely high.

I am sorry.

Mr. CHISHTI. Close to 50 percent.

Mr. CRANE. No. I mean an actual number, not a percentage.

Mr. CHISHTI. About 200,000, less than.

Ms. VAUGHAN. About 170,000-some.

Mr. CRANE. About 170,000-some odd people. And with the handful of folks, like Ms. Myers was testifying, we have States where we have two ICE agents in the whole State. Do you think we are getting all these jails covered? Absolutely we are not. And, you know, so I think the numbers of criminals are far higher in general probably than just the really bad offenders that you are citing.

Mr. BACHUS. And in your testimony, you cite several examples of ICE agents who have arrested people for misdemeanors or detained illegal immigrants as they came out of a courtroom, and the ICE agent, the—it goes up to the office or the higher-ups, and you get an order to dismiss that person and release him, and also you are—they are disciplined. Right?

Mr. CRANE. Yes, sir. I mean, obviously, in one of the cases that we had in Delaware, that is exactly what happened. You know, the officer encountered an individual that was driving without a driver's license, had been convicted of that repeatedly, was getting in a vehicle in their presence getting ready to do it again. They said, hey, this guy is a public threat. We are at least going to take him down to the office and issue an NTA, at which time, you know, the officer was told, no, you will not issue an NTA, you will just release him. And when he attempted to issue the NTA, he was given a proposed suspension of 3 days.

Mr. BACHUS. And I noticed that he was also told that if he received a second offense, he would lose his job.

Mr. CRANE. Well, I don't know, sir, that he was told that.

Mr. BACHUS. It would likely result.

Mr. CRANE. Yeah. That is the standard procedure, that, you know, once you commit an offense, and they basically, you know, say that you did it and issue a suspension, the next time you do it, you are going to have either, you know, a higher suspension or removal. You are only going to get two or three shots at that, and you are going to lose your job.

Mr. BACHUS. And that agent had been with the ICE for 18 years and was a 5-year military veteran?

Mr. CRANE. He was actually, I believe, 11 years at the U.S. Border Patrol and came over to the ICE for his total of 18 years of Federal law enforcement experience. So he is definitely a vet on the immigration side as well as the 5 years of military service, yes.

Mr. BACHUS. All right. Thank you.

I would ask every Member to please read this testimony and—I am sorry. I am going to yield to the Chairman.

Mr. GOODLATTE [presiding]. I thank the gentleman.

And I can work from here.

I want to ask all the panelists one last question. I want to thank you for your great contribution. We have talked about what happened in 1986. We have talked about the problems that we are experiencing right now in getting clear guidance from the Administration about enforcing the law or we are getting clear guidance that, in many instances, we are not allowed to enforce the existing laws, and I know that frustrates a great many American people.

If we were to do so-called comprehensive immigration reform, we are going to have to address this component of it. We did it in 1986. It was not enforced, with regard to the employer sanctions, at least not in a significant comprehensive way, and so I think a lot of people would say, Fool me once, shame on you; fool me twice, shame on me.

Why should this Committee, why should this Congress pass comprehensive immigration reform without having the assurance that somehow these laws will be enforced? And what would that assurance be that we could write into the law that we would know that it wouldn't be in the hands of one individual to decide to suspend an entire area of enforcement of the law, as is being challenged by the lawsuit of Mr. Crane and his associates? And I commend them for doing that. What could we put into this law that would give comfort to American citizens that if we attempt to solve this problem this time, it will indeed be mostly, if not completely, solved? And we will start with you, Ms. Wood.

Ms. WOOD. I get the easy question at the end?

Mr. GOODLATTE. All of you are going to get this question.

Ms. WOOD. I mean, I think Congress should attempt this because it is the right thing to do, because our system has been broken for far too long, and we are not—we are kind of not managing it, and I think we need a kind of reset where we are to move forward in a productive enforcement manner.

What I would suggest is to look honestly at what the agencies need to be equipped in terms to really enforce, so that on day 1, when the first person comes in the country and overstays a visa is 1 day late or is not eligible for adjustment, day 1, we are able to identify that person and send the person home.

And so I think that means resources in terms of manpower for all the agencies. I think that means technology, a better employer verification system, a better entry-exit, you know, better technology. And then look and say, you know, can we do it? With 17,000 kind of people at ICE and a problem of 11 million individuals illegally in the country, I will tell you, we can't do it. Right? The numbers just don't stack up. So how can we make the numbers actually work. And maybe that would mean kind of, you know, an intensive surge, a border surge, kind of for an initial time on the resources, and then it could kind of peter out as we move forward.

And then I think we need to look at the inefficiencies in our system. You know, it is ridiculous that people can tie up court hearings for years and years and years just to determine whether or not they are in the country illegally. Right? You know, so we need to see can we make systems move through the courts more quickly, expand expedited removal, voluntary returns and things of that nature.

And then, finally, I think we should look at, you know, the fundamental fairness of our system. I think part of the problem we have now is that people feel, rightly or wrongly, that our system is unfair to them, because they have built up equities, or they came here when they were 2 or something else. And so how is our system fair? Are we treating everyone fairly? And, you know, I think that would be something that we could—

Mr. GOODLATTE. Okay. But what I am really getting at is, I don't like a system where one individual can say, the President of the United States can say, we are not going to enforce this law. And maybe we will win this lawsuit and make it clear that the President doesn't have the authority to do that, but I am looking for ideas that would go into a bill to do that.

Ms. WOOD. Cut the funding. Say, if, you know, you could tie the funding if certain things weren't done, then certain funding streams are cut off. I will tell you that that has been very effective for ICE, I know personally, you know, in a certain number of areas including, you know, making sure that they are filling the number of detention beds. So I think tying certain things to funding streams, funding streams that the Executive Office of the President or other places care about, I think would be a way to make sure that you are actually meeting some of the triggers, but it is very hard, so hopefully the other panelists may have some other ideas on that front.

Mr. GOODLATTE. Mr. Crane.

Mr. CRANE. Well, I don't know how good my ideas are on this, because I have always been baffled, quite frankly, just as a U.S. citizen to see that the President of the United States has the ability to control these agencies in this way. I mean, once they appoint the director of the agency, they seem like they have sole control, and when we come and we talk to Members of Congress, you know, they seem like there is nothing that they can do. And so, like I said, as just a citizen, it is kind of baffling to me.

So if there is a way that Congress—like you said, that one person doesn't have the sole power—I mean, ICE is getting a budget of about \$6 billion a year, and once that President gets that appointee confirmed, then that agency and that \$6 billion and everything

that goes with it seems to be under the control of the President. And I just—to me, I just think that is fundamentally wrong, and I don't think it matches up with our democratic principles.

So I don't know, sir. If there is a way that Congress, Members of Congress could be more involved in it, we would certainly welcome that, because there are a lot of problems within these agencies, not just this immigration enforcement issue.

Mr. GOODLATTE. I think it is one of the keys, one of just a very few central keys to figuring out how to do this legislation. So if you have further ideas, please feel free to share them with us.

Ms. Vaughan.

Ms. VAUGHAN. I think it is critically important that Congress reassert its authority, its constitutional authority to make immigration laws. I don't think that there is one single trigger that is possible to ask for that will set in motion the kind of comprehensive immigration reform that has been talked about.

I think that package, what is known as CIR, is a bad idea for many reasons. Number one, it is going to inspire more illegal immigration. It is costly. It is going to distort the labor market.

What we need to do first is establish a sustained period of control and integrity in the systems that we have, including our legal immigration system and also start consolidating some of our legal immigration categories, so that, you know, we are not offering more opportunities for legal immigration than we can actually fulfill, all those backlogs that people have talked about. But I don't think we—to repeat an expression that came earlier today, we shouldn't just throw up our hands.

I think what is important is, you know, I see the vast disparity of views on this issue that are represented on this Committee, and I think what needs to happen is to take smaller steps, at such point as we all have confidence in the system or at least more confidence, start small, look for the areas of consensus, like perhaps skilled immigration, looking at it in a small way, the illegal aliens, younger illegal aliens, who were brought here by their parents and have grown up here. Bite off what Congress can chew, start with confidence-building measures, and do it slowly and in a meaningful way. After all, that is how it has happened over the last 20 years. I mean, I cut my teeth on the Immigration Act of 1990, when the skills issue was addressed. There were more reforms that came in 1996 and, you know, every few years. It doesn't have to be done all at once. In fact, it is a mistake to do it that way.

Mr. GOODLATTE. Thank you.

Mr. Chishti.

Mr. CHISHTI. Thank you very much for letting me be the last speaker on this.

I mean, I think, first of all, you should congratulate yourselves. I mean, I don't think Congress has reneged its responsibility in this area. The fact that we have had this robust enforcement machinery built has a lot to do with congressional appropriations over the last many years, especially since 9/11. That is the—I think the staffing and the resources was critical to the development of this robust machinery, which was lacking, I think, in the prior years. So something really has worked here, and we should celebrate that.

I think we are a pragmatic people. A defining characteristic of the country is a pragmatic country. We have to accept reality. The reality is these are 11 million people in our midst. Why we go here, we can all debate that, but that is the reality today. It is not in our interests to keep perpetuating that bad reality.

Mr. GOODLATTE. Well, if we accept that premise, we also have to address, do we want another 11 million.

Mr. CHISHTI. Exactly. I will get to that.

Mr. GOODLATTE. Well, we only have another minute.

Mr. CHISHTI. That is right. So we want to make sure we clean this slate, because having so many people in the underclass does not help U.S. workers, does not help economic interest, moral interest, all that.

Now, what we should not get here again is lessons from 1986. And this is where, unfortunately, the comprehensive nature of this approach is important. Just look at the E-Verify, which you are quite committed to. The E-Verify will never be a successful program if there are 11 million people who are unauthorized to work. E-Verify will never be a successful program if we don't allow for future flows of lawful workers. That is why I think exactly is the argument that it only works when we do these things together, and that is the lesson of IRCA and that is why we didn't do IRCA well.

Mr. GOODLATTE. Thank you very much.

I want to thank all of the panelists for their contributions today. This has been a long day but a good day in terms of gathering information that we will benefit from as the Committee continues to address the issue of immigration reform and fixing our broken immigration system.

This concludes today's hearing. And thanks to all of our witnesses for attending.

Without objection, all Members will have 5 legislative days to submit additional written questions for the witnesses or additional materials for the record.

And this hearing is adjourned.

[Whereupon, at 4:40 p.m., the Committee was adjourned.]



A P P E N D I X

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MATERIAL SUBMITTED FOR THE HEARING RECORD

Supplemental Material submitted by Michael S. Teitelbaum, Senior Advisor, Alfred P. Sloan Foundation, Wertheim Fellow, Harvard Law School

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REPORT TO  
CONGRESS



**Becoming an American:  
Immigration and  
Immigrant Policy**

U.S. COMMISSION ON IMMIGRATION REFORM



COVER ART: THE *STATUE OF LIBERTY* (*LIBERTY ENLIGHTENING THE WORLD*), A GIFT FROM FRANCE THAT WAS INTENDED AS A REPRESENTATION OF REPUBLICAN IDEALS, HAS FOR MORE THAN A CENTURY BEEN THE PREEMINENT SYMBOL OF IMMIGRATION TO THE U.S. THE BLINDFOLDED *STATUE OF JUSTICE*, DERIVED FROM THE GREEK GODDESS, THEMIS, REPRESENTS THE ORDER OF SOCIETY ESTABLISHED BY LAW, CUSTOM, AND EQUITY. THESE TWO SYMBOLS HIGHLIGHT THE COMMISSION'S VIEW THAT A CREDIBLE IMMIGRATION POLICY MUST UPHOLD BOTH OUR IMMIGRATION TRADITION AND OUR COMMITMENT TO THE RULE OF LAW.

