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S. HRG. 113–129

COMPREHENSIVE IMMIGRATION REFORM

HEARING

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDRED THIRTEENTH CONGRESS

FIRST SESSION

FEBRUARY 13, 2013

Serial No. J–113–4

Printed for the use of the Committee on the Judiciary

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COMPREHENSIVE IMMIGRATION REFORM

WEDNESDAY, FEBRUARY 13, 2013

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 9:43 a.m., in Room SH–216, Hart Senate Office Building, Hon. Patrick J. Leahy, Chairman of the Committee, presiding.

Present: Senators Leahy, Feinstein, Schumer, Durbin, Whitehouse, Klobuchar, Franken, Coons, Blumenthal, Hirono, Grassley, Sessions, Graham, Cornyn, Lee, Cruz, and Flake.

OPENING STATEMENT OF HON. PATRICK J. LEAHY, A U.S. SENATOR FROM THE STATE OF VERMONT

Chairman LEAHY. Good morning. We're delayed a little bit starting because there were a number of people waiting to get into the room, and I think we have been able to accommodate those who were waiting. There are well over a couple hundred people in this room. There are hundreds more watching our Committee Webcast. And I know that this is an issue that everybody has differing views on, and I would hope that—well, I know that we will have a civil meeting. Senator Grassley and I will, I think, join in asking everybody to treat all witnesses with respect.

I think the President should be commended for making comprehensive immigration reform a top priority. He followed his speech in Nevada last month with very strong comments last night in his State of the Union speech. I agree with his call for real reforms that will not only address our undocumented population, but will improve legal immigration by reducing the bureaucracy and delays that hinder our job creators but also strain our families. His recommendations for how to tackle one of our Nation's most pressing problems are thoughtful, they are realistic, they are inclusive.

I was pleased to see that the President's proposal includes better access to visas for victims of domestic and sexual violence, improved laws for refugees and asylum seekers, and the assurance that every family receives equal treatment under the law.

I look forward to seeing these principles turned into legislation. More importantly, comprehensive immigration reform has to include a fair and straightforward path to citizenship for those "dreamers" and families who have made the United States their home—the estimated 11 million undocumented people in the United States. I am troubled by any proposal that contains false promises in which citizenship is always over the next mountain. I

want the pathway to be clear. I want the goal of citizenship to be available and attainable.

The President and Secretary Napolitano have done more in the administration's first four years to enforce immigration laws and strengthen border security than in the previous eight years. But we will continue our efforts to make sure that Federal law enforcement officials have the tools they need to be effective and secure, and that is something that should unite both Democrats and Republicans.

Now, despite all our efforts and all our progress, there are some stuck in the past who are repeating the demands of "enforcement first." I fear that they mean "enforcement only." To them I say this has stalled immigration reform for far too long. We have effectively done enforcement first and enforcement only. It is time to proceed to comprehensive action to bring families out of the shadows.

The President is right: Now is the time. And in my view, it is time to pass a good bill, a fair bill, a comprehensive bill. I want this Committee to complete work on such a bill over the next few months. Too many have been waiting too long for fairness.

I hope that we will honor those who contributed so much to building this country after coming from distant lands in search of freedom and opportunity. Few topics are more fundamental to who and what we are as a Nation. Immigration throughout our history has been an ongoing source of renewal of our spirit, our creativity, and our economic strength, whether it was my maternal grandparents who immigrated to Vermont from another land with another language or my wife's parents who immigrated to Vermont from another country with another language. From the young students brought to this country by their parents seeking a better life, to the hardworking men and women who play vital roles supporting our farmers, innovating for our technology companies, or creating businesses of their own, our Nation continues to benefit from immigrants, and we have to uphold the fundamental values of family, hard work, and fairness.

In Vermont, immigration has promoted cultural richness through refugee resettlement and student exchange, economic development through the EB–5 Regional Center program, and tourism and trade with our friends in Canada. Foreign agricultural workers support Vermont's farmers and growers, many of whom have become a part of the Vermont families that are so integral to our communities.

But the dysfunction in our system affects us all. We have to do better by gay and lesbian Americans who face discrimination in our immigration law. Today, Senator Susan Collins and I will introduce the Uniting American Families Act. This legislation, I hope, will end the needless discrimination so many Americans face in our immigration system. Too many citizens, including Vermonters who I have come to know personally and who want nothing more than to be with their loved ones, are denied this basic human right. This policy serves no legitimate purpose, and it is wrong.

The fundamental civil rights of American citizens are more than just a social issue. Any legislation that comes before the Senate Judiciary Committee should recognize the rights of all Americans, who have just as much right to spousal immigration benefits as anybody else, straight or gay.

We know that the President has a comprehensive proposal that he has deferred sending to us at the request of Senators working to develop their own legislation. I would say to everybody that the window of opportunity will not stay open long. If we are going to act on this issue, we have to do so without delay. I hope today's hearing helps to emphasize the urgency of the situation because this Committee will start marking up immigration legislation soon.

Senator Grassley.

STATEMENT OF HON. CHUCK GRASSLEY, A U.S. SENATOR FROM THE STATE OF IOWA

Senator GRASSLEY. Thank you very much, Mr. Chairman, and before I speak, I want to notify the audience as well as the panelists that three of us on the Committee have a conflict, two Republicans and one Democrat, with Finance, so we will be in and out for that hearing, and a couple of us have some conflict also between Budget and this Committee.

I am going to start with a quote from then-Chairman Senator Simpson of Wyoming that he made on May 5, 1981, as we started down a six-year road to get the immigration bill of 1986 passed. "Immigration reform is a perilous minefield of emotionally charged issues. One cannot but consider any such discussion as being about one's own ancestors, and in some cases about oneself. Further, it brings into question one's image of America's past, an assessment of America's present, and most difficult of all, the direction of America's future. There is a general consensus that reform is required, some clear restatement of where we stand. It is imperative that the debate concerning such needed reform be conducted in an atmosphere of calm, compassionate, and careful deliberation, recognizing the difficulty of the question and the earnestness of those who will speak to it."

Just as Congress was about to undertake an overhaul of the immigration system and to put a legalization program in place was what that road we started down was at that time in 1981. His words are valuable and relevant today. Since I was elected to the Senate in 1980, I have served on this Committee. I have seen my share of immigration debates. I voted for the 1986 amnesty because I believed it was a one-time solution to our problem. I was wrong. And today we are forced to deal with the same problem and the same arguments and the same ideas of how to improve the situation.

I applaud the movement by Members, including several of this Committee, to work toward an agreement. I have read the bipartisan framework for immigration reform that the group has written. The one line that struck me was the last sentence of the preamble. It states, "We will ensure that this is a successful permanent reform to our immigration system that will not need to be revisited." That sentence is the most important part of that document, and we must not lose sight of that goal. We need to learn from our previous mistakes so that we do not have to revisit that problem again.

I welcome the Secretary today and hope that we will get a better understanding of the administration's ideas. President Obama campaigned on transparency, but that promise has not been fully met.

I take my responsibilities to do oversight seriously, so it is extremely frustrating that the questions I have asked of this administration and of this Secretary have gone unanswered. I think it is a slap in the face of the American people who also want and deserve answers. So I plan to ask the Secretary about why agents in New Jersey were directed not to arrest a sexual predator whom they knew had overstayed a visa and had sexually abused minors on several occasions.

According to internal memos provided to the Committee, Immigration and Customs Enforcement officials in Newark planned to arrest Luis Abraham Sanchez Zavaleta on October 25th, but delayed the arrest after learning it was likely to be a high-profile case that would garner significant media and congressional interest. Zavaleta had pled guilty as a juvenile in family court in New Jersey to sexual assault of an eight-year-old boy, and police reports indicate that similar abuse had occurred a total of eight times. All Republicans on the Judiciary Committee sent the Secretary a letter December 19, 2012, and a follow-up letter January 7th this year. On February 4, 2013, two officials from Immigration and Customs Enforcement briefed Committee staff, but the Department has refused to make available before this hearing the official with firsthand knowledge, raising questions about what the Department might be trying to hide.

Staff is also still waiting for the Department to provide requested documents and a full response to our letters. But here is what we know. Immigration and Customs Enforcement missed an opportunity to arrest Sanchez Zavaleta in 2010. Then his arrest was delayed again in 2012, from October 25th until December 6th. Sanchez Zavaleta had a pending application for Deferred Action for Childhood Arrivals. This application was later denied December 4th. According to ICE agents who briefed Committee staff, Sanchez Zavaleta would have been eligible for DACA and his juvenile adjudication would not be a bar to eligibility. Now, isn't that a shocking assertion that U.S. Citizenship and Immigration Service would have the discretion to grant a child rapist application to stay in the country?

Today this person is free in the United States. After having served only a few days in detention, he was released on bond and is being monitored by ankle bracelet. It is unknown if Sanchez Zavaleta continued to work with youth as he did prior to being apprehended.

So the Secretary must answer for the delay in arresting this sexual predator and for allowing him to be on the streets today.

I also plan to ask the Secretary about her lack of cooperation and transparency with regard to the Deferred Action for Childhood Arrivals Program. I have sent several letters to the administration about how the program would be implemented. Our first letter to the President went unanswered. Then the Chairman of the House Judiciary Committee, Lamar Smith, and I posed several questions about background checks, fraud prevention funding, and applications that are denied. We asked the Secretary for a complete set of data. At least five of our letters on DACA alone were ignored by the Secretary.

The Secretary has also failed to respond to me about countries that refuse or delay taking back aliens. Finally, we have yet to receive responses posed by members of this Committee after our last hearing with the Secretary. She appeared before us April 25, 2012. Those questions have been ignored.

We are on the cusp of undertaking this massive reform of our immigration system that I started out my remarks referring to, a very important process we are going through. Immigration must be settled. We must find answers. But getting answers to our most basic questions that are a part of this process of legislating seems to be impossible. This administration has refused to be held accountable. I fear that what will become of the President's promise of transparency if and when we do pass a bill. Enacting a bill is one part of the process. Implementing the law that we pass is another. If we do not have faith in this administration now, how can we trust the implementation of a very important law that hopefully we will be able to pass yet this year?

I look forward to hearing from the Secretary.

Chairman LEAHY. Thank you.

Secretary Napolitano is the third Secretary of Homeland Security. She served as Governor of Arizona, Attorney General of Arizona actually, when we first met, and as United States Attorney for the District of Arizona.

The full statements of all witnesses will be placed in the record in full, and I would ask you, Madam Secretary, to go ahead and summarize or emphasize whatever points you would like.

STATEMENT OF THE HONORABLE JANET NAPOLITANO, SECRETARY, U.S. DEPARTMENT OF HOMELAND SECURITY, WASHINGTON, DC

Secretary NAPOLITANO. Well, thank you, Mr. Chairman and Senator Grassley and members of the Committee. It is a privilege to be here with you today, and I thank you for convening this hearing on such an important, timely issue, one that President Obama and I are committed to working with you to address: the need for common-sense immigration reform.

I sit here before you today not just as DHS Secretary but as someone who has spent the better part of my life and career focused on immigration enforcement and policy. I grew up in New Mexico. As the U.S. Attorney in Arizona, I supervised the prosecution of more than 6,000 immigration felony cases. As Arizona Attorney General and Governor, I dealt with the surge of illegal immigration in the early part of the century.

As Secretary of Homeland Security, I now serve as the chief enforcer of immigration law and the chief administrator of immigration services. I have dealt with immigration law and policy——

[Audience outburst.]

Chairman LEAHY. The Committee will stand in recess until the police can restore order. The police will restore order. Everybody will be seated so as not to block the view of those behind you.

You know, it is interesting. I hope that the people, whether they are for or against the position that I or others might take, I hope they do not think they are going to really help their cause by doing this. We are going to have as open a hearing as possible. We will

have statements from not only the witnesses but from others. And we will also have an orderly hearing because there are a lot of people here who want to hear what the witnesses say, and the Chair will not allow disturbances of that. I just want that very, very clear.

Secretary Napolitano, please continue.

Secretary NAPOLITANO. Mr. Chairman, I have dealt with immigration law and policy at nearly every level. I have seen this issue from many perspectives. I can say without equivocation what everyone who deals with this issue knows well. Our immigration system is not just broken; it is hurting our country. The time to fix it is long overdue, and the way to fix it is with common-sense, comprehensive immigration reform.

There is, as you noted, perhaps nothing more central to the American story than immigration and the contribution of immigrants to the United States. Immigration forms the core of our national identity. It has contributed to the richness of our culture and the advancement of our society. For many of us, it has also shaped our own families. But our immigration system is not working. Our communities, workers, and employers are all frustrated by a system that treats a drug smuggler the same as a high-achieving student, undercuts honest employers, and leaves millions in fear of deportation and vulnerable to fraud and other crimes.

We have tried before to reform this system. We have been unsuccessful because those efforts failed to address the root of the problem and in some cases directly contributed to the situation we find ourselves in today.

Now, I often hear the argument that before reform can move forward, we must first secure our borders. But too often the "border security first" refrain simply serves as an excuse for failing to address the underlying problems. It also ignores the significant progress and efforts that we have undertaken over the past four years.

Our borders have, in fact, never been stronger. I became U.S. Attorney in Arizona in 1993 after the provisions of the 1986 bill had taken effect, and I experienced the surge of border crossings firsthand. And for more than a decade in Arizona, I was vocal about filling that gap. We have done that. The situation I face in Arizona no longer exists. The border today is not the border then. Our border is better staffed with more people, infrastructure, and technology than at any time in our Nation's history, and the results are clear. Illegal immigration attempts are at 40-year lows; seizures of drugs, weapons, and contraband are up over the past four years. We have stronger, safer border communities and smarter, more efficient ports of entry.

But that is not to say that we are done or that we can stop our efforts. To the contrary, we must sustain and buildupon them. But the most effective way to do that is through common-sense immigration reform that strengthens employers' accountability and that updates our legal immigration system.

Now, I have also heard the refrain that any attempt to provide legal status to the undocumented immigrants already in our country would simply reward lawbreaking and constitute amnesty. Deporting 11 million people is not just impractical and cost prohibi-

tive; it runs counter to our values. It would break apart families, hurt our economy, and create labor shortages in critical industries. We must have a way for those who broke the law to pay a penalty, pay their taxes, learn English, and get right with the law so they can earn their way to citizenship.

Last month, President Obama put forward a set of principles that he believes will address the longstanding problems with our immigration system. His vision is firm and fair, and it is largely consistent with the bipartisan framework for comprehensive reform announced by a bipartisan group of Senators, some of whom are here today.

The President's principles support stronger, sustained border security and immigration enforcement. The President's proposal gives us better tools to strike at employers who hire illegal labor and, by doing so, create the market demand for illegal immigration. Under the President's proposal, we would provide a rigorous pathway to earn citizenship for those already here, and we would significantly improve the legal immigration system.

Common-sense immigration reform will help eliminate the main driver of illegal immigration: the desire to find work. As we make it easier for businesses to get the workers they need legally and more difficult for undocumented workers to find jobs, this will relieve pressure on the border and reduce illegal flows, and that will enable law enforcement to keep their focus where it should be—on narcotraffickers, human smugglers, and transnational criminal organizations.

An improved visa system will help align our work force with the needs of our economy. Further expansion of a worker verification system will allow employers to quickly and easily confirm the new hires and that they are eligible to work here, and increased penalties will help deter employers who still refuse to play by the rules.

A common-sense bill will also increase security by improving infrastructure at the ports of entry, giving prosecutors new legal tools to dismantle transnational criminal organizations and supporting DHS' work with State, local, and tribal partners in border communities.

And, finally, it will help law enforcement protect our communities in other ways, by bringing millions of people out of the shadows. Having a large group of illegal, undocumented immigrants creates many problems for law enforcement and for our communities.

These are all common-sense reforms, supported by law enforcement organizations, business leaders, faith communities, and elected officials from both sides of the aisle. With bipartisan support for reform, now is the time to act.

President Obama and I stand ready to work with this Committee and the Congress to achieve this goal for our country, for the American people, and for all who seek to contribute their talents and energy to our great Nation, just as generations before them have done, and just as future generations must do.

Thank you, Mr. Chairman.

[The prepared statement of Secretary Napolitano appears as a submission for the record.]

Chairman LEAHY. Thank you very much, Madam Secretary.

You know, as we begin this debate on comprehensive immigration reform, we have heard some say that if we legalize the status of millions of people, we are going to end up in the same situation 10 or 20 years from now with a large undocumented population. We will repeat the same cycle as 1986, as has been referred to here earlier. And some argue that legalizing the status of this population is going to be a magnet for future illegal immigration.

How would you respond to that? Is there something different today? Do we take different steps in the legislation? How would you respond?

Secretary NAPOLITANO. Mr. Chairman, I would say that immigration and immigration enforcement now is light years away from what it was in 1986, and you can see it by the numbers. I think in 1986 the total Border Patrol population was about 3,000. Now it is over 21,000, assuming sequestration does not happen.

I think in 1986 there were a couple of miles of fence along the entire southern border, and it was basically chain-link fence. Now we have over 655 miles of actual fence infrastructure. In some areas it is double. There are a lot of kinds of infrastructure that goes into it.

In 1986, the then-INS removed I think about 25,000 individuals from the country. Last year, we removed 409,000. That is a record number. Fifty-five percent of those had other criminal convictions, by the way. But it is the enforcement and the removals that have caused some of the tensions that we saw expressed earlier today.

So, in short, the border is different than it was then. Immigration enforcement is different than it was then. And I think from the President's standpoint, from our standpoint, two things must occur: One, these efforts must be sustained and built upon; and, two, we have to get at the demand for illegal immigration, and we have to deal with legal migration into the country.

Chairman LEAHY. Let me ask you this. If you had a legalization process, does that make your efforts to apprehend and remove those who have committed crimes or are fugitives more or less difficult?

Secretary NAPOLITANO. Oh, it makes it less difficult, and the reason, Mr. Chairman, is because, as I mentioned in my statement, it takes out of the enforcement area those who have longstanding relationships in the country, who have been here for years, who are already working, paying their taxes and the like, and it allows us to focus even more specifically on those who are here committing other crimes and who are really dangerous to our public safety and our security.

Chairman LEAHY. You know, anybody who has ever been a prosecutor knows that it is impossible to prosecute every single thing that comes before you, and actually the reason we either appoint or elect our prosecutors, is that we assume they are going to use some discretion in what they go after.

Now, you have shown prosecutorial discretion, which I supported, in your policies to provide relief for children brought to the United States by their parents. You are not visiting the sins of the parents upon the children, in effect, as somebody else said.

But critics have said the administration's Deferred Action for Childhood Arrivals, DACA, and prosecutorial discretion policies have the effect of prohibiting ICE from enforcing the law. How would you respond to that?

Secretary NAPOLITANO. I would say to the contrary. First of all, the DACA program is consistent with our values. As you said, we should not visit the "sins" of the parents upon the children. I think about 190,000 have now been granted deferred action under the DACA program.

But, second, the guidance we have given to ICE and ICE agents is to focus on those who commit other crimes, who are repeat violators, who are fugitives from existing warrants, and taking those who are low priority out of the system per se allows us to achieve that focus.

Chairman LEAHY. Now, I mentioned earlier that Senator Collins and I have legislation, the *Uniting American Families Act*. It is legislation I have introduced every year for 10 years. President Obama included immigration fairness as part of his principles for immigration reform. Some have expressed the fear that adjudicating same-sex spousal or partner petitions would cause significant challenges for adjudicators and invite more fraud. I do not see that. We were able to handle that issue very easily in my State of Vermont.

Do you see any likelihood that expanding the spousal green card to committed same-sex couples presents a risk of fraud any greater than that associated with heterosexual spousal petitions?

Secretary NAPOLITANO. No, and our adjudicators are experienced at fraud detection. We have actually increased the number of examiners who focus on this. This is done primarily at USCIS, but, no, we do not see that as a barrier to achieving equality.

Chairman LEAHY. My time is up, but I would ask you to look at some of the dysfunctions in the existing H–2A agricultural visa system, especially as that involves dairy farmers, obviously a matter of concern to me in Vermont. And I would ask you to work with us to make that better and continue to work with us, as you have, on the EB–5 Program. That has been a success in Vermont. H–2A has problems. EB–5 has worked well. So let us work on those two, and if you would commit to have your staff work with mine on those two issues, please.

Secretary NAPOLITANO. Mr. Chairman, absolutely. And on the H–2A issue with particularly the dairy farmers, again, another area where statutory reform is needed. That can all be fixed by statute.

Chairman LEAHY. I could not agree more. Thank you.

Senator Grassley.

Senator GRASSLEY. Mr. Chairman, if I could, out of courtesy, Senator Sessions is Ranking Republican on the Budget Committee, and they meet soon. I would like to defer to him and then be the next Republican.

Chairman LEAHY. Certainly. Senator Sessions.

Senator SESSIONS. Thank you, Mr. Chairman. And you and I do share some common beliefs about EB–5, and I think we can make that system better and should make it better.

And, Mr. Chairman, you touched on a question that is so fundamental to our analysis of immigration law in America, and that is,

you said you were afraid enforcement first means enforcement only. For the American people, what their concern is that by saying enforcement only, you really mean amnesty only. You really mean that we are not going to have enforcement, but we have got to have amnesty first. And that is part of the big debate that we are wrestling with.

And, Madam Secretary, I truly believe had this administration done a better job of enforcement, been more effective in moving forward with a lawful system of immigration, you would be in a much stronger position with the American people to ask for a more broad solution to the problem. So I think that is the fundamental place we are today.

I truly respect the people that are working that think they can reach legislation, but it sounds a good bit like what happened previously. It sounds so much like before where a group of special interests meet at the White House, and you had some of the big business people and you had the agro people and you had the immigration activist people. But I did not see the Border Patrol there. I did not see the ICE representatives, the law enforcement officers there. And I did not see the American people's real interests being represented there.

So a bill will come out, and it will need to be analyzed. I have my doubts that it is going to deliver on its promises. If it can deliver on its promises, then I think there will be a strong—I think it will have momentum and can go forward, and perhaps even become law. But we might be better in dealing with the discrete problems within our immigration system today than trying a massive immigration comprehensive reform.

I do believe some improvement has been done at the border. I do not know where you were, Governor Napolitano, but I fought for the fencing that is out there that you are bragging about today, and it took a long time, and it basically only got done after the last bill or as part of the last bill was going forward. And it called for 700 miles of fencing. As of February of this year, there are 352 miles of pedestrian fencing, 299 miles of vehicle fencing, and approximately 36 miles of secondary fencing—not what the law required. It called for full double fencing, pedestrian fencing, for 700 miles.

I just say that to say that—and additional Border Patrol Agents that have been added in recent years were added over the objection of many of the people that were advocating the last amnesty law that came forward.

So, anyway, that is where we are. We had to fight for that. We had to fight for funding for that, and we still are not where we promised the American people we would be.

When you last appeared before the Committee in October 2011, I raised concerns about the morale of agents and officers of ICE, the Immigration and Customs Enforcement agency. In 2010, they cast a no-confidence vote unanimously on their director, John Morton, because of policies implemented by this administration that directly orders them not to enforce the law. These are the people who handle mostly the internal, not the border area.

At that time you said you believed those policies are "actually enhancing morale among our troops." Well, apparently that was not correct.

According to recent Federal surveys, ICE ranked 279th out of 291 in agency morale and satisfaction. The president of the ICE employees union, Chris Crane, who will testify later, before the House Committee last week said that his agency is falling apart. Its agents now believe that, "Death or serious injury to ICE officers and agents appears more acceptable to ICE, DHS, and the administration leadership than the public complaints that would be lodged by special interest groups representing illegal aliens."

They have also filed a lawsuit against you alleging that you are interfering and blocking their ability to enforce the law. That lawsuit is still in court moving forward.

So this is a real serious problem. Have you met with Mr. Crane or the ICE agents to try to resolve this difficult problem of morale?

Secretary NAPOLITANO. Senator, let me make three points, because you actually had a series of questions.

Number one, were CBP and ICE involved in discussions in the White House as the President formed his proposal? And the answer is yes. And, in fact, the Acting Commissioner of CBP is a career Border Patrol Agent for decades. Operational issues and how the system works were definitely part of that dialogue.

On the fence, the original act was for 700 miles. There was a subsequent amendment or adjustment to that—I think it was proposed by Senator Hutchison—to 655 miles. All but one mile of that is now complete, and the one mile or different little sections, most of them are in some litigation or another with private property owners. But the fence, to the extent it has been appropriated for, is complete.

With respect to——

Senator SESSIONS. Well, it is not the kind of fence the statute described.

Secretary NAPOLITANO. And with respect to ICE and ICE morale, I think ICE agents have one of the most, if not the most difficult law enforcement jobs in America. They get criticized because we are deporting too many people, and as I mentioned in my testimony, we have deported more people than any prior administration. Then they get criticized for not deporting everyone who is here illegally. It does not surprise me that their morale is low.

We are working on that, and we are doing a number of things, but the key fact I want to get to, Senator, is that it is our responsibility as the leadership of the Department, as the leadership of any prosecution agency, to set priorities. It is done within the Department of Justice. It is done within every State Attorney General's office. It is done within every——

[Audience outburst.]

Chairman LEAHY. The police will restore order.

Thank you. Go ahead, please.

Secretary NAPOLITANO. It is done within every local prosecutor's office.

[Audience outburst.]

Secretary NAPOLITANO. The priorities are not set—with all respect and appreciation for the hard work of our agents in the field,

they do not set the policy. They get guidance from their leadership as to what they should focus upon, and that is what ICE has done.

Chairman LEAHY. Senator Feinstein——

Senator SESSIONS. Thank you, Mr. Chairman, and I just would say they are not happy with those policies. That is the problem.

Chairman LEAHY. Thank you. We gather that.

Senator Feinstein.

Senator FEINSTEIN. Thank you very much, Mr. Chairman.

Madam Secretary, I have followed your career and also your administration of a very tough, large, unwieldy Department, and I want to thank you for your service and your good work. I think you have been just excellent, and I want you to know that.

Secretary NAPOLITANO. Thank you very much.

Senator FEINSTEIN. Let me bring up something that I bring up at every hearing, and that is the Visa Waiver Program and the absence of a biometric entry and exit system for foreign visitors. I know how important this program is to commerce and travel. I also know that Richard Reid, the shoe bomber, and Zacarias Moussaoui came in on the Visa Waiver Program. For many years, I have been trying to get data on visa overstays for each country, to no avail so far.

Last year, Assistant Secretary David Heyman informed me that, by June 2012, the Department would have a fully operational biometric exit system in place that would provide real-time information to those who exit U.S. airports. This new system was expected to allow DHS to calculate overstays per country by May 2012. Now, as you know, the Department has failed to meet both the May and June deadlines.

Could you give us a quick update? Because I have got two other questions I want to get in in my short time. And when are we going to be able to get the exit and entry system in place?

Secretary NAPOLITANO. Right. I think what Mr. Heyman was probably referring to was an enhanced biographic exit system that will lead to biometric.

Senator FEINSTEIN. That is correct.

Secretary NAPOLITANO. And that is an important distinction because biometric, as you know, is extraordinarily expensive, and our airports were never designed to monitor exits, only entrances. So lots of logistical difficulties.

On the country-by-country overstay rates, I inquired about this as recently as last week. I was told that we should have those in 2013. I said, "Now in 2013? The end of 2013?" The answer I got was, "By the end of 2013." But, Senator, I want to assure you this is something that I am very interested in as well.

Senator FEINSTEIN. Well, thank you, and that time will be indelible on my consciousness, so I will ask again then.

I am trying to put together the agricultural jobs part of the immigration bill. As a matter of fact, we are negotiating between growers and the farm workers at this time. E-verify, as currently constructed, is not workable in agricultural settings.

Last year, I sent a letter to Director Mayorkas asking for recommendations on how E-Verify can be modified to operate effectively in agricultural settings. In a response letter, he acknowl-

edged the challenges faced. However, he did not provide any specific strategy on how his agency is working to address this issue.

This is coming up. You know, are we going to include E-verify? Are we not? How workable can it be? Can you respond to that?

Secretary NAPOLITANO. Yes. First of all, as I mentioned in my testimony, I believe national implementation of some worker verification system—E-Verify is the one we have—is central for immigration reform. It will actually reinforce what we do at the border. But with respect to agricultural workers, one of the problems is they are out in the fields. I mean, the farmers are out in the fields. So we have been looking at and testing mobile sites that can travel around and other kinds of technology that we can use to kind of put the E-Verify system where the growers are.

Senator FEINSTEIN. OK. I would like to follow up with this.

Last question. One of the principles of our system is family unification. Under current law a citizen or a green card holder can bring in immediate family—spouse, children, parents, and minor siblings. The question becomes where we draw the line. It was really, as I think Senator Graham knows, a big part of the so-called grand bargain when we discussed immigration reform and it was on the floor several years ago.

What do you believe is the appropriate place for this immediate family? The nuclear family? How many others should be included?

Secretary NAPOLITANO. Yes, this is an issue that has a lot of difficulty associated with it, I think, as we can all appreciate. I think what I would say at this point is that the President believes very strongly in family unification. How we have dealt with the three- and 10-year bar, I think, is evidence of that.

We will work with you and with this Committee in terms of looking at the overall—what is the chain, how big is the chain that should be permitted under the law.

Senator FEINSTEIN. Do you have any studies on how many—what is the average number of people someone on a green card brings in with them?

Secretary NAPOLITANO. I do not know, Senator. I will find out.

Senator FEINSTEIN. Would you? Because that might be helpful.

[The information appears as a submission for the record.]

Senator FEINSTEIN. Thank you, Mr. Chairman.

Chairman LEAHY. Thank you.

Senator Grassley.

Senator GRASSLEY. Just a statement to follow up on something that Senator Feinstein said about entry and exit. We keep track of people coming in, obviously. When they go out, she cited cost, and there may be some cost to it, but I think it is important to emphasize that that is the law that we ought to keep track of that.

Madam Secretary, I want to go to what I brought up in my opening statement, and let me say I probably hammer you because you did not answer letters, but there are other departments that do not answer letters either. I have got email here from a group over in the Defense Department that I sent a letter with 78 questions in it, and a person in charge of that said, "F Grassley, whether or not we are going to answer him." So, you know, we have got a problem throughout the entire bureaucracy, whether Republican or Democrat administrations, not responding to congressional oversight, a

responsibility of ours under checks and balances of Government. So I have not gotten answers from you on this question, so I am going to ask about the person that is the sex offender that I referred to. And I think it is important that we get it.

Agents at the field level apparently wanted to detain him as soon as possible for deportation in October of last year. Documents show the arrest was planned for October 5th but did not occur until December 6th. The delay appears to be related to political sensitivity of the case—that is the word we got—and intervention by the headquarters.

So did you or senior aides have any involvement in the delay? If you say no, that is okay with me. I just want to know. Did you have any involvement, or your senior aides, in that delay?

Secretary NAPOLITANO. Senator, I think I know the specific case you are referring to, and I did not learn about it until January, nor did my aides.

I now have gone through the chronology of the case, and I can answer those questions for you.

Senator GRASSLEY. OK. When did you or officials at DHS headquarters first learn about this case? Was it before the December arrest? And I think you just said no, it was January.

Secretary NAPOLITANO. I speak for myself, Senator, but I first learned of it when the AP ran a story in January.

Senator GRASSLEY. OK. And so other officials, you do not know of other officials knowing about it before this same story?

Secretary NAPOLITANO. Correct.

Senator GRASSLEY. OK. If you were told a sex offender has a job working with children and if you have the legal authority to detain him on immigration violations, why would anyone wait a month and a half before taking action? Now, I know it is below your level. That is what you just told me. But why would anybody want to delay action on that?

Secretary NAPOLITANO. If I might, in this particular case, having looked at it, I think the real issue was why was there a delay between the adjudicated offense in 2010 to 2012, and I have asked my staff to look into that. He should have been removed at that point in time.

In 2012, when you look at the chronology, a lot of things happened. One is the local prosecutor was considering doing something, so we usually defer to that. That is normal. Hurricane Sandy hit in the middle of everything. The prosecutor's office was closed for weeks. Our office was closed.

So there are reasons for that part of the delay, but I think the more significant issue is what happened in those two years and why wasn't the original removal effected.

Senator GRASSLEY. OK. Now, a question that was not in any letters I wrote to you. It is about DACA eligibility. In a briefing to Committee staff, ICE staff said that having "a juvenile delinquency adjudication" does not make someone ineligible for DACA. They said that this sex predator would have been eligible for DACA despite his record.

Now, to me, this is outrageous. Will you remedy this loophole given that you wrote DACA?

Secretary NAPOLITANO. Senator, the agents were wrong. There is a clear public safety exemption in the policy on DACA. I will resend the policy to the particular agents you reference, but they were simply incorrect.

Senator GRASSLEY. Thank you, and I think you are doing the right thing by doing that.

This will have to be the last question I ask you. ICE policy states that high-profile or high-media-attention cases must be approved by headquarters. That policy looks like a dangerous invitation for political interference in law enforcement operations. These decisions should be made by career law enforcement professionals on the merits. Law enforcement should not be driven by political agendas.

Why was there such a major disagreement between the law enforcement folks on the ground and senior folks at headquarters on when to take action in this case that we just discussed?

Secretary NAPOLITANO. Every case has particular facts. They are not all the same. And in this instance, as far as I can ascertain, you had USCIS turning down the DACA application, and you had ICE making sure we could effect the arrest and the removal, and they had to coordinate their actions.

Senator GRASSLEY. I have one more question.

Chairman LEAHY. Go ahead.

Senator GRASSLEY. OK. Thank you.

After his arrest, the sex offender in this case was released on a $20,000 bond and is wearing a location monitoring bracelet. Allegedly, ICE Director John Morton approved this decision to release him on these conditions. Were you involved in that decision?