1997  
REPORT TO CONGRESS  
EXECUTIVE SUMMARY

**Becoming an American:  
Immigration & Immigrant Policy**

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SEPTEMBER 1997

U.S. COMMISSION ON IMMIGRATION REFORM



**EXECUTIVE SUMMARY**

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## INTRODUCTION

Immigration and immigrant policy is about immigrants, their families and the rest of us. It is about the meaning of American nationality and the foundation of national unity. It is about uniting persons from all over the world in a common civic culture.

The process of becoming an American is most simply called "Americanization," which must always be a two-way street. All Americans, not just immigrants, should understand the importance of our shared civic culture to our national community. This final report of the U.S. Commission on Immigration Reform makes recommendations to further the goals of Americanization by setting out *immigrant* policies to help orient immigrants and their new communities, to improve educational programs that help immigrants and their children learn English and civics, and to reinforce the integrity of the naturalization process through which immigrants become U.S. citizens.

This report also makes recommendations regarding *immigration* policy. It reiterates the conclusions we reached in three interim reports—on unlawful migration, legal immigration, and refugee and asylum policy—and makes additional recommendations for reforming immigration policies. Further, in this report, the Commission recommends ways to improve the structure and management of the federal agencies responsible for achieving the goals of immigration policy. It is our hope that this final report, *Becoming An American: Immigration and Immigrant Policy*, along with our three interim reports, constitutes a full response to the work assigned the Commission by Congress: to assess the national interest in immigration and report how it can best be achieved.



## **MANDATE AND METHODS**

Public Law 101-649, the Immigration Act of 1990, established this Commission to review and evaluate the impact of immigration policy. More specifically, the Commission must report on the impact of immigration on: the need for labor and skills; employment and other economic conditions; social, demographic, and environmental impact of immigration; and impact of immigrants on the foreign policy and national security interests of the United States. The Commission engaged in a wide variety of fact-finding activities to fulfill this mandate. Site visits were conducted throughout the United States. Commission members visited immigrant and refugee communities in California, Texas, Florida, New York, Massachusetts, Illinois, Arizona, Washington, Kansas, Virginia, Washington, DC, Puerto Rico and the Commonwealth of the Northern Mariana Islands. We also visited such major source countries as Mexico, the Dominican Republic, Cuba, Haiti, and the Philippines. To increase our understanding of international refugee policy issues, we visited Bosnia, Croatia, Germany, and Kenya, and we consulted with Geneva-based officials from the U.N. High Commission for Refugees and the International Organization for Migration. We held more than forty public hearings, consultations with government and private sector officials, and expert roundtable discussions.

## **IMMIGRATION TODAY**

The effects of immigration are numerous, complex, and varied.<sup>1</sup> Immigrants contribute in many ways to the United States: to its vibrant and diverse communities; to its lively and participatory democracy; to its vital intellectual and cultural life, to its renowned

<sup>1</sup> Please see the full report for a more detailed discussion of the economic, social, demographic, foreign policy, and national security implications for U.S. immigration.



<b>Immigrant Admissions by Major Category: FYs 1992-1996</b>					
Category of Admission	1992	1993	1994	1995	1996
<b>TOTAL</b>	<b>810,625</b>	<b>880,014</b>	<b>798,384</b>	<b>716,194</b>	<b>808,959</b>
<b>SUBJECT TO THE NUMERICAL CAP</b>	<b>668,641</b>	<b>719,701</b>	<b>662,029</b>	<b>603,234</b>	<b>771,604</b>
<b>FAMILY-BASED IMMIGRANTS</b>	<b>602,896</b>	<b>639,209</b>	<b>497,692</b>	<b>460,663</b>	<b>696,640</b>
Immediate Relatives of U.S. citizens	239,484	255,059	249,764	220,360	360,192
Spouses and children	170,720	182,631	193,364	171,978	283,582
Parents	64,764	62,428	56,370	48,382	66,600
Children born abroad to alien residents	2,116	2,030	1,883	1,894	1,658
Family-sponsored immigrants	213,123	226,776	211,961	238,122	293,751
Unmarried sons/daughters of U.S. citizens	12,466	12,819	13,181	15,182	20,885
Spouses and children of LPRs	90,486	98,604	88,673	110,960	145,990
Sons and daughters of LPRs	27,761	29,704	26,327	33,575	38,559
Married sons/daughters of U.S. citizens	22,195	23,385	22,191	20,676	25,420
Siblings of U.S. citizens	60,195	62,264	61,589	57,529	64,897
Legalization dependents	52,272	55,344	34,074		164
<b>EMPLOYMENT-BASED IMMIGRANTS</b>	<b>116,198</b>	<b>147,012</b>	<b>123,291</b>	<b>86,336</b>	<b>117,346</b>
Priority workers	5,486	21,114	21,053	17,339	27,469
Professionals w/ adv. deg. or of advanced ability	58,401	29,466	14,432	10,475	18,436
Skilled, professional, other workers (CSPA)	47,568	87,669	76,956	50,245	62,674
Skilled, professional, other workers	47,568	60,774	55,659	46,032	62,273
Chinese Student Protection Act (CSPA)	X	26,915	21,297	4,213	401
Special immigrants	4,023	8,156	10,406	6,737	7,831
Investors	59	563	444	540	696
Professionals or highly skilled (Old 3rd)	340	X	X	X	X
Needed skilled or unskilled workers (Old 6th)	311	X	X	X	X
<b>DIVERSITY PROGRAMS</b>	<b>36,348</b>	<b>33,480</b>	<b>41,044</b>	<b>47,246</b>	<b>68,718</b>
Diversity permanent	X	X	X	40,301	58,174
Diversity transition	33,914	33,468	41,056	6,964	544
Nationals of adversely affected countries	1,557	10	X	X	X
Natives of underrepresented countries	880	2	X	X	X
<b>NOT SUBJECT TO THE NUMERICAL CAP</b>	<b>146,084</b>	<b>160,313</b>	<b>136,366</b>	<b>122,960</b>	<b>136,323</b>
Americans	17,253	11,116	2,822	909	954
Cuban/Haitian Entrants	89	62	47	42	29
Parolees, Soviet and Indochinese	13,661	15,772	8,253	3,120	2,283
Refugees and Asylees	117,037	127,343	121,434	114,632	128,367
Refugee adjustments	106,379	115,539	115,431	106,795	118,345
Asylee adjustments	10,658	11,804	5,983	7,837	10,022
Registered Nurses and their families	3,572	2,178	304	69	16
Registry, entered prior to 1/1/72	1,293	938	667	466	356
Other	2,179	2,904	2,836	3,692	6,318

Note: X = Not Applicable. Deleted entries gained LPR status under the provisions of the Immigration Reform and Control Act of 1986.  
Source: Immigration and Naturalization Service, Statistics Division.





job creating entrepreneurship and marketplaces; and to its family values and hard-work ethic. However, there are costs as well as benefits from today's immigration. Those workers most at risk in our restructuring economy—low-skilled workers in production and service jobs—are those who directly compete with today's low-skilled immigrants. Further, immigration presents special challenges to certain states and local communities that disproportionately bear the fiscal and other costs of incorporating newcomers.

Properly-regulated immigration and immigrant policy serves the national interest by ensuring the entry of those who will contribute most to our society and helping lawful newcomers adjust to life in the United States. It must give due consideration to shifting economic realities. A well regulated system sets priorities for admission; facilitates nuclear family reunification; gives U.S. employers access to a global labor market while ensuring that U.S. workers are not displaced or otherwise adversely affected; and fulfills our commitment to resettle refugees as one of several elements of humanitarian protection of the persecuted.

## **AMERICANIZATION AND INTEGRATION OF IMMIGRANTS**

### **A DECLARATION OF PRINCIPLES AND VALUES**

Immigration to the United States has created one of the world's most successful multiethnic nations. We believe these truths constitute the distinctive characteristics of American nationality:

- American unity depends upon a widely-held belief in the principles and values embodied in the American Constitution and their fulfillment in practice: equal protection and



justice under the law; freedom of speech and religion; and representative government;

- Lawfully admitted newcomers of any ancestral nationality—without regard to race, ethnicity, or religion—truly become Americans when they give allegiance to these principles and values;
- Ethnic and religious diversity based on personal freedom is compatible with national unity; and
- The nation is strengthened when those who live in it communicate effectively with each other in English, even as many persons retain or acquire the ability to communicate in other languages.

As long as we live by these principles and help newcomers to learn and practice them, we will continue to be a nation that benefits from substantial but well-regulated immigration. We must pay attention to our core values, as we have tried to do in our recommendations throughout this report. Then, we will continue to realize the lofty goal of *E Pluribus Unum*.<sup>2</sup>

#### **AMERICANIZATION**

*The Commission reiterates its call for the Americanization of new immigrants, that is the cultivation of a shared commitment to the American values of liberty, democracy and equal opportunity. The United States has fought for the principles of individual rights and*

<sup>2</sup> Our national motto, *E Pluribus Unum*, “from many, one,” was originally conceived to denote the union of the thirteen states into one nation. Throughout our history, *E Pluribus Unum* has also come to mean the vital unity of our national community founded on individual freedom and the diversity that flows from it.



*Americanization is the process of integration by which immigrants become part of our communities and by which our communities and the nation learn from and adapt to their presence.*

equal protection under the law, notions that now apply to all our residents. We have long recognized that immigrants are entitled to the full protection of our Constitution and laws. And, the U.S. has the sovereign right to impose obligations on immigrants.

In our 1995 report to Congress, the Commission called for a new commitment to Americanization. In a public speech that same year, Barbara Jordan, our late chair, noted: "That word earned a bad reputation when it was stolen by racists and xenophobes in the 1920s. But it is our word, and we are taking it back." Americanization is the process of integration by which immigrants become part of our communities and by which our communities and the nation learn from and adapt to their presence. Americanization means the civic incorporation of immigrants, that is the cultivation of a shared commitment to the American values of liberty, democracy, and equal opportunity.

The Commission proposes that the principles of Americanization be made more explicit through the covenant between immigrant and nation. Immigrants become part of us, and we grow and become all the stronger for having embraced them. In this spirit, the Commission sees the covenant as:

**Voluntary.** Immigration to the United States—a benefit to both citizens and immigrants—is not an entitlement and Americanization cannot be forced.

**Mutual and Reciprocal.** Immigration presents mutual obligations. Immigrants must accept the obligations we impose—to obey our laws, to pay taxes, to respect other cultures and ethnic groups. At the same time, citizens incur obligations to provide an environment in which newcomers can become fully participating members of our society.

**Individual, Not Collective.** The United States is a nation

founded on the proposition that each individual is born with certain rights and that the purpose of government is to secure these rights. The United States admits immigrants as individuals (or individual members of families). As long as the United States continues to emphasize the rights of individuals over those of groups, we need not fear that the diversity brought by immigration will lead to ethnic division or disunity.

To help achieve full integration of newcomers, the Commission calls upon federal, state, and local governments to provide renewed leadership and resources to a program to promote Americanization that requires:

- Developing capacities to orient both newcomers and receiving communities;
- Educating newcomers in English language skills and our core civic values; and
- Revisiting the meaning and conferral of citizenship to ensure the integrity of the naturalization process.

#### **ORIENTATION**

*The Commission recommends that the federal, state, and local governments take an active role in helping newcomers become self-reliant: orienting immigrants and receiving communities as to their mutual rights and responsibilities, providing information they need for successful integration, and encouraging the development of local capacities to mediate when divisions occur between groups. Information and orientation should be provided both to immigrants and to their receiving communities.*



*Information and orientation should be provided both to immigrants and to their receiving communities.*

The Commission believes the federal government should help immigrants and local communities by:

- **Giving orientation materials to legal immigrants upon admission** that include, but are not limited to: a welcoming greeting; a brief discussion of U.S. history, law, and principles of U.S. democracy; tools to help the immigrant locate and use services for which they are eligible; and other immigration-related information and documents. All immigrants would receive the same materials. The packets would be available in English and other dominant immigrant languages.
- **Encouraging state governments to establish information clearinghouses in major immigrant receiving communities.** The Commission recommends that the federal government provide modest incentive grants to states to encourage them to establish and maintain local resources that would provide information to immigrants and local communities.
- **Promoting public/private partnerships to orient and assist immigrants in adapting to life in the United States.** While the federal government makes the decisions about how many and which immigrants will be admitted to the United States, the actual process of integration takes place in local communities. Local government, schools, businesses, charities, foundations, religious institutions, ethnic associations, and other groups play important roles in the Americanization process.

TOP TEN COUNTRIES OF ORIGIN OF LEGAL IMMIGRANTS 1996	
Mexico	159,731
Philippines	55,778
India	44,781
Vietnam	42,006
Mainland China	41,862
Dominican Republic	39,516
Cuba	26,415
Ukraine	21,051
Russia	19,646
Jamaica	19,029

Source: INS FY 1996 Public Use Admissions Data.

**EDUCATION**

Education is the principal tool of Americanization. Local educational institutions have the primary responsibility for educating im-



migrants. However, there is a federal role in promoting and funding English language acquisition and other academic and civic orientation for both immigrant children and adults.

*The Commission urges a renewed commitment to the education of immigrant children.* The number of school-aged children of immigrants is growing and expected to increase dramatically. These children, mostly young, speak more than 150 different languages; many have difficulty communicating in English. They are enrolled in public schools as well as in secular and religious private schools throughout the country. And, in addition to the problems other students have, they face particular problems in gaining an education— often because of language difficulties.

*The Commission emphasizes that rapid acquisition of English should be the paramount goal of any immigrant language instruction program.* English is the most critical of basic skills for successful integration. English can be taught to children in many ways. Effective programs share certain common characteristics. Based on a review of these programs, the Commission emphasizes the need for public and private educational programs to:

- **Conduct regular evaluations of students' English competence and their ability to apply it to academic subjects.** Such evaluations will ensure placement of immigrant children into regular English-speaking classes as soon as they are prepared. Regular evaluation also will highlight strengths and weaknesses in educational programs and provide insight on improvements that are needed to ensure timely English acquisition.
- **Collect and analyze data** on immigrant students, including their linguistic and academic performance and the efficacy of the instructional methods used in programs for immigrant children.

**TOP TEN  
INTENDED  
STATES OF  
RESIDENCE OF  
LEGAL  
IMMIGRANTS:  
1996**

California 199,221

New York 153,731

Texas 82,229

Florida 79,067

New Jersey 63,162

Illinois 42,154

Massachusetts 23,017

Virginia 21,329

Maryland 20,683

Washington 18,718

Source: INS FY 1996  
Public Use Admissions Data

*English is  
the most critical  
of basic skills  
for successful  
integration.*



- **Include appropriate grade-level instruction in other academic disciplines.** Coordination with teachers, curricula, and instruction outside of English acquisition will promote students' mastery of regular subject matter while they expeditiously learn English.
- **Involve parents of immigrant students in their schooling.** A characteristic of many of the most successful language acquisition programs is the active involvement of parents in the education of their children.

*The Commission encourages programs that are responsive to the needs of immigrant children and an orientation to United States school systems and the community, such as we have seen in "newcomer schools." Newcomer schools must not isolate immigrant newcomers. Instead, they must be transitional and actively promote the timely integration of students into mainstream schools.*

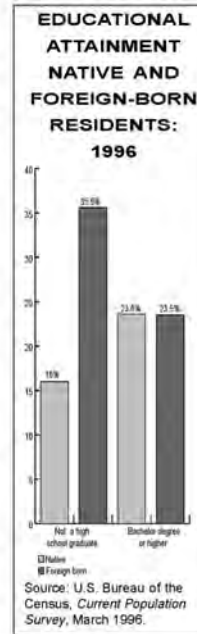
*The Commission recommends the revival and emphasis on instruction of all kindergarten through grade twelve students in the common civic culture that is essential to citizenship. An understanding of the history of the United States and the principles and practices of our government are an essential for all students, immigrants and natives alike. Americanization requires a renewed emphasis on the common core of civic culture that unites individuals from many ethnic and racial groups.*

*The Commission emphasizes the urgent need to recruit, train, and provide support to teachers who work with immigrant students. There is a disturbing shortage of qualified teachers for children with limited English proficiency, of teacher training programs for producing such teachers, and of other support for effective English acquisition instruction.*

*The Commission supports immigrant education funding that is based on a more accurate assessment of the impact of immigration on school systems and that is adequate to alleviate these impacts. There are costs and responsibilities for language acquisition and immigrant education programs that are not now being met. We urge the federal government to do its fair share in meeting this challenge. The long-term costs of failure in terms of dropouts and poorly educated adults will be far larger for the nation and local communities than the costs of such programs. More specifically, we urge the federal government to:*

- **Provide flexibility in federal funding for the teaching of English to immigrant students to achieve maximum local choice of instructional model.** The federal government should not mandate any one mode of instruction (e.g., bilingual education, English as a second language programs, immersion).
- **Make funding contingent on performance outcomes—that is, English language acquisition and mastery of regular academic subject matter by students served in these programs.** School systems receiving funds because of large numbers of children with limited English proficiency and immigrant children should be held to rigorous performance standards. Federal and state funding incentives should promote—not impede—expeditious placement in regular, English-speaking classes.

*The Commission urges the federal, state, and local governments and private institutions to enhance educational opportunities for adult immigrants. Education for basic skills and literacy in English is the major vehicle that integrates adult immigrants into American society and participation in its civic activities. Literate adults are more*







likely to participate in the workforce and twice as likely to participate in our democracy. Literate adults foster literacy in their children, and parents' educational levels positively affect their children's academic performance.

Adult education is severely underfunded. Available resources are inadequate to meet the demand for adult immigrant education, particularly for English proficiency and job skills. In recognition of the benefits they receive from immigration, the Commission urges leaders from businesses and corporations to participate in skills training, English instruction, and civics education programs for immigrants. Religious schools and institutions, charities, foundations, community organizations, public and private schools, colleges and universities also can contribute resources, facilities, and expertise.

#### **NATURALIZATION**

Naturalization is the most important act that a legal immigrant undertakes in the process of becoming an American. Taking this step confers upon the immigrant all the rights and responsibilities of civic and political participation that the United States has to offer (except to become President). The naturalization process must be credible, and it must be accorded the formality and ceremony appropriate to its importance.

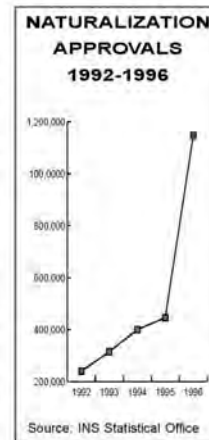
*The Commission believes that the current legal requirements for naturalization are appropriate, but improvements are needed in the means used to measure whether an applicant meets these requirements.* With regard to the specific legal requirements, the Commission supports:

- **Maintaining requirements that legal immigrants must reside in the United States for five years (three years for spouses of U.S. citizens and Lawful Permanent Residents**

*The naturalization process must be credible, and it must be accorded the formality and ceremony appropriate to its importance.*

[LPRs] who serve in the military) before naturalizing. We believe five years is adequate for immigrants to embrace, understand, and demonstrate their knowledge of the principles of American democracy.

- **Improving the mechanisms used to demonstrate knowledge of U.S. history, civics, and English competence.** The Commission believes that the tests used in naturalization should seek to determine if applicants have a meaningful knowledge of U.S. history and civics and are able to communicate in English. The tests should be standardized and aim to evaluate a common core of information to be understood by all new citizens.
- **Expediting swearing-in ceremonies while maintaining their solemnity and dignity.** In districts where the federal court has exercised sole jurisdiction to conduct the swearing-in ceremonies, long delays often result from crowded court calendars. The Commission recommends that Congress restore the Executive Branch's sole jurisdiction for naturalization to reduce this waiting time. The Executive Branch should continue to work with federal judges as well as other qualified institutions, such as state courts and Immigration Judges, to ensure that swearing-in ceremonies are consistently conducted in a timely, efficient, and dignified manner.
- **Revising the naturalization oath to make it comprehensible, solemn, and meaningful.** The current oath is not easy to comprehend. We believe it is not widely understood by new citizens. Its wording includes dated language, archaic form, and convoluted grammar. The Commission proposes the following revision of the oath as capturing the essence of naturalization.





*Solemnly, freely, and  
without any mental reservation,  
I, [name] hereby renounce under oath  
[or upon affirmation]  
all former political allegiances.  
My sole political fidelity  
and allegiance from this day forward  
is to the United States of America.  
I pledge to support and respect  
its Constitution and laws.  
Where and if lawfully required,  
I further commit myself to defend them against all enemies,  
foreign and domestic, either by military or civilian service.  
This I do solemnly swear [or affirm].*

The Commission calls for urgently needed reforms to increase the efficiency and integrity of the naturalization process. The vast majority of applicants for naturalization are law-abiding immigrants who contribute to our society. The value of Americanization is eroded whenever unnecessary obstacles prevent eligible immigrants from becoming citizens. Its value also is undermined when the process permits the abuse of our laws by naturalizing applicants who are not entitled to citizenship.

Recognizing steps already are underway to reengineer the naturalization process, the Commission supports the following approaches:

- **Instituting efficiencies without sacrificing quality controls.**  
In the Commission's 1995 report to Congress, we recommended that the Immigration and Naturalization Service (INS) and the Congress take steps to expedite the processing of naturalization applications while maintaining

As under current regulations, new citizens will conclude the oath with the words "so help me God" unless, because of religious beliefs or by other reasons of conscience they choose to affirm their allegiance.



rigorous standards. Two years later, the naturalization process still takes too long, and previous efforts to expedite processing resulted in serious violations of the integrity of the system. Instituting a system that is both credible and efficient remains a pressing need.

- **Improving the integrity and processing of fingerprints.** The Commission believes that only service providers under direct control of the federal government should be authorized to take fingerprints. If the federal government does not take fingerprints itself but instead contracts with service providers, it must screen and monitor such providers rigorously for their capacity, capability, and integrity. Failure to meet standards would mean the contract would be terminated.
- **Contracting with a single English and civics testing service.** The Commission recommends that the federal government contract with one national and respected testing service to develop and administer the English and civics tests to naturalization applicants. Having one organization under contract should help the government substantially improve its oversight. Moreover, contracting with a highly respected and nationally-recognized testing service will help ensure a high quality product.
- **Increasing professionalism.** While many naturalization staff are highly professional in carrying out their duties, reports from district offices, congressional hearings, and complaints from naturalization applicants demonstrate continued dissatisfaction with the quality of naturalization services. Recruitment and training of longer term staff assigned to adjudicating applications and overseeing quality control would help overcome some of these problems.
- **Improving automation.** The Commission is encouraged by

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plans to develop linkages among data sources related to naturalization. The Commission recommends continued funding for an up-to-date, advanced, electronic automation system for information entry and recordkeeping.