Secretary NAPOLITANO. I was not, but the provision of allowing bond is in the law.

Senator GRASSLEY. Do you approve of the decision that was made?

Secretary NAPOLITANO. If there is adequate supervision of the defendant, that is a common way to deal with some of these cases.

Senator GRASSLEY. And, last, has the Department taken any other steps to ensure that he is not around children? And if not, why not?

Secretary NAPOLITANO. I would have to look into the specific restrictions on his movement, but the fact that he has an ankle bracelet suggests that he is not to be around children.

Senator GRASSLEY. OK. Thank you very much.

Chairman LEAHY. Thank you.

Senator Durbin.

Senator DURBIN. Thank you very much, Madam Secretary, for being with us, and I have a special interest in this line of questioning. Twelve years ago, I introduced the DREAM Act. It was a bipartisan measure, and not so much today, but I hope that that changes. We have had indications that many Republicans who voted against it in the past are reconsidering their positions, and I am glad they are.

I also want to salute the President and your office for the Deferred Action for Childhood Arrivals, known as DACA, which basically gives to DREAM Act-eligible individuals a chance to stay in the United States. So far, my information suggests there have been

more than 424,000 requests for this deferred action received by USCIS, and over 178,000 have been approved.

When Congressman Luis Gutiérrez and I held on August 15th an opportunity for those in the Chicagoland area to come forward and apply, we expected several hundred. Twelve thousand showed up. Many of them came with their parents. Some of them waited from midnight the night before in the hopes of being able to apply. Some of them are in the audience today, and they represent, in my view, a great opportunity for America to give these idealistic, energetic, committed individuals a chance to make this a better Nation.

But we have drawn rules on the DREAM Act and on DACA that I think most Americans would agree are the right rules. Your response to Senator Grassley I think was spot on in terms of what we are trying to achieve here.

In the particular case which he has noted, which has received some publicity, I might make this fact clear: This individual was not granted DACA. He was denied.

Secretary NAPOLITANO. That is right.

Senator DURBIN. He was denied this status. He has been arrested and placed in deportation proceedings, and that is entirely consistent with the administration's policy using limited resources to target the most serious offenders. The DACA rules are very clear. While juvenile delinquency is not an absolute bar to DACA, public safety threats are not eligible, and no juvenile with an adjudication for sexual assault will be granted discretion. That should be clear on the record. And for the thousands and thousands of young people who have applied, they know these standards going in. And to suggest that we are cutting corners for political reasons or not paying attention is not the case, to my knowledge. You are dealing with literally hundreds of thousands of cases. We are human, we are fallible. Some mistakes will be made. But let us make no mistake in establishing the sound and specific rules when it comes to the DREAM Act and to the application of DACA. And I thank you very much for that.

Now, let me ask you a question which may be more difficult. Your critics—and there are some.

Secretary NAPOLITANO. I heard some.

Senator DURBIN. I am sure you did.

[Laughter.]

Senator DURBIN. They suggest you are going too far in deportation proceedings. They are suggesting that, yes, anyone who is a threat to America with a criminal background should go. We understand that. I applaud that. That keeps America safe. But they are suggesting that the deportation efforts have gone beyond that into families that are no threat whatsoever and result in splitting up families. Many times mothers or fathers are removed from households full of citizen children.

So what standards are being used when you talk about 400,000 deportations beyond the obvious standard of deporting those who are a criminal threat to America?

Secretary NAPOLITANO. Well, the standards are spelled out in the various memos on prosecutorial discretion and how it is to be exercised. One factor to be considered, Senator, is whether the individual is the parent of citizen children, so that is a factor taken

into account. But it is not determinative. Many times we find someone who is a parent and they have felony conviction or convictions or serious misdemeanors, and——

Senator DURBIN. That is another story. That is another story.

Secretary NAPOLITANO [continuing]. That will control the situation.

Senator DURBIN. And it should. I suppose what I am asking you to clarify, when you do not have that extenuating circumstance, when there is no threat to the public, when there is no criminal record, when you are breaking up a family, splitting up a family, what are the standards that are applied in those circumstances?

Secretary NAPOLITANO. Well, I would approach it a different way. If they do not fit any of the priority categories—you know, they are not a repeat violator, somebody is using the border as a revolving door; if they are not someone with a serious misdemeanor conviction or felony conviction; and if it would split up a family, that would be a low-priority matter.

Chairman LEAHY. If the witness would hold, we have a number of people that are blocking the view of those who have been sitting here for a long time waiting to watch this hearing. The police will please remove them.

I think that—those who are blocking the view, please remove them. And I would think that those who come in here who feel strongly about something would have at least enough respect for human rights, one of the human rights is to allow the people who are here wanting to hear this testimony, to give them a chance to see and hear what is going on. And I am sorry that they feel that the rights apply only to them and not to others who are in the room.

Please continue and I apologize to you and the Senator for the interruption.

Senator DURBIN. Thank you very much, Mr. Chairman, and my time has expired.

Chairman LEAHY. No, that is okay. Go ahead.

Senator DURBIN. I will just say to the Secretary and to the Members of the Committee, there is a genuine, good-faith effort underway, a bipartisan effort among Senators, and I am part of a group, four Democrats and four Republicans. We are doing our best to fix this broken immigration system. I could not agree with you more. It is a threat to America's future if we do not deal with it honestly and in a comprehensive and complete way.

There are elements in this negotiation that go beyond my personal feelings about what should be done, but it is literally an effort to reach consensus and compromise. I know Senator Feinstein is engaged in a similar effort when it comes to agricultural workers. We have been encouraged by the President, but the President has made it clear he is anxious to move this on. And I hope we can meet his—allay his concerns about any delay here. And I thank you for accepting one of the most challenging, difficult, and controversial jobs in this administration.

Secretary NAPOLITANO. Thank you, Senator.

Senator DURBIN. Thank you, Mr. Chairman.

Chairman LEAHY. Thank you.

Senator Cornyn, you and I have discussed these immigration matters often. Please go ahead, sir.

Senator CORNYN. Thank you, Mr. Chairman.

Madam Secretary, I agree with Senator Durbin. You have got a very tough job. And you and I have known each other a long time, serving as Attorney Generals of our respective States and you as a U.S. Authority and as Governor and now in this important position. And, of course, we have been talking about immigration reform for a long time.

In 2005, Senator Kyl, from your home State of Arizona, and I cosponsored a bill we called the Comprehensive Border Security and Immigration Reform Act of 2005. So this is like deja vu for a lot of us.

But I believe that the reason that immigration reform failed in 2007 is because the American people do not actually believe that Congress intends to follow through on important measures like border security, worksite enforcement, visa overstays, and the like.

So I just want to ask you some questions, first of all, about a story that I read from your appearance in San Diego on Monday, January 4th, where it quotes you as saying, "I believe the border is secure." Is that an accurate quote?

Secretary NAPOLITANO. It is, but there is a context there that I would like to reference you to, which is to say the border is more secure now than it has been ever. The numbers are better now than they have been in decades. But as you mentioned, Senator, we have to build upon that. We have to sustain that. And that should be a part of the bill.

Senator CORNYN. Well, let me refer you to a report of the GAO in 2010, which reflects the level of operational control of the border as of September 30, 2010. And as you can see, in red is the Texas-Mexico border, which represents the majority of the southwestern border. And you can see in the four sectors that represent the Texas border, the border is nowhere near secure. As a matter of fact, in the Marfa Sector, it looks like it is about 15 percent operational control; Del Rio looks like perhaps close to 30 percent; Laredo, about 20 percent; and the Rio Grande Valley, arguably 30 percent or so.

So I do not believe that the border is secure, and I still believe we have a long, long way to go.

Secretary NAPOLITANO. If I might, Senator——

Senator CORNYN. I have some other questions I want to ask you. As a matter of fact, a recent Government Accountability Office found that your Department failed to apprehend at least 39 percent of illegal border crossovers in 2011. And, of course, as I travel the border in Texas, what the Border Patrol and others tell me on an anecdotal basis is that we probably catch about one out of every three individuals who try to make it across. But even assuming that the Border Patrol and the Department of Homeland Security was able to catch and detain 61 percent of the people who traveled illegally across the border, is that a good record, in your view?

Secretary NAPOLITANO. Well, if I might, and let me, if I might, go back to the earlier point as well——

Senator CORNYN. If you could answer my question——

Chairman LEAHY. Now, wait a minute. With all due respect to the Senator, you have asked two or three questions here. At least give the witness a chance to answer the question. It is not fair to ask a witness a question and then not allow them to answer.

Senator CORNYN. Well, Mr. Chairman, I would ask her to answer my question. If she has further explanation, I am glad to hear it. The question is—the question is, just to refresh your memory: According to the General Accountability Office, the Department apprehends about 61 percent of people who crossed the border illegally in 2001. And my question is: Do you consider that a record to be proud of? Do you count that as success? Or how would you characterize it?

Secretary NAPOLITANO. I would characterize it as one of the many numbers that float around when the term "border security" is used. We know that border security is extremely important. We know we have done more in the last four years, actually with the help of this Congress and appropriations you have made, to deter traffic over this border.

We know the main driver of illegal immigration across the Texas border, Arizona, California, whatever, is the ability to work. But we do not have the tools to support the border with effective worker requirements and prosecution tools against employers. So when you think about immigration reform, that is why all these things go together. It is a system.

Now, with respect to that GAO report, I have read it, obviously. We disagree with the methodology, but beyond that, I think the overall conclusion of that report—and it is GAO, so you have to presume it is going to be negative because that is their job, is to find out things that are wrong. But the overall tenor of the report——

Senator CORNYN. I thought it was determined what the facts were.

Secretary NAPOLITANO. We have different perspectives. We sit in different seats. But in any event, the overall conclusion of the report is, A, fewer people are trying to cross that border; and, indeed, other studies have shown that net migration is negative—in other words, more people are going south than coming north—and that substantial progress has been made.

Are we done? No.

Senator CORNYN. One last question. In Fiscal Year 2012, 683 illegal aliens from terrorist sponsor and terror watchlist nations were apprehended coming across the southwestern border, so obviously people who—more than just people who want to work in the United States are penetrating our border and coming here from nations like Afghanistan, Iran, Libya, Yemen, Cuba, and Syria. And that led former DIA Director, the Director of the Defense Intelligence Agency, to conclude that this was a national security risk.

Would you agree that having the border crossed illegally by people really at will from around the world and the limitation only being their determination to get here, that that represents a national security risk?

Secretary NAPOLITANO. Well, Senator, obviously we want the border to prevent likely terrorists from entering our country. Everybody would agree with that.

What I would say further, however, is that by improving the legal migration system so that people can get visas, they go through our ports, we know who they are, we know what their biometrics are, we know where they are going, having an employer sanction system, will enable us to better focus on those who really are nefarious and are trying to do us harm.

So if we want to say, look, we want you to focus on terrorists, narcotraffickers, transnational criminal organizations, one way to do that, and really the only way to do that, is to take some of these others and focus on the legal migration system.

Chairman LEAHY. Thank you.

Senator Schumer.

Senator SCHUMER. Thank you, Mr. Chairman. I apologize to you and my colleagues. I had to introduce Jack Lew over at the Finance Committee as a fellow New Yorker, which—well, I will not say anything.

Secretary NAPOLITANO. Well, I was born there so——

Senator SCHUMER. That is what I was going to say, but I did not want to—you are almost a New Yorker, but a very successful Arizonan as well.

First, I want to thank your boss, the President of the United States, for his remarks on immigration last night. Continuing his handling of immigration, his remarks last night on immigration were just right. He importuned us to act. He stated how important it was to get this done for the future of America. But at the same time, he did not make it a wedge issue. He made it clear that we had to act in a bipartisan way and gave us in our little group the space to come up with a bipartisan proposal, which we know is really our only hope. With a Democratic Senate, a Republican House, with the 60-vote rule, unless we have a bipartisan agreement, we are not going to have a bill. And the President is handling this just right, so I thank you and him for that, as well as thanking you for being here, because you have been such a strong voice on this issue. Since you were Governor of Arizona, you understand both the importance of immigration enforcement and having a functional legal immigration system that better reflects America's values and interests. And I believe we need to reform the immigration system, and we need reform that fixes all aspects of our broken immigration system.

As I mentioned, our little group of eight, four Democrats, four Republicans, is really making good progress. We have a timetable. We still are looking to get this done in a very short period of time. Our Chairman has been both very insistent and gracious, like the President, in saying he will make time for us. But at the same time, we cannot take forever to get this done. And we are on track.

The amazing thing in that room—and I think—well, Senator Durbin, who was here before, and Senator Graham, who is here now, and Senator Flake, who is here now, would agree that both sides know they have to give, and they are. And I have been really impressed in the room at the desire to get a bill done, and no one is seeking political advantage but, rather, doing what is right for America. And we have this bipartisan consensus around the principle that we need to further secure the border, reduce visa

overstays, and crack down on unlawful employment of people without status.

But all of us believe that it is going to be much easier to accomplish these things after we account for all of the people who are currently here without lawful status and allow those individuals living here peacefully and productively to earn legal status that allows them to work and earn their way toward citizenship. This way, our law enforcement resources, which are always not as much as we want, can focus on a smaller universe of criminals, future border crossers, future visa overstays, and employers who hire illegal workers because the people, the 11 million who live in the shadows, have no criminal background and have met the early standards are going to work here legally. So it gives you an ability to focus on the people we do not want here.

Do you agree with that premise?

Secretary NAPOLITANO. That is right, and I think that is consistent with what I just was sharing with Senator Cornyn.

Senator SCHUMER. Right. And, by the way, with Senator Cornyn, I would just add something about the GAO report, and I would like to submit this page that has the statistics in the record. It is true that if you just look at apprehensions, it is a 61-percent number of people apprehended. But 20 percent go back. They see the Border Patrol agent, and they turn around. And those numbers in 2001 were an additional 107,000 in addition to the 254,000 apprehensions. So that makes the efficiency rate not 61 percent but 82 percent, compared to only 66 percent in 2006.

Are those numbers correct, in your judgment?

Secretary NAPOLITANO. Well, I cannot do the math in my head right now, but they sound correct. But if I might——

Senator SCHUMER. They are in the report.

Secretary NAPOLITANO. Very good. But if I might, Senator, I think that, as I mentioned earlier, there are numbers flying all over the place about what the border is and what apprehensions are. Here is what I know. What I know is fewer people are trying to immigrate illegally into this country than in four decades.

What I know is that apprehensions are at a low because attempts are at a low. Drug seizures, contraband seizures, all the numbers that need to be up are up. And what I know is we are actually removing more people from the country than ever before.

Senator SCHUMER. And one other thing. At the request actually or the importuning of Senator McCain, in 2010 we had—you asked for and we in Congress gave you 1,500 additional border personnel to the southern border, four new unmanned drones to boost further border surveillance and strengthen the presence of the FBI, DEA, and U.S. Marshals along the southern border. So it is much stronger today than it was in the past.

Secretary NAPOLITANO. Well, and the aerial assets make a huge difference. That is a big deal on border enforcement.

Senator SCHUMER. And I have not—I am not going to ask any more questions. We have a ways to go on the border, and our group is working on that. We have made some progress—I would characterize our view we have made good progress, we have to make more. Is that pretty much your view?

Secretary NAPOLITANO. I think you can always do more on the border, yes.

Senator SCHUMER. Thank you, Mr. Chairman.

Chairman LEAHY. Does the Senator wish to have that report made part of the record?

Senator SCHUMER. Yes.

Chairman LEAHY. Without objection, it will be made part of the record.

Senator SCHUMER. Thank you.

[The report appears as a submission for the record.]

Chairman LEAHY. Senator Lee.

Senator LEE. Thank you, Mr. Chairman, and thank you, Secretary Napolitano, for your service to our country and for joining us today.

The title of this hearing is "Comprehensive Immigration Reform." The term "comprehensive" seems to accompany the term "immigration reform" with increased frequency these days. It is, nonetheless, worth mentioning, I believe, that our immigration system involves a lot of complex moving parts, but a lot of these parts are distinct from one another. And I believe we ought to have a robust and open debate over the proper way to handle each component without necessarily assuming that comprehensivity is the without which not of any kind of immigration reform.

The good news is that Republicans and Democrats are not really that far apart on many, if not most, of the critical issues that we face when it comes to immigration reform. Virtually all of us agree that we need to secure America's border. We need to implement workplace verification. We need to reform and enforce our visa system, and we need to streamline legal immigration so that we can meet and respond to America's changing employment and economic needs.

I think we have a real historic opportunity here to make some meaningful progress in areas where there is common sense—where there is an opportunity for common-sense bipartisan agreement. That progress should not be held hostage, in my opinion, to demands that we solve every single problem associated with immigration, that we do it all at once, or that we have to resolve necessarily all of the most contentious issues associated with immigration before turning to those for which there is broad-based bipartisan agreement.

That is why I have sponsored or cosponsored a variety of bills that would address employer verification, prioritize implementation of a visa exit system, promote tourism of the United States, help alleviate the shortage of legal agricultural workers in this country, and reform our visa system to attract the best and the brightest workers to contribute to the American economy.

This morning, I will be introducing the Fairness for High Skilled Immigrants Act which would remove the per country caps on employment-sponsored visas, allowing the business community to recruit employees based on their talent rather than based on their country of origin.

So in the spirit of constructive and common-sense reforms, I want to begin by asking you, Secretary Napolitano, which specific components of immigration reform do you think enjoy the broadest

bipartisan support and could be implemented most swiftly and readily by your Department so we can begin the process of immigration reform?

Secretary NAPOLITANO. Well, Senator, I think the framework and what is in the framework that was announced really gives you—gives me, anyway, a sense of the bipartisan nucleus that is forming in the Senate. We want to work with you and work with the Members of the Senate to flesh that out and to get into some of the details because, as you mentioned, it is a big system.

Senator LEE. Right. And I agree with you, there certainly are elements of that statement that enjoy broad bipartisan support, and there are other elements that do not, and that is why I would like to see us move forward first on those issues for which there is broad bipartisan support.

Let me switch to another issue. In 2011, Immigration and Customs Enforcement Director John Morton issued two memoranda that outlined priorities for prosecutorial discretion. I was troubled by the issuance of those memoranda in some respects, and I remain troubled by their implementation.

Chris Crane, who is a witness on the second panel here for this Committee today, submitted written testimony for today's hearing detailing some disturbing accounts of the implementation of this prosecutorial discretion directive, as it is known. Specifically, he recounts the experience of three ICE agents in Salt Lake City, Utah, who arrested an individual after he admitted in open court that he was in the country illegally. The ICE field office Director nevertheless ordered that all the charges be dropped and that the ICE agents themselves be placed under investigation for making the arrest.

I understand that this is just one of many instances in which agents' ability to arrest offenders, admitted offenders, has been restricted. So if the approach to prosecutorial discretion outlined in the Morton memoranda is truly to be conducted on a case-by-case basis, as prosecutorial discretion is always understood to function—that is what prosecutorial discretion is, as the word "discretion" implies—and the memos do not constitute a blanket injunction on the pursuit of entire categories of offenders, why is it that ICE agents are being reprimanded for merely arresting someone who admitted in open court that he had broken the law?

Secretary NAPOLITANO. Well, Senator, I would have to look into the specifics of that, but as you know, sometimes the allegation or the statement that this is what happened does not actually explain all the facts. So we need to look at all the facts.

But, you know, this is and the Committee should appreciate this is a big change for ICE to actually have priorities. In the past, every illegal immigrant was considered the same as every other illegal immigrant.

Senator LEE. And I agree there ought to be some discretion.

Secretary NAPOLITANO. That is right.

Senator LEE. But my question is——

Secretary NAPOLITANO. And there are no—I am sorry.

Senator LEE. Is it discretion or is there an injunction against any enforcement?

Secretary NAPOLITANO. There is no injunction categorically. It is discretion with factors to be considered.

Now, what was going on between an agent and their supervisor or what have you, there can be a lot of things that add to that situation. So we would have to know it better.

Senator LEE. OK. Thank you, Madam Secretary. My time has expired. Thanks, Mr. Chairman.

Chairman LEAHY. Thank you, Senator Lee.

Senator Whitehouse.

Senator WHITEHOUSE. Thank you, Mr. Chairman.

Madam Secretary, welcome back. It is good to have you here again. I wanted to congratulate you first on the Executive order that the President signed yesterday on cybersecurity and that he mentioned in the speech last night. I see Senator Graham here, and he is part of a bipartisan group that is working to try to supplement that effort legislatively, and we look forward to working with you on that. When we see a vaunted American institution like the *New York Times*, which is willing to have journalists go to jail to protect its sources, hacked into by the Chinese trying to find the sources for stories that are unflattering about the Chinese Government, that is a pretty good sign that the private sector is really not up to snuff on protecting our national security in this area. And the critical infrastructure folks who run our banking transactions and our electric power grids and so forth, I think, we have to be particularly concerned about, so I look forward to working with you on that.

On the immigration bill, I have been a supporter of the high-skilled worker legislation—I know Senator Klobuchar has been very involved in that—with respect to providing visas for qualified immigrant entrepreneurs, with respect to limiting the per country caps that Senator Lee described, with respect to providing green cards to foreign students who graduate from our universities with science, technology, engineering, and mathematics degrees. But if they cannot work here, they have to go and work for an overseas competitor. In Rhode Island, I have seen folks who actually have internships with companies while they are students and then have to leave and go and work for a competitor.

So I think this is important, and I wonder if you could take a moment to make the case for the record of this hearing as to why encouraging highly skilled immigrant engineers and entrepreneurs to stay and to locate in this country is good for American jobs and is good for the American economy rather than competing and displacing American jobs and the American economy.

Secretary NAPOLITANO. Well, I think the case for high-skilled and STEM-educated workers is extraordinarily strong. We know we need more of them in the country. They complement not substitute for American workers. They become job creators. They add to economic growth. Some of our Nation's most successful companies over the last decade, even through the recession, were companies that were either started by or run by those who came here originally as immigrants.

So it is a global talent pool that we want to have in the United States. We want to be a magnet for those types of individuals because, in the end, they are job creators.

Senator WHITEHOUSE. I will stand by that. Thank you very much, Madam Secretary.

Chairman LEAHY. Senator Cruz, I know you have been having some voice difficulty, but——

Senator CRUZ. Well, and I would apologize to the Committee, but I have lost my voice entirely—perhaps from cheering too much at last night's State of the Union.

[Laughter.]

Chairman LEAHY. I had overlooked that, Senator Cruz.

Senator CRUZ. I will say this is an incredibly important topic. Secretary Napolitano, I thank you for being here. I thank each of the witnesses for being here, and I will be entering a statement into the record.

Thank you.

Chairman LEAHY. Thank you, and it will be made part of the record. I appreciate you coming here, nonetheless.

[The prepared statement of Senator Cruz appears as a submission for the record.]

Chairman LEAHY. We will go to Senator Klobuchar, and I will also leave the gavel with you for a couple minutes because I have to return a phone call outside.

Senator KLOBUCHAR. Well, thank you very much, Mr. Chairman. I had offered to do Senator Cruz's questions for him and just make a few nuanced changes and I would ask them, but he did not accept that offer, Madam Secretary.

Thank you again, following up on Senator Durbin's comments, for not only taking this incredibly difficult job, but then staying with it. Whether it is the hurricanes, whether it is the floods, you have been there every step of the way, and certainly this will be—working on this comprehensive immigration reform, accountable immigration reform, is going to, I think, be a lasting legacy for you if we get this done. And I am very hopeful we will.

Senator Whitehouse talked about the work that I have been doing with Senator Hatch, which also includes what Senator Lee mentioned, which is getting rid of the per-country cap on green cards, with the simple notion that we are the world's talent, that we want to be a country that makes stuff, invents things, exports to the world, and to do that we need to access the world's talent.

Right now there are no caps on professional sports players. I know that from our great teams in Minnesota when you look at their roster. But we have very severe caps, as you know, on scientists and engineers, to the point where they are a third of what they were in 2001. So part of this—and we truly see this as part of this work. I have talked to Senator Rubio about this, who is also on our bill with 15 cosponsors, that this is part of comprehensive immigration reform, and we see it that way.

One of the issues here is that when you look at Americans past, something like 30 percent of U.S. Nobel laureates were born in other countries. Ninety of the Fortune 500 companies were started by immigrants. And so this is a key part of how we build our country, how we have built our country, and how we go forward.

I was intrigued by the beginning of your testimony when you talked about how sadly one of the reasons the current system is so

broken is because it treats drug smugglers the same way as aspiring students. Could you expand on that a bit?

Secretary NAPOLITANO. Yes. Because the visas are so limited, when you have someone illegally in the country, that is it. They are illegally in the country. And so if you arrest everybody that you come across who is here illegally, they would be treated the same, regardless of circumstance.

One of the things we have done through prosecutorial discretion is to take circumstances into account, but that is no substitute for statutory change.

Senator KLOBUCHAR. Exactly. We have a student right now—I have the president of St. Cloud State in Minnesota here to make this case yesterday for the State of the Union. One of his students runs their computer program, cannot get a green card, has been bouncing around on visas, is a technical superstar and is looking at taking permanent residence in Canada because it is just too difficult to get that green card here.

Following up on what you just said about law enforcement, us both being former prosecutors, could you touch on one of the issues, getting away from the engineering and science issue here, of having so many people living in the shadows and how that is difficult for law enforcement? You raised that in your testimony. Could you expand on that?

Secretary NAPOLITANO. Well, what happens is, particularly in areas where there are large concentrations, people are afraid to go to law enforcement if they have been victims of a crime. They are afraid to be witnesses so that we can get at criminal prosecution. They are simply afraid to interact with law enforcement in any sort of productive way. And that is really a cloud on those communities. And if you speak with, as I did last week, the sheriffs in and police chiefs in places like Los Angeles, they really make that point about the effect on law enforcement of a large illegal immigrant population that has no way to get out of the shadows.

Senator KLOBUCHAR. And I certainly saw that as a county prosecutor. We would have cases where, you know, a kid, a 13-, 14-, 15-year-old kid, would be threatened by a rapist, basically saying, "If you come forward with this, I am going to get you deported." And that is one of the reasons in the Violence Against Women Act which we just passed we have a provision that continues in there for U visas, which allows victims of domestic violence to be able to stay and testify against their perpetrators. We had actually wanted to use up some of the old U visas—you may be aware of this issue—and had to change that in order to get this through. And I know that Senator Leahy, Chairman Leahy, is devoted to the idea of trying to get this as part of the comprehensive reform we are working on. But if you want to elaborate at all on the need for U visas for victims of domestic violence?

Secretary NAPOLITANO. Well, the whole issue of U visas, we are using up all the U visas that we get. We could use more in terms of protecting victims of domestic violence. But, again, every problem that gets referenced by a Member of the Committee I think just serves as further illustration why the whole system needs to be reformed.

Senator KLOBUCHAR. Very good. I appreciate your work. Thank you.

Secretary NAPOLITANO. Thank you.

Chairman LEAHY. Thank you very much.

Senator Flake.

Senator FLAKE. Well, thank you, Mr. Chairman. Thank you, Secretary Napolitano, and I appreciate the conversations we have had over the past years and as recently as yesterday on some of these issues. And I appreciate what the Department is doing and is trying to do and the support for our efforts here to get immigration reform done.

I will touch on a few things that were touched on before. Keep in mind I am one of the Gang of Eight, if you will. I do want to get immigration through. I do not want any of the elements that we need to finish to hold up any of the other elements. So my effort here is to make it work, and there are some things that we need help on with regard to border security elements.

As you know, as part of the framework, there are certain triggers that need to be tripped in terms of border security, and I know that is a difficult term to define. We have come up against that again and again and again. But part of the issues that we have, you mentioned that GAO at times they seem just to be critical of what a department is doing. I should note that with regard to the border in Arizona, they are quite complimentary of what is going on in the Yuma Sector, for example, so it is not the universal criticism. Where there are good things happening, where there is operational control, however defined, they tend to point that out. But they have noted that there are issues, and in the most recent report of December 2012, they note that the Border Patrol does not have performance goals and measures in place necessary to define border security.

How are we dealing with that? What are we doing to remedy that problem? Do you recognize it as a problem, first?

Secretary NAPOLITANO. Well, the problem is, as you mentioned, Senator, to define border security. In my judgment, one way to look at it is if we have extra money to invest on immigration enforcement, is it better spent on more Border Patrol Agents? We can always hire more Border Patrol—I mean, we can always have a use for that. Or is it better spent investing in a worker verification program that really looks at the demand side of this issue? We do not have the tools necessary for that. The law does not give us those tools.

In terms of things to look at that are objective, I think you can begin with some of the factors in the 2007 bill, you know, apprehensions, crime rates along the border. El Paso was for the third year in a row just named the safest city in America with a population of over 500,000. You can look at drug and gun and other contraband seizures. You know, all of those things that were listed in the 2007 bill are things that we can relook at again.

But I would, if I might, suggest that the notion of a trigger is not—there is a better way to look at it because a trigger implies you do not get to these other things until X is met, when, in fact, these all have to be looked at simultaneously.

Senator FLAKE. Oh, I understand that, and I have been one who has always said that the best way to get the border secured is to have a legal framework for people to come and to go.

Secretary NAPOLITANO. That is right.

Senator FLAKE. And that will be taking place as we look at more border security. It is just the path to citizenship, that element that takes place years from now, that we have to certify a certain amount of border security—or certain level of border security, I should say.

Part of the trouble we have is GAO—there was a RAND study a while ago that you may be familiar with that said that GAO reported in 2009 that the CBP, Customs and Border Patrol, explained increases in apprehensions made at a checkpoint in some border sectors to improved—it pointed to that as improved border security, and then in some sectors it pointed to decreased apprehensions as a measures of increased border security. So there seems to be confusion within DHS itself or within the Border Patrol as to what constitutes better security or lessened security. So you can see as policymakers we have a difficult time here, and it is tough for us to measure.

My last question. If directed by Congress, is there anything stopping the Department from at least going back to what we were doing prior to 2010 where the charts that Senator Cornyn brought up, which defined operational control, the percentage of the border that is under operational control? I realize it is an imperfect measure, but it is something, and it is something more than we have now. Can we go back to that? If directed by Congress, could the Department go back to that measure? And if not, why not? The Department stopped reporting that as of 2010.

Secretary NAPOLITANO. I would suggest we should not go back, and I would suggest that the difference of opinion prior to 2009 that was referenced in that GAO report illustrates the difficulty of any one- or two-line description of what is border security.

We want to work with the Committee on this. It is a difficult thing to substantiate. What we all know is we want a safe border, we want a strong border, and, importantly—and I have seen what happens when you do not do this. If you do not have the ability to sustain those efforts, you can have a problem again. So sustainment needs to be part of our equation.

Senator FLAKE. All right. I have submitted some questions that you have, that we talked about, and I will look forward to getting those from you with regard to specifics on one ranch near Naco that gives us an illustration of, you know, what security we have and what we still lack. But if I could have your commitment to work with us on these measures, if not operational control then some other definition that will give us what the GAO refers to as—you know, they say, "Currently what DHS has does not inform program results and, therefore, limits DHS and congressional oversight and accountability." And that is true. We lack that, and we need it, and it is for positive things. We are trying to get immigration reform done.

Secretary NAPOLITANO. That is right.

Senator FLAKE. And so if we can work with you on that, it would be incredibly helpful.

Secretary NAPOLITANO. We will work with you very closely on this and understand the importance of the question.

Senator FLAKE. Thank you.

Chairman LEAHY. Thank you.

Senator Hirono.

Senator HIRONO. Thank you, Mr. Chairman.

Secretary Napolitano, thank you so much for your tremendous service to this country, and, of course, we are confronted with a broken immigration system, with 11 million undocumented people in our country, with millions of visa overstayers, and decades-wait for families hoping to reunite with their citizen members, family members.

You used the term we are here to talk about common-sense changes that we can make to improve the system, and I am encouraged by the bipartisan support around the areas of border control, workplace enforcement, visa reform. But, of course, unless we get to some kind of a bipartisan agreement on addressing the 11 million people in this country who are living in the shadows, then I do not think that we are doing the kind of immigration reform that we need to do to bring us forward.

There have been a number of questions about border control. The term "operational control" has been tossed out, and to some people, operational control means zero illegal border crossings. I think that we better make sure that we are using these terms where we are all on the same page. But let us say that we are talking about zero illegal border crossings. I would like to ask you, Madam Secretary, how much money do we spend every year on border control to keep out illegal crossers?

Secretary NAPOLITANO. Billions upon billions. There are some studies that suggest that you could add up all of the expenditures of every other Federal law enforcement agency and you would not equal the amount we spend on border security.

Senator HIRONO. And, of course, we are not at zero illegal crossings. So if we were to try to get to that goal, how much do you think we would need to spend every year? Because this is about cost/benefits. And you mentioned before that perhaps we could be using those kinds of sums for other types of immigration reform and control.

Secretary NAPOLITANO. That is right, Senator. You know, we are all living in a fiscally austere world. We have a responsibility to invest dollars where they would have the most benefit. I think as the Secretary I would advise the Committee that those enforcement efforts are better spent on the interior of the country on things like workplace enforcement while we sustain and fill in the technology and other things that we have already planned for along the border itself.

Senator HIRONO. I think that immigration reform should be guided by certain principles that reflect our values. There has been a lot of emphasis on meeting the critical needs of our economy through some changes to how we treat visas, especially with regard to people with STEM education. But I also think that another guiding principle should be maintaining our 50-year tradition of bringing families together. And as I mentioned, many of my colleagues have highlighted the importance of providing green cards to STEM

graduates of U.S. universities because I certainly agree that we should not educate foreign students and then send them away to work for foreign competitors of American companies, and it only makes sense to keep such talent here if we can.