- **Establishing clear fee-waiver guidelines and implementing them consistently.** Under current law, the Attorney General is authorized to grant fee waivers to naturalization applicants. The Commission has received accounts of legitimate requests being denied. Clear guidelines and consistent implementation are needed to ensure that *bona fide* requests are granted, while guarding against abuse.

## **A CREDIBLE FRAMEWORK FOR IMMIGRATION POLICY**

In our previous reports, the Commission defined a credible immigration policy "by a simple yardstick: people who should get in do get in, people who should not get in are kept out; and people who are judged deportable are required to leave." By these measures, we have made substantial, but incomplete, progress. What follows are the Commission's recommendations for comprehensive reform to achieve more fully a credible framework for immigration policy.

### **LEGAL PERMANENT ADMISSIONS**

*The Commission reiterates its support for a properly-regulated system for admitting lawful permanent residents.<sup>4</sup> Research and analyses conducted since the issuance of the Commission's report*

<sup>4</sup> For a full explanation of the Commission's recommendations see *Legal Immigration: Setting Priorities*, 1995. See Appendix for summary of Commissioner Leiden's dissenting statement.

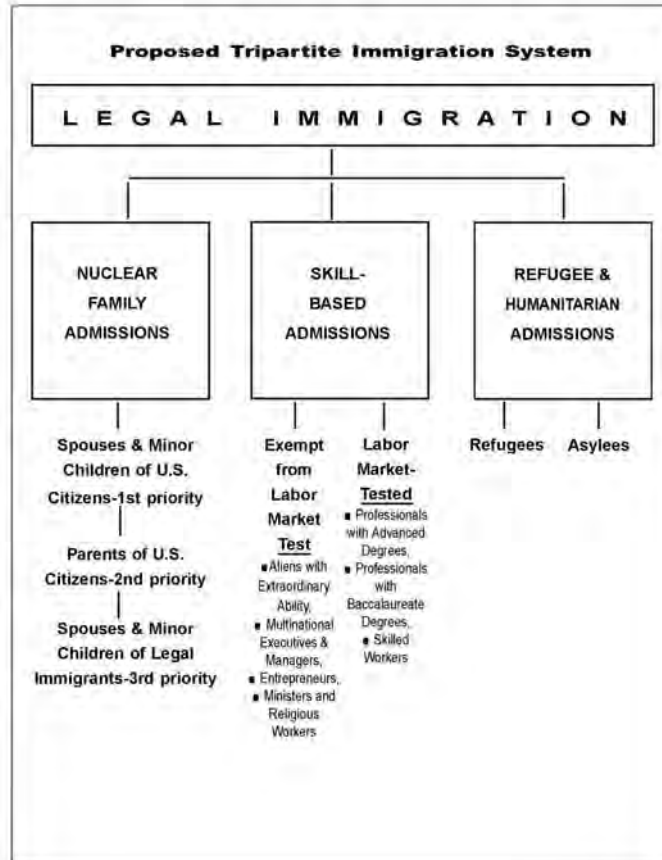


on legal immigration support our view that a properly regulated system of legal permanent admissions serves the national interest. The Commission urges reforms in our legal immigration system to enhance the benefits accruing from the entry of newcomers while guarding against harms, particularly to the most vulnerable of U.S. residents—those who are themselves unskilled and living in poverty. More specifically, the Commission reiterates its support for:

- **A significant redefinition of priorities and reallocation of existing admission numbers to fulfill more effectively the objectives of our immigration policy.** The current framework for legal immigration—family, skills, and humanitarian admissions—makes sense. However, the statutory and regulatory priorities and procedures for admissions do not adequately support the stated intentions of legal immigration—to reunify families, to provide employers an opportunity to recruit foreign workers to meet labor needs, and to respond to humanitarian crises around the world. During the two years since our report on legal immigration, the problems in the legal admission system have not been solved. Indeed, some of them have worsened.

Current immigration levels should be sustained for the next several years while the U.S. revamps its legal immigration system and shifts the priorities for admission away from the extended family and toward the nuclear family and away from the unskilled and toward the higher-skilled immigrant. Thereafter, modest reductions in levels of immigration—to about 550,000 per year, comparable to those of the 1980s—will result from the changed priority system. The Commission continues to believe that legal admission numbers should be authorized by Congress for a specified time (e.g., three to five years) to ensure regular, periodic review and, if needed, change by Congress. This review should consider the ad-

*A properly-regulated  
system of  
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national interest.*





equacy of admission numbers for accomplishing priorities.

- **Family-based admissions that give priority to nuclear family members—spouses and minor children of U.S. citizens, parents of U.S. citizens, and spouses and minor children of lawful permanent residents—and include a backlog clearance program to permit the most expeditious entry of the spouses and minor children of LPRs.** The Commission recommends allocation of 550,000 family-based admission numbers each year until the large backlog of spouses and minor children is cleared. Numbers going to lower priority categories (e.g., adult children, siblings, and diversity immigrants), should be transferred to the nuclear family categories. Thereafter Congress should set sufficient admission numbers to permit all spouses and minor children to enter expeditiously.

Since the Commission first reported its findings on legal admission, the problems associated with family-based admissions have grown. In 1995, the wait between application and admission of the spouses and minor children of LPRs was approximately three years. It is now more than four and one-half years and still growing. Moreover, various statutory changes made in 1996 make it all the more important that Congress take specific action to clear the backlog quickly to regularize the status of the spouses and minor children of legal permanent residents in the United States. In an effort to deter illegal migration, Congress expanded the bases and number of grounds upon which persons may be denied legal status because of a previous illegal entry or overstay of a visa. An unknown, but believed to be large, number of spouses and minor children of LPRs awaiting legal status are unlawfully present in the United States. While the Commission does not condone their illegal presence, we





are cognizant of the great difficulties posed by the long waiting period for a family second preference visa.

- **Skill-based admissions policies that enhance opportunities for the entry of highly-skilled immigrants, particularly those with advanced degrees, and eliminate the category for admission of unskilled workers.** The Commission continues to recommend that immigrants be chosen on the basis of the skills they contribute to the U.S. economy. Only if there is a compelling national interest—such as nuclear family reunification or humanitarian admissions—should immigrants be admitted without regard to the economic contributions they can make.

Research shows that education plays a major role in determining the impacts of immigration. Immigration of unskilled immigrants comes at a cost to unskilled U.S. workers, particularly established immigrants for whom new immigrants are economic substitutes. Further, the difference in estimated lifetime fiscal effects of immigrants by education is striking: using the same methodology to estimate net costs and benefits, immigrants with a high school education or more are found to be net contributors while those without a high school degree continue to be net costs to taxpayers throughout their lifetime.<sup>4</sup>

The Commission also continues to recommend changes in the procedures used in testing the labor market impact of employment-based admissions. Rather than use the lengthy, costly, and bureaucratic labor certification system, the Commission recommends using market forces as a labor market test. To ensure a level playing field for U.S. workers, em-

<sup>4</sup> National Research Council. 1997. *The New Americans: Economic, Demographic, and Fiscal Effects of Immigration*. Washington, DC: National Academy Press.



ployers would attest to having taken appropriate steps to recruit U.S. workers, paying the prevailing wage, and complying with other labor standards. Businesses recruiting foreign workers also would be required to make significant financial investments in certified private sector initiatives dedicated to improving the competitiveness of U.S. workers. These payments should be set at a per worker amount sufficient to ensure there is no financial incentive to hire a foreign worker over a qualified U.S. worker.

- **Refugee admissions based on human rights and humanitarian considerations, as one of several elements of U.S. leadership in assisting and protecting the world's persecuted.**<sup>5</sup> Since its very beginnings, the United States has been a place of refuge. The Commission believes continued admission of refugees sustains our humanitarian commitment to provide safety to the persecuted, enables the U.S. to pursue foreign policy interests in promoting human rights, and encourages international efforts to resettle persons requiring rescue or durable solutions. The Commission also urges the federal government to continue to support international assistance and protection for the majority of the world's refugees for whom resettlement is neither appropriate nor practical.

*The Commission continues to recommend against denying benefits to legal immigrants solely because they are noncitizens.* The Commission believes that the denial of safety net programs to immigrants solely because they are noncitizens is not in the national interest. In our 1994 and 1995 reports, the Commission argued that Congress should address the most significant uses of public benefit programs—particularly, elderly immigrants using Supplementary

<sup>5</sup> For a full explanation of the Commission's refugee-related recommendations, see *U.S. Refugee Policy: Taking Leadership, 1997*.



*Persons admitted for limited duration stays help to enhance our scientific, cultural, educational, and economic strength.*

Security Income— by requiring sponsors to assume full financial responsibility for newly-arriving immigrants who otherwise would be excluded on public charge grounds. In particular, the Commission argued that sponsors of parents who would likely become public charges assume the responsibility for the lifetimes of the immigrants (or until they became eligible for Social Security on the basis of work quarters). We also argued that sponsors of spouses and children should assume responsibility for the duration of the familial relationship or a time-specified period. We continue to believe that this targeted approach makes greater sense than a blanket denial of eligibility for public services based solely on a person's alienage.

#### **LIMITED DURATION ADMISSIONS**

Persons come to the United States for limited duration stays for several principal purposes: representation of a foreign government or other foreign entities; work; study; and short-term visits for commercial or personal purposes, such as tourism and family visits. These individuals are statutorily referred to as "nonimmigrants." In this report, however, we refer to "limited duration admissions [LDAs]," a term that better captures the nature of their admission: When the original admission expires, the alien must either leave the country or meet the criteria for a new LDA or permanent residence.

For the most part LDAs help enhance our scientific, cultural, educational, and economic strength. However, the admission of LDAs is not without costs and, as explained below, certain reforms are needed to make the system even more advantageous for the United States than it now is.

The Commission believes LDA policy should rest on the following principles:

- Clear goals and priorities;

U.S. COMMISSION ON IMMIGRATION REFORM



### Limited Duration Admissions and Visa Issuances

Class of Admission	Admissions (Entries) 1996	Visa Issuances 1996
All classes*	24,842,503	6,237,870
Foreign government officials (& families) (A)	118,157	78,078
Temporary visitors for business and pleasure (B1, B2)	22,880,270	4,947,899
Transit aliens (C)	325,538	186,556
Treaty traders and investors (& families) (E)	138,568	29,909
Students (F1, M1)	426,993	247,432
Students' spouses/children (F2, M2)	32,485	21,518
Representatives (& families) to international organizations (G)	79,528	30,258
Temporary workers and trainees	227,440	81,531
Specialty occupations (H-1B)	144,458	58,327
Performing services unavailable (H2)	23,980	23,204
Agricultural workers (H-2A)	9,635	11,004
Unskilled workers (H-2B)	14,345	12,200
Workers with extraordinary ability (O1, O2)	9,289	4,359
Internationally recognized athletes or entertainers (P1, P2, P3)	33,633	23,885
Exchange & religious workers (Q1, R1)	11,048	5,946
Spouses/children of temporary workers and trainees (H4, O3, P4, R2)	53,572	38,486
Exchange visitors (J1)	215,475	171,164
Spouses/children of exchange visitors (J2)	41,250	33,068
Intracompany transferees (L1)	140,457	32,098
Spouses/children of transferees (L2)	73,305	37,617

Sources: Admissions: U.S. Immigration and Naturalization Service statistical division; Visa Issuances: U.S. Department of State, 1996, *Report of the Visa Office, 1996*, Washington, DC: DOS, Bureau of Consular Affairs.

\*Categories may not equal total because of omitted categories (e.g., fiancé(e)s of U.S. citizens, overlapping Canadian Free Trade Agreement professionals, unknown, NATO officials and professionals, and foreign media).



- Systematic and comprehensible organization of LDA categories;
- Timeliness, efficiency, and flexibility in its implementation;
- Compliance with the conditions for entry and exit (and effective mechanisms to monitor and enforce this compliance);
- Credible and realistic policies governing transition from LDA to permanent immigration status;
- Protection of U.S. workers from unfair competition and of foreign workers from exploitation and abuse; and
- Appropriate attention to LDA provisions in trade negotiations to ensure future immigration reforms are not unknowingly foreclosed.

*The Commission recommends a reorganization of the visa categories for limited duration stays in the United States to make them more coherent and understandable. The Commission recommends that the current proliferation of visa categories be restructured into five broad groups: official representatives; foreign workers; students; short-term visitors; and transitional family members. This reorganization reflects such shared characteristics of different visa categories as entry for like reasons, similarity in testing for eligibility, and similar duration of stay in the United States.*

The definitions and objectives of the five limited duration visa classifications would be:<sup>9</sup>

- **Official representatives** are diplomats, representatives of or to international organizations, representatives of NATO or NATO forces, and their accompanying family members. The



objective of this category is to permit the United States to admit temporarily individuals who represent their governments or international organizations.

- **Short-term visitors** come to the United States for commercial or personal purposes. In 1995 alone, millions of inbound visitors from other countries spent \$76 billion on travel to and in the United States (on U.S. flag carriers, lodging, food, gifts, and entertainment).
- **Foreign workers** are those who are coming to perform necessary services for prescribed periods of time, at the expiration of which they must either return to their home countries or, if an employer or family member petitions successfully, adjust to permanent residence. This category would serve the labor needs demonstrated by U.S. businesses, with appropriate provisions to protect U.S. workers from unfair competition.
- **Students** are persons who are in the United States for the purpose of acquiring either academic or practical knowledge of a subject matter. This category has four major goals: to provide foreign nationals with opportunities to obtain knowledge they can take back to their home countries; to give U.S. schools access to a global pool of talented stu-

\* The current system includes the J visa for cultural exchange, which is used for a variety of purposes, ranging from short-term visits to study and work. The workers include scholars and researchers, camp counselors, *au pairs*, and various others. Some work activities under the J visa demonstrate a clear cultural or education exchange; other work activities appear only tangentially related to the program's original purposes. Protection of U.S. workers by labor market tests and standards should apply to the latter group in the same manner as similarly situated temporary workers in other LDA categories. The Department of State should assess how better to fulfill the purpose of the Mutual Educational and Cultural Exchange Act of 1961 [Fulbright Hays Act]. Such an analysis is particularly timely in light of the merger now being implemented between the Department of State and the United States Information Agency, which is responsible for administering the J visa.



dents; to permit the sharing of U.S. values and institutions with individuals from other countries; and to enhance the education of U.S. students by exposing them to foreign students and their cultures.

- **Transitional family members** include fiancé(e)s of U.S. citizens. These individuals differ from other LDAs because they are processed for immigrant status, although they do not receive such status until they marry in the U.S. and adjust. The Commission believes another category of transitional family members should be added: spouses of U.S. citizens whose weddings occur overseas but who subsequently come to the U.S. to reside.

#### **Short-term Visitors**

*The Commission recommends that the current visa waiver pilot program for short-term business and tourist visits be made permanent upon the implementation of an entry-exit control system capable of measuring overstay rates.* A permanent visa waiver system requires appropriate provisions to expand the number of participating countries and clear and timely means for removing those countries that fail to meet the high standards reserved for this privilege. Congress should extend the pilot three years while the control system is implemented.

#### **Foreign Workers**

Each year, more foreign workers enter the United States as LDAs for temporary work than enter as skill-based immigrants. In FY 1996, the Department of State issued almost 278,000 limited duration worker visas, including those for spouses and children. By contrast, only 118,000 immigrant visa issuances and domestic ad-

Adjustments of status in worker categories were recorded in FY 1996, far less than the legislated limit of 140,000.

The Commission recommends that the limited duration admission classification for foreign workers include three principal categories: those who, for significant and specific policy reasons, should be exempt by law from labor market protection standards; those whose admission is governed by treaty obligations; and those whose admission must adhere to specified labor market protection *standards*. Under this recommendation, LDA worker categories are organized around the same principles that guide permanent worker categories. Accordingly, the Commission proposes different subcategories with labor market protection standards commensurate with the risks to U.S. workers we believe are posed by the foreign workers.

- **Those exempt by law from labor market protection standards** because their admission will generate substantial economic growth and/or significantly enhance U.S. intellectual and cultural strength and pose little potential for undermining the employment prospects and remuneration of U.S. workers. These include:

*Individuals of extraordinary ability in the sciences, arts, education, business, or athletics*, demonstrated through sustained national or international acclaim and recognized for extraordinary achievements in their field of expertise.

*Managers and executives of international businesses*. The global competitiveness of U.S. businesses is enhanced by the capacity of multinational corporations to move their senior staff around the world as needed.

*Professors, researchers and scholars* whose salary or other compensation is paid by their home government, home institu-





tion, or the U.S. government in a special program for foreign professors, researchers, and scholars.

*Religious workers*, including ministers of religion and professionals and other workers employed by religious nonprofit organizations in the U.S. to perform religious vocations and religious occupations.

*Members of the foreign media* admitted under reciprocal agreements. The U.S. benefits from the presence of members of the foreign media who help people in their countries understand events in the United States. Just as we would not want our media to be overly regulated by labor policies of foreign governments, the United States extends the same courtesy to foreign journalists working in the U.S.

- **Foreign workers whose admission is subject to treaty obligations.** This includes treaty traders, treaty investors, and other workers entering under specific treaties between the U.S. and the foreign nation of which the alien is a citizen or national. Under the provisions of NAFTA, for example, Canadian professionals are not subject to numerical limits or labor market testing; Mexican professionals continue to be subject to labor market tests, but will be exempt from numerical limits in 2003.
- **Foreign workers subject by law to labor market protection standards.** These are principally:

*Professionals and other workers who are sought by employers because of their highly-specialized skills or knowledge and/or extensive experience.* Included in this category are employees of international businesses who have specialized knowledge but are not managers or executives.



*Trainees* admitted to the United States for practical, on-the-job training in a variety of occupations. Trainees work in U.S. institutions as an integral part of their training program.

*Artists, musicians, entertainers, athletes, fashion models, and participants in international cultural groups* that share the history, culture, and traditions of their country.

*Lesser-skilled and unskilled workers* coming for seasonal or other short-term employment. Such worker programs warrant strict review, as described below. The Commission remains opposed to implementation of a large-scale program for temporary admission of lesser skilled and unskilled workers.

*The Commission recommends that the labor market tests used in admitting temporary workers in this category be commensurate with the skill level and experience of the worker.*

- **Employers requesting the admission of temporary workers with highly-specialized skills or extensive experience should meet specific requirements.** Admission should be contingent on an attestation that:

*The employer will pay the greater of actual or prevailing wage and fringe benefits* paid to other employees with similar experience and qualifications for the specific employment in question. Actual wage rates should be defined in a simple and straightforward manner.

*The employer has posted notice of the hire,* informed coworkers at the principal place of business at which the LDA worker is employed, and provided a copy of the attestation to the LDA worker.



*The employer has paid a reasonable user fee* that will be dedicated to facilitating the processing of applications and the costs of auditing compliance with all requirements.

*There is no strike or lockout* in the course of a labor dispute involving the occupational classification at the place of employment.

*The employer has not dismissed, except for cause, or otherwise displaced workers* in the specific job for which the alien worker is hired during the previous six months. Further, the employer will not displace or lay off, except for cause, U.S. workers in the specific job during the ninety-day period following the filing of an application or the ninety-day periods preceding or following the filing of any visa petition supported by the application.

*The employer will provide working conditions* for such temporary workers that are comparable to those provided to similarly situated U.S. workers.

- **Certain at-risk employers of skilled workers** (described below) should be required to attest to having taken significant steps—for example, recruitment or training—to **employ U.S. workers in the jobs for which they are recruiting foreign workers**. We do not recommend, however, that current labor certification processes be used to document significant efforts to recruit. These procedures are costly, time consuming, and ultimately ineffective in protecting highly skilled U.S. workers.
- **Employers requesting the admission of lesser-skilled workers should be required to meet a stricter labor market protection test**. Such employers should continue to be required to demonstrate that they have sought, but were unable to

find, sufficient American workers prepared to work under favorable wages, benefits, and working conditions. They also should be required to specify the plans they are taking to recruit and retain U.S. workers, as well as their plans to reduce dependence on foreign labor through hiring of U.S. workers or other means. Employers should continue to be required to pay the highest of prevailing, minimum, or adverse wage rates, provide return transportation, and offer decent housing, health care, and other benefits appropriate for seasonal employees.

*The Commission recommends that categories of employers who are at special risk of violating labor market protection standards—regardless of the education, skill, or experience level of its employees—be required to obtain regular, independently-conducted audits of their compliance with the attestations made about labor market protection standards, with the results of such audit being submitted for Department of Labor review. Certain businesses, as described below, pose greater risk than others of displacing U.S. workers and/or exploiting foreign workers. The risk factors that should be considered in determining whether regular audit requirements must apply include:*

- **The employer's extensive use of temporary foreign workers.** Extensive use can be defined by the percentage of the employer's workforce that is comprised of LDA workers. It also can be measured by the duration and frequency of the employer's use of temporary foreign workers.
- **The employer's history of employing temporary foreign workers.** Those employers with a history of serious violations of regular labor market protection standards or of specific labor standards related to the employment of LDA workers should be considered as at risk for future violations.



- **The employer's status as a job contracting or employment agency providing temporary foreign labor to other employers.** Risk of labor violations increases as responsibility is divided between a primary and secondary employer.

To ensure adequate protection of labor market standards, such employers should be required to submit an independent audit of their compliance with all statements attested to in their application. The independent audits should be done by recognized accounting firms that have the demonstrated capacity to determine, for example, that wages and fringe benefits were provided as promised in the attestation and conformed to the actual or prevailing wages and fringe benefits provided to similarly situated U.S. workers.

*The Commission recommends enhanced monitoring of and enforcement against fraudulent applications and postadmission violations of labor market protection standards.* To function effectively, both the exempt and nonexempt temporary worker programs must provide expeditious access to needed labor. The Commission's recommendations build on the current system of employer attestations that receive expeditious preapproval review but are subject to postapproval enforcement actions against violators. More specifically, the Commission recommends:

- **Allocating increased staff and resources to the agencies responsible for adjudicating applications for admission and monitoring and taking appropriate enforcement action against fraudulent applications and violations of labor market protection standards.** Increased costs required for more efficient adjudication of applications can be covered by applicant fees. However, additional costs incurred for more effective investigations of compliance with labor market standards will require appropriated funds.
- **Barring the use of LDA workers by any employer who has been found to have committed willful and serious labor**



standards violations with respect to the employment of LDA workers. Further, upon the recommendation of any federal, state, or local tax agency, barring the use of LDA workers by any employer who has been found to have committed willful and serious payroll tax violations with respect to LDA workers. The law currently provides for such debarment for failure to meet labor condition attestation provisions or misrepresentation of material facts on the application. Implementation of this recommendation would enable penalties to be assessed for serious labor standards violations that are not also violations of the attestations.