But at the same time as we are focused on employment-based immigration, we should not get tunnel vision and forget the human element of immigration. And, of course, I am talking about the need to expand, as far as I am concerned, to expand the opportunities for families to be reunited and kept together. And this should include LGBT families.

I think family-based immigration is essential to ensuring the continued vitality of the American economy and, in fact, the success of immigrants in this country is often the story of the success of immigrants with their families. And, of course, I speak from personal experience, being an immigrant myself.

I wanted to ask you about family reunification because there is such a huge, huge backlog there. The most recent visa bulletin indicates that potential immigrants must have been in line nearly 25 years in order to have their applications processed now. There is a significant backlog in family-based immigration to the United States, with Asian countries representing some of the largest backlogs.

I am pleased that the President's immigration reform principles included temporarily increasing the per-country cap for family based immigration from seven percent to 15 percent. And so I wanted to ask you, if the cap were to be raised, as the President has proposed, what would you expect to see in terms of the reduction in the backlog that I talked about? And how long would you estimate that it would take to eliminate the family based backlog going back decades?

Secretary NAPOLITANO. By increasing the cap—I would have to go back and get a firm number for you, but there is no doubt it would be a substantial reduction in the backlog.

Senator HIRONO. Well, for example, in my own community there are World War II Filipino veterans who fought alongside our troops in World War II, and they have been waiting decades—decades—to be reunified with their children who are in their 60s at this point. And I hope that part of immigration reform can look to those kinds of very specific kinds of instances where perhaps it could get ahead a little bit because, you know, they did fight for our country.

You were asked some questions about the fact that we have so many legal people who came to our country through visas, and I have been told that maybe about 40 percent, as much as 40 percent of the undocumented people in our country are visa overstayers.

Now, this is an issue that I know that we have been attempting to address for over a decade, and I think I heard that perhaps by 2013 we will get there, that we will be able to verify the overstayers. Could you talk a little bit more about truly what it is going to cost for us to put such a system in place? And how much are you going to oversee that we get to this 2013 timeframe?

Secretary NAPOLITANO. I think the 2013 timeframe, Senator, involved estimates of country-by-country overstays, and we will work with the Committee on that.

In terms of being able to ascertain overstays, we have now gone back, and one of the things that technology permits us to do now is to link different data bases, and it has allowed us to go back and look at visa overstays and prioritize them as well, you know, those that have committed other crimes, for example, and then those are sent over to ICE to go find and to pick up.

With the enhanced biographic system that we are implementing now, the difference between that and the biometric is not as great as you would think, and that is our current plan, to do enhanced biographic at the exits of our country, land, air, and sea, and then move gradually—because it is very, very expensive—into biometric.

Chairman LEAHY. Thank you very much.

We will go to Senator Graham, then Senator Franken, and then we will move to the next panel. Senator Graham.

Senator GRAHAM. Thank you, Mr. Chairman. Thank you for having this hearing. I think this is an important hearing at a time when it will really matter.

Madam Secretary, the goal, I guess, this time around is to fix a broken immigration system in a way that 20 years from now we will not have 11 or 12 million illegal immigrants? Isn't that the goal, to fix it?

Secretary NAPOLITANO. Yes.

Senator GRAHAM. I think the country is tired of talking about it. I think it is time for us to fix it with the goal in mind that there will be no third wave of illegal immigration.

To put it in context, we are not being overrun by Canadians, are we?

Secretary NAPOLITANO. Not as far as I can tell.

Senator GRAHAM. Not as far as I can tell either. I love our Canadian friends. They come to Myrtle Beach in March.

Secretary NAPOLITANO. They come to Arizona, too.

Senator GRAHAM. They do, and they swim. I do not know why in March, but they seem to enjoy that. Then they go back home. And I would suggest that they go back home because Canada has got a stable government and a stable economy, and most of the people coming here are coming from pretty dire situations, and that is just a reality that a lot of people come to this country because where they live is not so nice. Do you agree with that?

Secretary NAPOLITANO. Yes, or their opportunity to raise a family and to thrive economically is diminished.

Senator GRAHAM. Right. I can understand why people want to come to America, but I do not understand why we cannot control who comes and on what terms. And I think we can if we choose to.

Starting with the border, do you agree with me that you have got to have a secure border because if you have a bunch of other laws and you can still walk across the street in the country, you are probably not going to accomplish your goal?

Secretary NAPOLITANO. I think we can all agree that border security has to be part of a comprehensive plan.

Senator GRAHAM. I think that is the starting point, and I want to applaud you for making progress. You certainly have. There are nine sectors that we have laid out in terms of our borders. What I would like from your organization, your Department, is an inven-

tory of what we can do that we have not yet done, and one through nine, give us a punch list and let us see if we can push this thing over the line and say the border is reasonably secure. So would you provide the Committee, if you could, with kind of an inventory of what is yet to be done that could reasonably be done in all nine sectors?

Secretary NAPOLITANO. Yes, we will work with you on that.

Senator GRAHAM. Also, I agree with you that you could build a 100-foot-high wall, and if you are getting a job pretty easily on the other side of the wall, people will go under it or over it or around it. So really E-Verify, controlling employment, is a virtual fence all of its own, is it not?

Secretary NAPOLITANO. I think it is, yes.

Senator GRAHAM. I just do not see how you could ever solve this problem if you do not deal with the magnet, which is jobs. If we cannot come up with a system where our employers can tell the difference between being here legally and illegally, we are never going to address this problem. So one of the key components is employer verification. Do you agree with that?

Secretary NAPOLITANO. I agree, and I would suggest, Senator, that the E-Verify system now is far different from the E-Verify system we——

Senator GRAHAM. We are moving in the right direction, but put yourself in an employer's situation. If you ask too many questions, like a Social Security card is pretty easily duplicated. If you like Ronald Reagan, I could make you Ronald Reagan by midnight. I could give you a Social Security card saying you are Ronald Reagan. We need to deal with that. And I think we are well on our way to doing it. So employer verification, and employers who cheat need to be hit hard. Do you agree?

Secretary NAPOLITANO. That is right. And the current law does not give us the tools to do that.

Senator GRAHAM. Well, you are going to get those tools, and those employers are trying to do the right thing. You have got to be frustrated by your own Government. We are going to give you some help.

So temporary workers. The one thing the President did not mention last night was the temporary worker program. If I had to bet where this thing could run into a real roadblock, it would not be on the pathway to citizenship. As long as it is earned and it is not a special pathway, it will not be on border security because we are all signed up for that. I think E-Verify, some kind of new system to control employment, we are all signed up for that.

But here is the friction point: Temporary workers are needed in the future, a legal source of labor for American employers. Do you agree with that?

Secretary NAPOLITANO. Yes, that concept is one I can agree with.

Senator GRAHAM. And the goal is not to displace an American worker. You can only get a temporary worker when there is no American available at a competitive wage.

Secretary NAPOLITANO. The devil is in the details. You have got to have appropriate protections for American workers and, indeed, for workers who are coming in to work.

Senator GRAHAM. And nobody wants to displace a willing American worker, but I can tell you, in South Carolina there are certain jobs, like in the meat-packing industry, as an employer you can advertise all day long, every day of the week, and you are not going to get that work force. And I do not want those meat-packing plants to leave the country. I want it to be a win-win where somebody overseas can come here temporarily and improve their life and help our employers. Do you agree with that?

Secretary NAPOLITANO. I agree with that, yes.

Senator GRAHAM. OK. So that is one of the goals, a temporary worker program that will meet the labor needs of this country. And demographically we are changing. There are three workers for every Social Security retiree today. In 20 years, there will be two. Do you agree with me that the demographics of America are changing and that we are going to need a more robust legal immigration system?

Secretary NAPOLITANO. Yes, and as I mentioned in my opening statement, it is part of economic growth.

Senator GRAHAM. I am running out of time. Just say "yes," because you——

Secretary NAPOLITANO. I will say yes. This is a good cross-examination.

Senator GRAHAM. And just say "no" when you need to.

Secretary NAPOLITANO. All right.

Senator GRAHAM. The bottom line here is it is not just the high-tech workers. God knows we are going to need—if you go to the University of South Carolina or Clemson University graduation, if Bob Smith comes across the stage in a Ph.D. program, everybody claps because there is only one. We are getting people from all over the world coming to our universities, and that is a good thing. Do you agree with me that they should not only get a Ph.D. in some kind of hard science, they should get a green card with that Ph.D.?

Secretary NAPOLITANO. Assuming no security issues, or crime issues, yes.

Senator GRAHAM. And assuming they are not displacing an American worker. We are losing a lot of valuable people. Just give me a little bit more time here, Mr. Chairman. So the bottom line is——

Chairman LEAHY. And then we are going to—as soon as you get this one last question, we will go to Senator Franken, and then we are going to the next panel.

Senator GRAHAM. I can do this in 30 seconds. Have you ever seen a better opportunity than the moment that exists today to pass comprehensive immigration reform that would prevent a third wave?

Secretary NAPOLITANO. No. This is the moment.

Senator GRAHAM. Do you agree with me that the payoffs for the Nation are enormous, we improve our national security, we improve our economy, and we deal with real people who have real problems, and we are trying to give them a second chance on our terms, and some of the people we are going to say you have got to leave because you have been up to no good? Do you agree that the payoffs of fixing this broken immigration system are enormous for the country?

Secretary NAPOLITANO. I could not say it better than you just did.

Senator GRAHAM. Thank you.

Chairman LEAHY. Thank you.

Senator Franken.

Senator FRANKEN. Thank you, Mr. Chairman. And, Madam Secretary, it is good to see you, and it is so good that you can give me multiple-word answers if you like.

[Laughter.]

Secretary NAPOLITANO. Thank you.

Senator FRANKEN. We have been hearing a lot of issues raised, family reunification. My office just heard of a story about a Minnesota green card holder, legal immigrant who filed to be reunited with his wife and four children in November 2010 and is only now in February 2013 getting his application processed. So our system is broken when, if you do things right, you cannot see your wife and your four kids or cannot even get the application started going in about two and a half years.

I am going to go to something that Senator Leahy brought up, which is dairy. Minnesota is the sixth largest dairy producing State in the country. It is an important part of our economy. But not enough Americans are taking these jobs, and dairy farmers cannot access the Federal agricultural Guest Worker Program because cows are not seasonal. They have to be milked. If cows were milked seasonally, you would have a lot of uncomfortable cows.

[Laughter.]

Senator FRANKEN. I have had to leave during the hearing once.

[Laughter.]

Senator FRANKEN. Anyway, so this is an old issue, and I am sure you are familiar with it. What is the administration planning to do in its proposal to help our Nation's dairy farmers and, more importantly, Minnesota's dairy farmers?

Secretary NAPOLITANO. The administration supports a number of reforms to the H–2A program which would deal with the dairy issue and fix it.

Senator FRANKEN. All right. In the United States, approximately 250,000—or 205 parents of United States citizen children were deported from this country from July 2010 to September 2012. We have seen firsthand in Minnesota how devastating these enforcement actions can be on families. I understand that DHS has produced two sets of guidelines on this issue: the first is a parental interest directive, which will help ICE personnel conduct enforcement actions in a way that does not necessarily hurt families; the other guidance ensures that ICE field teams actually ask parents where they want their children to go before they place the children in State custody. None of these documents has been issued publicly.

What is the status of these guidelines? And what is DHS doing more broadly to protect children in enforcement actions?

Secretary NAPOLITANO. Well, my understanding is those either already have been issued or are about to be issued. I will follow up on that. But this really gets to one of the real hardships of the current immigration system. Where the parents need to be deported, for example, they meet our other priorities, what do you do with

the citizen children? One of the things we look at is can one of the parents, you know, stay. One of the things we try to find out, are there other family members that can take the children if the parents agree to that? And then in some cases, we have to call in whatever the social agency involved in the State appears to be.

Senator FRANKEN. This is something that concerns me when an action is being taken, that during that period, during the hours or days that this has actually happened, the children have some contact with the parents and that the parents have some rights to be in contact with their children, because this is a very traumatic, can be a very traumatic, and we have seen this in Minnesota where we have had some actions take place where it has been very traumatizing for the kids and for the parents. And I just want to make sure—I have a little piece—an important piece of legislation, not a little piece of legislation, to make sure that those kids have rights and those parents have rights during those kind of actions. I would love to work with you on that, Madam Secretary.

Secretary NAPOLITANO. You bet.

Senator FRANKEN. Thank you.

Thank you, Mr. Chairman.

Chairman LEAHY. Thank you very much.

Senator Coons is here, and then Senator Cornyn says he has a 30-second question. But Senator Coons has not had an opportunity.

Senator COONS. I am happy to defer to my colleague from Texas for 30 seconds.

Chairman LEAHY. For 30 seconds.

Senator CORNYN. Thank you, Mr. Chairman.

I just have one other question, Madam Secretary. It is estimated that there are between 4 and 5.5 million people who overstayed their visas—in other words, 40 percent of the illegal immigration in the country is caused not from people who have come across the border, which we have discussed, but people who come in lawfully but overstay their visa. Seventeen years ago, Congress, as you know, passed a requirement for an automated entry/exit system to record entries and departures for each one of these individuals.

What is your plan to deal with 40 percent of the illegal immigration that is a result of visa overstays?

Secretary NAPOLITANO. Senator, in the interest of time, because there is another panel, why don't I come and brief you about all of the actions on visa overstays.

Senator CORNYN. Well, if you would just answer my question, and then we can follow up with a further meeting if necessary.

Secretary NAPOLITANO. It is two phases. One is enhanced biographic at the exits of our country. That is being implemented and has been largely implemented already. We would like to move ultimately over time to a biometric exit system, but the money simply has not been made available.

Chairman LEAHY. Thank you.

Senator Coons.

Senator COONS. Thank you very much, and thank you, Chairman Leahy, for convening this important hearing today.

Secretary Napolitano, thank you. Great to be with you again, and thank you for the very hard work that you and the Department have done within our complicated and outdated immigration sys-

tem to prioritize our enforcement efforts and to make sure that we have a safer and a more just Nation.

There is a lot more work to be done, and much of that needs to come from our work here in Congress in passing a modern and comprehensive immigration system. It is broken. Families are torn apart. Businesses are discouraged from investing and hiring, and we are not living up to our constitutional values and how we treat families of all kinds, including LGBT families, and how we treat folks who are not citizens but deserve due process of some reasonable kind in this very difficult immigration experience.

What we are left with is a system that is very expensive, one that is expensive for law enforcement at the Federal level and the State and local level. It is expensive not just at the border but throughout the whole system. It is expensive for U.S. workers, for businesses, for taxpayers, and we can and I hope will do better.

As you know, Secretary, one of the pillars of proposed comprehensive immigration reform is a path to citizenship for the millions of undocumented living here in the United States today. Under current law, what is the path to citizenship for someone who is currently undocumented but living in the United States? Is there a line for them to get on?

Secretary NAPOLITANO. Not really, no. If they are here illegally and leave and try to re-enter the country, that is one circumstance. But we look at prior removals, prior deports as a barrier.

Senator COONS. And if someone is able to get on to the current wait lists for a green card based, say, on a family connection, a relationship to a U.S. citizen, what are the requirements they would then have to meet to at some point have a shot at becoming a U.S. citizen?

Secretary NAPOLITANO. They are extensive, and they are very lengthy. And I think the point of looking at the immigration system as a whole, Senator, is for those in the country right now who are here illegally to have a pathway to earn citizenship, to pay a fee, pay a penalty, learn English, take American civics, and then get in the back of the line.

Senator COONS. In the context of comprehensive immigration reform, there has been some discussion about equality, equal treatment of LGBT Americans being a divisive issue or a side issue that does not deserve the kind of focus that it may get in this deliberation. I just want to thank you for what you have done administratively to recognize the special circumstances faced by families with LGBT members. But you cannot build a family on deferred action. Could I get some commitment that you will cease deportations of same-sex partners, of Americans who would otherwise be eligible based on status?

Secretary NAPOLITANO. We cannot give a categorical answer there because of DOMA, and we are charged with enforcing DOMA as well.

Senator COONS. Well, I look forward to continuing to work with some of my colleagues who are cosponsoring legislation to repeal DOMA.

I would like to ask about the implementation of the Consequence Delivery System that DHS uses, including the Alien Transfer Exit Program. It is a program that takes families who have entered one

sector of the border, say California, for example, and separates the members of that family by deporting some members along other places, Arizona or Texas or elsewhere.

In implementing this process, how does the Department ensure it does not harm or in any way victimize asylum seekers or vulnerable women or children? And does this system allow for an officer's discretion in how they assign consequences for a particular immigrant and whether it might result in a family disruption or in a health, safety, or life risk?

Secretary NAPOLITANO. Obviously, those seeking asylum, there is a separate process for those who are requesting asylum. But we have found that one of the deterrents for repeated illegal immigration is to make sure that there is some consequence for every illegal immigrant that we apprehend at the border, and that is the so-called Consequence Delivery System, one part of which can be the lateral movement across the border before the actual deport.

Senator COONS. One of our highest objectives, I would think, in the enforcement actions taken by the Department is to focus on removing those who pose a threat to our community—criminals, violent criminals in particular. And the policy you are now following under Deferred Action for Childhood Arrivals has meant that many young people, the so-called *DREAM Act* kids, no longer live in constant fear of deportation, although they have an uncertain future, which I hope we will be addressing through legislation. And these young people continue to contribute to our country.

From the perspective of the Department, could you tell me if this policy, this Deferred Action for Childhood Arrival policy, has resulted in increased availability of Department resources to focus on higher-priority cases such as identifying and removing, deporting, violent criminals?

Secretary NAPOLITANO. I think we can say that, yes, it does. But more importantly, I think the Deferred Action program is consistent with our values as a country and our recognition that these young people are not to blame for being in the country.

Senator COONS. Well, thank you. And, Madam Secretary, as somebody who as Attorney General, as a Governor, and as Secretary has tackled what are very difficult issues, I am trying to make sure that we square our core values with what is a very political and difficult situation. I just want to thank you for your personal leadership, and I look forward to continuing to work with you on this.

Secretary NAPOLITANO. Thank you, Senator.

Senator COONS. Thank you.

Chairman LEAHY. Thank you very much.

Senator Flake had a letter to be included in the record at the appropriate point.

[The letter appears as a submission for the record.]

Chairman LEAHY. You had a closing statement?

Senator GRASSLEY. Not a closing statement. Just thank the Secretary, an understanding I assume we have that questions will be submitted for answer in writing. Several people on my side wanted a second round, but out of respect for the other panelists, we are not going to do that. But the Chairman promised that we would have an oversight hearing with you later on this spring, and we

can pursue all questions at that time. But some people will obviously want to pursue questions on immigration.

Thank you very much.

Secretary NAPOLITANO. Thank you.

Chairman LEAHY. Thank you.

Madam Secretary, thank you very much for being here. I think there is a growing consensus, I hope there is a growing consensus among both Republicans and Democrats in the Senate and in the other body, that we need—what button did you press, Chuck?

Senator GRASSLEY. I thought I just turned my microphone off.

Secretary NAPOLITANO. We need light on the subject. That is right.

Chairman LEAHY. We need light on the subject. But I think there is a growing consensus in both bodies that we need real immigration reform. I am committed as Chairman of this Committee to put together a bill with the help of both Republicans and Democrats which we will bring to a vote in the Committee and have something come to the Senate floor.

I worked with former President George W. Bush when we had tried once before to do this, but I think the time is even more right now. Obviously I come from a State where we do not face the problems that some of my colleagues do from States on the southern border and from your own home, but all of us know that there are other issues beyond just the border in immigration.

Secretary NAPOLITANO. That is right.

Chairman LEAHY. And as a parent and a grandparent, I worry very much what is happening to children and families.

So I appreciate your work, and both from our private conversations and public conversations, I know how dedicated you are to getting immigration reform, and we will work together. So thank you very much.

Secretary NAPOLITANO. Thank you.

Chairman LEAHY. And if the staff could set up for the next panel.

Secretary NAPOLITANO. Thank you, Mr. Chairman.

Chairman LEAHY. Thank you.

Chairman LEAHY. I am going to ask the panel to please stand to be sworn in. Do you swear that the testimony you are about to give before the Committee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. VARGAS. I do.

Ms. VAUGHAN. I do.

Mr. CASE. I do.

Mr. CRANE. I do.

Ms. MURGUÍA. I do.

Chairman LEAHY. Thank you. Let the record show all were sworn in, and I thank you for being here.

We will begin from your right to left, my left to right, with Jose Antonio Vargas, a former *Washington Post* journalist. He is part of the team that won the Pulitzer Prize for covering the tragedy at Virginia Tech. Those of us who either live or spend time in this area have read those articles, wishing that we were not reading them, wishing the event had not happened. The Pulitzer Prize is well deserved. In many ways, Mr. Vargas served as a whistleblower about the intractable situation in which so many who were brought

to the United States as children find themselves. They speak on behalf of millions who cannot speak for themselves to shed light on the human impact of our immigration system.

Mr. Vargas, please go ahead. And we will hear from each of you, and then we will ask questions.

STATEMENT OF JOSE ANTONIO VARGAS, FOUNDER, DEFINE AMERICAN, NEW YORK, NEW YORK

Mr. VARGAS. Thank you, Chairman Leahy, Ranking Member Grassley, and distinguished Members of this Committee.

I come to you as one of our country's 11 million undocumented immigrants, many of us Americans at heart, but without the right papers to show for it. Too often, we are treated as abstractions, faceless and nameless, subjects of debate rather than individuals with families, hopes, fears, and dreams.

I am in America because of the sacrifices of my family. My grandparents legally emigrated from the Philippines to Silicon Valley in the mid-1980s.

A few years later, Grandpa Teofilo became a U.S. citizen and legally changed his name to Ted—after Ted Danson in "Cheers."

Because grandparents cannot petition for their grandkids and because my mother could not come to the United States, Grandpa saved up money to get his only grandson, me, a passport and a green card to come to America. My mother gave me up to give me a better life.

I arrived in Mountain View, California, on August 3, 1993. One of my earliest memories was singing the National Anthem for the first time at Crittenden Middle School, believing the song had somehow something to do with me. I thought it said, "Jose, can you see?

Four years later, I applied for a driver's permit like any 16-year-old. That was when I discovered that the green card that my grandpa gave me was fake.

But I wanted to work. I wanted to contribute to a country that is now my home. At age 17, I decided to be a journalist for a seemingly naive reason: If I am not supposed to be in America because I do not have the right kind of papers, what if my name, my byline, was on the paper? How can they say I do not exist if my name is in newspapers and magazines? I thought I could write my way into America. That was the plan.

As I built a successful career as a journalist—paying Social Security and State and Federal taxes along the way—as fear and shame, as denial and pain, enveloped me, words became my salvation. I found solace in the words of the Reverend Martin Luther King, quoting St. Augustine: "An unjust law is no law at all."

Ultimately, it took me 12 years to come out as an undocumented American—because that is what I am, an American. But I am grateful to have been able to tell the truth. And in the past few years, more undocumented people, particularly young DREAMers, are coming out, telling the truth about the America we experience.

We dream of a path to citizenship so we can actively participate in our American democracy, this church.

We dream of not being separated from our families and our loved ones, regardless of sexual orientation, no matter our skill set. This

Government has deported more than 1.6 million people—fathers and mothers, sons and daughters—in the past four years.

We dream of contributing to the country we call our home.

In 21st century America, diversity is destiny. That I happen to be gay, that I happen to speak Tagalog, my first language, and that I want to learn Spanish—that does not threaten my love for this country. How interconnected and integrated we are as Americans makes us stronger.

Sitting behind me today is my Filipino American family: my Grandma Leonila, whom I love very much; my Aunt Aida Rivera, who helped raise me; and my Uncle Conrad Salinas, who served, proudly, in the U.S. Navy for 20 years. They are all naturalized American citizens.

I belong in what is called a mixed-status family. I am the only one in my extended family of 25 Americans who is undocumented. When you inaccurately call me "illegal," you are not only dehumanizing me, you are offending them. No human being is illegal.

Also here is my Mountain View High School family—my support network of allies who encouraged and protected me since I was a teenager. After I told my high school principal and school superintendent that I was not planning to go to college because I could not apply for financial aid, Pat Hyland and Rich Fischer secured a private scholarship for me. The scholarship was funded by a man named Jim Strand. I am honored that Pat, Rich, and Jim are all here today. Across the country, there are countless other Jim Strands, Pat Hylands, and Rich Fischers of all backgrounds who stand alongside their undocumented neighbors. They do not need to see pieces of paper—a passport or a green card—to treat us as human beings.

This is the truth about immigration in our America. And as this Congress decides on fair, humane reform, let us remember that immigration is not merely about borders. "Immigration is in our blood . . . part of our founding story," writes Senator Ted Kennedy, former Chairman of this very Committee, in the introduction to President Kennedy's book, "A Nation of Immigrants." I carry it around with me.

Immigration is about our future. Immigration is about all of us.

And before we take your questions here, I have a few of my own: What do you want to do with me? For all the undocumented immigrants who are actually sitting here at this hearing, for the people watching online and for the 11 million of us, what do you want to do with us?

[Applause.]

Mr. VARGAS. And to me, the most important question as a student of American history is this: How do you define "American"? How do you define it?

Thank you so much for having me here today.

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

Chairman LEAHY. Thank you very much, Mr. Vargas.

Jessica Vaughan is the Director of Policy Studies for the Center for Immigration Studies where she has worked since 1992, specializing in immigration policy and operations.

Incidentally, I forgot to mention at the beginning that your whole statements will be placed in the record as though read. I have tried to be a little flexible with the time, but I am trying to keep close to the time because several other hearings are going on. That is why Members have been coming in now.

Ms. Vaughan, please go ahead.

STATEMENT OF JESSICA VAUGHAN, DIRECTOR OF POLICY STUDIES, CENTER FOR IMMIGRATION STUDIES, WASHINGTON, DC

Ms. VAUGHAN. Thank you. So far, the comprehensive immigration reform proposals all include the same basic elements: amnesty for 11 million illegal immigrants; increases in legal immigration; and promises of stronger border security and immigration enforcement measures.

But this package would not only repeat the mistakes of IRCA from 1986; it would compound the immigration problems we currently have and fail to deliver a system that serves our citizens' economic needs.

Now is not the time to create new flows of immigration that will put Americans at a disadvantage, especially in exchange for promises of enforcement that are unlikely to be fulfilled. Instead, lawmakers should take the approach that has worked in recent years, which is to look for more narrow agreements focused on areas of broad consensus.

How did IRCA fail? The amnesty parts were a great success, at least for the three million people who were legalized. But illegal immigration continued, and now we have nearly three times as many illegal residents as we did in 1986. This is because the Government only relatively recently has gained some control of parts of the southwest border and never followed through with the enforcement of employer sanctions.

The Workplace Enforcement System of IRCA was built to fail. The INS put more resources into outreach than enforcement, and much like today, what few sanctions were imposed were no more than a slap on the wrist. The result was that employers failed to take the law seriously.

The American public understands why IRCA failed. According to a new poll my organization just commissioned, when asked why there is a large illegal population in the country, 71 percent of voters answered that it is because we have not made a real effort to enforce our immigration laws. Only 18 percent think it is because we are not letting in enough legal immigrants.

Not only was the enforcement end of the grand bargain scuttled, the Government also failed to enforce the rules of the amnesty program to make sure that only the right people were legalized. It is estimated that as many as 25 percent of the approved applications were based on fraud. Fraud is to be expected in any immigration benefits program, but in this case, the Government was willing to look the other way, even in cases of obvious fraud.

One of the worst examples was Mahmud Abouhalima, a cab driver from New York City, who was approved as a farm worker and later went on to help blow up the World Trade Center in 1993.

Based on what we have seen so far with the DACA program, it is reasonable to worry that any new legalization program will be administered with a similar indifference to fraud.

USCIS has yet to report more than a single denial out of the more than 400,000 applications submitted. As in IRCA, USCIS has established a generous system for DACA where applicants are presumed to be eligible, claims are rarely verified, and failed applicants get to stay anyway, for all intents and purposes immune from immigration law enforcement.

Before considering another large-scale amnesty, we need to shore up enforcement of immigration laws in order to prevent another surge in illegal immigration. Some progress has been made, but we cannot check the box off quite yet. Some of the metrics suggest a significant decline in enforcement activity over the last few years. Border Patrol apprehensions were up again in 2012 by nine percent. ICE arrests in the interior have been trending downward since 2008, and the Investigations Division, they have gone down 70 percent in the last few years.

It appears that the number of absconders is rising. ICE has reported that there are 850,000 aliens present in the country who have been ordered removed or excluded, but who have not departed. These numbers do not support the Obama administration's claims to have set a record for deportations.

ICE also has released tens of thousands of deportable criminal aliens in recent years. According to the Congressional Research Service, these aliens went on to commit 58,000 new crimes in a two and a half year period, including more than 5,000 major or violent criminal offenses and more than 8,000 DUI violations.

Similarly, DHS has failed to address the problem of the two dozen or so countries that refuse to accept back their citizens who have been ordered removed. More than 12,500 aliens, the majority of whom were likely criminals, have been released from ICE detention in recent years, and it could be as high a total of as many as 200,000.

If properly managed, immigration can serve the national interest, but today we are issuing more new green cards and work visas than we can absorb in our labor market without disadvantaging the millions of unemployed Americans who are competing in these same occupations. The result has been a measurable decline in wages for many, in addition to lost opportunities. This has affected engineers, teachers, and nurses, but also those Americans who lack a higher education and are already struggling to move up the ladder. Employers will have little incentive to improve working conditions and wages as long as there is a steady stream of replacement workers.

Last, a mass amnesty will be costly as newly legalized residents will now be eligible for the services and subsidized health care from which they were previously barred, and we estimate that this could cost tens of billions of dollars per year. Instead, lawmakers should start smaller, tackling issues like better workplace enforcement and compliance, amnesty for illegal aliens brought by their parents at a young age who grew up here with a path to citizenship, ending the visa lottery and other programs that do not serve our national interest, completing the entry/exit system, reforming the immigra-

tion court system, expanding Federal and local law enforcement partnerships, and rebalancing our legal immigration system to admit a larger proportion of immigrants who will be self-sufficient.

Before accepting any large-scale legalization program, people need to have some confidence that the laws will actually be enforced and that such an amnesty will not cause another surge of illegal immigration, and see meaningful and sustained commitment to attaining control of the borders and enforcing immigration laws in the interior in a transparent way.

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

Chairman LEAHY. Thank you very much.

Steve Case is the chairman and CEO of Revolution, co-founder of America Online, and chairman of the Case Foundation, an accomplished entrepreneur, philanthropist, member of President Obama's Council on Jobs and Competitiveness, and, I would also note, a valued and valuable member of the Smithsonian Institution's Board of Regents.

Mr. Case, please go ahead, sir.

STATEMENT OF STEVE CASE, CHAIRMAN AND CHIEF EXECUTIVE OFFICER, REVOLUTION LLC, WASHINGTON, DC

Mr. CASE. Thank you, Senator Leahy, and it is an honor to serve with you on that Smithsonian Board of Regents, and it is also an honor to be invited to speak to you and the Committee today.

I want to share my perspective on an issue that I think is central to our history and also critical to our future.

I appear before you today as an entrepreneur, an investor, a civic leader, and a colleague and friend of talented immigrant entrepreneurs and innovators who devote themselves to their companies and contribute to this country.

To understand this debate in context, it is necessary to remember that the story of America is in part the story of entrepreneurs who settled this land seeking a better life and who through grit, hard work, and creativity built companies, cities, and whole new industries that power the strongest economy the world has ever known.

Our country did not become the world's leading economy by luck or accident. Iconic *Fortune* 500 companies that employ thousands of Americans did not simply come to be. Revered American cities like New York, Chicago, and Los Angeles did not sprout up by chance. New industries for telephones, airplanes, and the Internet were not conceived by happenstance.

It was the work of pioneering entrepreneurs—beginning with the country's earliest settlers, our Nation's first immigrant entrepreneurs—who took a risk hoping to turn dreams into startup businesses.

From the earliest days, immigrant entrepreneurs started some of America's most celebrated enterprises. U.S. Steel, Pfizer, Kraft Foods, Honeywell, Goldman Sachs, AT&T, and Yahoo! were all started by immigrants. Today, 40 percent of *Fortune* 500 companies in the United States were started by immigrants or the children of immigrants—40 percent.

Between 1995 and 2005, half of Silicon Valley startups had an immigrant founder.

And this is not just about technology companies. When Hamdi Ulukaya, an immigrant from Turkey, hired four employees to begin packaging yogurt by hand in upstate New York, his friends thought it was a crazy idea. Eight years later, Chobani Yogurt generates $1 billion in sales, has hired 1,500 American workers, and is expanding operations all across the country.

Mr. Chairman, high-skilled immigrants have always been job creators, not job takers. The mistake that opponents of immigration reform often make is believing that our society and economic growth are zero sum. They are not. More talented immigrants joining the American family does not equate to fewer jobs; it equates to more jobs.

Others argue that instead of allowing more high-skilled immigrants to stay we should instead focus on better training and STEM education for America's youth. But this is a false choice. We can and must do both: Draw the best and brightest from across the globe, and develop more talented students here at home.

But every year, arbitrary immigration caps force approximately one-third of the 50,000 foreign-born STEM graduates from our universities to leave the country. If our military had such a policy, we would train soldiers, sailors, and pilots at West Point, the Naval Academy, and the Air Force Academy only to then send them away to join the militaries of other nations. I think we would all agree that that would be crazy. But our immigration policy, particularly around high-skilled immigrants, is equally crazy.

Meanwhile, as we as a Nation grow complacent about the global battle for talent, our global competitors are stepping up their game.