- **Developing an enforcement strategy to reduce evasion of the LDA labor market protection standards through contractors.** U.S. businesses' growth in contracting-out functions has raised questions of employment relationships and ultimate liability for employment-related violations, including those related to temporary foreign workers. A uniform policy for dealing with these situations is desirable for the enforcement agencies involved, as well as for employers, contractors, and workers.

#### **CURBING UNLAWFUL MIGRATION**

In its first interim report to Congress, the Commission recommended a comprehensive strategy to curb unlawful migration into the United States through prevention and removal.<sup>7</sup> Despite the additional resources, new policies, and often innovative strategies adopted during the past few years, illegal migration continues to be a problem. The Commission continues to believe that unlawful immigration can be curtailed consistent with our traditions, civil rights, and civil liberties. As a nation committed to the rule of law, our immi-

<sup>7</sup> For a full explanation of the Commission's recommendations see: *U.S. Immigration Policy: Restoring Credibility*, 1994.



*Unlawful immigration can be controlled consistent with our traditions, civil rights, and civil liberties.*

TOP TEN COUNTRIES OF ORIGIN OF UNLAWFUL MIGRANTS*
Mexico 2,700,000
El Salvador 335,000
Guatemala 165,000
Canada 120,000
Haiti 105,000
Philippines 95,000
Honduras 90,000
Poland 70,000
Nicaragua 70,000
Bahamas 70,000

\* 1996 estimates; Source: INS. 1997. *1996 Statistical Yearbook of Immigration and Naturalization Service*. Washington, DC: Government Printing Office.

gration policies must conform to the highest standards of integrity and efficiency in the enforcement of the law. We must also respect due process.

### Deterrence Strategies

The Commission reiterates its 1994 recommendations supporting a comprehensive strategy to deter illegal migration. More specifically, the Commission continues to support implementation of the following deterrence strategies:

- An effective border management policy that accomplishes the twin goals of preventing illegal entries and facilitating legal ones. New resources for additional Border Patrol officers, inspectors, and operational support, combined with such new strategies as operations "Hold the Line," "Gatekeeper," and "Safeguard," have improved significantly the management of the border where they are deployed. The very success of these new efforts demonstrates that to gain full control, the same level of resources and prevention strategies must be deployed at all points on the border where significant violations of U.S. immigration law are likely to occur.
- Reducing the employment magnet is the linchpin of a comprehensive strategy to deter unlawful migration. Economic opportunity and the prospect of employment remain the most important draw for illegal migration to this country. Strategies to deter unlawful entries and visa overstays require both a reliable process for verifying authorization to work and an enforcement capacity to ensure that employers

\* The Concurring Statement of Commissioners Leiden and Merced can be found in the Commission's 1994 report.



adhere to all immigration related labor standards. The Commission supports implementation of pilot programs to test what we believe is the most promising option for verifying work authorization: a computerized registry based on the social security number.<sup>8</sup>

- **Restricting eligibility of illegal aliens for publicly-funded services or assistance, except those made available on an emergency basis or for similar compelling reasons to protect public health and safety or to conform to constitutional requirements.** Although public benefit programs do not appear to be a major magnet for illegal migrants, it is important that U.S. benefit eligibility policies send the same message as immigration policy: Illegal aliens should not be here and, therefore, should not receive assistance, except in unusual circumstances. The Commission recommended drawing a line between illegal aliens and lawfully resident legal immigrants with regard to benefits eligibility, in part to reinforce this message. We continue to believe that this demarcation between legal and illegal aliens makes sense. The Commission urges the Congress to reconsider the changes in welfare policy enacted in 1996 that blur the distinctions between legal and illegal aliens by treating them similarly for the purposes of many public benefit programs.
- **Strategies for addressing the causes of unlawful migration in source countries.** An effective strategy to curb unauthorized movements includes cooperative efforts with source countries to address the push factors that cause people to seek new lives in the United States. The Commission continues to urge the United States government to give priority in its foreign policy and international economic policy to

**TOP TEN  
STATES OF  
RESIDENCE OF  
UNLAWFUL  
MIGRANTS\***

California	2,000,000
Texas	700,000
New York	540,000
Florida	350,000
Illinois	290,000
New Jersey	135,000
Arizona	115,000
Massachusetts	85,000
Virginia	55,000
Washington	52,000

\* 1996 estimates; Source: INS, 1997, *1995 Statistical Yearbook of Immigration and Naturalization Service*. Washington, DC: Government Printing Office.

<sup>8</sup> For a fuller discussion of the Commission's recommendation on mass migration emergencies, see *U.S. Refugee Policy: Taking Leadership*, 1997.





long term reduction in the causes of unauthorized migration.

- **Mechanisms to respond in a timely, effective, and humane manner to migration emergencies.** A credible immigration policy requires the ability to respond effectively and humanely to migration emergencies in which large numbers of people seek entry into the United States. These emergencies generally include *bona fide* refugees, other individuals with need for protection, and persons seeking a better economic life in the U.S. Failure to act appropriately and in a timely manner to determine who should be admitted and who should be returned can have profound humanitarian consequences. Further, an uncontrolled emergency can overwhelm resources and create serious problems that far outlast the emergency.<sup>9</sup>

### **Removals**

A credible immigration system requires the effective and timely removal of aliens who can be determined through constitutionally-sound procedures to have no right to remain in the United States. If unlawful aliens believe that they can remain indefinitely once they are within our national borders, there will be increased incentives to try to enter or remain illegally.

Our current removal system does not work. Hundreds of thousands of aliens with final removal orders remain in the U.S. The system's ineffectiveness results from a fragmented, uncoordinated approach, rather than flawed legal procedures. The Executive Branch does not have the capacity, resources, or strategy to detain aliens likely to abscond, to monitor the whereabouts of released aliens, or to remove them.

*The Commission urges immediate reforms to improve management of the removal system and ensure that aliens with final orders of deportation, exclusion, or removal are indeed removed from the United States. Establishing a more effective removal system requires changes in the management of the removal process. More specifically, the Commission recommends:*

- **Establishing priorities and numerical targets for the removal of criminal and noncriminal aliens.** The Commission encourages headquarters, regional, and local immigration enforcement officials to set these priorities and numerical goals.
- **Local oversight and accountability for the development and implementation of plans to coordinate apprehensions, detention, hearings, removal, and the prevention of reentry.** With guidance on priorities, local managers in charge of the removal system would be responsible for allocation of resources to ensure that aliens in the prioritized categories are placed in the system and ultimately removed. Local managers also would be responsible and accountable for identifying effective deterrents that reduce the likelihood that removed aliens would attempt to reenter the U.S.
- **Continued attention to improved means for identifying and removing criminal aliens with a final order of deportation.** The Commission reiterates the importance of removing criminal aliens as a top priority. Our recommendation regarding the importance of removing noncriminal aliens with final orders is not intended to shift the attention of the removal system away from this priority. Rather, both criminal and noncriminal aliens must be removed to protect public safety (in the case of criminals) and to send a deterrent message (to *all* who have no permission to be here).



- **Legal rights and representation.** The Executive Branch should be authorized to develop, provide, and fund programs and services that educate aliens about their legal rights and immigration proceedings. Such programs also should encourage and facilitate legal representation where to do so would be beneficial to the system and the administration of justice. Particular attention should be focused on aliens in detention where release or removal can be expedited through such representation. Under this approach, the alien would not have a right to appointed counsel, but the government could fund services to address some of the barriers to representation.
- **Prosecutorial discretion to determine whether to proceed with cases.** Guidelines on the use of prosecutorial discretion should be developed, local Trial Attorneys trained, support staff provided, and discretion exercised with the goal of establishing a more efficient and rational hearing system. Trial attorneys should focus their efforts on trying cases that are likely to result in the removal of the alien upon completion of the proceedings.
- **Strategic use of detention and release decisions.** Detention space, always in limited supply, is in greater demand as the government has focused more on the removal of criminal aliens and as Congress mandates more categories to be detained. Detention needs to be used more strategically if removals are to be accomplished. Alternatives to detention should be developed so that detention space is used efficiently and effectively. The Commission fully supports the three-year pilot program, created with and implemented by the Vera Institute, to help define effective alternatives to detention for specific populations.

- **Improved detention conditions and monitoring.** Detention cannot be used effectively unless the conditions of detention are humane and detainees are free from physical abuse and harassment by guards. We have no doubt that appropriate criteria for all facilities can be promulgated, based on sound governmental judgment and consultation with concerned nongovernmental organizations. But most importantly, a system to monitor facilities on a regular basis must be developed. Inspections must occur more than once annually.

Further, the Commission recommends that the Department of Justice consider placing administrative responsibility for operating detention centers with the Bureau of Prisons or U.S. Marshals Service. An immigration enforcement agency should not be shouldered with such a significant responsibility that is not part of its fundamental mission or expertise.

- **Improved data systems.** Current data systems are unable to link an apprehension to its final disposition (e.g., removal, adjustment of status). This significantly limits the use of apprehension and removal data for analytical purposes. The Commission urges development of data systems that link apprehensions and removals and provide statistics on individuals.
- **The redesigned removal system should be managed initially by a Last-In-First-Out (LIFO) strategy to demonstrate the credibility of the system.** Once a coherent system is organized and appropriate resources are assigned to removing deportable aliens—not simply to put aliens through proceedings—removals should proceed in a Last-In-First-Out mode. In this way, the government can send a credible



deterrent message to failed asylum seekers, visa overstayers, users of counterfeit documents, and unauthorized workers, that their presence in the United States will not be tolerated. Such a well-organized system can establish control over the current caseload and quickly prioritize the backlog for enforcement purposes. The deterrent effect of LIFO has been shown in the asylum system where new procedures were adopted in a LIFO mode.

*The Commission urges Congress to clarify that the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) and the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) do not apply retroactively to cases pending when the new policies and procedures went into effect. As a matter of policy, the Commission believes that retroactive application of new immigration laws undermines the effectiveness and credibility of the immigration system. Applying newly enacted laws or rules in an immigration proceeding that has already commenced results in inefficiency in the administration of the immigration laws. It also can raise troubling issues of fairness. Finally, it invites confusion, adds uncertainty, and fosters a lack of trust and confidence in the rule of law.*

## **ACHIEVING IMMIGRATION POLICY GOALS**

### **INTRODUCTION**

Restoring credibility and setting priorities—themes at the center of the Commission's policy recommendations on illegal and legal immigration, respectively—will not come to pass unless the government is structured to deliver on these policies. An effective immi-



gration system requires both credible policy and sound management. Good management cannot overcome bad policy. Poor structures, lack of professionalism, poor planning, and failure to set priorities will foil even the best policies.

Until relatively recently, the agencies responsible for implementing immigration policy were underfunded, understaffed, and neglected. During the past few years, however, massive increases in resources and personnel, combined with significant political attention to immigration issues, have provided new opportunities to address longstanding problems. A recent General Accounting Office [GAO] report documented improvements—including, for example, a more strategic approach to the formulation of immigration enforcement programs. The Commission has seen progress in many management areas—for example, more effective border management, increased numbers of criminal alien removals, and asylum reform that has deterred abusive claims while protecting *bona fide* refugees. Nevertheless, problems remain in the operation of the U.S. immigration and naturalization system. Further improvements must be made if it is to function smoothly and effectively, anticipating and addressing, rather than reacting to, problems.

*An effective  
immigration system  
requires both  
credible policy and  
sound management.*

#### **STRUCTURAL REFORM**

The Commission recommends fundamental restructuring of responsibilities within the federal government to support more effective management of the core functions of the immigration system: border and interior enforcement; enforcement of immigration-related employment standards; adjudication of *immigration and naturalization applications*; and *consolidation of administrative appeals*. The immigration system is one of the most complicated in the federal government bureaucracy. In some cases, one agency has mul-

<sup>10</sup> See Appendix for Commissioner Leiden's concurring statement.



Current U.S. Immigration System					
AGENCY	FUNCTION	IMMIGRATION ENFORCEMENT	IMMIGRATION BENEFITS	LABOR STANDARDS	APPEALS
<b>DEPARTMENT OF JUSTICE</b>					
	Immigration & Naturalization Service	✓	✓	✓	✓
	Executive Office for Immigration Review				✓
<b>DEPARTMENT OF STATE</b>					
	Consular Affairs		✓		
	Bureau for Population, Refugees & Migration		✓		
	Board of Appellate Review*				✓
<b>DEPARTMENT OF LABOR</b>					
	Employment Standards Administration			✓	
	Employment Training Administration		✓		
	Board of Alien Labor Certification Appeals				✓

\*For a limited set of nationality- and citizenship-related matters.

multiple, and sometimes conflicting, operational responsibilities. In other cases, multiple agencies have responsibility for elements of the same functions. Both situations create problems.

*Mission Overload.* Some of the agencies that implement the immigration laws have so many responsibilities that they have proved unable to manage all of them effectively. Between Congressional mandates and administrative determinations, these agencies must give equal weight to more priorities than any one agency can handle.

Proposed U.S. Immigration System					
AGENCY	FUNCTION	IMMIGRATION ENFORCEMENT	IMMIGRATION BENEFITS	LABOR STANDARDS	APPEALS
DEPARTMENT OF JUSTICE Bureau for Immigration Enforcement		✓			
DEPARTMENT OF STATE Undersecretary for Citizenship, Immigration, and Refugee Admissions			✓		
DEPARTMENT OF LABOR Employment Standards Administration				✓	
AGENCY FOR IMMIGRATION REVIEW					✓

Such a system is set up for failure and, with such failure, further loss of public confidence in the immigration system.

No one agency is likely to have the capacity to accomplish all of the goals of immigration policy equally well. Immigration law enforcement requires staffing, training, resources, and a work culture that differs from what is required for effective adjudication of benefits or labor standards regulation of U.S. businesses.

*Diffusion of Responsibilities Among Agencies.* Responsibility for many immigration functions are spread across numerous agencies within single departments or between departments. For example, responsibility for making decisions on skill-based immigrant and LDA applications is dispersed among the Department of Labor [DOL], the Department of Justice's [DOJ] Immigration and Naturalization Service [INS], and the Department of State [DOS]. Responsibility for





Proposed Restructuring of the Immigration System			
DEPARTMENT OF JUSTICE	BUREAU FOR IMMIGRATION ENFORCEMENT	Immigration enforcement at the border and in the interior of the United States	
DEPARTMENT OF STATE	UNDERSECRETARY FOR CITIZENSHIP, IMMIGRATION, AND REFUGEE ADMISSIONS	Adjudication of eligibility for immigration, refugee and naturalization applications	
DEPARTMENT OF LABOR	EMPLOYMENT STANDARDS ADMINISTRATION	Enforcement of immigration-related employment standards	
INDEPENDENT AGENCY	AGENCY FOR IMMIGRATION REVIEW	Administrative review of all authorized immigration-related appeals	



investigating employer compliance with immigration-related labor standards is shared by INS and DOL.

The Commission considered a range of ways to reorganize roles and responsibilities, including proposals to establish a Cabinet-level Department of Immigration Affairs. After examining the full range of options, the Commission concludes that a clear division of responsibility among existing federal agencies, with appropriate consolidation of functions, will improve management of the federal immigration system. As discussed below, *the Commission recommends a restructuring of the immigration system's four principal operations as follows:*<sup>60</sup>

1. *Immigration enforcement at the border and in the interior of the United States in a Bureau for Immigration Enforcement at the Department of Justice;*
2. *Adjudication of eligibility for immigration-related applications (immigrant, limited duration admission, asylum, refugee, and naturalization) in the Department of State under the jurisdiction of an Undersecretary for Citizenship, Immigration, and Refugee Admissions;*
3. *Enforcement of immigration-related employment standards in the Department of Labor; and*
4. *Appeals of administrative decisions including hearings on removal, in an independent body, the Agency for Immigration Review.*

The Commission believes this streamlining and reconfiguring of responsibilities will help ensure: coherence and consistency in immigration-related law enforcement; a supportive environment for adjudication of applications for immigration, refugee, and citizenship services; rigorous enforcement of immigration-related labor stan-



*The importance and complexity of the enforcement function within the U.S. immigration system necessitate the establishment of a higher-level, single-focus agency within the Department of Justice.*

dards to protect U.S. workers; and fair and impartial review of immigration decisions.

#### **Bureau For Immigration Enforcement (DOJ)**

*The Commission recommends placing all responsibility for enforcing United States immigration laws to deter future illegal entry and remove illegal aliens in a Bureau for Immigration Enforcement at the Department of Justice. The Commission believes that the importance and complexity of the enforcement function within the U.S. immigration system necessitate the establishment of a higher-level, single-focus agency within the DOJ. The Commission further recommends that the newly configured agency have the prominence and visibility that the Federal Bureau of Investigation [FBI] currently enjoys within the DOJ structure. The Director of the Bureau would be appointed for a set term (e.g., five years). The agency would be responsible for planning, implementing, managing, and evaluating all U.S. immigration enforcement activities both within the United States and overseas.*

The Commission recommends the following distribution of responsibilities within the Bureau for Immigration Enforcement.

**Uniformed Enforcement Officers.** The Commission recommends merger of the INS Inspectors, Border Patrol, and detention officers into one unit, the Immigration Uniformed Service Branch. Its officers would be trained for duties at land, sea, and air ports of entry, between land ports on the border, and in the interior where uniformed officers are needed for enforcement.

**Investigators.** The Commission believes investigators will be a key part of the new agency's responsibility. Investigators are the main agents responsible for identifying and apprehending people who are



illegally residing or working in the United States, for deterring smuggling operations, for building a case against those who are not deterred, and for identifying, apprehending, and carrying out the removal of aliens with final enforceable orders of removal.

**Intelligence.** The Bureau will require an Intelligence Division to provide strategic assessments, training and expertise on fraud, information about smuggling networks, and tactical support to uniformed officers or investigators.

**Assets Forfeiture Unit.** As with the other DOJ enforcement agencies, the Bureau will have an Assets Forfeiture unit.

**Pre- and Post-Trial "Probation" Officers.** "Probation" functions are not now performed consistently or effectively, but the Commission believes this function is essential to more strategic use of detention space. As it is unlikely that all potentially deportable aliens could or should be detained awaiting removal, the Commission believes more attention should be given to supervised release programs and to sophisticated methods for tracking the whereabouts of those not detained.

**Trial Attorneys/Prosecutors.** The Commission believes that the Trial Attorneys, who in effect are the Government's immigration prosecutors, should be vested with, *and should utilize*, an important tool possessed by their criminal counterparts: prosecutorial discretion.

**Field Offices.** The new agency would implement its programs through a series of field offices that are structured to address comprehensively the immigration enforcement challenges of the particular locality. As the location of these offices should be driven by enforcement priorities, they are likely to be in different places than current district offices. Regional Offices could be retained for administrative and managerial oversight of these dispersed and diverse field offices.



*A more streamlined and accountable adjudication process, involving fewer agencies but greater safeguards, will result in faster and better determinations of immigration and citizenship benefits.*

### **Citizenship, Immigration, And Refugee Admissions (DOS)**

*The Commission recommends that all citizenship and immigration benefits adjudications be consolidated in the Department of State, and that an Undersecretary for Citizenship, Immigration, and Refugee Admissions be created to manage these activities.* At present, three separate agencies—the INS, the Department of State, and the Department of Labor—play broad roles in adjudicating applications for legal immigration, limited duration admissions, refugee admissions, asylum, and/or citizenship. The Commission believes a more streamlined and accountable adjudication process, involving fewer agencies but greater safeguards, will result in faster and better determinations of these benefits. As in the current system, these services would be funded through fees paid by applicants and retained by the benefits offices for delivery of the services.

The Commission considered the advantages and disadvantages of consolidating responsibility in the Department of Justice and in the Department of State, the two agencies that already have the most significant immigration, refugee, and citizenship duties. Bearing in mind the dual problems the Commission identified in the current structures—mission overload and fragmentation of responsibility, we concluded that consolidation in the Department of State makes greater sense than creation of a new, separate benefits agency within the Department of Justice.

Taking responsibility for immigration and citizenship services out of the Department of Justice sends the right message, that legal immigration and naturalization are not principally law enforcement problems; they are opportunities for the nation as long as the services are properly regulated. Further, the Department of Justice does not have the capacity internationally to take on the many duties of the Department of State. The Department of State, however, already has a domestic presence and an adjudication capability. It issues one-



half million immigrant visas and six million nonimmigrant visas each year. DOS also provides a full range of citizenship services both domestically (issuance of almost 6 million passports annually) and abroad (e.g., citizenship determinations and registration of births of U.S. citizens overseas). Indeed, DOS has devoted a major share of its personnel and its capital and operating resources to these adjudicatory functions at embassies and consulates in more than two hundred countries and in passport offices in fifteen U.S. cities.

Consolidating responsibility requires some changes in the way the Department of State administers its immigration responsibilities, which we believe will strengthen the adjudication function. Because immigration has both foreign and domestic policy import, the Department of State will need to develop mechanisms for consultation with groups representing a broad range of views and interests regarding immigration. Such consultations already occur in the refugee program. The Department of State also will need to change its historic position on review of consular decisions. At present, decisions made at INS and the Department of Labor on many immigrant and LDA applications may be appealed, but no appeal is available on consular decisions. The Commission believes that immigrant and certain limited duration admission visas with a U.S. petitioner should be subject to independent administrative appeal (see below).

The Undersecretary, who would have direct access to the Secretary of State, would be responsible for domestic and overseas immigration, citizenship, and refugee functions. These include adjudication of applications for naturalization, determinations of citizenship overseas, all immigrant and limited duration admission petitions, work authorizations and other related permits, and adjustments of status. It also would have responsibility for refugee status determinations abroad and asylum claims at home. Overseas citizenship services would continue to be provided by consular officers abroad. The



agency would have enhanced capacity to detect, deter, and combat fraud and abuse among those applying for benefits.

Within the Office of the Undersecretary would be a unit responsible both for formulating and assessing immigration policy as well as reviewing and commenting on the immigration-related effects of foreign policy decisions. This policy capacity would be new for the Department of State, but it is in keeping with the important role that migration now plays in international relations.

The Undersecretary would have three principal operating bureaus:

**A Bureau of Immigration Affairs** would focus on the immigration process, as noted above, as well as on LDA processing. In addition to its existing overseas work, the Immigration Affairs Bureau would be responsible for domestic adjudication/examination functions, including work authorization, adjustment of status, domestic interviewing, and the issuance of appropriate documentation (e.g., green cards). The Immigration Affairs Bureau also would staff immigration information and adjudication offices in areas with immigrant concentrations.

**A Bureau of Refugee Admissions and Asylum Affairs** would assure an appropriate level of independence from routine immigration issues and processes. It would combine the present Bureau for Population, Refugees and Migration [PRM] responsibilities for overseas refugee admissions, the refugee and asylum offices of the INS, and the DOS asylum office in the Bureau of Democracy, Human Rights and Labor. This would integrate the key governmental offices in one of our most important and historic international activities.