China launched the "1000 Talents Program" to attract talented researchers back to the country. Australia grants nearly as many employment-based green cards as the United States, despite having an economy that is 14 times smaller. Canada recently announced a new startup visa program that grants permanent residency to foreign-born innovators who receive backing from Canadian investors.

But sadly, here in the United States we are making it harder for innovators to come and to stay. A few months ago, I was having breakfast with a group of young entrepreneurs in Chapel Hill, North Carolina, when I met Deepak, a young, up-and-coming star in the Research Triangle area. Deepak was born in India, has a Ph.D. in genetics from the University of North Carolina, and his health care startup has achieved 40 percent month-over-month growth. Yet his green card status remains uncertain, and as a result, Deepak is having difficulty convincing investors to fund his expansion. Deepak is ready to hire more employees in Raleigh. Instead, he waits.

And there are stories like this all over the country. A few decades ago, we lost ground in the manufacturing sector when we failed to respond aggressively to global competition. We cannot afford to do the same when it comes to the entrepreneurial sector.

The good news is that numerous bipartisan, high-skilled immigration proposals have been teed up in recent months that contain smart reforms. The Startup Act permits entrepreneurs and STEM

graduates to stay and start businesses. The I-Squared Act increases the amount of available green cards and removes the per country cap for employment-based visas. The Startup Visa Act allows foreign entrepreneurs to move to the United States as long as they have financial backing. The SMART Jobs Act slows the STEM "brain drain" by adding a new non-immigrant F–4 visa. Chairman Leahy has introduced a compelling idea based on the EB–5 program that is working in his home State of Vermont.

President Obama has called for stapling green cards to the diplomas of American-educated immigrants with STEM degrees, and the bipartisan Gang of Eight, including many in this room, has agreed on a framework to admit the skilled workers necessary for a competitive economy.

I defer to the men and women on Capitol Hill and at the White House to determine which of these specific provisions make up the final plan, but this much is clear: We must enact measures that enable talented entrepreneurs to start businesses here in the United States.

For over a decade, there has been a discussion of the need to update our laws and give our country the tools to win the global battle for talent, and yet nothing has happened. At this critical time, I believe the best way to win adoption of high-skilled immigration reforms is to make them part of a comprehensive immigration reform package that also addresses a path to citizenship for undocumented workers living in our country, deals with border security, and also sanctions on employers who break the law. Such a comprehensive package is essential not only for its potential to spur our economic growth, but because it also can address the family and human issues that are also at stake in this emotional debate. And with the leadership in the Senate and this Committee in particular, it can get done.

A few months ago, I stood next to President Obama and Republican Majority Leader Eric Cantor in the Rose Garden after they joined together to pass the JOBS Act, *Jump-Starting Our Business Startups Act*, on behalf of our Nation's entrepreneurs. Pundits said it would never happen, particularly given it was an election year. But it did. Bipartisan progress is possible during moments in Washington when diverse groups of citizens call for action. On immigration, this is the moment for Democrats, Republicans, and Independents to come together and pass comprehensive reform.

Mr. Chairman and Members of the Committee, thank you for your time.

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

Chairman LEAHY. Well, thank you, Mr. Case. I appreciate that very much.

Our next witness is Chris Crane, the president of the National Immigration and Customs Enforcement Council 118 of the American Federation of Government Employees. He currently serves as an ICE deportation officer. Am I correct on that?

Mr. CRANE. Yes, sir.

Chairman LEAHY. Your full statement will be placed in the record, but please go ahead, sir.

STATEMENT OF CHRIS CRANE, PRESIDENT, NATIONAL IMMIGRATION AND CUSTOMS ENFORCEMENT COUNCIL 118 OF THE AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, WASHINGTON, DC

Mr. CRANE. Good morning, Chairman Leahy, and thank you, as well as honorable Members of the Committee.

On Saturday, I was contacted by a man whose son was killed by an alien who was driving without a license. The alien had failed a driver's exam multiple times but decided to drive anyway. While attempting to flee the scene, the alien drove over the man's son approximately four times. Two years later, the father is still attempting to have the alien who killed his son deported.

In 2010, an illegal alien, again driving without a license as well as being intoxicated, killed one nun and maimed two others. The case made national headlines. Many in America called for Secretary Napolitano's resignation. Last week, that alien was sentenced to 20 years in prison.

Statistics show that unlicensed drivers kill 8,400 people in the United States each year. That is 700 deaths every month. Yet according to ICE's new prosecutorial discretion policies, driving without a license is just another traffic offense. And because of that, ICE agents cannot arrest illegal aliens without licenses unless they have already potentially injured someone.

ICE recently proposed a three-day suspension for an ICE agent who arrested an illegal alien with multiple convictions for driving without a license and who was attempting to operate a vehicle in the agent's presence. While seeking disciplinary action against the agent, ICE simply released the alien without charge, putting yet another unlicensed driver behind the wheel.

Secretary Napolitano describes these new policies as smart and effective. I can assure you they are neither.

I think most Americans assume that ICE agents and officers are empowered by the Government to enforce the law. Nothing could be further from the truth. With 11 million illegal aliens in the U.S., ICE agents are now prohibited from arresting illegal aliens solely on charges of illegal entry or visa overstay—the two most frequently violated sections of U.S. immigration law. Agents report that of they encounter suspected illegal aliens in the public, they cannot arrest them. Their instructions are that only if an alien is first arrested by local police on criminal charges may ICE agents and officers consider making an immigration arrest.

If an alien is arrested by local police and placed in jail, again, ICE agents may not arrest them for illegal entry or visa overstay. New policies require that illegal aliens have a felony arrest or conviction or be convicted of three or more misdemeanors, so many illegal aliens with criminal convictions are also now untouchable.

ICE agents apply the DREAM Act provisions and DACA not to children in schools but to adult inmates in jails. If the inmates claim to be DREAMers and claim to qualify under DACA, agents must take the illegal alien's word that they do qualify. No investigation is conducted. There is no requirement that the illegal alien provide proof such as a high school diploma or college transcript.

The fact that as a law enforcement agency ICE has any national policy or practice that simply relies on an individual's word as

grounds for stopping an enforcement action is yet further proof that ICE's new policies are neither smart nor effective.

For this and many other reasons, ICE is crumbling from within. Morale is at an all-time low. As criminal aliens are released to the streets and ICE instead takes disciplinary actions against its own officers for making lawful arrests, it appears clear that Federal law enforcement officers are the enemy and not those that break our Nation's laws. Whether it be our current immigration laws or future reforms, all will fail as long as individuals can pick and choose which laws enacted by Congress will be enforced. Operationally, ICE is not prepared or able to properly perform its mission, and the interior of the U.S. is not secure.

In closing, for the last four years, President Obama has excluded ICE officers and agents from all input on immigration reforms as well as ICE and DHS arrest policies. For that reason, yesterday a letter was sent to the President requesting that ICE agents be invited to future meetings as special interest groups representing illegal aliens have been for the last four years.

To the Members of this honorable body, I extend a warm and sincere invitation to call upon me at any time as we would very much like to assist you in your efforts to fix our broken immigration system.

With that, that concludes my testimony. Thank you.

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

Chairman LEAHY. Thank you very much, Mr. Crane.

The last witness is Janet Murguía, president and CEO of the National Council of La Raza, the largest Hispanic civil rights organization in the Nation. She served in the Clinton White House, including as Deputy Assistant to the President. She is one of four siblings trained as lawyers. Two siblings, I might mention, currently serve as Federal judges, and I was privileged to be here at the time both of them became Federal judges.

This is not your first visit to this Committee. We thank you for being here.

STATEMENT OF JANET MURGUÍA, PRESIDENT AND CHIEF EXECUTIVE OFFICER, NATIONAL COUNCIL OF LA RAZA, WASHINGTON, DC

Ms. MURGUÍA. Thank you, Mr. Chairman, and I also want to thank Ranking Member Grassley for giving me this opportunity to appear before the Committee today. And in addition to my written statement, I want to also request that over 265,000 petitions in favor of legalization and a path to citizenship be entered into the public record.

At the outset, I want to join the growing consensus that Congress has a historic opportunity to pass immigration reform this year. Fixing our broken immigration system is in the best interest of our country. Immigration should be orderly and legal and uphold our Nation's values. Reform must include: a road map to legalization and citizenship for eligible immigrants; smart, workable enforcement; and a legal immigration system that serves families, workers, and our economy.

For Latinos, this issue is personal. As the recent election demonstrated, Hispanic voters generated the game-changing moment for immigration, giving us the opportunity to finally achieve a solution. And our role is growing. An average of nearly 900,000 Latino citizens will turn 18 every year between now and 2028. Our community is engaged and watching this debate very closely.

This is urgent because the effects of a failed system on our economy and on our country are unacceptable. But I must note that the failure to enact immigration reform has not meant inaction on immigration enforcement. In fact, by nearly every standard, more is being done to enforce immigration laws than ever before. And detention, prosecutions, and deportations are at all-time highs.

Of course, for some people no amount of enforcement will ever be enough, but for our community, current enforcement levels are already intolerable, because virtually all of us, undocumented, permanent resident, and citizen alike, are affected. And despite all this enforcement, the notion that we would deport 11 million people is an ugly nightmare, and the notion that they will leave on their own is a fantasy.

So what should we do? Independent commissions have called for earned legalization with a road map to citizenship. And it is easy to understand why. No healthy society can tolerate the existence of a subclass of people outside the scope and protection of the law. And continuing a situation where we collectively nod and wink because our society benefits from their labor is unacceptable. When our laws do not reflect reality, reality will win every time.

That is why if we are to restore the rule of law, the single most essential element of immigration reform is an earned legalization program with a clear, achievable road map to citizenship—not because enforcement is unimportant, but because that is all we have done, and restoring the rule of law requires that we do both.

Most undocumented immigrants are long-term U.S. residents; they work hard, pay taxes, and otherwise abide by our laws. They provide for U.S. citizen spouses and children. Some came here as children, and this is the only country they know and consider home. Their lives are inextricably linked with ours.

The interests of our country are best served by allowing them to come forward, pass a background check, pay taxes, learn English, and earn the ability to apply for citizenship just like every other group of immigrants before them.

A majority of Americans support earned legalization with a road map to citizenship. The American public puts a special premium on citizenship because they want to see immigrants all in—not partially in, not in a special status, but in the same boat as everyone else.

The Latino community, three-quarters of whom are citizens, will not look kindly at legislation that condemns people to second-class status. They want to see a clear path. We understand that there will be questions about how long the process should take and what specific requirements need to be met. But if the process is unreasonable, the Latino community and I believe most Americans, will consider the program disingenuous.

We now have the opportunity for a real solution that will serve our country from the farm fields in the South all the way to Silicon

Valley. Some of the people we are talking about provided the food we will eat today. Others are at this moment caring for our children, our parents, or our grandparents. And, yes, many are ready to help support our technology, math, and engineering needs.

You have the power to help our economy and our Nation by passing immigration reform, and in so doing, you will be helping America's immigrants, our neighbors, our fellow churchgoers, and for many of us our family members.

I cannot help but feel the spirit of Senator Kennedy here today, and I think if he were here, he would say: "You are right. Now let us get to work and get this thing done."

Thank you, Mr. Chairman.

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

Chairman LEAHY. And I might say, if our friend Senator Kennedy was here, he would be able to say it without using a microphone.

[Laughter.]

Chairman LEAHY. And you would hear it in the halls.

Incidentally, I am going to put in the record an op-ed piece that Mr. Vargas had in the *New York Times* this morning.

[The op-ed appears as a submission for the record.]

Chairman LEAHY. I want to ask a few questions, and then I am going to turn the gavel over to Senator Coons because we have a court of appeals judge on the floor, and I have to go and handle that and hopefully get Mr. Kayatta through. He has been delayed for months and months and months.

Mr. Case, you are known as an entrepreneur, investor, and chair of Startup America. You have built companies, you mentor companies, and you have heard the things about why we need more immigrants. We have Americans out of jobs. They need jobs. Why do we try to increase opportunities to bring foreign workers? And yet we have also seen bipartisan coalitions. Senator Hatch, Senator Klobuchar, for example, joined together and introduced legislation on this.

Why is it good to create more visas for foreign skilled workers when we have people having trouble finding employment here?

Mr. CASE. I think the best answer is, as I tried to say in my testimony, that the immigrant entrepreneurs and innovators and engineers that are creating some of our fast-growing companies then create jobs both within those companies and more broadly within those communities. I saw this when AOL was growing in Northern Virginia. It was not just that we had a 1,000 employees, but it created thousands and probably tens of thousands additional jobs in terms of housing and restaurants and services and other things that were part of that community when it was rising.

Conversely, a few months ago I was speaking to some entrepreneurs in Detroit, and I was struck by two things. The first was that 50 years ago Detroit really was Silicon Valley. It was the most innovative place in the Nation, maybe in the world, when the automobile business was on fire. But then Detroit, for a variety of reasons, mostly related to globalization, lost its entrepreneurial mojo, and in the last 50 years it has lost 50 percent of its population. As a result, Detroit has kind of been in free fall. Now they are trying

to stabilize and fight their way back. We need to make sure as a Nation that we do not lose our entrepreneurial mojo, and the talent piece of that is central, that any organization is only as good as its people, any country is only as good as its people. So we really need to be a magnet for talent because these people are innovators.

As I mentioned, 40 percent of the *Fortune* 500 companies were started by first- or second-generation immigrants. I would hate for those companies to have been started somewhere else. And other nations are stepping up their activities. There is the phenomenon of the globalization of entrepreneurship as they recognize entrepreneurship is the secret sauce that powered our economy, has driven us to our leadership position in the world, and they are trying to knock that off and make it really easy for people to go there. And we need to make sure we do not get complacent.

Chairman LEAHY. Are you saying that these high-technology positions would help more than just the technology companies?

Mr. CASE. Absolutely. There are two reasons. First of all, almost every company now is a technology company. Even retailers and the service industry, restaurants, manufacturing, things around advanced manufacturing, additive manufacturing they all have a strong technology component. So when we talk about technology, I think people look at it too narrowly and think of it as software companies or Internet companies in Silicon Valley. The phenomenon around technology is much broader, and the need for engineering talent all across our Nation and all across our industry sectors is much broader. So that is the first.

The second, though, as I mentioned, it is not just the direct jobs that are created by these innovators who take companies that started with a handful of people, dozens of people, hundreds of people, sometimes thousands or tens of thousands of people, but the ripple effect, the network effect of those companies and their success and growth has more broadly in the community, creating jobs across many sectors of our economy.

Chairman LEAHY. I was struck by something you said about the legal—I am sort of compressing it—the legal, social, and moral imperatives of comprehensive immigration reform speak to our character as a Nation. You know, we all have immigrants somewhere in our background. My immigrant grandparents created jobs. My wife's immigrant parents created jobs. They made it a better community.

But with that, Ms. Murguía, I think when you said in your testimony that the notion that we would deport 11 million people is an ugly nightmare, I hope that everybody in this room would agree with that. But we also know the status quo is not sustainable.

How would you respond to people—and I have heard this said—who have said that anything short of mass deportation is amnesty? How do we respond to that?

Ms. MURGUÍA. Well, I would just disagree——

Chairman LEAHY. Make sure your microphone is on.

Ms. MURGUÍA. Well, I would just disagree. I think that amnesty is a pardon with no penalty, and we have made it clear that the kind of earned legalization on the table does not pardon anyone, and by any definition, includes penalties. It requires participants to admit an offense and pay a penalty, pay taxes, learn English,

and go back to the end of the line of those already waiting for citizenship. And I think there is a vast difference between saying that something is amnesty when it is a clear pardon. And so I would say that it is clearly not.

Chairman LEAHY. Thank you.

Mr. Vargas, my time is up, but I am introducing the Uniting American Families Act with Senator Collins, saying that preserving family unity should be part of our immigration policy. Of course, Senator Durbin has led on the *DREAM Act*, which I strongly supported.

What is the significance of these two pieces of legislation in your mind?

Mr. VARGAS. I think any talk of reform in this country, inclusion must be at the heart of it, because diversity is at the heart of this country. We come in all shapes and forms.

One of the things that I found really interesting listening to the House hearing, I think it was last week actually, with Ms. Vaughan and Mr. Crane, was a lot of the conversation about low-skilled—I have been to Alabama, I have been to Georgia. I can tell you that there is nothing low-skilled about harvesting fruits and vegetables and that people who are "low-skilled" must be as protected as high-skilled in the same way that heterosexual couples—same-sex binational couples should be afforded the same rights that are given heterosexual couples. It is simply an issue of equality.

You know, when DACA, when Deferred Action was announced last June, I have a dear friend sitting here, Gabby Pacheko, who has been an activist for a long time, and she qualified for DACA, and I do not. I am four months older. I remember she—I saw her in the morning when we found out the announcement, and she said, "Do not worry. We are not done. We will take care of you." And I know she means that. And we must mean that. We must make sure that in an America that is about inclusion that everyone is included in reform, that one group is not favored over the other.

Chairman LEAHY. Thank you very much.

I will yield to Senator Sessions, and, Senator Coons, if we could trade places up here and you take the—and I thank the panel very much. I apologize for having to leave. It is only because of the court of appeal matter on the floor. And Ms. Murguía remembers when her sister was up for a similar one and how important it is. But I appreciate all of you being here, every one of you. It is important to the debate. Thank you.

Senator Sessions.

Senator SESSIONS. Thank you, Chairman Leahy.

I appreciate all of you coming, your comments, and as we discussed, this is an important national issue. Mr. Vargas, would you agree fundamentally that a great nation should have an immigration policy and then create a legal system that carries that policy out and then enforces that policy?

Mr. VARGAS. Yes, sir.

Senator SESSIONS. I would just say that is a fundamental question of value, because the United States is not able to have an open border and allow everybody that would like to come to this country come. I know there was a poll in Peru a number of years ago when

we were in Peru that said 70 percent would come to America if they could. I saw a poll in Nicaragua, and 60 percent would come to America if they could. So we have to make decisions about how that is done so it does not disrupt socially and economically the Nation.

Mr. Case, I know you are again rallying with a group of special interest groups. The President had them at the White House recently. Ms. Murguía was there, you were there. Mr. Crane was not there. Anybody who knows anything about how the system actually operates on the ground was not there. I do not think anybody representing the broad-based American public was there.

So I think we have got a problem here. We have, as Mr. Crane just dramatically indicated, a serious unwillingness to enforce even the most basic laws.

When President Obama took office, I remember vividly that there was a raid at a plant, I think on the west coast, and they immediately apologized. Apparently they told Ms. Murguía in La Raza they would not do that anymore. And so the agents were disciplined, and everybody that was found to be there illegally, they were allowed to keep their jobs. And that was a signal that went right out through law enforcement all over the country.

And so do the American people worry about this? I think they do. 1986 is so fundamental. The amnesty occurs like that—the regularization, if you do not want to call it amnesty. That occurs immediately, and so we promise somehow in the future that we will have an enforcement mechanism. So we had three million people here illegally then, and now we have 11 million, because the word went out that if you get into America, you too will sooner or later get amnesty. And we are right back here in that position.

So we need to see, the American people need to see a real commitment, one that is truly so, to make the laws real and the policies real, and we are not going to be taking a pig in a poke. And there is a lot of overconfidence about this bill. I do not think that—this legislation is not what the Members said and goes further actually than the Members say about it, the group that is working on it, and I really respect them. If it does not really work, it is not going to pass. We are going to expose it. I am going to read the bill, and others will. So we are going to look at that. It has got to end.

Clearly, we need a policy that serves the national interest of the United States. So that means we have to decide how many people can come, how many engineers will not be employed because we open the world to bright engineers all over the world, people that our children and grandchildren—will they not be able to get a job? I think it is not so to suggest that you will have no impact on wages or jobs.

I remember Senator Kennedy and I debated the question about wages. I suggested that large flows of labor will pull down wages. He did not dispute it. He said, "Well, we will fix it by raising the minimum wage." Well, I do not want people operating at the minimum wage. I want them operating two, three times the minimum wage. So the President was talking minimum wage last night. It reminded me of that.

So, Mr. Case, I do think that the Canadian plan—I think maybe your friend from Microsoft—we have talked about this—has got a good plan, that if we move in that direction, it would be appealing to me.

I have talked too long.

Mr. Crane, has the President or anyone in the administration or Congress—well, in the administration asked you or any of your officers about their evaluation of how to improve the immigration law?

Mr. CRANE. No, Senator. In fact, what we see is that the special interest groups are brought in to ICE headquarters, to DHS headquarters. They put out lists bragging, you know, 100 or more special interest groups that they are bringing in to work on the policies, and they completely shut us out to the point where even our union rights have been taken away from us and we cannot even communicate with the agency through our basic union rights. And they have an army of attorneys opposing each and every single thing that we do just as a union to try to get involved in any of our law enforcement policies to look out for the best interests of our officers.

Senator SESSIONS. Briefly, has Secretary Napolitano formally in any official way reached out to the union to find out why you voted no confidence in your Director, Mr. Morton?

Mr. CRANE. No, sir. In fact, I have never met Secretary Napolitano, never shook hands with her or anything.

Senator SESSIONS. Well, I have called for Mr. Morton to resign. I think he has failed in his fundamental duty to enforce the law and maintain the morale of the people that we pay to do their jobs every day.

Mr. Chairman, my time has concluded. Thank you very much.

Senator COONS. [presiding.] Senator Klobuchar.

Senator KLOBUCHAR. Thank you very much, Mr. Chairman. Thank you to all the witnesses.

Mr. Vargas, I just would first like to thank you for your touching, heartfelt story. You can tell why you are good journalist. And I was thinking here, as I was listening, that you are not just a DREAMer, but you are a doer, that you are not simply an amnesty seeker, as some people here might characterize it, but you are a taxpayer. And so I want to thank you for that and ask if you could respond to this framework where either we just keep the status quo because we are unable to get something done, which I just will not accept, or, in fact, we up deportations of people like yourself. What would happen to you if that happened? And what is your counterargument in response to what you have heard?

Senator SESSIONS. Mr. Chairman, could I just have one second before you start on that, Senator Klobuchar.

Senator KLOBUCHAR. Yes.

Senator SESSIONS. I would offer for the record a series of documents provided by Mr. Crane, one being his letter to the President asking that National ICE Council be included in future immigration meetings, and other documents.

Senator COONS. Without objection.

[The information appears as a submission for the record.]

Mr. CASE. I am sorry. If I could, Senator Sessions, I just want to correct one thing for the record. You mentioned that there was

a meeting I attended with the President and special interests. I have actually never attended a meeting with the President on this issue with special interests. I was invited to attend a meeting with a dozen CEOs of companies like Coca-Cola and Marriott who were talking about pragmatic solutions to get the economy moving, and one of the key focuses was immigration, and there was a broad sense that the country needed to move forward. So the focus really—if I represent any special interest, it is just doing my part to make sure we remain the world's most entrepreneurial Nation, and winning this global battle for talent is central to that. I just wanted to correct that.

Senator SESSIONS. Well, we did have a document that suggested that that could have been incorrect. Thank you.

Senator KLOBUCHAR. OK. Mr. Vargas, welcome to our hearing. So DREAMer versus doer, we are back talking about amnesty seeker versus taxpayer, and how you respond to this and what would happen to you if we simply just kept the status quo and/or we just upped deportations.

Mr. VARGAS. First of all, the status quo is untenable. I think we all agree that we cannot—that the situation cannot keep going the way that it is. This past weekend, I was with Erika Andiola. She is a DREAMer who is also a doer, graduated from college, who one night ICE just knocked at her door and grabbed her mom and her brother. Thankfully, she got on Facebook, and I think there were like 300 of us that jumped right in, got on a conference call: "How do we do this?

It should not be lost on anyone the surreal nature of even this hearing, the fact that I am sitting here on the same table as Mr. Crane and Ms. Vaughan. And before I kind of dive into what you said, I think we need to define our terms. And when we talk about what is in the national interests of the country, you know, I have been to Alabama. I spent some time there. I have been to Alabama to talk to someone like Lawrence Calvert, for example, who is a Republican, who is a farmer, who once H.B. 56—you know, that out Arizona'd Arizona's immigration law—was passed, Lawrence Calvert said, "Wait a second. It is not right for this State to say who my friends can be. My best worker is this guy Paco." He is such a best worker that there is actually a room in Mr. Calvert's house called the "Guatemalan suite" for Paco.

So, you know, when Senator Sessions talks about the national interests of Americans, I think about Lawrence Calvert. I think about the national interests of my principal and my superintendent who are here today. I feel as if we have been having the exact same conversation on immigration for the past decade. We invite the same people to talk about the same thing as if immigration is all about border security. I came here from the Philippines. My border was the Pacific Ocean.

We talk about immigration and enforcement as if we are talking about alien people from Mars and not human beings whose lives and whose families are being torn apart every day.

NCLR, which has been referred to as an interest group, represents 55 million Latinos in this country. That is not an interest group.

Senator KLOBUCHAR. Thank you, Mr. Vargas, because I wanted to ask one more question here of Mr. Case. I am sure we can talk later, but I really appreciate your answer, and I think people need to think about who they are talking about.

Mr. Case, you talked about how, in fact, people do not always see how this can create jobs. I think you said, 'The mistake that opponents of immigration reform often make is believing that our society and economic growth are zero sum. They are not. More talented immigrants joining the American family does not equate to fewer jobs; it equates to more jobs." And there have been many studies, one commissioned by Mayor Bloomberg and Mayor Castro that showed, I think, 1.8 jobs for every holder of one of these visits that come in, another one up to five jobs that are created.

Could you talk about your personal experience with this?

Mr. CASE. That is absolutely true. I have invested—not just helped start AOL and create the Internet, but then invested in a couple dozen different companies, and many of them started by immigrant entrepreneurs. So I have seen firsthand the job creation leverage of that, and as I said earlier, it is not just the direct impact of those companies, it is the broader impact.

Frankly, when I hear this discussion about immigration—and this morning's discussion was reflective of it—it is usually framed as a problem we need to solve. I think it is an opportunity we need to see.

Senator KLOBUCHAR. Exactly.

Mr. CASE. And while there is a moral prism aspect, there is a political prism aspect, I look at it through the economic prism aspect. And if we are going to remain the leading economy in the world and we are going to boost our growth rate from two percent to three, four, five percent, which I think is the only way we are going to solve our fiscal problems long term, the talent issue is central because all the job creation and economic growth comes from these innovative entrepreneurs who are starting companies and growing their companies and growing their communities.

So this really is about the future of the country and how do we seize this opportunity to remain the world's most entrepreneurial nation. As I said before, we are getting complacent. Other nations are probably laughing at us. Recently, Canada announced a policy around the Startup Visa Program and said they are going to go to Silicon Valley, fly the Canadian flag, and say, "Stop messing around in the United States. Come here. We welcome you. We are going to give you a visa."

Senator KLOBUCHAR. And no one knows that better than Minnesota because we can see Canada from our porch.

[Laughter.]

Senator KLOBUCHAR. And so I am quite concerned about this just because we want these people to stay and, you know, make the next Post-it Note and pacemaker in Minnesota. And so that is why, as you know, Senator Hatch and I introduced the I-Squared bill, half Democrat, half Republican authors. It is part of comprehensive immigration reform. That is how I see it. But it is also important, we believe, to get the writing on the wall and get that bill out there, because it really does—right now we have—a third of the visas that we had back in 2001 for H–1Bs. We have severe limits

on per country green cards, which Senator Lee pointed out. And I was thinking, as I listened to your testimony where you said a third of immigrants at our universities have to go back when they do not want to, imagine if that happened to our sports teams. Just look at the roster of your favorite sports team, NFL, NHL, Major League Baseball. Look at what the immigrants are on that team and take a third of them off, because that is what we are doing with our universities.

Mr. CASE. It is worse than we think because when they go back, they go to other countries and start companies there. The entrepreneurial ecosystem is developed there, and then they become more robust competitors to the United States. So once the genie gets out of the bottle, it is hard to put it back in.

Senator KLOBUCHAR. Right. And to just last bring it back—no more questions, Mr. Chairman—to Mr. Vargas, I liked your words, Mr. Case, how you see this as an opportunity, that this is not a problem, that Mr. Vargas is not a problem, but he is creating opportunities for himself and for others in our country.

Thank you.

Senator COONS. Senator Hirono.

Senator HIRONO. Thank you, Mr. Chairman, and thank you to the panel.

Before I begin my questions, starting with Mr. Vargas, I would like to extend a special aloha to Steve Case, who has spent a lot of time in Hawaii. You have family there, and you are very much a part of our community in the State. So aloha to you.

Mr. Vargas, I was particularly touched and taken by your testimony because you are living the broken immigration system. And I want to welcome your family and friends who are here to support you.

I just happened to read your op-ed piece in today's *New York Times* where you say that 1.6 million people have been deported by this administration and maybe 200,000 of them left their American-born children who, if they do not have family who can help take care of them, they end up being in foster care. This is no way for us to fix this broken system.

From your experience—and you also talked about how worried your grandmother continues to be because you came out, and were in not for some changes in priorities of enforcement, you could be arrested right here and now, deported. So I think you really bring to the fore the kinds of changes we need to make that really reflects our values.

Can you just talk a little bit more from not just your experience but the experience of the people that you obviously work with in terms of how important unifying families is? And that includes LGBT families.

Mr. VARGAS. Thank you. Families are at the heart of the American character. I am fortunate that I have a really, you know, strong Filipino family, Filipino American family. You know they are from Hawaii.

Senator HIRONO. Yes.

Mr. VARGAS. You know, my grandmother, who is sitting right there, my Lola, is an American citizen, hard-working, taxpaying American citizen. I remember when I got hired at the *Washington*

Post, and I was here for five years. Being in D.C. for five years and going to the White House and going to Capitol Hill to cover a hearing was—I would not even call her because when I called, the first thing she would say is, "Are you sure you are going to be OK? Are you sure you are going to be OK?" Thankfully, she is still healthy now. She just turned 75 last September, because I promised her that once we fixed this—and we are going to fix it—we will be able to travel together. I have not seen my mother for 20 years this August. And I can only imagine how many other families are out there who are experiencing the exact same thing.

I have met a lot of same-sex binational couples as I have traveled. I have been to about 25 States, maybe 100 meetings and events, even a couple of Tea Party meetings, and it has been really interesting, you know, when you see same-sex couples say, "I cannot marry and petition my partner of five, 10, 12 years, because we have DOMA"—the Defense of Marriage Act that does not allow—the Federal Government does not acknowledge same-sex marriage even if it happens in New York, for example, or Massachusetts.

So you see just not how—you really see how broken it is from the perspective of individual lives and their connections to their own communities. And that is why it is so important, that is why it was important for me not just to bring my Filipino American family but to bring the family that I found at my high school. You know, I do not know what I would have done if Pat Highland or Jim Strand and Rich Fischer—they did not see me as an illegal alien sitting the classroom. They saw me as a kid who could maybe, you know, work for the *Washington Post*, maybe write for the *New Yorker*. They saw opportunity. They did not see a problem. And I think it is important, as we talk about human beings, to keep the conversation that way.

Senator HIRONO. Thank you.

I think that it is very clear that I am very focused on one of the principles of immigration reform as family reunification, and, Mr. Case, I agree with you that we ought to provide opportunities for people who come here and get their STEM education here, for them to remain so that they can—so that we can have the benefit of their entrepreneurial skills.

There are a lot of people—I know you know—who came here as children, immigrated here, for example, Sergei Brin of Google, he fled the Soviet Union at age six, and Jerry Yang of Yahoo! who left Taiwan with his mother at age 10. So I hope that you agree with me that we do need to balance the visa/green card issue with encouraging immigration, family immigration to this country so that people who dream the American dream can also provide us with their talents and entrepreneurism.

Mr. CASE. I do agree, and as I mentioned in my testimony, I have been talking and many people have been talking and advocating for high-skilled immigration reform for a decade, and for most of that decade, we were frustrated nothing was happening and concluded that it would be difficult to get anything done, but if anything got done, it would be narrower high-skilled reform package. I think there is now a recognition there is a moment, there is now bipartisan support building, and the best, fastest path to get high-skilled immigration done is to support comprehensive immigration reform.

So I think you will see a broader support from the tech community not just on the specific issues, but this broader solution.

Senator HIRONO. Thank you. I believe my time is up. Thank you, Mr. Chairman.

Senator COONS. Senator Blumenthal.

Senator BLUMENTHAL. Thank you, Mr. Chairman, and thank you all for being here. My special thanks to Mr. Vargas. As you may know, I have been a long-time advocate of the *DREAM Act*, both as State Attorney General and now as a United States Senator. In fact, I try to go to the floor every week when I can to, in effect, highlight a story like yours of a DREAMer contributing and giving back to this country in very, very material and impressive ways, and you have done so, and by today's appearance you have given us a new DREAMer to call a model for why we should pass this act and expedite the earned citizenship status for young people brought to this country or coming to this country at a young age and then being educated, working, contributing, serving in our military. Thank you for being here today.

Mr. Crane, I thought, when you opened with the story of the unlicensed driver causing this tragic crash and injury/death to the individual you described, that you were going to argue for providing driver's licenses and requiring insurance for undocumented immigrants, such as some States have done. What do you think about that proposal?

Mr. CRANE. Well, I think that actually both of those cases that I cited, both of those individuals had—one had an opportunity to have a license. He was on TPS. So he could have had a license. He failed the exam three times. The other one, I think his license had been suspended three times. So in both of those cases, there would have been no benefit to having a license as both of them had already had licenses.

I do not know if that answers your question.

Senator BLUMENTHAL. What about insurance?

Mr. CRANE. Did they have insurance?

Senator BLUMENTHAL. Yes.

Mr. CRANE. That I do not know, sir. My understanding of both cases is that they do not, but I cannot say for sure.

Senator BLUMENTHAL. And what about increasing the penalties for drivers who cause such accidents without insurance, such as some States have done? Which is a problem common not only to undocumented immigrants but to many, many other citizens.

Mr. CRANE. I am a law enforcement officer. Absolutely I would support stronger penalties for individuals that do not have the proper licensing, et cetera.

Senator BLUMENTHAL. Let me ask you, Mr. Case—and I really want to thank you for your very persuasive and important testimony today on the H–1B visa reform, and I have joined as a leading cosponsor, with thanks to Senator Klobuchar and Senator Hatch, for their effort in championing this reform.

One concern that has been expressed that also troubles me to an extent is the fact that individuals coming here with such visas are, in effect, tied to their employer with long backlogs before they can receive a green card. Wouldn't this kind of reform also require or

entail either streamlining that process or according the H–1B visa recipient with greater freedom to move among employers?

Mr. CASE. Yes, I think that would be a good idea. There are obviously many facets to this, and having more H–1Bs, raising or having no cap for some of these kind of advanced degrees that people have so we can keep more of that talent, more innovation here is key. But I do think what some have called the portability issue of H–1B visas would be helpful. There is no question that getting people here is part of the battle. Getting them to stay here is the next part of the battle. I would hate to train them and have them be working at IBM or Microsoft or some company, then after three years or six years feel like they have to go back and take those skills somewhere else or feel they cannot really leave that company because to do a startup, even if they would like to, because they would lose their status, we really should take this in a broader context of winning the battle for talent. How do we attract some of the—keep the ones we have and attract others who can really power our economy for the next 200 years and pioneer the next industries? And there are many specifics that obviously you folks need to deal with, but I favor a broader solution, a little bit of "all of the above" solution around high-skilled immigration. The I-Squared is very helpful, the Startup Visa Act very helpful. I am pleased that Senator Coons with bipartisan support is reintroducing the Startup Act. It also, I think, is very helpful.

So I would encourage this Committee to look at all these different bills. There is a lot of commonality to them, but we do need a robust high-skilled immigration component to any comprehensive reform.

Senator BLUMENTHAL. And I assume that you would also support a stronger system in the United States of STEM education so that our own citizens can be afforded greater opportunity to take advantage of these jobs that right now are unfilled because we are not providing our young people with the kind of skills that they need to fill them. The President highlighted this issue last night in the State of the Union, and I strongly support that kind of measure, which, again, Senator Klobuchar and others who are behind this bill have said is important.

Mr. CASE. I totally agree. I even believe it has been framed as sort of this false choice, either why don't you invest in STEM education in the United States and not attract people from out of the country. Of course, you have to do both, and we should be as robust as we can, but recognize that takes some time, 10 or more years, before we will get the benefit of any of those investments in our own education system.

Meanwhile, we are starting to lose the battle of talent. We are running the risk of losing our status as the most entrepreneurial nation. So we need to move very aggressively and very urgently to make sure that the best and brightest are coming here and staying here.

Senator BLUMENTHAL. Thank you. My time has expired. Thank you, Mr. Chairman.

Senator KLOBUCHAR. Mr. Chairman.

Senator COONS. Thank you, Senator Blumenthal.

Senator KLOBUCHAR. Just one point to follow up on that, not a question. The bill actually contains an increase in the visa fee. As Mr. Case and Senator Blumenthal know, that will amount to a minimum of $3 billion in 10 years that will go directly to STEM education and training in our country. And perhaps it will be as much as $5 billion.

And so that was something that we got business support for, and it is a really important element of this bill, because we have to do both of these things simultaneously.

Senator BLUMENTHAL. I was going to make that point, Mr. Chairman, but my time had expired.

[Laughter.]

Senator KLOBUCHAR. I get the point, Mr. Chairman.

Senator COONS. You have battling cosponsors of an important piece of legislation that contributes significantly both to STEM education for U.S. nationals and creating a new pathway. Thank you, Senator Klobuchar, for your leadership on the bill and for that contribution.

Ms. Murguía, if I might, a previous Senator described meetings in which only special interests were present and I think fairly directly implied that NCLR is a special interest group that does not speak for ordinary Americans. Could you just tell us something about who NCLR represents and its role in conversations about the path forward for America?

Ms. MURGUÍA. Thank you, Senator. I appreciate the opportunity to respond to that, and I thank Jose Antonio for understanding, too, that we are not a special interest group. The fact is that the National Council of La Raza, NCLR, has been around for 45 years, and we represent a network of affiliates that serve millions of Hispanic families. And what we try to do is make sure that we are providing opportunities for our community to succeed, and we have various programs that we provide through this network of affiliates, community-based, nonprofit organizations. We run 115 charter schools. We have health programs and health clinics that are providing services.

We run homeownership counseling services that have put over 65,000 families in their first-time homes, and we have work force development programs that have helped fill the gaps in skills so that our community can fill the jobs that are out there that need to be filled.

And, yes, we do represent a voice for the community when it comes to civil rights and when we have been involved in immigration policy.

But the truth is that we have been active and involved in representing the Latino community for almost 50 years now, and it is something that we believe is important particularly now on this issue when we have a unique moment in time to finally put a solution out there for immigration reform.

And I commend Jose Antonio and the DREAMers for the courage that they have demonstrated. It really is an example for all of us to put that personal narrative out there for us to understand that not only do we need to address their situation, but that they understand that their parents and other family members need to have

their situations addressed as well. And that is why we need comprehensive immigration reform.

So when I am in a meeting with the President, I am representing not just a special interest but 50 million Latinos who are out there contributing mightily, serving in our military, and making this country better every day.

Senator COONS. Thank you. I am well familiar with the range and scope of your good work. I just thought it was important to have that included in the record.

As we move forward in this conversation, to the point you made, we are grateful to Mr. Vargas for sharing with us the details of his personal familial experience and the significant contributions his voice, his writing, and his work have made to our country and to this debate. But if you might, how in your view is a mixed family, one with citizenship and undocumented status, affected? How does this illegal limbo impact their interaction, their opportunity, their engagement with law enforcement, their likelihood of attending college, or being able to fully participate in America? Then, Mr. Vargas, I will ask you to follow up.

Ms. MURGUÍA. Well, of course. Right now we have a situation where these young people, individuals, have been brought into this country by their parents, have grown up pledging allegiance to this country in their schools and classrooms, and all they want to do is have a chance to go on and to have higher education. And a lot of folks have found that cost prohibitive because of their status. But not only that, they are living in the shadows still today, and they understand that their situation is one that is represented by all their families.

But we are missing out as a country in not benefiting from their potential further contributions. And as Steve Case has made the point, if we would be able to make sure that we are obviously looking at the harvest of folks that we have here that we are not taking advantage of, we need to strike a right balance with folks who are coming in, who are able to meet other immediate needs for this country in terms of our work force. But we have many individuals now that, if we would put the right law in place, allow them to be able to come out of the shadows, but also make the right investments, we can have those kinds of contributions to our economy which we know will be plentiful.

Senator COONS. Thank you. And if I might, Mr. Case, because my time is about to be up and I want to be respectful of other Senators' time, you have been an effective and engaged advocate, particularly on the issue of high-skilled immigration, but also consistently around the special contribution of immigrants in the United States throughout its whole history—creativity, entrepreneurship, vision. And you have tried to bring focus in this Congress to the issue of global competition, how things have changed in the last 10 or 20 years, that today we cannot afford to have the best and brightest in the world come here, be trained in some of the most advanced skills and techniques, and then go back to their home countries where their governments are waiting with resources and support to help them then begin companies that will compete against us.

Could you talk just a little bit about how that dynamic, as you described it, the entrepreneurial ecosystem, works to our disadvantage if we do not fix this part of our broken immigration system? And then, in closing, if you would just comment on why it is important that it be comprehensive, that we not do sort of rifle-shot issues to try and address one piece, but that we do this broadly and comprehensively.

Mr. CASE. Well, I think people in this country, including in this town, are a little complacent about the role entrepreneurship has played in building the Nation and the role it needs to play to continue to drive a powerful economy. We kind of take it for granted that entrepreneurship is alive and well, and we like to talk about Silicon Valley, and we are so proud of Silicon Valley. And there are a lot of great stories. But as you point out, in the last 10 years we have seen a dramatic shift, as other countries around the world have recognized, that the secret sauce that has powered the American economy and the American story, which is why we are the leading nation in the world, you know, the leader of the free world, is the work of entrepreneurs and innovators. So they are moving very aggressively on talent policy, trying to make it easy for people to come and stay because they want to attract the best talent. Investment incentives, you know, little or no capital gains, for example, in many countries, building up more research to make sure the next Internets are created in other nations, a whole slew of policies that are really focused on trying to shift the center of gravity from entrepreneurship being kind of the secret sauce of America and trying to replicate that.

So we do need to take it quite seriously. I would hate, as I mentioned in my remarks, for us 25 years from now to be bemoaning the loss of entrepreneurship like we now bemoan the loss of manufacturing. We are still in the lead, but that lead is slipping, and we need to take action.

Your final question on comprehensive immigration reform, part of it is the pragmatic recognition that the best path to get high-skilled immigration reform done is to include a broader set of initiatives that have broader support. But also I think it is the right thing to do morally and the right thing to do from our economy's standpoint. It is not just about the high-skilled workers in those particular companies. It is what happens more broadly in those communities and having a path to citizenship and getting people off this status of being kind of in the gray zone and contributing fully as members of the economy I think is very important, and it really is the story of America as well.

Senator COONS. Well, thank you, Mr. Case. In my view, allowing 11, 12 million people in this country to come out of the shadows to fully engage in our economy, to fully engage in our community and our society is one of the best contributions we could make to economic growth.

Senator Klobuchar.

Senator KLOBUCHAR. Yes, I will just ask one more question of Mr. Case. Could you explain—I think there is some confusion sometimes about why we need both green card reform, where we have these students who we literally want to staple a green card to their diploma so they can stay and take time to look for a job,

and then we also have people like a doctor in Minnesota from India who for 16 years bounced around on various visas and it was not until when he became head of a high-tech company he was able to finally get a green card, even though he had been trained at the Mayo Clinic, had a diabetes degree, he had worked with low-income families and provided medical services to them, why this green card option is important but also why the H–1B is important and how we are literally reaching the cap as the economy is improving in some cases, back a while ago, the same day.

Mr. CASE. I think it is part of this broader issue about winning the global battle for talent, and although the issue of 11 million undocumented people is a big issue, we are talking here, whether it be the *Startup Act* or the I-Squared, relatively small numbers that have relatively large impact, 50,000, 100,000, 150,000, whether it be we are talking about H–1B or a STEM visa or an entrepreneur visa.

So in the grand scheme of things, it is a relatively small part of the problem, but, in fact, it is the bigger opportunity in terms of job creation. And it is important to recognize there are lots of different ways to attract talent. Some of it is getting students here and trying to get them to stay here. Some of it is recruiting people to larger companies and then trying to get them to stay in that company or stay in our country starting other companies.

It is all about winning the battle talent, and I think we sometimes focus too much on the specifics and miss the broader story of how do we make sure we win that battle for talent.

So I support all these different initiatives and try to make it as robust as possible because there are a lot of different ways people are going to be thinking about coming and staying in this country and contributing in this country, which is not just about, as I said, immigration. It is about our economy. If we want to get our two-percent growth to a higher level, we have got to focus more on innovation and entrepreneurship, given the statistics that half of the technology companies are started up by immigrants and 40 percent of the *Fortune* 500 companies are first- or second-generation immigrants, including non-technology companies. If we do not get this right, our lead in entrepreneurship is going to slip away, and we cannot allow that to happen.

Senator KLOBUCHAR. Thank you.

Senator COONS. Thank you.

Senator Hirono, do you have any further questions? Senator Blumenthal, any further questions.

Senator BLUMENTHAL. Yes, just a couple of questions.

Ms. Vaughan, I want to make sure that I understand your position, which emphasizes really the importance of enforcement. As a law enforcer, I am certainly completely in agreement, but I think the President and the bipartisan group working here in the Senate also contemplate stronger enforcement. In fact, the plan under consideration here, the bipartisan plan, would actually condition earned citizenship on some certification that there is stronger enforcement at the borders. But regardless of whether that particular device is adopted or not, enforcement at the borders against illegal immigration, enforcement within our borders against employers who hire undocumented immigrants certainly is the priority goal,

and in some ways on the President's plan even above the pathway to earned citizenship.

And so even if they were to adopt the ABC's of stronger enforcement that you suggest in your testimony should be made a practice, I gather you would still oppose the path to earned citizenship for various reasons, not the least of which is your concern about unskilled workers filling jobs that otherwise would be filled by American citizens. And I wonder what you would do about the 11 million undocumented people who are within our borders right now.

Ms. VAUGHAN. Well, I think it is important for the public to be able to support the proposals that Congress is going to be debating, and I think for that to happen, the public has expressed, at least through the polling data I have seen, that they want to see a sustained commitment to enforcement before we make a decision on what to do with——

Senator BLUMENTHAL. So your objection is one of timing, then?

Ms. VAUGHAN. Well, that is part of it.

Senator BLUMENTHAL. In other words, if the polling data show that 90 percent—or is your argument about the politics of this problem, or is it about the substance? If the President could use his bully pulpit to convince the public, beginning with the State of the Union last night, that a pathway to earned citizenship is really necessary, you would go along with it then?

Ms. VAUGHAN. The pathway itself is not necessarily the issue. I think the politics are a problem because of the fact that there has not been enough substance in the way of enforcement to convince people that we are not going to be in this same situation 10, 20 years down the road.

We also have to—and I do not know of anybody who thinks that it is either feasible or a good idea to try to remove 11 million people who are here illegally. But what we have seen——

Senator BLUMENTHAL. You would leave them in their current status.

Ms. VAUGHAN. Well, some of them would make the choice to go back home. That is what we have seen happen when robust enforcement has been implemented, for example, at the State level. But we can have a conversation about a path to citizenship to those that are deemed to be, you know, people that we can accommodate. That is also going to have to take into account what the effect is going to be on Americans who are looking for jobs, the same kinds of jobs, and also whether or not we should adjust future immigration levels to compensate for the fact that we are going to be issuing a lot more green cards as a result of any amnesty that is contemplated.

So, I mean, that is why I think trying to bite all of this off in one massive bill is going to be very, very difficult to accomplish. When I look back at the immigration legislation that has been passed since 1986, all of it was much narrower in scope. We have passed a lot of—I should say Congress has passed a lot of immigration bills in the last 20 years. All of them were much narrower in scope and focused on things that were attainable and around which there was broad consensus. And part of that is because of the IRCA

experience where the amnesty came first and the promises of enforcement were never fulfilled.

Senator BLUMENTHAL. First of all, I think to characterize it as amnesty would be rejected by many of us who support it, the idea of earning citizenship by paying back taxes, paying a penalty, learning English, going to the back of the line, and in the case of the DREAMers, literally earning it by serving this Nation in its United States military, I think is inaccurate. But I really do believe that we are at a moment, a historic moment, when a big deal—and immigration reform is a big deal—would be accepted by the public, and I think would be inspiring to the public because we are Nation of immigrants. We all know it. We all feel it in our gut. We all have pictures on our walls of people who came here because this Nation has been a beacon for them, not just the skilled who come here with H–1B visas, but also, you know, the folks in Connecticut who built our railroads, whose children now are running major corporations.

I just differ with you strongly on the politics of this issue, and I think your argument really is grounded in a very pessimistic view of what the American public will support. So I thank you for your very, very constructive and informative testimony, and I hope that we are in a different time in terms of where public opinion is.

Thank you.

Senator COONS. Thank you, Senator Blumenthal.

I believe we have come to the end of our questions. I am going to simply thank the panel. I am going to ask unanimous consent to place in the record statements from a variety of law enforcement, immigration, and human rights groups and thank them for their submissions and providing their testimony on this important topic.

[The information appears as a submission for the record.]

Senator COONS. I do want to say, in closing, Mr. Vargas asked at one point rather movingly, "What is it that you want to do with us?" And at least speaking for myself, what I would like to see us do, as Senator Blumenthal put so well, is to embrace the enormous opportunity presented for us to deal with immigrants in America not as a problem but as a great path forward together to build a stronger, more vibrant, more entrepreneurial America, to allow millions to move out of the shadows and to have real access to the American dream, to make our country safer, to make it possible for folks to openly contribute their skills and talents, as you have, and to heal this longstanding impasse over this most fundamental values issue.

So to the panel, thank you very much for your testimony today. The hearing record will remain open for one week if other Senators who were not able to attend wish to submit additional questions, and the hearing is hereby adjourned.

[Whereupon, at 1:22 p.m., the Committee was adjourned.]

[Questions and answers and submissions for the record follow.]

APPENDIX

Additional Material Submitted for the Record

UPDATED Witness List

Hearing before the
Senate Committee on the Judiciary

On

"Comprehensive Immigration Reform"

Wednesday, February 13, 2013
Hart Senate Office Building, Room 216
9:30 a.m.

Panel I

The Honorable Janet Napolitano
Secretary
United States Department of Homeland Security
Washington, DC

Panel II

Jose Antonio Vargas
Founder
Define American
New York, NY

Jessica Vaughan
Director of Policy Studies
Center for Immigration Studies
Washington, DC

Steve Case
Chairman and CEO
Revolution
Washington, DC

Chris Crane
President
National Immigration and Customs Enforcement Council 118
of the
American Federation of Government Employees
Washington, DC

Janet Murguía
President and CEO

PREPARED STATEMENTS OF WITNESSES, COMMITTEE CHAIRMAN, RANKING MEMBER, AND COMMITTEE MEMBERS

National Council of La Raza
Washington, DC

Statement for the Record

"Commonsense Immigration Reform"

Secretary Janet Napolitano

U.S. Department of Homeland Security

Before the

United States Senate

Committee on the Judiciary

February 13, 2013

Introduction

Thank you, Chairman Leahy, Ranking Member Grassley, and Members of the Committee. I am pleased to join you today to discuss the Department of Homeland Security's (DHS's) efforts on immigration and why I believe the time has come for Congress to pass commonsense immigration reform so that everyone plays by the same rules.

The United States is a nation of immigrants and a nation of laws. Our very founding is rooted in immigration. And at every great and momentous occasion throughout our proud history, the immigrant, and the immigrant experience, has contributed to the richness of our culture, the strength of our moral character, and the advancement of our society.

As this Committee knows, DHS plays a significant role in the administration and enforcement of our immigration laws. We secure our Nation's borders to prevent the illegal entry of people, drugs, weapons, and contraband, while fostering legal trade and travel. We enforce immigration laws to protect public safety, promote economic fairness and competition, and maintain the integrity of our immigration system. We administer legal immigration benefits and services to millions of new and aspiring Americans, including members of our Armed Forces. And we work with a range of Federal, state, tribal, local, territorial, and international partners to advance all of these efforts, while ensuring that the civil rights of affected communities are respected.

But we know that our immigration system is out of date and badly in need of reform. Our law enforcement, our economy, our workforce, and our communities are suffering and frustrated by current patchwork of laws and requirements that make up this system.

The current system forces law enforcement to spend as much time, if not more, going after those who pose little risk to the United States as it does criminals and drug smugglers and human traffickers. It makes it difficult for companies to hire and retain the workers they need, instead sending those we educate in America back to their home countries rather than allowing many of our best and brightest students to stay in America where they can create the next new industry and jobs for American workers. It allows unscrupulous businesses that hire undocumented workers to game the system in their favor, hurting lawful businesses and employees. And it keeps families apart, often for years at a time, as they wait for immigration relief.

Last month in Las Vegas, President Obama discussed the principles that are integral to reforming and updating our immigration system. This vision, which shares much in common with the principles proposed by a bi-partisan group of Senators, including several here today, would continue to strengthen border security and immigration enforcement; crack down on employers that hire undocumented workers; create a pathway to earned citizenship for undocumented immigrants already in the United States; and make improvements to the legal immigration system so our nation can continue to be a magnet for the best and brightest from around the world.

Today, I would like to discuss the President's vision for reform. In particular, I want to describe how the President's work on this issue strengthens and builds upon the Department's work, and will give our Nation the 21st Century immigration system it deserves.

Continuing to Strengthen Border Security

A constant refrain I have heard as Secretary is that before immigration reform can move forward, border security must come first. Too often, the "border security first" refrain has served as an excuse for failing to address overall immigration reform. The insistence that an overhaul of our immigration laws must wait until the border is secure fails to recognize that immigration reform promotes border security. Moreover, the argument ignores the unprecedented progress we have made.

I speak as someone who, as Arizona's U.S. Attorney, Attorney General, and Governor, experienced the flood of illegal immigration in the early part of the century. That situation no longer exists. Over the past four years, DHS has made historic investments in additional personnel, technology, and infrastructure at our borders. We have made our ports of entry more efficient to expedite lawful travel and trade. We have deepened partnerships with federal, state, tribal, and local law enforcement, and internationally, to combat transnational threats and criminal organizations to help keep our Southwestern and Northern border communities safe. We have improved intelligence and information sharing to identify threats sooner, and we have strengthened entry procedures to protect against the use of fraudulent documents and the entry of individuals who may wish to do us harm.

Today, the U.S. Border Patrol is staffed at a higher level than at any time in its 88-year history. We have doubled the number of agents from approximately 10,000 in 2004 to more than 21,000 today. Along the Southwest border, the number of Border Patrol agents has increased by 94 percent to nearly 18,500. In coordination with state and other Federal agencies, we also have deployed a quarter of all U.S. Immigration and Customs Enforcement (ICE) operational personnel to the Southwest border region – the most ever – to dismantle criminal organizations along the border.

U.S. Customs and Border Protection (CBP) has deployed proven, effective technology tailored to the operational needs of our agents on the ground, including non-intrusive inspection systems, mobile surveillance systems, remote video surveillance systems, thermal imaging systems, radiation portal monitors, license plate readers, and biometrics to identify repeat offenders and criminals. And we have expanded unmanned aerial surveillance to the entire Southwest border.

Since 2009, we also have providcd more than $250 million in Operation Stonegarden funds to enhance cooperation among Federal, state, tribal, local, and territorial law enforcement agencies to secure U.S. borders and territories. More than 80 percent of those funds – or $167 million – have been allocated to states along the Southwest border.

The results of these efforts speak for themselves. Attempts to cross the Southwest border illegally, as measured by Border Patrol apprehensions, have decreased 49 percent over the past four years, and are 78 percent lower than what they were at their peak. From Fiscal Years 2009 to 2012, DHS also seized 71 percent more currency, 39 percent more drugs, and 189 percent more weapons along the Southwest border as compared to Fiscal Years 2006 to 2008. Further,

since 2008, crime in each of the four Southwest border states—Arizona, California, New Mexico, and Texas—has decreased significantly.

We see the results of the substantial investment and strong commitment to border security. But to continue making progress to secure our borders, we must modernize our immigration laws. We need to make sure our border security efforts are focused on combating public safety and national security threats – drug smugglers, human smugglers, and transnational criminal organizations – not economic migrants. And the best way we can do that is by removing one of the biggest incentives that drives most undocumented immigration: the jobs magnet.

We know most undocumented immigrants are here simply to work, not to cause harm or trouble. The more infrastructure we put in place to reduce opportunities for unauthorized work, the more we can lower the demand for undocumented workers and thus reduce illegal entry across our borders.

The President's vision for immigration reform addresses this directly. It makes an electronic employee verification system mandatory. Electronic verification strengthens the integrity of our immigration system and helps support the American economy by providing businesses with a clear, free, and efficient means to determine whether their employees are eligible to work in the United States. By helping employers ensure their workforce is legal, electronic verification promotes economic fairness and a level playing field, prevents the illegal hiring that serves as a magnet for further undocumented immigration, and protects workers from exploitation. The President's vision also would increase sanctions against businesses that break the law, a further disincentive that will help reduce the demand for undocumented workers.

Moreover, a key element of the President's vision, shared by the Senate's Bipartisan Framework for Comprehensive Immigration Reform, is an earned path to citizenship for individuals unlawfully present in the United States. Bringing these individuals out of the shadows not only will ensure they are held accountable for breaking the law, but also will bring them into a regulated system where they can find work legally, eliminating the need to cross the border illegally, where they may be preyed upon by transnational criminal organizations or involved in human smuggling. It will also help us to further secure the public safety of immigrant families and our communities. In turn, this will allow our agents and officers to stay focused on those who pose a public safety risk to the American people, and on interdicting drugs and other illegal contraband.

The President's reforms would create new criminal penalties to combat transnational criminal organizations that traffic in drugs, weapons, and money, and that smuggle people across borders. Importantly, they would expand the scope of current law to allow for the forfeiture of these organizations' criminal tools and proceeds, which will help deprive criminal enterprises, including those operating along the Southwest border, of their infrastructure and profits.

The President's reform vision would expand our ability to work with our cross-border law enforcement partners. It would boost funding to tribal government partners to help reduce illegal activity on tribal lands.

In short, I believe passage of the President's reform principles is the single best step we can take to enhance border security.

Smarter, More Effective Immigration Enforcement

This Administration has undertaken historic efforts to enforce immigration laws in a manner that is smart and effective, and that maximizes the impact of the resources that Congress has made available. Over the past four years, we have fundamentally reformed immigration enforcement, prioritizing the identification and removal of criminals who pose a threat to public safety, repeat immigration violators, and recent border crossers, and targeting employers who knowingly and repeatedly break the law.

At DHS, we have ensured that our resources are applied in a way that enhances public safety, border security, and the integrity of the immigration system, while respecting the rule of law. Our enforcement results bear this out.

In Fiscal Year 2012, approximately 55 percent, or more than 225,000, of the individuals that ICE removed from the United States were convicted of felonies or misdemeanors — a more than 96 percent increase since Fiscal Year 2008. Overall, 96 percent of ICE's removals fell into one of our priority categories this past year.

An important tool in this effort has been Secure Communities, a program that uses biometric information and services to identify and remove criminal and other priority aliens found in state prisons and local jails. Since its inception, more than 150,000 aliens convicted of serious crimes, including aggravated felony offenses like murder, rape, and sexual abuse of children, have been removed from the United States after identification through Secure Communities. For this reason, ICE has expanded Secure Communities to more than 3,000 law enforcement jurisdictions across the country.

To ensure that our enforcement resources continue to be focused on priority cases, we also have implemented policies and training to ensure that those enforcing immigration laws make appropriate use of the discretion they have in deciding the types of individuals prioritized for removal from the country.

Last year, for example, we established a process to allow certain young people who were brought to the United States illegally as children and who meet several key guidelines to request consideration of deferred action for a period of two years, subject to renewal, and, as a result, apply for work authorization. This process helps us continue to focus immigration enforcement and ensure that resources are not spent pursuing the removal of low priority cases involving productive young people working to better their lives and strengthen their communities. To date, more than 424,000 requests for deferred action have been received by U.S. Citizenship and Immigration Services (USCIS), and of those, more than 178,000 have been approved.

We also have worked to better detect and deter those who overstay their lawful period of admission to the United States. In 2012, DHS submitted a biometric air exit plan to the House and Senate Appropriations Committees detailing the Department's way forward on developing

exit capabilities and addressing overstays. This built on a previous effort to vet all overstays for national security concerns, which also leveraged existing capabilities to close out overstay leads. We now vet all potential overstays and refer leads to ICE based on national security and public safety priorities for further review.

Key to determining who is lawfully abiding by the terms of their admission is the ability to match entry and exit records. DHS continues to enhance its capabilities to integrate, process, and analyze biographic information contained in immigration databases, which will significantly enhance our ability to identify and target for enforcement action those who have overstayed their period of admission and who represent a public safety and/or national security threat. The current phase of this effort includes automating connections between DHS data sources, and refining ICE's ability to more effectively target and prioritize overstay leads of concern, which will dramatically improve our ability to successfully match entry and exit records biographically. We expect this phase to be complete in mid-2013.

This system will strengthen our ability to identify individual overstays; provide the State Department with information to support visa revocation, prohibit future Visa Waiver Program (VWP) travel for those who overstay, and place "lookouts" for individuals, in accordance with existing Federal laws; establish greater efficiencies to our Visa Security Program; and enhance the core components of an entry-exit and overstay program.

Concurrently, the DHS Science and Technology Directorate (S&T) is developing criteria for evaluation of new technologies that may provide the ability to capture biometrics upon exit. As DHS noted in the 2012 plan, we will evaluate technological options within the constraints of the current fiscal environment. S&T is developing a test environment for a variety of biometric technologies in order for DHS to identify how to implement a process that increases the security of the travel system and enhances our ability to detect and deter overstays, while also improving passenger processing.

The President's vision for commonsense immigration reform will build upon and strengthen our enforcement efforts in several ways. It would expand smart enforcement efforts that target convicted criminals in federal or state correctional facilities, allowing ICE to remove them from the United States at the end of their sentences without re-entering our communities. It also would create a streamlined administrative removal process for people who overstay their visas and have been determined to be threats to national security and public safety.

As important, the President's principles for immigration reform include investing in our immigration courts by increasing the number of immigration judges and their staffs, investing in training for court personnel, and improving access to legal information for immigrants. These reforms will improve court efficiency. They also will allow DHS to better focus our detention resources on public safety and national security by reducing the time spent in ICE facilities, and accordingly, overall detention costs.

Cracking Down on Employers Who Hire Undocumented Workers

Our nation's economic health and continued prosperity depends on businesses of all kinds and sizes being able to find and maintain a stable, legal workforce, and having confidence that they are all playing by the same set of rules. When businesses break the law by hiring undocumented workers, it undercuts lawful businesses, creates an uneven playing field, and hurts all workers, affecting wages, employee safety, and creating further demand for illegal labor.

A key part of our immigration enforcement efforts has been strengthening enforcement against employers that hire undocumented immigrants. In 2009, ICE implemented a new worksite enforcement strategy focused on more effective auditing and investigations that prioritize the use of criminal prosecutions against employers that engage in fraud or abusive practices against their workers, use unauthorized workers as a business model, or participate in other criminal conduct.

This worksite enforcement strategy prioritizes investigations involving national security, public safety, or critical infrastructure and key resources sectors, and will help reduce the demand for illegal employment while protecting employment opportunities for the nation's lawful workforce.

Under this strategy, since January 2009, ICE has audited nearly 9,000 employers suspected of hiring undocumented workers, debarred 917 companies and individuals, and imposed more than $101 million in financial sanctions, which exceeds the total amount of audits and debarments during the entire previous administration.

At the same time, we have worked to help employers maintain a legal workforce through programs like E-Verify, our employee verification system managed by USCIS. USCIS has continued to improve and expand E-Verify by adding new features to monitor for fraud, redesigning the system to increase compliance and ease of use, and expanding the E-Verify Self Check program, a voluntary, fast, free and secure online service that allows individuals in the United States to check their employment eligibility status before formally seeking employment.

In 2011, we announced the 'I E-Verify' initiative to let consumers know which businesses are working to maintain legal workforces by using E-Verify. Employer enrollment in E-Verify has more than doubled since January 2009, with more than 429,000 participating companies representing more than 1.2 million hiring sites. More than 21 million queries were processed in E-Verify in Fiscal Year 2012, allowing businesses to determine the eligibility of their employees to work in the United States.

The President's vision for commonsense immigration reform would strengthen these efforts by further enhancing tools for employers to ensure a legal workforce by using federal government databases to verify that the people they hire are eligible to work in the United States. Specifically, it would require mandatory electronic employment verification, phased in over five years, with exemptions for certain small businesses. It also would ensure the privacy and confidentiality of all workers' personal information and include important procedural protections. This is an important protection as the majority of workers who will be verified through the system are U.S. citizens. And it would increase penalties for hiring undocumented

workers and establish new penalties for committing fraud and identity theft. These commonsense measures are consistent with the principles of the Senate Bipartisan Framework.

To protect against identity theft and document fraud, the President's principles for immigration reform also would mandate a fraud-resistant, tamper-resistant Social Security card and require workers to use fraud-and tamper-resistant documents to prove authorization to work in the United States. They would also seek to establish a voluntary pilot program to evaluate new methods to authenticate identity and combat identity theft, and allow workers to block their own Social Security number to prevent it from being used for fraudulent purposes.

Creating a Pathway to Earned Citizenship

Currently, there are an estimated 11 million undocumented immigrants present in the United States. While all of these people are in our country unlawfully, we know their individual stories can differ dramatically. Some were brought here as children and have spent almost their entire lives in the United States, many going on to graduate from high school or college. Others illegally crossed our borders as adults seeking better lives. Some also entered our country legally and overstayed their lawful period of admission.

The President's immigration reform vision recognizes that deporting 11 million people from the United States is not only impractical, but inconsistent with our values. No one questions that these individuals have broken the law and should be held accountable for their actions. But they are here, and in many cases they have been in the United States for years, have raised families here, and are now contributing members of our communities. For immigration reform to be successful, we must make clear from the outset to these individuals that they will have a pathway to earned citizenship.

Consistent with the President's reform principles, undocumented immigrants would have to register, submit biometric data, pass criminal background and national security checks, and pay fees. They would then be eligible for provisional legal status. Those with provisional status would have to wait until the current legal immigration visa waiting lists are cleared and pay penalties before being able to apply for lawful permanent residency, and ultimately, United States citizenship.

Those applying for green cards would also have to pay taxes, pass additional criminal background and national security checks, register for Selective Service, where applicable, pay additional fees and penalties, and learn English. Consistent with current law, five years after receiving a green card, individuals would be eligible to apply for U.S. citizenship like other lawful permanent residents.

Childhood arrivals—known as DREAMers—also will be eligible for earned citizenship. By going to college or serving honorably in the Armed Forces for at least two years, these individuals would be given an expedited opportunity to earn their citizenship.