**A Bureau of Citizenship and Passport Affairs** would be responsible for naturalization, other determinations of citizenship, and issuance of passports. Local offices performing some citizenship func-



tions, such as overseas travel information, passport and naturalization applications, testing and interviews, could be located with local immigration services.

Overseas citizen services would continue to be handled within the newly consolidated organization. These services include: responding to inquiries as to the welfare or whereabouts of U.S. citizens; assisting when U.S. citizens die, are arrested, or experience other emergencies abroad; providing notarial services; and making citizenship determinations and issuing passports abroad.

**Quality Assurance Offices** would oversee records management, monitoring procedures, fraud investigations, and internal review. At present, monitoring of the quality of decisions made on applications for immigration and citizenship benefits receives insufficient attention. The Commission believes that quality decisions require some form of internal supervisory review for applicants who believe their cases have been wrongly decided. This type of review helps an agency monitor consistency and identify problems in adjudication and offers a means of correcting errors. A staff responsible for and dedicated to ensuring the quality of decisions taken on applications for immigration and citizenship should address some of the weaknesses in the current system, such as those recently identified in the naturalization process.

With respect to the domestic field structure for implementing these programs, the Regional Service Centers (RSCs) and National Visa Center (NVC) would continue to be the locus of most adjudication. The physical plants are excellent and the locally-hired staffs are trained and in place. At this time, information is passed from the

<sup>11</sup> At present, DOL investigates employer compliance with the requirement to check documentation and fill out the I-9 form, while INS does this paperwork review and investigations of knowing hire of illegal aliens. The latter investigations are hampered, however, by the absence of an effective verification process and proliferation of fraudulent documents.





RSCs to the NVC when the applicant for admission is overseas. Overseas interviews would continue to take place at embassies and consulates.

A range of other interviews would take place domestically. Ideally, to avoid long lines and waits for service, there would be smaller offices in more locations than the current INS district offices. The Commission recommends against locating these offices with the enforcement offices discussed above. Asking individuals requesting benefits or information to go to an enforcement agency sends the wrong message about the U.S. view of legal immigration.

#### **Immigration-related Employment Standards (DOL)**

*The Commission recommends that all responsibility for enforcement of immigration-related standards for employers be consolidated in the Department of Labor.* These activities include enforcing compliance with requirements to verify work authorization and attestations made regarding conditions for the legal hire of temporary and permanent foreign workers. The Commission believes that as this is an issue of labor standards, the Department of Labor is the best equipped federal agency to regulate and investigate *employer compliance* with standards intended to protect U.S. workers. The hiring of unauthorized workers and the failure of employers to comply with the commitments they make (e.g., to pay prevailing wages, to have recruited U.S. workers) in obtaining legal permission to hire temporary and permanent foreign workers are violations of such labor standards. Enforcement of compliance with these requirements currently lies within the responsibility of both INS and DOL. Under consolidation, the DOL Employment Standards Administration's [ESA] Wage and Hour Division [WH] and Office of Federal Contract Compliance Programs [OFCCP] would perform these func-

*The Department of Labor is the best equipped federal agency to regulate and investigate employer compliance with standards intended to protect U.S. workers.*



tions in conjunction with their other worksite labor standards activities.

**Sanctions Against Employers Who Fail to Verify Work Authorization.** The Commission believes all worksite investigations to ascertain employers' compliance with employment eligibility verification requirements should be conducted by DOL. DOL already conducts many of these investigations. However, under this recommendation, DOL also would assess penalties if employers fail to verify the employment eligibility of persons being hired. DOL would not be required to prove that an employer knowingly hired an illegal worker, just that the employer hired a worker without verification of his or her authorization to work. With implementation of the Commission's proposal for a more effective verification process, this function will be critical to deterring the employment of unauthorized workers.<sup>11</sup>

**Enforcement of Skill-Based Immigrant and Limited Duration Admissions Requirements.** The Commission believes an expedited process is needed for the admission of both temporary and permanent foreign workers, as discussed earlier in this report, as long as adequate safeguards are in place to protect the wages and working conditions of U.S. workers. To prevent abuse of an expedited system, an effective postadmission enforcement scheme is necessary.

DOL's other worksite enforcement responsibilities place it in the best position to monitor employers' compliance with the attestations submitted in the admissions process. DOL investigators are experienced in examining employment records and interviewing employees. Penalties should be established for violations of the conditions to which the employer has attested, including payment of the appropriate wages and benefits, terms and conditions of employment, or any misrepresentation or material omissions in the attestation. Such penalties should include both the assessment of significant administrative fines as well as barring egregious or repeat vio-



lators from petitioning for the admission of permanent or temporary workers.

#### **Agency For Immigration Review**

*The Commission recommends that administrative review of all immigration-related decisions be consolidated and be considered by a newly-created independent agency, the Agency for Immigration Review, within the Executive Branch.* The Commission believes that a system of formal administrative review of immigration-related decisions—following internal supervisory review within the initial adjudicating body—is indispensable to the integrity and operation of the immigration system. Such review guards against incorrect and arbitrary decisions and promotes fairness, accountability, legal integrity, uniform legal interpretations, and consistency in the application of the law both in individual cases and across the system as a whole.

*Not only is independence in decisionmaking the hallmark of meaningful and effective review, it is also critical to the reality and the perception of fair and impartial review.*

The review function works best when it is well insulated from the initial adjudicatory function and when it is conducted by decisionmakers entrusted with the highest degree of independence. Not only is independence in decisionmaking the hallmark of meaningful and effective review, it is also critical to the reality and the perception of fair and impartial review.

Hence, the Commission recommends that the review function be conducted by a newly-created independent reviewing agency in the Executive Branch. To ensure that the new reviewing agency is independent and will exist permanently across Administrations, we believe it should be statutorily created. It would incorporate the activities now performed by several existing review bodies, including the DOJ Executive Office for Immigration Review, the INS Administrative Appeals Office, the DOL Board of Alien Labor Cer-



tification Appeals, and the DOS Board of Appellate Review. It also would have some new responsibilities.

This reviewing agency would be headed by a Director, a presidential appointee, who would coordinate the overall work of the agency, but would have no say in the substantive decisions reached on cases considered by any division or component within the agency.

There would be a trial division headed by a Chief Immigration Judge, appointed by the Director. The Chief Judge would oversee a corps of Immigration Judges sitting in immigration courts located around the country. The Immigration Judges would hear every type of case presently falling within the jurisdiction of the now-sitting Immigration Judges.

The reviewing agency also would consider appeals of decisions by the benefits adjudication agency, using staff with legal training. Although the benefits adjudication agency will handle a wide range of applications—from tourist visas to naturalization and the issuance of passports—not all determinations will be appealable, as is the case under current law. We envision that those matters that are appealable under current law would remain appealable. The only difference is that the appeal would be lodged with and considered by the new independent Agency for Immigration Review rather than by the various reviewing offices and Boards presently located among the several Departments. The administrative appeals agency also would consider appeals from certain visa denials and visa revocations by consular officers. Under current law, such decisions are not subject to formal administrative or judicial review. The Commission believes that consular decisions denying or revoking visas in specified visa categories—i.e., all immigrant visas and those LDA categories where there is a petitioner in the United States who is seeking the admission of the visa applicant—should be subject to formal administrative review. The visa applicant would have no



right to appeal an adverse determination. Instead, standing to appeal a visa denial or revocation would lie only with United States petitioners, whether U.S. citizens, lawful permanent residents, or employers.

An appellate Board would sit over the trial and administrative appeals divisions of the new independent Agency for Immigration Review. This appellate Board would be the highest administrative tribunal in the land on questions and interpretations of immigration law. It would designate selected decisions as precedents for publication and distribution to the public at large. Its decisions would be binding on all officers of the Executive Branch. To ensure the greatest degree of independence, decisions by the Board would be subject to reversal or modification only as a result of judicial review by the federal courts or through congressional action. Neither the Director of the reviewing agency nor any other agency or Department head could alter, modify, or reverse a decision by the appellate Board.

#### **MANAGEMENT REFORM**

*The Commission urges the federal government to make needed reforms to improve management of the immigration system. While the Commission recommended structural changes will help improve implementation of U.S. policy, certain management reforms also must be adopted if the restructured agencies responsible for immigration matters are to be effective in performing their functions. Structural reforms will not by themselves solve some of the management problems that have persisted in the immigration agencies.*

More specifically, the Commission recommends:

- **Setting More Manageable and Fully-Funded Priorities.** The

Commission urges Congress and the Executive Branch to establish and then appropriately fund a more manageable set of immigration-related priorities. More manageable means fewer objectives, but also a set of more integrated priorities, more realistically-achievable short-term and long-term goals, and greater numerical specificity on expected annual outcomes to which agencies could be held accountable.

- **Developing More Fully the Capacity for Policy Development, Planning, Monitoring, and Evaluation.** Each department with immigration-related responsibilities needs to perform a wide range of policy functions, including, but not limited to, long-range and strategic policy planning, inter-agency policy integration, policy review, policy coordination, priority setting, data collection and analysis, budget formulation, decisionmaking, and accountability. The Domestic Policy Council and the National Security Council in the White House can also play an important role in coordinating policy development across departments.
- **Improving Systems of Accountability.** Staff who are responsible for immigration programs should be held accountable for the results of their activities. Systems should be developed to reward or sanction managers and staff on the basis of their performance.
- **Recruiting and Training Managers.** The Commission believes enhancements must be made in the recruitment and training of managers. As immigration-related agencies grow and mandated responsibilities increase or evolve, closer attention should be paid to improving the skills and managerial capacity of immigration staff at all levels to ensure more efficient and effective use of allocated resources.



- **Strengthening Customer Service Orientation.** The Commission urges increased attention to instilling a customer-service ethic in staff, particularly those responsible for adjudication of applications for benefits.
- **Using Fees for Immigration Services More Effectively.** The Commission supports the imposition of user fees, but emphasizes: (1) that the fees should reflect true costs; (2) that the agencies collecting the fees should retain them and use them to cover the costs of those services for which the fees are levied; (3) that those paying fees should expect to be treated to timely and courteous service; and (4) that maximum flexibility should be given to agencies to expand or contract their response expeditiously as applications increase or decrease.

*The Commission reiterates its 1994 recommendations concerning the need for improvements in immigration data collection, coordination, analysis, and dissemination. Although some progress has been made, much more needs to be done to collect data that will inform responsible immigration policymaking. The Commission believes that each agency involved in immigration must establish a system and develop a strategy for the collection, interagency coordination, analysis, dissemination, and use of reliable data.*

Further, the Commission urges the federal government to support continuing research and analysis on the implementation and impact of immigration policy. In particular, the federal government should support data collection and analysis in the following areas: longitudinal surveys on the experiences and impact of immigrants; on the experiences and impact of foreign students and foreign workers admitted for limited duration stays; and on the patterns and impacts of unlawful migration.



## **CONCLUSION**

This report concludes the work of the U.S. Commission on Immigration Reform. Together with our three interim reports, this final set of recommendations provides a framework for immigration and immigrant policy to serve our national interests today and in the years to come. The report outlines reforms that will enhance the benefits of legal immigration while mitigating potential harms, curb unlawful migration to this country, and structure and manage our immigration system to achieve all these goals. Most importantly, this report renews our call for a strong commitment to Americanization, the process by which immigrants become part of our community and we learn and adapt to their presence. Becoming an American is the theme of this report. Living up to American values and ideals is the challenge for us all.