Of course, we recognize that for this to work, DHS, the Department of State and other relevant federal agencies must be equipped to process applications for earned citizenship, conduct

background investigations, and prevent fraud and abuse. The President's immigration reform principles would implement fraud prevention programs that will provide training for adjudicators, require regular audits of applications to identify patterns of fraud and abuse, and incorporate other proven fraud prevention measures.

Streamlining Legal Immigration

Our commitment to improving legal immigration includes launching new initiatives to spur economic competitiveness; streamlining and modernizing immigration benefits processes; strengthening fraud protections; protecting crime victims, supporting and helping to integrate refugees and asylees; updating rules to keep immigrant families together; and promoting civic engagement and integration. Over the past four years, we have made progress in each of these areas.

Supporting Economic Competitiveness

USCIS has launched a series of initiatives to spur economic competiveness by attracting foreign entrepreneurial talent to create jobs, form startup companies, and invest capital in areas of high unemployment. This includes the Entrepreneurs in Residence initiative, which harnesses industry expertise to ensure USCIS policies reflect business realities and increase the job creation potential of nonimmigrant high-skilled visa categories. USCIS also continues to streamline the EB-5 Immigrant Investor visa program to promote job creation and capital investment by foreign investors. And DHS has taken action using existing authorities to keep more talented science and math graduates in the country longer and to attract highly skilled immigrants who will be critical to continuing our economic recovery and encouraging job creation

Modernizing Systems and Strengthening Protections

In May 2012, USCIS launched the first release of its electronic immigration benefits system, Electronic Immigration System (ELIS), which began the agency's transition from a paper-based to an electronic, online organization. This release provides the ability to manage cases electronically and allows customers to set up an account for filing electronically. Since then, USCIS has launched two additional releases improving on the system's initial capabilities. The system is modernizing the processes for filing and adjudicating petitions, transforming how USCIS interacts with its customers and manages the six to seven million applications it receives each year.

USCIS also has created a Fraud Detection and National Security directorate that focuses on detecting and removing suspected fraud from the application process. USCIS, working with the Department of Justice and the Federal Trade Commission, also launched the Unauthorized Practice of Immigration Law (UPIL) initiative, a national, multi-agency campaign that spotlights immigration-services scams and the problems that can arise for immigrants when legal advice or representation is given by people who are not attorneys or accredited representatives. The UPIL initiative has expanded nationwide to include all of USCIS's district offices.

Protecting Victims and Keeping Families Together

DHS also has worked to help protect victims of domestic violence, human trafficking, and victims of devastating natural disasters and violent conflicts, as well as individuals from around the world seeking refuge or asylum in the United States. The Blue Campaign, for example, has strengthened and expanded DHS efforts to address human trafficking through prevention, protection, and prosecution, as well as public outreach and law enforcement training. We also have increased educational efforts with respect to U nonimmigrant visas, which are for victims of crimes who have suffered substantial mental or physical abuse and are willing to assist law enforcement and government officials in the investigation or prosecution of the criminal activity.

To keep families together as they navigate the immigration process, last month DHS also adopted a final rule that will reduce the time U.S. citizens are separated from their immediate relatives who are in the process of applying for immigrant visas to become lawful U.S. permanent residents. This rule, which goes into effect next month, allows certain family members, who have been unlawfully present in the United States, to apply for a waiver of their inadmissibility while still in the United States and receive a provisional waiver determination before they leave the United States to complete the immigrant visa process at a U.S. consular post.

Promoting Integration

USCIS also has continued to strengthen its work with communities nationwide to promote citizenship preparation, including civics-based English instruction and education on the rights and responsibilities of United States citizenship. As part of this effort, in 2011, USCIS announced the Citizenship Public Education and Awareness Initiative, which funds citizenship and integration programs and activities, including competitive grants to local immigrant-serving organizations to strengthen citizenship preparation programs for permanent residents.

The President's Framework

The President's immigration reform vision builds upon each of these efforts. It would strengthen economic competitiveness by allowing foreign entrepreneurs who attract financing from U.S. investors or revenue from U.S. customers to start and grow their businesses in the United States, and to remain permanently if their companies grow further, create jobs for American workers, and strengthen our economy. It would improve the EB-5 Immigrant Investor visa program by adding measures to combat fraud and national security threats, permanently authorize regional center (pooled investment) programs, and expand opportunities for U.S. economic development.

In particular, it would "staple" a green card to the diplomas of science, technology, engineering and mathematics (STEM) PhD and Master's Degree graduates from qualified U.S. universities who have found employment in the United States. The President's vision would address the waiting list for employment-sponsored immigration by eliminating annual country caps, adding visas to the system, and implementing new measures to combat fraud and national security threats. And outdated legal immigration programs would be reformed to meet current and future demands by exempting certain categories from annual visa limitations.

The President's reform vision also seeks to eliminate existing waiting lists in the family-sponsored immigration system by recapturing unused visas and temporarily increasing annual visa numbers. It raises existing annual country caps from seven percent to 15 percent for the family-sponsored immigration system. It treats the families of same-sex partners the same as other families by giving foreign born same-sex partners of Americans access to the family based immigration system. And it revises current unlawful presence bars and provides broader discretion to waive bars in cases of hardship.

The President's reform principles would streamline immigration law to better protect vulnerable immigrants, including those who are victims of crime and domestic violence. They would better protect those fleeing persecution by eliminating certain limitations that prevent qualified individuals from applying for asylum. And the President's vision promotes earned citizenship and efforts to integrate immigrants into their new American communities linguistically, civically, and economically.

Finally, the President's reform principles recognize the importance of travel and tourism to the United States and support additional measures to promote foreign travel to America and to streamline processing for foreign visitors. This includes allowing greater flexibility to designate countries for participation in the Visa Waiver Program (VWP), which allows citizens of designated countries to visit the United States without a visa by obtaining security authorization prior to travel. The President's vision would strengthen law enforcement cooperation while maintaining the program's robust counterterrorism and criminal information sharing initiatives.

Conclusion

Our immigration system is sorely out of date and it is time to fix it. The principles outlined by President Obama – which are largely consistent with the Bipartisan Framework for Comprehensive Immigration Reform – will address long-standing problems.

His vision for reform will strengthen border security and immigration enforcement. It will help crack down on employers that break the law while giving them better tools to hire a legal workforce. It will provide an earned path to citizenship so that millions of people can play by the same rules as everyone else. And it will streamline legal immigration while supporting our economy.

Importantly, it will allow DHS to continue to build on the progress we have achieved along our borders. Immigration reform will help us keep our focus exactly where it should be: preventing the entry of criminals, human smugglers and traffickers, and national security threats. By updating our antiquated laws governing legal migration to our country, we can eliminate a key incentive to those who may seek to illegally migrate to the United States. And because illegal migration can have links to transnational criminal activity, where these individuals are at great risk from drug cartels and other transnational criminal groups smuggling or trafficking them to the U.S., immigration reform will help us further increase public safety.

Moreover, establishing a sensible pathway to earned citizenship is essential to improving the security and integrity of our immigration system. Streamlining the immigration process will encourage immigrants to pursue pathways to legal status, reducing attempts to unlawfully cross our borders, and will ensure that enforcement resources are spent pursuing the removal of high priority cases involving criminals and those who present a risk to public safety or national security.

Over the past four years, the men and women of DHS have worked very hard to meet our immigration responsibilities. The results we are seeing today reflect promises kept. They reflect the most serious and sustained effort to strengthen border security and enforce immigration laws that I've seen in the more than twenty years I've been engaged in immigration enforcement and policy.

Our borders are more secure and our border communities are among the safest communities in our country. We have removed record numbers of criminals from the United States and our immigration laws are being enforced according to sensible priorities. We have taken numerous steps to strengthen legal immigration and build greater integrity into the system. And we are using our resources in a smart, effective, responsible manner. We have matched words with action, and we are prepared to implement the reform principles being discussed today.

I believe we are at a unique moment in history. All sides of the immigration debate agree that the status quo is not acceptable and that we must act to address the significant shortcomings of the current system – now, not years from now. For the first time in recent memory, we are seeing a bi-partisan consensus emerge about what those commonsense steps should be. We must not miss this opportunity to enact meaningful reforms to not only strengthen our immigration system, but also to ensure that our nation remains a land of opportunity for immigrants, businesses, and all those whose dreams, aspirations, hard work, and success have contributed to our nation's uniqueness, diversity, cultural richness, and economic strength since our founding.

The President's vision for commonsense immigration reform will help our nation build a fair, effective, and commonsense immigration system that honors our heritage as a nation of laws and a nation of immigrants. The time to modernize our immigration laws is long overdue, and we stand ready to work with this Committee and the Congress to achieve this important goal for our country, the American people, and all those seeking to contribute their talents and energy to our great nation.

SENATE JUDICIARY COMMITTEE TESTIMONY: Jose Antonio Vargas

Thank you Chairman Leahy, Ranking Member Grassley, and distinguished members of this Committee.

I come to you as one of our country's 11 million undocumented immigrants, many of us Americans at heart, but without the right papers to show for it. Too often, we're treated as abstractions, faceless and nameless, subjects of debate rather than individuals with families, hopes, fears, and dreams.

I am in America because of the sacrifices of my family. My grandparents legally emigrated from the Philippines to Silicon Valley in the mid-1980s. A few years later, Grandpa Teofilo became a U.S. citizen and legally changed his name to Ted--after Ted Danson in "Cheers." Because grandparents cannot petition for their grandkids--and because my mother could not come to the United States--grandpa saved up money to get his only grandson, me, a passport and green card to come to America. My mother gave me up to give me a better life.

I arrived in Mountain View, Calif. on August 3, 1993. One of my earliest memories was singing the National Anthem as a 6th grader at Crittenden Middle School, believing the song had somehow something to do with me. I thought the first lines were, "Jose, can you see?"

Four years later, I applied for a driver's permit like any 16 year old. That was when I discovered that the green card that my grandpa gave me was fake.

But I wanted to work. I wanted to contribute to a country that is now my home. At age 17, I decided to be a journalist for a seemingly naive reason: if I am not supposed to be in America because I don't have the right kind of papers, what if my name--my byline--was on the paper? How can they say I don't exist if my name is in newspapers and magazines? I thought I could write my way into America.

As I built a successful career as a journalist--paying Social Security and state and federal taxes along the way--as fear and shame, as denial and pain, enveloped me--words became my salvation. I found solace in the words of the Rev. Martin Luther King, quoting St. Augustine: "An unjust law is no law at all."

Ultimately, it took me 12 years to come out as an undocumented American--because that is what I am, an American. But I am grateful to have been able to tell the truth. And in the past few years, more undocumented people, particularly young DREAMers, are coming out. Telling the truth about the America we experience.

We dream of a path to citizenship so we can actively participate in our American democracy.

We dream of not being separated from our families and our loved ones, regardless of sexual orientation, no matter our skill set. This government has deported more than 1.6 million people--fathers and mothers, sons and daughters--in the past four years.

We dream of contributing to the country we call our home.

In 21st century America, diversity is destiny. That I happen to be gay; that I speak Tagalog, my first language, and want to learn Spanish--that does not threaten my love for this country. How interconnected and integrated we are as Americans makes us stronger.

Sitting behind me today is my Filipino-American family--my grandma Leonila, whom I love very much; my Aunt Aida Rivera, who helped raised me; and my Uncle Conrad Salinas, who served, proudly, in the U.S. Navyfor 20 years. They're all naturalized American citizens.

I belong in what is called a mixed-status family. I am the only one in my extended family of 25 Americans who is undocumented. When you inaccurately call me "illegal," you're not only dehumanizing me, you're offending them. No human being is illegal.

Also here is my Mountain View High School family--my support network of allies who encouraged and protected me since I was a teenager. After I told my high school principal and school superintendent that I was not planning to go to college because I could not apply for financial aid, Pat Hyland and Rich Fischer secured a private scholarship for me. The scholarship was funded by a man named Jim Strand. I am honored that Pat, Rich and Jim are all here today. Across the country, there are countless other Jim Strands, Pat Hylands, and Rich Fischers of all backgrounds who stand alongside their undocumented neighbors. They don't need to see pieces of paper--a passport or a green card--to treat us as human beings.

This is the truth about immigration in our America.

As this Congress decides on fair, humane reform, let us remember that immigration is not merely about borders. "Immigration is in our blood...part of our founding story," writes Sen. Ted Kennedy, former chairman of this very Committee, in the introduction to President Kennedy's book, "A Nation of Immigrants." Immigration is about our future. Immigration is about all of us.

And before I take your questions, I have a few of my own:
What do you want to do with me?

What do you want to do with us?

How do you define "American"?

Thank you.

"Comprehensive Immigration Reform"

U.S. Senate
Committee on the Judiciary

Wednesday, February 13, 2013

Statement of Jessica M. Vaughan
Director of Policy Studies
Center for Immigration Studies

Chairman Leahy, Ranking Member Grassley, and committee members, thank you for the opportunity to testify today. In recent weeks, the President and a group of your Senate colleagues have put forward very similar plans for "Comprehensive Immigration Reform." These proposals include the same basic elements: amnesty for most of the more than 11 million illegal immigrants residing in the country; increases in legal immigration; expansion of guestworker programs; and promises of stronger border security and immigration enforcement measures.

These proposals are essentially the same as those offered about five years ago, which failed to pass muster with the American public and with the Congress, with good reason. They adopt the same formula as the failed grand bargain of 1986. This package of reforms would make major changes to our system, reward huge numbers of scofflaws and create new flows of immigration without regard to their effect on U.S. workers, in exchange for unfulfilled promises of enforcement. It is a recipe for failure on a scale even more massive than in 1986.

The IRCA Experience. The Immigration Reform and Control Act of 1986 (IRCA) package – a collection of amnesties coupled with a new prohibition on hiring unauthorized workers – was billed as a solution to the illegal immigration problem. The amnesties were a great success, at least in terms of the numbers who were legalized – about three million people, with admissions continuing to this day.[1]

But the program most certainly did not solve the illegal immigration problem. Following IRCA, the size of the stock illegal population rose from about four million in 1986 (pre-amnesty) to about 12 million in 2007, with estimates dropping slightly in 2008 and 2009, and increasing slightly in 2010 and 2011, to roughly 11.5 million estimated today.

[1] David North, "Before Considering Another Amnesty, Look at IRCA's Lessons," Center for Immigration Studies, January, 2013, http://www.cis.org/before-considering-another-amnesty-look-at-ircas-lessons.

Employer Sanctions Not Enforced. The main reason illegal immigration has continued was because the government was quick to implement the amnesty program, but never followed through with the enforcement of employer sanctions (and only relatively recently has gained operational control of large sections of the southwest border). In fact, it seems that the sanctions were never intended to be allowed to work at all. Congressional drafters created the clumsy I-9 system in which employers are required to ask new hires for documentation, but not expected or required to verify the information (until recent years, when some states and the federal government adopted laws calling for mandatory use of E-Verify for some or all categories of employers). 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.

Executive branch officials were equally complicit in creating a workplace enforcement system that was built to fail. The INS diverted a significant share of enforcement resources toward an outreach program to inform the nation's employers of the new law and their new responsibilities, performed primarily by the agency's corps of special agents – which meant that the sworn law enforcement officers who were trained and empowered to investigate violations were taken off their beat. In addition, the agency leadership crafted the regulations in such a way as to make it difficult to investigate employers, and so that any sanctions actually imposed would amount to a slap on the wrist, insufficient to deter illegal hiring. 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.

This fundamental failure of IRCA has not been lost on the public. According to a new poll commissioned by my organization, when asked why there is a large illegal population in the country, voters overwhelming (71 percent) answer that it is because we had not made a real effort to enforce our immigration laws. Only 18 percent think it is because we are not letting in enough immigrants through legal channels.

Massive Fraud and Rubber-Stamping of Applications. Not only was the enforcement end of the grand bargain scuttled, the government also failed to make sure that only qualified applicants would be legalized. IRCA has been called the most massive fraud ever perpetrated on the U.S. government. The fraud in these programs has been well documented (see my colleague David North's summary in "A Bailout for Illegal Immigrants: Lessons from the Implementation of the 1986 IRCA Amnesty").[2] The largest number of fraudulent applications was in the agricultural workers program. In California, the number of farmworker amnesty applicants was more than twice as large as the entire agricultural workforce at the time. In other parts of the country, applicants often made laughable claims of picking strawberries and watermelons from trees, and failed to identify the plants they allegedly had spent months handling. One of the terrorists in the first World Trade Center bombing of 1993 obtained his green card by claiming to be a farmworker, although he was actually working illegally as a taxi driver.

It is to be expected that any amnesty or similar government benefits program will attract fraudsters. What is most concerning is that the government agency charged with administering the program routinely looked the other way and did little to prevent them from getting legalization and thus a pathway to U.S. citizenship. The agency managers failed to encourage use of even the most rudimentary tools available to check applicants' claims, and frequently overruled the front-line adjudicators who spotted the fraud. For example, there is unpublished INS data from 1989 showing that

[2] North, at http://cis.org/irca-amnesty.

by that date the front line interviewers had recommended more than 880,000 denials. But by the end of the entire program, only about 350,000 denials were reported.

There are some indications that the administration of the latest amnesty, the new Deferred Action for Childhood Arrivals (DACA) program, is being handled with the same indifference to fraud. For example, insiders report that a disproportionate number of the applicants are claiming to be home-schooled, presumably to explain the absence of any documentation of schooling in the United States, which would confirm eligibility. U.S. Citizenship and Immigration Services (USCIS) has yet to report a single denial out of the more than 400,000 applications submitted, while more than 150,000 have been approved. Like INS before it, USCIS has established a generous system for DACA where applicants are presumed to be eligible, claims are rarely verified, and failed applicants get to stay anyway, for all intents and purposes immune from immigration law enforcement.[3]

Post-IRCA Surge in Legal Immigration. Not only did IRCA fail to solve the illegal immigration problem, it also caused future flows of legal immigration to swell far beyond the numbers initially legalized. This is partly because the family members of legalized immigrants living overseas were not covered by the amnesty; but also because many acquired new spouses who could then be sponsored. The three million original IRCA beneficiaries amounted to the equivalent of five years' worth of legal immigration, under the rules of the time. We estimate that another 740,000 additional immigrants were subsequently sponsored by the original IRCA beneficiaries and were admitted between 1989 and 2012. In addition, these individuals have sponsored additional family members, and almost certainly have hosted family members who have entered illegally.

Because Congress has placed limits on some categories of immigration, the surge in post-IRCA sponsored family immigration caused the immigrant visa waiting lists to get much longer, especially for Mexican applicants, but also for those from other countries. Predictably, this led to calls for reform from immigration advocates, which Congress answered by passing the Immigration Act of 1990. That law raised the limits for spouses and children of green card holders by diverting numbers to that category from the categories for lesser-priority family members, by eliminating the per-country caps for the spouse category, and by adding 55,000 extra green cards for the spouses and children of IRCA immigrants each year for a period of three years. The implementation of IMMACT90 brought immediate relief to the immigrant visa waiting lists. The waits in the spousal category were reduced by several years in a relatively short period of time, although the waiting lists in the lesser priority categories increased significantly over time. In retrospect, it would have been a better idea to transfer all of the numerical allocations from these lesser-priority categories right away. Such a move would have prevented the situation we have now, where some applicants in the sibling category, for example, have been waiting for more than a decade. It would have been more help to the nuclear family members and avoided raising false hopes for migration opportunities among the U.S. citizens sponsoring siblings.

Current System Lacks Control and Integrity.

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

[3] For more on the lax administration of DACA, see the Center's collection of articles on this topic: http://cis.org/AdministrativeAmnesty.

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 is about one-half of the amount spent on all other federal law enforcement expenditures (not counting most military and intelligence service law enforcement nor Coast Guard), which totaled about $39 billion in 2012,[4] and one-third of total non-military/intelligence/Coast Guard law enforcement.

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. And, as discussed above, illegal immigration has risen steadily since 1986. Some real progress has been made, particularly along the southwest border, as DHS officials have frequently reported.

But our borders are far from secure, and equally important, enforcement of immigration laws in the interior is insufficient, inconsistent, overly surgical, and largely ineffective at preventing the entry, deterring the settlement, and effecting the removal of illegal immigrants, including those who are terrorists, criminals, or otherwise a threat to public safety.

Immigration Enforcement Anemic under the Obama Administration. The Obama administration has touted its enforcement achievements as "smarter" enforcement that focuses on the removal of non-citizens who have been convicted of serious crimes. Certainly there is an ample supply of those. According to the 2011 annual report of the U.S. Sentencing Commission, 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.[5]

Statistics from a variety of sources present a very mixed picture, with many indicators suggesting a significant decline in immigration enforcement activity over the last five years, and others showing only modest increases:

- Border Patrol apprehensions declined 61 percent over the five year period, from 877,000 in 2007 to 340,000 in 2011. Our research shows that new illegal entries have slackened somewhat since 2007, but 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

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[4] 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.

[5] U.S. Sentencing Commission, 2011 Sourcebook of Federal Sentencing Statistics, http://www.ussc.gov/Data_and_Statistics/Annual_Reports_and_Sourcebooks/2....

has used as an indicator of the number of illegal crossings, went up by nine percent, from 328,000 to 357,000.

- ICE arrests have been trending downward since 2008, from 320,000 that year to just over 300,000 in 2011. The most significant decline in DHS arrests – 70% -- was in the Homeland Security Investigations division, which is responsible for certain interior enforcement: worksite enforcement, transnational gang cases, national security, and certain non-immigration related casework. HSI arrests have declined from 54,000 in 2007 to 16,000 in 2011. This is troubling, since the number of illegal residents has not significantly declined over this period.

- Arrests by ICE's Enforcement and Removal Operations have held relatively constant over the period, averaging 285,000 per year, with a slight drop in totals over the last two years. This division focuses on removing criminal aliens discovered in jails, referred by local law enforcement, and immigration fugitives.

- Syracuse University's Transactional Records Access Clearinghouse, which obtains immigration court data from the federal government, reports that since 2009, there has been a significant decline in the number of aliens that ICE has brought to immigration court. The number of immigration court filings has declined 25 percent since last year, and 30 percent since 2009.

- The percentage of aliens ordered deported by immigration judges is the lowest rate since 1998, according to TRAC. Last year, judges ordered removal in 57 percent of the cases, and granted the alien's request to stay 43 percent of the time.

- It appears that the number of aliens who have failed to abide by deportation orders is rising. In 2012, ICE reported that there were 850,000 aliens present in the country who have been ordered removed or excluded, but who had not departed.[6] In 2008, DHS said that there were 558,000 "fugitive aliens."

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 immigration enforcement as it can. 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.[7]

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[6] DHS Office of Inspector General, "Improvements Needed for SAVE to Accurately Determine Immigration Status of Individuals Ordered Deported," OIG-13-11, December, 2012, http://www.oig.dhs.gov/index.php?option=com_content&view=article&id=64&Itemid=34.

[7] DHS Immigration Enforcement Actions, 201, http://www.dhs.gov/immigration-enforcement-actions-2011.

- It has been established that recent deportation statistics are heavily padded with cases that were not previously counted as such.[8]

One notable accomplishment has been the implementation of the Secure Communities program, which links FBI and DHS fingerprint databases to enable ICE to more efficiently identify and remove aliens who are arrested by local law enforcement agencies. More than 1.2 million criminal aliens arrested by local police have been identified through the Secure Communities program since 2009. Of these, 247,000 have been removed so far. The Secure Communities program has contributed to ICE's ability to remove more criminal aliens than ever before.

Unfortunately, ICE is now also releasing more criminal aliens than ever before, thanks to the array of policies falling under the umbrella of "prosecutorial discretion," stipulating, essentially, that ICE agents may not arrest or seek to remove illegal aliens unless they have been convicted of at least three misdemeanors, and sometimes not even then, even if these offenses are of a violent or dangerous nature. This "worst of the worst" policy leaves a lot of the worst still living in American communities, in defiance of our laws, and creates too many needless victims. For example, in September, 2011, the Chicago ICE Field Office released Amado Espinoza-Ramirez, an illegal alien who had been charged with 42 counts of child molestation, including incestuous child rape. ICE issued a statement saying the man was not an enforcement priority, reportedly because he had a U.S. citizen child, a category designated for leniency under Obama administration policies.[9]

According to a Congressional Research Service analysis, over a two and one-half year period they studied, ICE released tens of thousands of deportable criminal aliens who had been identified under Secure Communities. Of these, the 26,000 criminal aliens were later re-arrested for 58,000 new crimes within the time frame of the study. The 58,000 new crimes included 59 murders, 21 attempted murders, and more than 5,000 major or violent criminal offenses. In addition, they were charged with more than 6,000 drug violations and more than 8,000 DUI violations.[10]

In addition, the Obama administration and its agencies have undertaken aggressive legal action to try to prevent state and local governments from assisting ICE and from deterring illegal settlement. The Department has sued several states, including Arizona and Alabama and also some local law enforcement agencies that have elected to allow their officers to follow the guidelines established by state and federal laws, rather than the Obama administration's more restrictive and selective policies on which illegal aliens to arrest.

At the same time, both Justice and Homeland Security officials have sat on their hands as a number of local governments have adopted policies to actively obstruct ICE's enforcement activities, even against criminal aliens. The most egregious sanctuary policy is in Cook County, Illinois, one of the largest jail systems in the country, and with a significant population of criminal aliens. In September, 2011, the county adopted a policy directing Cook County jail officers to ignore all ICE detainers. The

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[8] Rep. Lamar Smith, http://www.washingtontimes.com/news/2012/sep/26/obama-puts-illegals-ahea...

[9] Michael Volpe, "ICE admits releasing alleged child rapist," *The Daily Caller*, March 21, 2012, http://dailycaller.com/2012/03/21/ice-admits-releasing-alleged-child-rapist/.

[10] Congressional Research Service memorandum to Rep. Lamar Smith, "Analysis of Data Regarding Certain Individuals Identified Through Secure Communities," updated July 27, 2012, linked here: http://cis.org/vaughan/new-report-obama-catch-and-release-policies-result-more-crimes-more-victims.

result has been the release of hundreds of criminal aliens, including a large number of felons, back to Chicago-area communities. One of these was Saul Chavez, an illegal alien who ran over and killed Dennis McCann while driving drunk in Chicago in June, 2011, and who had a previous aggravated felony drunk driving conviction.[11]

Meanwhile, the administration continues to dole out millions of dollars in annual awards, earmarked for the costs of detaining criminal aliens, to Cook County and other local governments that do everything they can to obstruct ICE from doing its job, when it has the ability and the authority to deter such practices by denying the awards.[12]

Similarly, DHS has failed to address the problem of other countries that obstruct immigration law enforcement by refusing to accept back their citizens who have been ordered removed. ICE has identified about two dozen countries that are "recalcitrant" in repatriating their citizens or in issuing travel documents.[13] Because of a 2001 Supreme Court decision, ICE may not detain removable aliens for longer than six months, except in exceptional circumstances. As a result, more than 12,500 aliens (the majority of whom were likely criminals) have been released from ICE detention. In addition, there are between 100,000 and 200,000 aliens living here who have not been in ICE custody recently, but who have been ordered removed and could not be removed because their home countries refused to take them back.[14] Under current law, DHS may impose visa sanctions on the recalcitrant countries, as has been done successfully before; but chooses not to use this leverage. This adds needlessly to our population of illegal residents, but also exposes everyone to potential harm. ICE does not routinely inform either victims or local law enforcement agencies when it releases such aliens. In one particularly tragic case recounted recently in the *Boston Globe*, illegal alien Huang Chen, convicted of assaulting a woman in 2006, was released by ICE under Zadvydas rules, and remained free to stalk his previous victim until he bludgeoned and slashed her to death in 2010.[15]

These and other gaps in our enforcement system need to be fixed before we can contemplate another massive legalization program. This includes finishing the entry-exit system ordered by Congress in 1996, so that DHS knows who is coming and going, and more importantly, who is staying. Little progress has been made since the initial launch of US-VISIT in 2004. Currently, only air and sea passengers receive biometric screening and identity authentication; but the largest number of visitors enters through the land ports, and imposters using someone else's legally issued documents are a major problem. The biggest problem is abuse of the Border Crossing Cards, which have been issued to more

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[11] See testimony of Brian McCann before the U.S. House Judiciary Committee, Subcommittee on Immigration Policy and Enforcement, March 7, 2012, http://judiciary.house.gov/hearings/Hearings%202012/hear_03072012_2.html.

[12] See Jessica Vaughan and Russ Doubleday, "Subsidizing Sanctuaries: The State Criminal Alien Assistance Program," November, 2010, http://www.cis.org/subsidizing-sanctuaries.

[13] Testimony of Gary Mead, Executive Associate Director, ICE Enforcement and Removal Operations, before the House Judiciary Committee, Subcommittee on Immigration Policy and Enforcement, May 24, 2011, http://www.dhs.gov/news/2011/05/24/statement-gary-mead-executive-associate-director-enforcement-and-removal-operations.

[14] Jon Feere, "Reining in Zadvydas: New Bill Aimed at Stopping Release of Criminal Aliens," Center for Immigration Studies, May 2011, http://www.cis.org/stopping-release-of-criminal-aliens and Mark Metcalf, "Built to Fail: Deception and Disorder in America's Immigration Courts," Center for Immigration Studies, May 2011, http://cis.org/Immigration-Courts.

[15] Maria Sacchetti, "Unwanted at home, free to strike again," *Boston Globe*, December 8, 2012, http://www.boston.com/news/nation/2012/12/08/secret-criminals-quietly-released-criminals-who-were-supposed-deported-with-deadly-consequences/gA2ALtmA9LMuKUVGnffvAI/story.html.

than nine million Mexicans, facilitating the illegal settlement of perhaps as many as one million Mexicans.[16]

The other very conspicuous void in immigration law enforcement today is workplace enforcement. 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. In line with ICE's current strategy, the number of I-9 audits increased from 503 to 2,496 from fiscal year 2008 to 2012, the number of final orders to cease violations and pay fines increased from 18 to 385, and the dollar amount of final orders increased from $675,209 to $10,463,987.

But every other metric points in the other direction. Administrative arrests have fallen 78% from fiscal year 2008 to fiscal year 2012 (from 5,184 to 1,118); criminal arrests of employers and employees are down 53% (from 1,103 to 520) with criminal arrests of employees down 71% (from 968 to 280) and criminal arrests of employers increasing by 78% (from 135 to 240); criminal indictments have fallen 63% (from 900 to 329); and criminal convictions are down 65% (from 908 to 314). The number of ICE investigative hours devoted to worksite enforcement per quarter fell by 34% from the 3rd quarter of fiscal year 2008 to fiscal year 2010 overall (from 258,306 hours in the 3rd quarter of 2008 to 683,868 hours for all of 2010). This represents a drop from 9.5% of all investigative hours to 6.2%.

In addition, judging from other 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 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 drophouse for 5,000 smuggled aliens.

Meanwhile, 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. Tolerance of flagrant illegal hiring practices at a number of large corporate dairy operations, some of which also have a track record of violating environmental and conservation laws, has forced many of the smaller, family-owned dairy farmers out of business, and led to the sacking of the local residents who used to do this work. Displaced workers and their families have abandoned Vermont for other parts of the country, and family farmers, unable and unwilling to compete with the exploitative and illegal practices, end up selling off their holdings to the large farm

[16] Jessica Vaughan, "Border Crossing Chaos," Center for Immigration Studies, March 25, 2009, http://cis.org/vaughan/PaseoDelNortePartIV.

owners that have trailers, apartments and old farmhouses now full of illegal workers. Vermont taxpayers cover the cost of the workers' health care and any other needs, since the farm operators do not have the workers "on the books."

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.

Legal Immigration System Has Economic and Fiscal Costs and Lacks Integrity. Obviously many immigrants have enriched our nation and have been a source of strength rather than a burden. America has given opportunities and safe haven to countless individuals over the decades. If properly managed, immigration can serve the national interest and the interests of employers and families alike. But our legal immigration system is not managed properly today. We are admitting more people than we can employ without disadvantaging Americans, we need to re-allocate the quotas so that we can accommodate the highest priority categories, we need to be stricter with the eligibility criteria, and we need to stop tolerating such a high rate of fraud.

Current legal immigration is as high as it has ever been in our history. The government issues about one million green cards annually in the family, employment, humanitarian and lottery categories, more than all other countries combined. In addition, we have guestworker programs that bring in about 700,000 workers a year, including farm workers, factory workers, lifeguards, nannies, ice cream scoopers, fish slimers, crab pickers, lab technicians, physical therapists, nurses, electricians, church secretaries, priests, musicians, baseball players, computer programmers, teachers, college professors, researchers, and doctors, among many others.

Despite its huge size, the legal immigration system is ridiculously oversubscribed, with more than four million eligible people on the waiting list, mostly in the lesser priority family categories. It is weighted in favor of family immigration, with only about 12 percent of green cards issued to new immigrants based on their skills. As a result, while there are great variations according to sending country, our legal immigration system is essentially an unskilled labor importation program that has greatly increased the size of America's low-income population.

The economic and fiscal consequences of admitting so many immigrants who are on average less educated than U.S. workers are significant. Not only does mass immigration displace Americans from job opportunities, it causes wages to stagnate or decline. There is huge supply of potential less-educated workers; more than 25 million native-born Americans aged 18 to 65 with a high school degree or less are unemployed. If there were a labor shortage at the bottom end of the U.S. labor market, then wages, benefits, and employment would all be increasing; instead, unemployment is stubbornly high and wages have declined alarmingly for many U.S. workers, even before the current recession. But hourly wages for male non-high school graduates declined 22 percent from 1979 to 2007, and hourly wages for male high school graduates declined 10 percent from 1979 to 2007.

There is no evidence that immigrants only do jobs Americans don't want. Of the 465 occupations defined by the government, only four are majority immigrant. Many jobs often thought to be majority immigrant are in fact majority native. For example:[17]

- Maids and housekeepers: 52 % native-born
- Taxi drivers and chauffeurs: 59 % native-born
- Butchers and meat processors: 64 % native-born
- Construction laborers: 66 % native-born
- Janitors: 73 % native-born.

The nation's leading immigration economist, George Borjas of Harvard, has demonstrated that immigration has had a negative impact on wages, for example, estimating that immigration reduced the wages for natives who had not graduated from high school by 7.4 percent. Borjas also has found that immigration significantly reduced both the wages and employment of less-educated, native-born African Americans.[18]

Other research corroborates these findings of displacement and wage depression. A 2006 study by Andrew Sum and his colleagues at Northeastern University found that the arrival of new immigrants (legal and illegal) in a state results in a decline in employment among young native-born workers in that state.[19] Research by my colleague Steven Camarota has examined differences in wages across occupations in which most of the workers have no more than high school education. The findings show that immigration reduced wages for American workers by 10 percent in some occupations.[20]

Because so many immigrants lack the education and skills needed to be self-sufficient, they tend to make disproportionate use of our social welfare programs. In 2010, 23 percent of immigrants and their children lived in poverty, compared to 13.5 percent of natives. They account for one-fourth of all persons in poverty. In 2010, 36 percent of immigrant-headed households used at least one major welfare program (compared to 23 percent of natives).[21]

Many immigrants make progress over time but, on average, even after 20 years, they do not come close to closing the poverty and welfare gap with natives. Moreover, immigration does not does not have a noticeable impact on our nation's age structure, and so cannot help address the entitlements or Social Security/Medicare funding crisis.[22]

In general, skilled and/or educated immigrants do not impose the same kind of fiscal costs on communities as do those who are less educated. However, if skilled immigrants are concentrated in one

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[17] Steven A. Camarota, *Immigrants in the United States: A Profile of America's Foreign Born Population*, Center for Immigration Studies, August, 2012, http://cis.org/2012-profile-of-americas-foreign-born-population.

[18] George Borjas, "The Labor Demand Curve is Downward Sloping: Reexamining the Impact of Immigration on the Labor Market," *Quarterly Journal of Economics, November 2003, pp. 1335-1374, at: http://ksghome.harvard.edu/~GBorjas/Papers/QJE2003.pdf ; for a less technical version, see www.cis.org/articles/2004/back504.html.*

[19] Andrew Sum, Paul Harrington, and Ishwar Khatiwada , *The Impact of New Immigrants on Young Native-Born Workers, 2000-2005*, Center for Immigration Studies, 2006, www.cis.org/articles/2006/back806.html.

[20] Steven Camarota, "The Effect of Immigrants on the Earnings of Low-Skilled Native Workers: Evidence from the June 1991 Current Population Survey," Social Science Quarterly, Vol. 78, 1997.

[21] Camarota, *Profile.*

[22] Ibid.

labor market or occupation, they can displace U.S. workers, as has happened in the technology/engineering sector. Our current admissions system – specifically the labor certification process – does not protect U.S. workers from unfair competition, nor ensure that America is bringing in the kind of workers that are needed, as opposed to simply enabling U.S. employers to bypass U.S. workers.

A growing body of research indicates that while there may be spot shortages of specific skill sets or in specific labor markets, the claims of a general shortage of the so-called STEM workers are exaggerated. Our colleges and universities are turning out more degree holders in these fields than there are job openings, and there is persistent high unemployment in STEM occupations.[23]

Some researchers believe we actually have a glut of STEM workers, due in part to the fact that we have admitted so many foreign students seeking degrees in this field, most of whom stay on in some status, often as H-1B workers with the expectation that they will eventually earn permanent residency. In addition, we admit tens of thousands of H-1B and L visa workers from abroad, many of whom join the waiting list for employment-based green cards. The reason we have such a long waiting list for employment green cards is because the flow of H-1B and L workers far exceeds the number of employment visas available (and because most of the demand is concentrated in just a few countries).

There are two problems that plague all of our visa programs, whether temporary or permanent, family or employment or humanitarian: lax enforcement of eligibility standards and rampant fraud. One example of the former is the abandonment of any pretense of insisting that immigrants show that they can support themselves. Despite the law's stipulation that applicants show they are not and will not be a "public charge," adjudicating officers at both USCIS and State Department are directed in the regulations to ignore most kinds of social welfare benefits that applicants may have received. In addition, sponsors who cannot show sufficient income (or sufficient reported income on tax returns) to qualify to sponsor a relative are allowed to submit affidavits of support signed by third parties who pledge to assist if needed. These pledges are never verified, much less enforced if the immigrant ends up needing social services.

Fraud exists in nearly every category of immigration benefits, although some categories are more fraud-prone than others. A number of years ago, USCIS conducted several detailed fraud assessments, and found double digit rates of fraud in the categories they studied, which included religious workers, employment-based immigrants, H-1B, L-1A, asylum and marriage. The adjudicating agencies have improved their fraud investigations and analytical systems significantly. But only rarely do the agencies work with other partner agencies to prosecute fraud or to seek the removal of individuals who commit fraud or are found ineligible for admission. As a result, an untold number of people who do not qualify for residency are allowed to stay anyway.

Finally, in recent years, the immigration agencies have begun stretching the criteria for eligibility in some programs so that unqualified -- and in some cases, potentially dangerous – individuals have been allowed to stay. For example, according to the law, individuals with Temporary Protected Status (TPS) are ineligible if they are convicted of two or more misdemeanors. Recently, DHS implemented a policy that directs adjudicators to re-classify the misdemeanors as "infractions" so that they can retain

[23] See, for example, Daniel Costa, "Microsoft report distorts reality about computing occupations," Economic Policy Institute, November, 2012, http://www.epi.org/publication/pm195-stem-labor-shortages-microsoft-report-distorts/.

their TPS. Most of the beneficiaries of this policy have been individuals convicted of drunk or impaired driving. While only a small number of people in this category have been approved, it is reasonable to ask why the administration would make it a priority to create such a loophole.

"Comprehensive Immigration Reform" Is Not a Solution.

A mass legalization of 11 million (or more) illegal immigrants and expansion of green card and temporary worker admissions, especially when combined with promises of future enforcement, rather than strengthened enforcement, will not cure most of the problems with our immigration system.

On the contrary, the two "comprehensive" proposals would exacerbate our unemployment, inequality and wage stagnation problems by adding large numbers of both heavily-educated and lightly-skilled workers to the labor pool, when there is no evidence of need for either type.

Employers welcome such a situation, but the workers suffer. We know from experience how this will turn out. For example, several years ago, the Hyatt Hotels chain replaced its entire staff of about 90 housekeepers at its three hotels in Boston with new workers hired through a staffing company based in Georgia. The original housekeepers were full-time workers, earning about $14 per hour, with subsidized health insurance and paid sick and vacation leave. Many of these women had supported their families on these jobs and had worked there for more than a decade. The replacement contract workers were brought in from Georgia (some admitted to being here illegally and using false documents to get hired). They were willing to work for $8 per hour, without benefits. The original workers were offered the chance to keep their jobs as employees of the staffing company at the lower rate of compensation. Can there be any doubt that this scenario will repeat itself as employers seek to take advantage of new labor streams created by expanded immigration and more guestworker programs?

Lawmakers must also consider the cost of adding millions of newly legalized residents to the public welfare and subsidized healthcare rolls. Currently, illegal residents are not able to access many of the federally-funded programs (except on behalf of U.S.-born children), but will be eligible to do so after an amnesty. Even though most illegal aliens are working, because they tend to be concentrated in relatively low-paying jobs, they and their families can be expected to apply for many welfare programs. This additional cost is likely to run in the tens of billions of dollars per year, and will not be offset by new tax payments, again, due to the fact that many are in low-paying jobs. Barring them from the welfare programs is not a good choice; once we make the decision to admit someone as an immigrant, they should have access to all the same programs as others in similar circumstances.

As discussed earlier, fraud is likely to be an issue in any legalization program, especially if this administration's handling of DACA is any model. The DACA program is rigged in favor of applicants; adjudicators are unable to verify claims of applicants, there is no interview, and the rules are written so loosely that it is easy to game the system. Because of a strict confidentiality provision, as with IRCA, none of the information on an applicant's paperwork may be shared or used for enforcement purposes. We can expect more of the same in any legalization program run by the Obama administration. Indeed, in the President's fact sheet on CIR, it states that those whose applications are denied will get appeals and judicial reviews – not removal.

Most of the enforcement measures that have been proposed are vague, aspirational, costly, and of dubious feasibility. One, the entry-exit system, was first mandated by Congress in 1996; this should not be part of a compromise, it should be completed without further discussion. This is especially important in light of the administration's proposals to expand the Visa Waiver Program. The White House also proposals to implement universal mandatory E-Verify, which is a very good idea, but since the program is already operating effectively, this expansion should not be contingent on the development of a biometric Social Security Card or other biometric enhancements that would be unduly burdensome for employers and workers alike.

What Should Be Done Instead?

In light of the vast disparity of views within Congress on which type of reform to pursue, it seems unrealistic to rush into the huge agenda put forth in the two "comprehensive immigration reform" proposals that have been issued. The most successful attempts at immigration reform in recent decades have been much narrower in scope, including IMMACT 90, IIRAIRA, NACARA, AC-21st Century, LIFE ACT, the 9/11 bill, and many other smaller measures that have been passed since 1990.

Lawmakers should start with areas of reform around which there is already significant consensus and popular support. These include better workplace enforcement and compliance, such as universal mandatory E-Verify; amnesty for illegal aliens brought by their parents at a young age and who grew up here; ending the visa lottery and other programs that do not serve our national interest; completing the entry-exit system; reforming the immigration court system; expanding federal-local law enforcement partnerships; and rebalancing our legal immigration system to admit a larger proportion of immigrants who will be self-sufficient.

But before undertaking any large-scale legalization program, lawmakers must be able to assure the public that the laws we have will actually be enforced, and that such an amnesty will not cause another surge of illegal immigration. The government needs to show meaningful and sustained commitment to attaining operational control of the borders and enforcing immigration laws in the interior in a transparent way, so that all illegal immigrants -- not just those who are convicted criminals and known terrorists – are potentially held accountable for violating our law and are preventing from gaming our systems. A more detailed laundry list of what meaningful enforcement includes is outlined in our publication "ABCs of Effective Immigration Enforcement," available on our website.[24] Progress should be measured not just by enforcement actions like apprehensions and removals, but by our success in reducing the stock of the illegally-resident population as well as the in-flow of new illegal migrants.

Our research indicates that most Americans reject the false choice of either mass deportations or mass legalization. In our latest poll, using neutral language, voters indicated that they preferred that illegal immigrants return home (52%) rather than be given legal status (36%). Further, 69 percent believe that giving legal status to illegal immigrants only encouraged more illegal immigration. These results suggest that enactment of the "comprehensive immigration reform" proposals would be a political mistake as well as a policy mistake. ###

[24] Jessica Vaughan, "ABC's of Effective Immigration Enforcement," http://cis.org/Announcements/Amnesty-Panel-Discussion-01142013.

TESTIMONY OF STEVE CASE
CHAIRMAN AND CEO, REVOLUTION LLC
CO-FOUNDER, AMERICA ONLINE
BEFORE THE U.S. SENATE COMMITTEE ON THE JUDICIARY
HEARING ON "COMPREHENSIVE IMMIGRATION REFORM"
216 HART SENATE OFFICE BUILDING
FEBRUARY 13, 2013

Chairman Leahy and members of the Committee:

Thank you for the invitation to share my perspective on an issue central to our history and critical to our future.

I appear before you today as an entrepreneur who founded and built America Online just a few miles from the Capitol; as an investor through my company Revolution where we mentor and support entrepreneurs across the United States; as a civic leader working on public policy and private sector initiatives focused on improving the environment for entrepreneurs to start and grow companies; and as a colleague and friend of talented immigrant-entrepreneurs and innovators who devote themselves to their companies and contribute to our country. Working across industries for three decades I have seen firsthand the effects of both smart and misguided policies on our businesses, our communities, and our nation's economic competitiveness.

To understand this debate in context, it is necessary to remember that the story of America is in part the story of entrepreneurs who settled this land seeking a better life and who through grit, hard-work, and creativity built companies, cities, and whole new industries that power the strongest economy the world has ever known.

Our country did not become the leading economy by luck or accident. Iconic, Fortune 500 companies such as Intel, DuPont, and Google that employ thousands of Americans who deliver goods and services around the world did not simply come to be one day. Revered American cities like New York, Chicago, and Los Angeles that showcase our cultural, artistic, and

economic might did not sprout up out of chance. New industries for telephones, airplanes, and the Internet that improve the way we live our lives were not randomly conceived.

It was the work of pioneering entrepreneurs - beginning with the country's earliest settlers, our nation's first immigrant entrepreneurs - who took a risk hoping to turn dreams into businesses. From the mom and pop bakery on Main Street to fast-growing tech companies like Facebook, the primary drivers of our economic growth have been and will continue to be startup businesses that create value, generate revenue, produce jobs, spur innovation, and expand the tax base. According to the Kauffman Foundation, in the past three decades startups less than five years old created almost 40 million American jobs - all the net-jobs created during that period.

And from the earliest days, immigrant entrepreneurs started some of America's most celebrated enterprises. U.S. Steel, Pfizer, Kraft Foods, Honeywell, AT&T, Yahoo!, and Goldman Sachs were all started by immigrants. Today, 40 percent of Fortune 500 companies in the United States were started by immigrants or the children of immigrants, employing 10 million people across the globe and doing $4 trillion in revenue. Of the 10 most valuable brands globally, seven of them come from American companies founded by immigrants or their children. In the past 15 years, immigrants founded one quarter of U.S. venture-backed public companies.[1]

Statistics show that immigrants are almost twice as likely as U.S.-born workers to start a company. Between 1995 and 2005, half of Silicon Valley startups had an immigrant founder. In 2005 alone, those businesses achieved $52 billion in sales supporting 400,000 jobs. In 2011, more than three-quarters of the patents filed at the top ten patent-producing U.S. schools had an immigrant inventor. Of the 1,600 computer science PhD graduates from our universities in 2010, 60 percent were foreign students.[2]

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[1]Partnership for a New American Economy, "The 'New American' Fortune 500" (2011). *Available at* http://www.renewoureconomy.org/sites/all/themes/pnae/img/new-american-fortune-500-june-2011.pdf

[2] Partnership for a New American Economy, "Fact Sheet." *Available at* *http://www.renewoureconomy.org/sites/all/themes/pnae/img/facts.pdf*

And this is not just about technology companies. When Hamdi Ulukaya, an immigrant from Turkey told friends that he was going to start a yogurt company in upstate New York in 2005, they advised against the idea. But Hamdi was adamant. He hired four employees to begin packaging yogurt by hand, and eight years later Chobani Yogurt generates $1 billion in sales, has hired 1,500 American workers, and is expanding operations across the country.[3]

Mr. Chairman, high-skilled immigrants have always been job creators, not job takers. They have been a valuable source of creativity and innovation helping to build the most diverse and entrepreneurial economy in the world. The mistake that opponents of immigration reform make is believing that our society and economic growth are zero sum. They are not. More talented immigrants joining the American family does not equate to fewer jobs, it equates to more jobs.

Others argue that instead of allowing more high-skilled immigrants to stay we should instead focus on better training and STEM education for America's youth. This is a false choice. We can and must do both: draw the best talent from across the globe, and develop more talent in science, math, technology, and engineering here at home. We must bolster U.S. STEM education by giving teachers and students the tools they need. But we also need to be a magnet for talented entrepreneurs and engineers from other countries. It is not the case that an increase in foreign talent will increase unemployment for native workers. Studies show that from 2000 to 2007, every 100 additional foreign-born workers in STEM fields created 262 additional employment positions for native U.S. workers.[4]

In recent years, our nation's entrepreneurial edge has been slipping away. Even before the recent economic downturn took hold, new company formation was down a quarter, entrepreneurs were adding fewer jobs than they had historically, public offerings were down for small and medium-sized companies, and capital was slower to reach high-growth enterprises. An entrepreneurial slowdown is antithetical to an economy reeling and striving to return to full employment.

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[3] Walsh, Megan, "Chobani Takes the Lead," *Bloomberg Businessweek (2012). Available at http://www.businessweek.com/articles/2012-07-31/chobani-takes-gold-in-the-yogurt-aisle*

[4] American Enterprise Institute for Public Policy Research and the Partnership For a New American Economy, "Immigration and American Jobs" (2011). *Available at* http://www.renewoureconomy.org/sites/all/themes/pnae/img/NAE_Im-AmerJobs.pdf

Last year the Congress and the White House came to recognize these troubling trends and worked together in bipartisan fashion to pass the Jumpstart Our Business Startups Act (JOBS Act) to help entrepreneurs raise capital from more sources, grow their businesses with less burden, and access public markets earlier to boost job creation. The JOBS Act was an important step forward in improving the environment for entrepreneurs, but the legislation did not address the high-skilled talent issue – the one issue many of us believe is paramount when it comes to ensuring our economic competitiveness.

Now is the time to act.

Every year, arbitrary immigration caps force approximately one-third of the 50,000 foreign-born STEM graduates from our universities to leave the country. After earning a Masters or PhD from universities such as Stanford, Carnegie Mellon, and MIT, these talented men and woman move to competitor nations and launch businesses abroad that compete with our workers here at home. If our military had a similar policy we would train soldiers, sailors, and pilots at West Point, the Naval Academy, and the Air Force Academy with world-class battlefield skills, only to send them away to join the militaries of foreign nations. This is part of the reason why in Silicon Valley over the past seven years the percentage of immigrant-founded startups has dropped from 52.4 percent to 43.9 percent.[5]

A few months ago I was having breakfast with a group of young entrepreneurs in Chapel Hill, North Carolina when I met Deepak, a young, up-and-coming star in the Research Triangle's entrepreneurial ecosystem. Deepak was working to grow his health-care startup, create jobs, and enable people from around the world to live healthier lives by personalizing the delivery of health and wellness advice. Deepak was born in India, has a PhD in genetics from the University of North Carolina, and his startup has achieved 40 percent month-over-month growth. Yet his green card status remains uncertain and as a result Deepak is having a difficult time convincing

[5] Wadhwa, Vivek; Saxenian, AnnaLee; Siciliano, Daniel F; "America's New Immigrant Entrepreneurs: Then and Now" (2012). *Available at* http://www.kauffman.org/uploadedFiles/Then_and_now_americas_new_immigrant_entrepreneurs.pdf

investors to fund his expansion. Deepak is ready to hire more employees in Raleigh. Instead he waits.

There are thousands of these stories across the country. But it's not just about the competitiveness of our startup economy. Facebook almost relocated a key project, and numerous employees, offshore until it finally obtained a late H-1B visa for a Stanford graduate from Spain. Google, along with other large firms, has been forced to relocate part of its operations abroad due to the challenges of getting work visas and green cards.[6]

Meanwhile, as we grow complacent in the global battle for talent, our competitors are picking up their game.

China has dedicated resources toward increasing its talent pool of skilled workers to 180 million in the coming years. The Chinese launched the "1000 Talents Program" to attract talented researchers back to the country.[7] Australia skips the temporary work-visa step altogether and provides fast-track permanent residency to high-skilled workers and their spouses even before they relocate. In fact, Australia grants nearly as many employment-based green cards as the United States, despite having an economy 14 times smaller.[8] Canada took action just a few weeks ago when its Citizenship and Immigration office announced a new startup visa program that grants permanent residency to foreign-born innovators who receive backing from Canadian investors. Jason Kenney, the Citizenship and Immigration Minister of Canada, told one newspaper that he plans:

> *"...to go down to Silicon Valley with some of the industry associations here and fly the Canadian flag and say to those bright young prospective immigrants, some of whom are*

[6] Gruenwald, Juliana, "Progress on Immigration, Education Key to Reviving Jobs, Tech Leaders Say," *National Journal (2011). Available at* http://www.nationaljournal.com/tech/progress-on-immigration-education-key-to-reviving-jobs-tech-leaders-say-20110802

[7] Thousand Talents Program. *Available at* http://www.szdo.cuhk.edu.hk/en-GB/research-funding/national-funding/1000-talents-plan

[8] Dalmia, Shikha, "Canada Shows How U.S. States Can Fix Immigration," *Bloomberg (2012). Available at http://www.bloomberg.com/news/2012-11-28/canada-shows-how-u-s-states-can-fix-immigration.html*

going to create massively successful companies in their lifetime, that they can come to Canada through this program and they can get permanent residency here, and have the certainty that this represents and start their businesses in Canada."[9]

From Singapore to Germany to India, countries around the world are making it easier and more attractive for talented foreigners to settle and contribute. What was once the secret sauce of our economic advantage – a strong entrepreneurial economy that rewards risk, disruption and innovation – is being replicated aggressively around the world. A few decades ago we lost ground in the manufacturing sector when we failed to respond aggressively to global competition. We cannot afford to do the same when it comes to the entrepreneurial sector.

The good news is that Democrats and Republicans in Congress and the White House agree that we need to take action. Numerous bipartisan, high-skilled immigration proposals have been teed up in recent months that contain smart reforms aimed at righting this policy. A combination of these reforms should make up a core component of a comprehensive immigration package. The Startup Act permits entrepreneurs and STEM graduates to stay and set up businesses. The I-Squared Act increases the amount of available green cards and removes the per-country cap for employment-based visas. The Startup Visa Act allows foreign entrepreneurs to move to the United States so long as they have financial backing from American investors. The SMART Jobs Act slows the STEM "brain drain" by adding a new non-immigrant F-4 visa for students pursuing masters or doctorate degrees and puts them on a path to legal, permanent residency. Two more bills introduce in the House last fall would award green cards to top foreign-born STEM graduates and entrepreneurs. And Chairman Leahy has introduced additional immigration proposals that merit serious consideration as part of comprehensive immigration reform, including a compelling idea based on the EB-5 program working in his home state of Vermont.

President Obama has called for stapling green cards to the diplomas of American-educated immigrants with STEM degrees, and in the Senate the bipartisan "Gang of Eight" agreed on a

[9] **Dobby, Christine, "Startup Visa Program To Launch April 1 With Participation of CVCA and NACO,"** *Financial Post (2013). Available at http://business.financialpost.com/2013/01/24/startup-visa-program-to-launch-april-1-with-participation-of-cvca-and-naco/*

framework to admit the skilled workers necessary for a competitive economy. From the White House plan, to the numerous aforementioned high-skilled legislative proposals, to additional bills, there are smart ideas on the table. While some increase the number of green cards or the number of H-1B visas, others create new entrepreneurial visas, remove the per-country cap for employment-based visas, add a new non-immigrant F-4 visa, or build on successful programs that lure investment and talent to the United States, all of the proposals together make it easier to recruit and retain innovators, founders, and job-creators. Whether a person starts as a student, an employee in a large corporation, or as a partner of a U.S. enterprise abroad, we should enact measures that enable talented entrepreneurs to start businesses and innovate here in the United States. I defer to the men and women on Capitol Hill and at the White House to determine which of these specific provisions make up the final plan, but I am confident we are close to meaningful high-skilled immigration reform.

While my main focus is on talent, I also believe we need to work together to create a dignified path to citizenship for the 11 million undocumented workers currently in the country, strengthen border security, and crack down on employers who knowingly hire illegal workers. The legal, social, and moral imperatives of comprehensive immigration reform speak to our character as a nation. This is an emotional issue. It is a vexing issue. Families are split apart by our immigration laws. Young people who love this country are forced to leave. I do not envy the difficult choices you all face. But I believe that the smart and responsible course is passing one comprehensive bill that deals once and for all with these issues. This is the right thing to do, but also the smart thing to do. Sensible immigration policies will ensure America remains a beacon of hope and opportunity.

A few months ago I stood next to Republican Majority Leader Eric Cantor and President Obama in the Rose Garden after they joined together to pass the JOBS Act on behalf of our nation's entrepreneurs. Pundits said it would never happen, particularly given it was an election year. But it did. Bipartisan progress is possible during moments in Washington when diverse groups of citizens call for action. In recent months, a broad coalition of religious leaders, law enforcement, labor, big businesses, and entrepreneurs have come together to press our elected leaders to pass comprehensive immigration reform. This is the moment.

History teaches us that the most open and inclusive societies tend to be the most successful: Spain in the early 1400s pioneering navigation and global trade; Italy in the 1500s advancing science and learning. But no country has benefited more from immigration than the United States. We began as a startup founded by immigrant settlers who left a difficult situation to build a better life. What distinguishes us is that we have always been a magnet for risk-taking men and women from across the world hoping to start businesses, innovate, and contribute. That is part of our DNA. It is why in the 20th century we created more wealth, opportunity, and economic growth than any other nation.

But that advantage is slipping away. As the economies of developing countries mature rapidly it is no longer the easy choice to settle in the United States. There are now increasingly attractive opportunities abroad. We must improve the environment for entrepreneurship to thrive. Now is the time to work together and pass comprehensive reform that fixes our high-skilled immigration system.

Mr. Chairman and members of the Committee, thank you for your time.

Statement by Chris Crane, President,

National Immigration and Customs Enforcement Council 118

of the

American Federation of Government Employees

Before the

Senate Committee on the Judiciary

February 13, 2013

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 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 3 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 under DACA."

With all of the restrictions placed on ICE immigration agents in enforcing the 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 for 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.

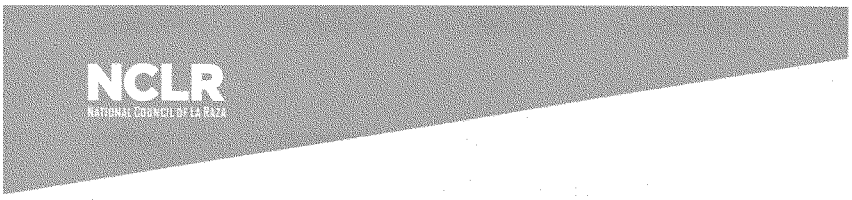
In Dover, Delaware, ICE agents conducted surveillance of a vehicle registered to an ICE criminal fugitive. When a man attempted to enter the vehicle and depart, ICE agents discovered that while not their arrest target, the man was an illegal alien with multiple convictions for driving without a license. 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 excluding 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.



A COMMONSENSE SOLUTION FOR IMMIGRATION REFORM MUST INCLUDE A ROADMAP TO CITIZENSHIP

Presented at

"Comprehensive Immigration Reform"

Submitted to
U.S. Senate Judiciary Committee

Submitted by
Janet Murguía
President and CEO
National Council of La Raza

February 13, 2013

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Chairman Leahy and Ranking Member Grassley, I thank you for holding this hearing on immigration reform, and I appreciate the opportunity to appear before the Committee today.

I come before you today in several capacities. I am the President and CEO of the National Council of La Raza (NCLR), the largest national Hispanic civil rights and advocacy organization in the United States, an American institution recognized in the book *Forces for Good* as one of the best nonprofits in the nation. We represent some 300 Affiliates—local, community-based organizations in 41 states, the District of Columbia, and Puerto Rico—that provide education, health, housing, workforce development, and other services to millions of Americans and immigrants annually.

Like our country, NCLR has a long legacy of engaging in immigration, evidenced through our work in the Hispanic community and in Washington, DC. Some of our Affiliates began as settlement houses that helped immigrants from Europe adjust to American society at the turn of the 20th century. Others are the modern-day spiritual descendants of the settlement house movement, teaching English, providing health care, promoting financial literacy, and otherwise easing the integration of immigrants into the mainstream. We support and complement the work of our Affiliates in communities by advocating for public policies here in Washington, and increasingly at the state level.

NCLR contributed to shaping the Immigration Reform and Control Act of 1986, the Immigration Act of 1990 to preserve family-based immigration, and the Nicaraguan Adjustment and Central American Relief Act (NACARA), and we led four successful efforts to restore safety net systems that promote immigrant integration. We have worked with Presidents Reagan, Bush Sr., Clinton, and Bush Jr. to achieve the best results possible for our community and for the country. We know that working with both parties is the only way to get things done, and we thank the Congressional Hispanic Caucus for their leadership on this issue, as well as the bipartisan group of senators working on immigration reform legislation in this chamber.

I am also the proud daughter of parents who emigrated from Mexico. My father worked in a steel mill and my mother looked after us and other neighborhood children to help make ends meet. They worked hard to provide for our family in Kansas. My parents stressed the importance of education, and thanks to the values that they instilled in us, two of my siblings are federal judges, another is a Harvard Law School graduate in private practice who is also deeply engaged in philanthropy, and I had the opportunity to work in both Congress and the White House.

At the outset, I want to join the growing consensus that Congress has a unique, historic opportunity to pass immigration reform this year. Not only does fixing our broken immigration system benefit immigrants themselves, but it is in the interest of our country. Immigration to the United States should be orderly and legal, promote economic growth, sustain our families, and be implemented in a way that is consistent with our nation's values. That is why we need immigration reform that (1) restores the rule of law by creating a path to legalization and a roadmap to citizenship for the 11 million aspiring Americans, as well as smart enforcement that improves safety, supports legal immigration channels, and prevents discrimination; (2) preserves the rule of law by creating workable legal immigration channels that uphold the principle of

family unity, strengthen our economy, and protect workers' rights; and (3) strengthens the fabric of our society by adopting proactive measures that advance the successful integration of new immigrants.

As the recent election clearly demonstrated, the issue of immigration is a galvanizing one for the nation's Hispanic community. There is a precious opportunity to address it humanely and responsibly. The toxicity in this debate has affected us deeply, regardless of immigration status, and we see getting this debate on the right course as a matter of fundamental respect for the presence and role of Latinos in the U.S. Latino voters generated the game-changing moment for immigration last November, creating an opening to finally achieve the solution our country longs for. And our role is growing. An average of 878,000 Latino citizens will turn 18 each year between 2011 and 2028. Our community is engaged and watching this debate closely.

Immigration Enforcement

The need for policy solutions is urgent because of the effects our failed system has on our economy and on our communities. But I must note that the failure to enact immigration reform has not meant inaction on immigration enforcement over the past two decades. In fact, by nearly every standard, more is being done than ever before to enforce immigration laws. Measured in terms of dollars, not only are we spending more on immigration enforcement than at any time in history, but the federal government today spends more on enforcing immigration laws than on all other categories of law enforcement combined.

Measured in qualitative terms, never before has our country used a broader array of enforcement strategies than we do today. Through congressional appropriations and the passage of legislation like the Secure Fence Act and the Southwest Border Security Bill, the federal government has certainly enacted an enforcement-first policy. We have seen more personnel, more technology, more fencing, and more money put into border security, along with new and expanded initiatives like Operation Streamline, which criminally prosecutes all undocumented border crossers and has overwhelmed our court system and wasted precious judicial resources. Throughout the interior, enforcement has increased through programs like Secure Communities and 287(g) agreements. At the worksite, E-Verify has been expanded, and the incidence of I-9 audits is at unprecedented levels. And a number of states have enacted their own immigration enforcement measures.

Measured by results, detention and prosecutions of immigration law violators, as well as deportations, are at all-time highs. Perhaps for the first time since we acquired much of the American Southwest in the late 1840s, net migration from Mexico is now zero—or less—according to the best available research.

Reasonable people can disagree about how much enforcement is enough. Even though the Government Accountability Office (GAO) has testified before Congress that prevention of every single unauthorized border crossing would be unreasonable, for some people no amount of enforcement will ever be enough. One cannot help but note that this is not the standard that we apply in any other area of law enforcement.

All I can say is that from the perspective of the Latino community, current levels of immigration enforcement are already intolerable, because virtually all of us are affected. The way in which these policies are being carried out is destroying the fabric of immigrant communities across the nation. And the magnitude of that devastation goes beyond immigrant communities, as the lives and fate of immigrants are fundamentally interwoven with those of citizens, particularly in considering the treatment of those who are deemed to be immigrants. That intertwined fate is evident in the Latino community, and it is the reason why immigration has become such a galvanizing issue with this electorate. Many U.S. citizens and lawful permanent residents have been stopped, detained, arrested, and even mistakenly deported as a result of federal and state immigration law enforcement. Hundreds of thousands of U.S. citizens and lawful permanent residents have been separated from family members. For example, between July 1, 2010 and September 31, 2012, the Department of Homeland Security (DHS) deported 204,810 parents of U.S. citizens. Indeed, our nation's very commitment to equal justice under the law is imperiled at current levels of immigration enforcement.

Despite all this enforcement, despite almost half a million people being deported every year, despite several years of high unemployment and slow economic growth in sectors where immigrant labor had been plentiful, 11 million people are not leaving. The notion that we would deport 11 million people is an ugly nightmare, and the notion that they will leave on their own is a policy fantasy. So with that reality in mind, what would we have our country do?

Legalization and Roadmap to Citizenship

As this Committee is aware, numerous independent commissions have called for an earned legalization program with a roadmap to citizenship.[1] It is easy to understand why. No healthy society can tolerate the existence of a subclass of people outside the scope and protection of the law. Those living in the shadows are easily exploited by employers, thus lowering the wages and labor standards for all workers and undercutting businesses that play by the rules. They are afraid to report crimes that they may experience or witness, undermining public safety.

The continuation of a situation where we collectively nod and wink because our society benefits from their labor is unacceptable. When our laws don't reflect reality, reality will win every time.

That is why if we are to restore the rule of law, the single most essential element of immigration reform is an earned legalization program with a clear, achievable roadmap to citizenship—not because enforcement is unimportant, but because enforcement is all we have done thus far, and restoring the rule of law requires both elements. Most undocumented immigrants are long-term U.S. residents; they work hard, pay taxes, and otherwise abide by our laws. They provide for U.S. citizen spouses and children; they are our fellow churchgoers and children's playmates. Some of them came to this country as children, and this is the only country they know and consider home. Their lives are inextricably linked with ours.

[1] Such commissions include the Independent Task Force on Immigration and America's Future, co-chaired by Spencer Abraham and Lee Hamilton, and the Council on Foreign Relations Independent Task Force, co-chaired by Jeb Bush and Thomas McLarty.

In addition, numerous studies show that legalization and citizenship would have positive benefits for the economy overall, and for *all* workers, not just for those legalized.

The interests of our country are best served by allowing these long-term residents to come forward, pass a background check, pay taxes, learn English, and earn the ability to apply for citizenship just like every other group of immigrants before them. An immigration bill must not create a permanent subclass of workers who are expected to support the rest of us in our pursuit of the American Dream without having access to it themselves. The U.S. has been successful as a nation of immigrants because we allow and encourage those who come to our shores to fully participate in American life. By encouraging citizenship and civic participation, we strengthen immigrants' connection to the nation and strengthen our common social bonds.

It is important to note that the American public puts a special premium on citizenship, because to the American people citizenship signifies fully embracing our country and accepting the contract that all of our ancestors at some point made: to be fully American. Poll after poll has shown that a majority of Americans support an earned legalization with a roadmap to citizenship as an essential component of immigration reform. A bipartisan poll released in January showed that 80% of voters favor a full package of immigration reforms, including a roadmap to citizenship, followed by a Gallup poll showing that more than seven in ten voters would support a roadmap to citizenship.[2] The American people want to see immigrants all in—not partially in, not in a special status, but in the same boat as everyone else.

I can tell you with absolute conviction that the Latino community, three-quarters of whom are United States citizens, will not look kindly at immigration legislation that condemns people to second-class status. The community desires real reform, with a clear, direct roadmap to citizenship. We understand that there will be questions about how long the process should take and what specific requirements need to be met. Those are legitimate items for debate.

But if the process is not real—if the requirements are designed to impede people from fulfilling them, or if so many barriers are put in the way that many participants can't overcome them, or the roadmap depends on markers that can be arbitrarily moved or delayed midstream—then the Latino community, and I believe most Americans, will not consider the program legitimate.

Legal Immigration

While the focus of this testimony is on legalization and a roadmap to citizenship as the centerpiece of immigration reform, there are obviously other provisions of immigration reform legislation that are important as well. Improving our legal immigration system is the surest way to preserve the rule of law once we have restored it.

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[2] See the January 2013 Hart Research Associates/Public Opinion Strategies Poll at http://www.seiu.org/immigration/Immigration%20Toplines%20Public%20Release.pdf and the February 2013 Gallup poll at http://www.gallup.com/poll/160307/americans-widely-support-immigration-reform-proposals.aspx. For more polling, see http://americasvoiceonline.org/polls/poll-after-poll-american-public-wants-immigration-reform-with-citizenship.

Family unity has always been the cornerstone of our immigration system. We must address the unnecessary separation of families who are kept apart by extraordinarily long wait times for certain family visas, including the families of binational and same-sex couples. Millions of close family members of U.S. citizens and permanent residents are stuck waiting outside the U.S. for visas to become available; many wait for more than two decades. These close relatives are able to make vital contributions to the U.S. economy as productive workers and entrepreneurs. Keeping families together and strong is a core principle; it promotes the economic stability of immigrants and their integration into our country, and we must continue our historic commitment to this idea.

Immigration reform must also provide a way for immigrant workers to enter the U.S. through safe and legal channels in order to meet legitimate workforce needs across sectors of our economy. We are confident that immigration reform can establish a system that keeps the United States on the leading edge of the global economy and preserves the values of family unity. We believe that a process which responds to U.S. labor needs in a regulated, orderly fashion—while breaking precedent by providing for full labor rights and protections—is better equipped to break the cycle created by previous immigration reforms, which have tightened enforcement but failed to establish effective legal avenues that respond to the needs of our economy and protect the American workforce. In short, NCLR believes that such a program, properly constructed, with the opportunity for workers to eventually pursue legal permanent residency and then citizenship, is the best way to prevent the nation from having another debate in the future about legalizing yet another group of workers who live and work unlawfully in the U.S. Let's be clear—we have an undocumented population not because there was a legalization program in the '80s, but because our legal immigration system is not keeping pace with our economy and our family values.

Our legal immigration system must reflect our future and take into account our country's and workers' needs, from the fields all the way to Silicon Valley. A balance is needed where employers are able to recruit the talent we need today, and contribute to a new funding stream that ensures our children have the skills they need for the high-paying jobs of tomorrow. Similarly, as important contributors to our economy, farmworkers, now and in the future, should be given true economic freedom to find agricultural jobs and improve their conditions; and an opportunity to earn immigration status and citizenship. And no matter what industry, future worker programs must be designed to prevent the systematic abuse we have too often seen.

Just as we need to ensure that our future legal immigration system protects workers' rights, we should take this opportunity to strengthen labor law enforcement and eliminate the economic incentives for unscrupulous employers to hire unauthorized workers. Although there is widespread agreement that employment is the principal magnet for unauthorized migration, it's curious that few are calling for the kind of buildup in our labor law enforcement infrastructure that we've seen in immigration law enforcement.

Immigrant Integration

Finally, we need to do more to achieve the successful integration of immigrants into American society. Americans hold this in high regard and want to see immigrants pledge allegiance to our

country. And immigrants want to learn English and make greater contributions to the nation—I know it, because my organization and our hundreds of Affiliates help immigrants on this journey every day of the week. We need to strengthen that process, not undermine or ignore it.

At the turn of the 20th century, the integration of immigrants was accelerated by both the public and private sectors. Government, by establishing universal public education and creating the adult education system, established strong policy structures that helped everyone, including immigrants, acquire the skills they needed to work in a rapidly industrializing economy. And the private sector, through the creation of settlement houses, civic organizations like the Knights of Columbus, and the seeding of what eventually became the modern public library system, stepped in to ease immigrants' transition to our society. We need a 21st-century strategy to promote the integration of immigrants into the economic and social mainstream, and we should start by building new mechanisms to achieve this through immigration reform.

Conclusion

All of us in this room know the magic of the American Dream. Virtually all of us are the descendants of people who came to this country with nothing but a burning desire to provide a better life for their children. We now have the power to make this dream a reality for millions of fellow human beings who are ready to earn that opportunity. Some of them picked, processed, prepared, or served the food we will eat tonight. Others are, at this moment, caring for our children, our parents, or our grandparents. And yes, many are ready to help support our technology, math, and engineering needs.

They may be our neighbors, our fellow churchgoers, and, for many of us, our family members. Now is the time to help them become our fellow citizens, our fellow Americans, by passing comprehensive immigration reform. You have a great deal of power to help these families. And in so doing, you will be helping our economy and our nation.

Statement Of Senator Patrick Leahy (D-Vt.),
Chairman, Senate Judiciary Committee,
Hearing On "Comprehensive Immigration Reform"
February 13, 2013

President Obama should be commended for making Comprehensive Immigration Reform a top priority. He followed his speech in Nevada last month with strong comments in his State of the Union speech last night. I agree with his call for real reforms that will not only address our undocumented population, but will improve legal immigration by reducing the bureaucracy and delays that hinder our job creators and strain families. His recommendations for how to tackle one of our Nation's most pressing problems are thoughtful, realistic, and inclusive. I am particularly pleased to see that the President's proposal includes better access to visas for victims of domestic and sexual violence, improved laws for refugees and asylum seekers, and the assurance that every family receives equal treatment under the law. The President's leadership, the commitment of Majority Leader Reid, and the recent work of Senators are encouraging.

I look forward to seeing principles turned into legislation. Most importantly, comprehensive immigration reform must include a fair and straightforward path to citizenship for those "dreamers" and families who have made the United States their home -- the estimated 11 million undocumented people in the United States. I am troubled by any proposal that contains false promises in which citizenship is always over the next mountain. I want the pathway to be clear and the goal of citizenship attainable. It cannot be rigged by some illusive precondition. We should treat people fairly, and not have their fate determined by matters beyond their control, nor by the judgments of those who have been among the most resistant to enacting rational legislation.

This President and Secretary Napolitano have done more in the administration's first four years to enforce immigration laws and strengthen border security than in the previous administration's entire eight years. A Democratically-controlled Senate passed a $600 million border security supplemental in 2010. Yet, despite all our efforts and all our progress, there are still some stuck in the past who are repeating the demands of "enforcement first." I fear they mean "enforcement only." To them I say that you have stalled immigration reform for too long. We have effectively done enforcement first and enforcement only. It is time to proceed to comprehensive action to finally bring families out of the shadows.

The President is right: now is the time. And in my view it is time to pass a good bill, a fair bill, a comprehensive bill. I want this Committee to complete work on such a bill over the next few months. Too many have been waiting too long for fairness.

At least since 2005, during the second term of the last Republican President, there has been broad acknowledgement that our immigration system is in dire need of improvement and reform. The Senate passed a bill in 2006, but it was thwarted by the Republican House. Again, in 2007, under the leadership of Senator Kennedy, we tried to work with President Bush to advance broad reforms. By then, almost all Senate Republicans had abandoned the effort and opted to become part of the enforcement-only crowd. I supported President Bush in his efforts then; I support President Obama's efforts now.

I hope that we will honor those who contributed so much to building this country after coming from distant lands in search of freedom and opportunity. Few topics are more fundamental to who and what we are as a Nation than immigration. Immigration throughout our history has been an ongoing source of renewal of our spirit, our creativity and our economic strength. From the young students brought to this country by their parents seeking a better life, to the hardworking men and women who play vital roles supporting our farmers, innovating for our technology companies, or creating businesses of their own, our Nation continues to benefit from immigrants. We need to uphold the fundamental values of family, hard work, and fairness.

We all share in the benefits that immigration brings to our states, communities and businesses, and we will all share in an immigration system designed for the 21st Century. Immigration helped build our Nation and enriches our society and economy. In Vermont, immigration has promoted cultural richness through refugee resettlement and student exchange, economic development through the EB-5 Regional Center program, and tourism and trade with our friends in Canada. Foreign agricultural workers support Vermont's farmers and growers, many of whom have become a part of farm families that are woven into the fabric of Vermont's agricultural community.

The dysfunction in our system affects all of us. It affects the constituents of every Senator on this Committee, including Vermonters. The unfair and harmful policy that prohibits dairy farmers from obtaining agricultural workers through the H-2A visa program must be corrected. This policy drives workers underground and hurts farmers who are working hard to produce the food on which we all depend. It defies common sense and it is time we changed that.

We must also do better by gay and lesbian Americans who face discrimination in our immigration law. Today, Senator Susan Collins and I will introduce the Uniting American Families Act. This legislation will end the needless discrimination so many Americans face in our immigration system. Too many citizens, including Vermonters who I have come to know personally and who want nothing more than to be with their loved ones, are denied this basic human right. This policy serves no legitimate purpose and it is wrong.

Yet, I have heard some disparage fairness in our immigration law as a "social issue" that threatens their narrow view of what immigration reform means. Well, to me, the fundamental civil rights of American citizens are more than just a social issue. Any legislation that comes before the Senate Judiciary Committee should recognize the rights of all Americans, including gay and lesbian Americans who have just as much right to spousal immigration benefits as anyone else.

We know that the President has a comprehensive proposal that he has deferred sending to us at the request of Senators working to develop their own legislation. Our window of opportunity will not stay open long. If we are going to act on this issue, we must do so without delay. I hope today's hearing helps to emphasize the urgency of the situation.

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Statement by Senator Chuck Grassley
Comprehensive Immigration Reform
February 13, 2013

"Immigration reform is a perilous minefield of emotionally charged issues. One cannot but consider any such discussion as being about one's own ancestors and in some cases, about oneself. Further, it brings into question one's image of America's past, an assessment of America's present and, most difficult of all, the direction of America's future. There is a general consensus that reform is required, some clear restatement of where we stand. It is imperative that the debate concerning such needed reform be conducted in an atmosphere of calm, compassionate, and careful deliberations recognizing the difficulty of the question and the earnestness of those who will speak to it."

Those were the words of Chairman Alan K. Simpson on May 5, 1981, just as the Congress was about to undertake an overhaul of our immigration system and put a legalization program in place. His words are valuable and relevant today. While there may be differences of opinion on how to enact real change and improve the system, my hope is that we can have a real discussion on the merits and a civil discourse that will bring about true reform. At the end of the day, we must do what is right for our country and for American citizens, and we must provide a compassionate, fair and legal process for people who want to become a part of this great country.

Since I was elected to the Senate in 1980, I have served on this committee. I have seen my share of immigration debates. I worked very hard from 1981 until 1986 to help form a consensus, and I voted for the 1986 amnesty because I was led to believe it was a one-time solution to our problem. I was wrong, and today we are forced to deal with the same problem and the same arguments and the same ideas on how to improve the situation.

I applaud the movement by some members, including several on this committee, to work towards an agreement. I've read the bipartisan framework for immigration reform that this group has written. The one line that struck me is the last sentence in the preamble. It states, **"We will ensure that this is a successful permanent reform to our immigration system that**

will not need to be revisited." That sentence is the most important part of that document, and we must not lose sight of that goal.

We need to learn from our previous mistakes so that we truly don't have to revisit the problem. I hope this body is successful. To be successful, though, first and foremost, we need enforcement of the laws on the books.

We need an administration that won't turn a blind eye to sanctuary cities, and will take stronger action against countries that refuse or delay in taking back their aliens. We need an administration that will perform the constitutional duty of faithfully executing the laws.

We need a more secure border. We need an administration that will not fail to implement a biometric entry and exit system to track foreign nationals, which was originally required by Congress in 1996. We can't reward people who do not abide by the terms of their visas or overstay their welcome. We need double layer fencing and other technology along both the northern and southern borders, and we need to provide stiff penalties on those who attempt to do harm to our agents who are on the front lines.

We need E-Verify to be used by every business in America to ensure they have a legal workforce. We need to enhance this tool for employers. At the same time, we need to increase penalties on employers who refuse to use it or continue to hire people here illegally. We need to weaken the job magnet that draws people across the border.

We need legal immigration reform where we give high skilled and low skilled workers an avenue to enter and remain here. We need to enhance the avenues already in place, and we need to create new avenues where there's a gap. We need to give employers the tools to have a legal workforce, and incentivize them to hire documented and willing workers through legal channels. We need to root out and prevent fraud and abuse in these visa programs so they are being used as intended and not to the detriment of American workers.

We need to find common ground on how to deal with 12 million people here illegally. I do not think an easy path to citizenship is acceptable to the American people. Nor do I think it will solve the problem so the issue doesn't have to be revisited. An overnight legalization program for millions of lawbreakers is a short term band-aid, not a long term solution. I learned that from our 1986 amnesty.

The Chairman and I discussed this issue and we both agree that any immigration bill must go through regular order. A bill has a better chance of passage after going through a thoughtful debate and amendment process – in this committee and on the floor. I appreciate that the Chairman is holding the first hearing today, and I look forward to future hearings to dive more into the details of the issue.

I also welcome Secretary Napolitano today, and hope we'll get a better understanding of the President's ideas. The President campaigned on immigration reform leading up to the 2008 election, but refused to lead on the issue. While it appears to be a priority in his second term, the President's plan, announced on January 29, falls short of the reforms needed and does very little to ensure that enforcement will be taken seriously. The President's plan is silent on future guest workers when it's clear we need a program that works and fills the temporary need of employers who cannot find Americans able to do the jobs.

I plan on asking Secretary Napolitano about this administration's promise to be the most transparent in history. I take my responsibility to do oversight seriously. So, it's extremely frustrating that the questions I have asked of this administration and this Secretary have gone unanswered. It's a slap in the face of the American people who also want – and deserve – answers.

I plan to ask the Secretary about why agents in New Jersey were directed not to arrest a sexual predator whom they knew had overstayed his visa and had sexually abused a minor on several occasions. According to internal memos provided to the committee, Immigration and Customs Enforcement officials in Newark planned to arrest Luis Abrahan Sanchez Zavaleta on October 25, but delayed the arrest after learning it was likely to be a high profile case that would

garner significant media and congressional interest. Zavaleta had pled guilty as a juvenile in family court in New Jersey to sexual assault of an eight-year old boy, and police reports indicate that similar abuse had occurred on a total of eight occasions. All Republicans on the Judiciary Committee sent Secretary Napolitano a letter on December 19, 2012 and a follow-up letter on January 7, 2013.

On February 4, 2013, two officials from Immigration and Customs Enforcement briefed Committee staff but the Department has refused to make available before this hearing the official with firsthand knowledge, raising questions about what the Department is trying to hide. Staff is also still waiting for the department to provide requested documents and a full response to our letters.

But, here's what we know. Immigration and Customs Enforcement missed an opportunity to arrest Sanchez Zavaleta in 2010. Then his arrest was again delayed in 2012, from October 25 until December 6. Sanchez Zavaleta had a pending application for Deferred Action for Childhood Arrivals, the President's initiative to delay the deportations of up to 1.8 million people in the United States. This application was later denied on December 4. According to the ICE agents who briefed committee staff, Sanchez Zavaleta would have been eligible for DACA and his juvenile delinquent adjudication would not be a bar to eligibility. That is a shocking assertion: that U.S. Citizenship and Immigration Service would have the discretion to grant a child rapist's application to stay in the country. It is not clear why his DACA application was denied, although there's no doubt that it should have been. The Department has refused to provide a copy of that application or any documents related to it since we began asking questions nearly two months ago.

Today, Sanchez Zavaleta is free in the United States. After having served a few days in detention, he was released on bond and is being monitored by an ankle bracelet. It is unknown if Sanchez Zavaleta continues to work with youth as he did prior to being apprehended.

The Secretary must answer for the delay in arresting this sexual predator, and for allowing him to be on the streets today.

I also plan to ask Secretary Napolitano about her lack of cooperation and transparency with regard to the Deferred Action for Childhood Arrivals program. The Secretary, at the President's request, laid out a plan to provide en masse deferred action to certain people in the United States. Following that announcement, I sent several letters to the administration about how the program would be implemented. Our first letter to the President went unanswered.

Then Chairman of the House Judiciary Committee, Lamar Smith, and I posed several questions, including: What steps would be taken to ensure that fraudulent documents are not submitted in support of deferred action applications? In what circumstances will an individual who is denied deferred action be placed in removal proceedings? What sort of confidentiality protections will the administration give to applicants? What type of fraud detection mechanisms will be used? How will background checks be conducted and which specific databases will be used in this process? What information is provided to the intelligence community about applicants? Are in-person interviews going to be required, as they are done for other visa applicants? How will denials be processed, and why should adjudicators seek the permission of headquarters only when they deny?

We asked the Secretary for a complete set of data, including: how many people apply, are approved and denied; how many applications have fraud indicators or are denied on the basis of fraud; how many applications are approved or denied in spite of or because of one's criminal history; how many DACA recipients who applied and received advanced parole; how many DACA applicants requested, received or denied prosecutorial discretion; how many applications have been received for individuals in removal proceedings; and how many persons who were denied DACA have been put in removal proceedings.

At least five of our letters on DACA alone were ignored by the Secretary.

The Secretary has also failed to respond to me and the former Chairman of the House Judiciary about countries that refuse or delay in taking back their aliens. In a letter dated June 1, Chairman Smith and I asked the Secretary about aliens who are released in the United States due

to the *Zadvydas v. Davis* decision that prohibits the government from detaining a foreign national with removal orders for longer than 180 days. We asked if she would support a legislative fix to authorize the Department to detain aliens beyond six months. We asked if the Secretary has or would confer with the Secretary of State about using existing authority to discontinue granting visas to nationals of countries that deny or delay in accepting their aliens. Our letter on this very serious issue went ignored.

Finally, we have yet to receive responses posed by members of this committee after our last hearing with Secretary Napolitano. She appeared before us on April 25, 2012. As customary, the Secretary is asked to respond to questions we pose in writing. She has ignored them.

We are on the cusp of undertaking a massive reform of our immigration system. Yet, getting answers to the most basic questions is impossible. This administration has refused to be held accountable. I fear what will become of the President's promise of transparency if and when we do pass a bill. Enacting a bill is one part of the process; implementing a law we pass is another. If we don't have faith in this administration now, how can we trust in the future?

I look forward to hearing from the Secretary and our other esteemed witnesses.

Senator Hirono Opening Statement

Hearing before the
Senate Committee on the Judiciary
On
"Comprehensive Immigration Reform"

Wednesday, February 13, 2013
Hart Senate Office Building, Room 216
9:30 AM

Thank you Chairman Leahy and Ranking Member Grassley for holding this important hearing on comprehensive immigration reform, an issue about which I care deeply.

Immigration reform should be rooted in a set of guiding principles to ensure that our immigration system addresses the critical needs of our economy, while maintaining the nearly 50-year tradition of bringing families together.

There is a huge backlog in our legal immigration system. These backlogs have prevented Filipino Veterans of World War II, men who fought for our country, from reuniting with their children for decades.

We now consider how to address the numerous problems in a large and complicated system. To bring the millions of undocumented out of the shadows so that they can contribute to our society fully. To reduce and eliminate the backlogs in family-based immigration. And to reunite the Filipino veterans of World War II with their children.

I know many of my colleagues have highlighted the importance of providing green cards to STEM graduates of U.S. universities. I agree that we should not educate foreign students and then send them away to work for foreign competitors of American companies. It only makes sense to keep that talent here. However, we should not shift the purpose of immigration to the United States away from a family focus towards an employment focus. In advocating for more employment-based immigration we should not get tunnel vision and forget the human element of immigration. We should be looking to expand the opportunities for families to be reunited and kept together – and this should include LGBT families.

The needs of employers are important in this debate. But I believe that family-based immigration is essential to ensuring the continued vitality of the American economy. The success of immigrants in this country is often the success of immigrants with their families. Families provide American workers with a support network and social safety net.

I am also concerned about how women and children are treated, both in our current immigration system and under any reforms we put in place. Female immigrants and unaccompanied minors face unique circumstances that are often lost in this debate that focuses on enforcement and the job market. For example, a woman who stays at home as a domestic worker could fall through the cracks and be denied legal status if she suffers the loss of her husband or becomes a victim of domestic abuse.

Our immigration policies should allow for discretion in dealing with vulnerable populations. This should include how we treat families and children in our enforcement and detention system. But it should also include how we design an earned legalization program to be inclusive of women and children under immigration reform.

Senator Ted Cruz
Statement for the Record – "Comprehensive Immigration Reform"
Senate Committee on the Judiciary
February 13, 2013

For generations, individuals from around the world have come to America in pursuit of a more prosperous life. As a border-state senator and son of an immigrant, I have a deep and personal appreciation for the vast benefits of legal immigration and the dangers of a porous border.

Few doubt that our current immigration policies are not working. And despite repeated promises and commitments, our nation's border is still not secure.

We can and should improve the process by which people can come legally to America. We should minimize the burdens of dealing with the immigration bureaucracy, and we should continue to call out to the world, "give me your tired, your poor, your huddled masses yearning to breathe free."

At the same time, Washington must make good on its decades-old promise to secure our borders once and for all.

Modernizing legal immigration and securing our borders will not only benefit our economy, these actions respect the sacrifice of past immigrants who came to America lawfully and will ensure that we remain a beacon of hope and opportunity to the world.

QUESTIONS AND ANSWERS

Senator Grassley's Questions for Steve Case

1. **H-1B visas:** Recently, we learned that more than 40,000 of the available 85,000 H-1B visas for fiscal year 2012 went to the top 10 users of the program. The top user petitioned for 9,281 foreign workers. Below is the Fiscal Year 2012 data for H-1B employers:

RANK	Employer	FY 12 H-1B Initial Petitions	FY12 PERM Applications for H-1B Workers	Immigration Yield	Significant Offshoring
1	Cognizant	9281	669	7%	X
2	Tata	7469	4	0%	X
3	Infosys	5600	21	0%	X
4	Wipro	4304	30	1%	X
5	Accenture	4037	8	0%	X
6	HCL America	2070	44	2%	X
7	Tech Mahindra SATYAM	1963	20	1%	X
8	IBM & IBM India	1846	96	5%	X
9	Larsen & Toubro	1932	15	1%	X
10	Deloitte	1668	260	16%	X
11	Microsoft	1497	1629	109%	
12	Patni	1260	30	2%	X
13	Syntel	1161	3	0%	X
14	Intel	812	72	9%	
15	Amazon.Com	773	254	33%	
16	Qualcomm	729	506	69%	
17	Google	646	256	40%	
18	PricewaterhouseCoopers	599	159	27%	X
19	Synechron	572	6	1%	X
20	Mphasis	569	16	3%	X

- Aside from increasing annual caps, what more can we do to ensure that companies get the highly skilled workers they need?
- Do you think we should revamp the way these visas are doled out, and prioritize them based on skills, whether the applicants were educated here, or whether the company is based in the United States?
- Under current law, only "H-1B dependent employers" have to prove that they have recruited American workers and haven't displaced other workers before acquiring an H-1B visa holder. A bill sponsored by Senator Durbin and myself would apply protections for visa holders as well as American workers. Our bill would ensure that all employers that use the H-1B visa program attest that they have tried to find an American who can do the job. Do you believe that companies should try to find qualified Americans before they petition for a foreign worker? If not, why not?

2. **H-1B Visas - Protections for American Workers:** The Durbin-Grassley H-1B reform bill (s. 887 in the 110th Congress) included several provisions aimed at better protecting American workers who may be passed over for high-skilled, high-paying jobs.

    - The bill would require that before an employer may submit an H-1B application, the employer must first advertise the job opening for 30 days on a Department of Labor (DOL) website. DOL would also be required to post summaries of all H-1B applications on its website. Do you support such an effort?

    - The bill would require that H-1B employers may not advertise a job as available only for H-1B visa holders or recruit only H-1B visa holders for a job. Do you support this provision?

    - The bill would prohibit employers from hiring H-1B employees who are then outsourced to other companies. This is a method that some companies use to evade restrictions on hiring H-1Bs. Do you support this effort?

    - The bill would prohibit companies from hiring H-1B employees if they employ more than 50 people and more than 50% of their employees are H-1B visa holders. Do you support this provision?

    - The bill would require H-1B and L-1 employers to pay employees the prevailing wage to ensure employers are not undercutting American workers by paying substandard wages to foreign workers. Do you support this effort?

Senator Grassley's Questions for Chris Crane, ICE Union

1. **Resources Needed By ICE:** Some outside groups have suggested that more than enough resources are devoted to immigration enforcement. What specific and additional resources does ICE and its agents need to better enforce our immigration laws?

2. **Morale:** You mentioned that morale at Immigration and Customs Enforcement is low and has been falling in recent years. You also stated that agents are regularly prohibited from enforcing the law. Do you have any examples in which ICE agents have been prevented from doing their jobs and from enforcing the law?

3. **Cooperation Between Federal & Local Law Enforcement:** I have been vocal about the lack of attention on states and localities that turn a blind eye to people here illegally. There are sanctuary cities that refuse to help the federal government. But, on the other hand, there are local jurisdictions that are eager about helping to protect the homeland and enforcing our immigration laws. What suggestions do you have to improve the level of cooperation between local and federal officers so that we can work better together to enforce our immigration laws?

Senator Grassley's Questions for Janet Murguia, President and CEO of La Raza

1. **Employer Sanctions:** In 1989, Cecelia Munoz – then a Senior Vice President with La Raza, today, Director of President Obama's Domestic Policy Council – wrote a report for your organization entitled "Unfinished Business: The Immigration Reform and Control Act of 1986." The report stated that Congress had a "moral obligation to repeal employer sanctions" put in place by the 1986 law, claiming that they infringed on citizens' civil rights. Does your organization stand by that report and its recommendations? Does your organization support sanctions for employers who hire those unauthorized to work in the United States? Would La Raza oppose a comprehensive immigration reform proposal that includes mandatory E-Verify?

2. **Temporary Worker Program:** On January 29, President Obama offered an outline of a plan for comprehensive immigration reform. While he addresses legal immigration by talking about family reunification, increasing numbers, and enhancing tourism, he does not mention the need for a future guest worker program to help low-skilled immigrants. In your testimony, you stated that "we must provide a way for immigrant workers to enter the U.S. through safe and legal channels in order to meet legitimate workforce needs across sectors of our economy." What's your reaction to the fact that the President has ignored the need for a guest worker program, particularly for low-skilled and year round employment?

3. **Limitations on Immigration Levels:** Do you think there should be limits on immigration levels? If not, why not? If so, what limits should be in place and how do we enforce those limits?

4. **Legalization Program Details:** Should Congress consider a bill to legalize people unlawfully in the country, who should be eligible for the program? Please answer the following questions related this issue.
   - Should people here illegally who are in removal proceedings be allowed to benefit from a legalization program?
   - Should people that have ignored the government's orders to leave the United States – after a thorough legal proceeding—be allowed to benefit from a legalization program?
   - Should an alien convicted of a felony criminal offense or multiple misdemeanors be allowed to benefit from a legalization program?
   - Should gang members be allowed to benefit from a legalization program?
   - If an alien provides information in an application that is law enforcement sensitive or criminal in nature, should that information be used by our government and not be protected under confidentiality provisions?
   - Should people here illegally be given probationary status, or legal status, without a background check done first?
   - Should aliens (rather than taxpayers) who benefit from a legalization program pay for all costs associated with it?

- Should there be a time limit imposed for federal agents with regard to background checks on aliens who apply for legalization?
- Should people that apply for legalization be required to submit to an in-person interview with adjudicators?
- Should people that have been denied legalization be placed in immigration proceedings and removed?
- If the Secretary of Homeland Security must revoke a visa for someone on U.S. soil, should that decision be reviewable in the U.S. courts?

Questions for Secretary Janet Napolitano
Senate Judiciary Committee hearing on February 13, 2013

1. **Deferred Action for Childhood Arrivals**

1. **DACA Authority:** Did your Department obtain a legal opinion from the Office of Legal Counsel or anyone else in the administration about your legal authority to implement the Deferred Action for Childhood Arrivals? Please provide copies of any documentation, including any and all legal opinions, memoranda, and emails, that discusses any authority you have or do not have to undertake the program.
2. **DACA processing:** Are officers being instructed to approve or pressured to "get to a yes" on DACA applications? Is there guidance to officers that Requests for Evidence (RFEs) not be issued, or to be issued only in extremely rare circumstances?
3. **Background Checks on DACA Applicants:**
    a. Describe what databases are queried as part of the applicant's background check and what government agency maintains the database. Does the database have audit qualities to determine date, location, and name of official performing the query?
    b. Describe what type of queries are being conducted and the information that is provided as a result of the search (i.e. NCIC queries provide a description of the applicant's criminal history).
    c. Does USCIS receive assistance from any other government agencies when conducting background checks on applicants? If so, what is the extent of this assistance?
    d. Is the Intelligence Community provided the names of the applicant's to cross check with their databases? If not, why not?
    e. At what stage of the background check is the Fraud Detection and National Security (FDNS) unit at USCIS consulted?
    f. If an applicant does not provide the designated background documents are they allowed to submit additional documents in their place?
    g. Are the applicants allowed to present a character reference to verify their identity? If so, are these references verified?
    h. Is FDNS reviewing approved applications for quality assurance? If not, why not?
    i. is the Department requiring in-person interviews? If so, under what circumstances? If not, why not?
    j. Does USCIS have a sufficient number of employees to process the background checks for the large volume of applicants? Is USCIS currently hiring employees or have any vacancies for these positions? If so, how many?

4. **DACA Fraud and Abuse:**
    a. What steps has the administration taken to review and ensure that fraudulent documents are not submitted in support of applications for deferred action?
    b. What types of fraud detection mechanisms have been used? Which have been successful? Which have not been so successful?
    c. How have the veracity of affidavits been assessed?
    d. In what circumstances does an individual receive a notice of intent to deny and a denial of deferred action?
    e. In what circumstance is an individual who is denied deferred action placed in removal proceedings?
    f. Please explain the applicable confidentially provisions. At what point in the process does confidentially attach? Is confidentiality protected no matter the case, or is previous fraud, criminal behavior or national security concerns being raised with other law enforcement?
    g. What sort of punishment will be sought for aliens who commit fraud or material misrepresentation? Please elaborate if any punishments have been imposed.

5. **DACA Data**: Please provide the following detailed data, as requested by Chairman Smith and myself on September 20, 2012:
    a. The number of submitted Form I-821Ds (applications for deferred action)
        i. received
        ii. approved
        iii. denied
        iv. approved despite a criminal conviction
        v. approved despite a pending criminal charge
        vi. approved despite a juvenile criminal conviction
        vii. denied for suspicion of fraud or on the basis of fraud. Of those, how many have been referred for prosecution or removal, and how many have been prosecuted or removed for such cause?
        viii. containing fraud indicators

    b. The number of submitted Form I-765s (applications for work permits) submitted along with an I-821D
        i. received
        ii. approved
        iii. denied
        iv. granted a fee waiver.

    c. The number of individuals granted deferred action under the DACA policy who

i. have applied for advanced parole
ii. have been granted advance parole
iii. have been granted advanced parole, traveled, and been paroled back into the United States and subsequently been granted lawful permanent residency
iv. have been granted lawful permanent residency under any other means.

d. The number of parents of applicants for DACA who have
i. requested prosecutorial discretion
ii. received prosecutorial discretion
iii. been denied prosecutorial discretion.

e. The number of applications that have been received for individuals in removal proceedings, and the number of deferred action or work permit applications that have been approved for individuals in removal proceedings.

f. The number of DACA applicants who have been denied deferred action who have been
i. placed in removal proceedings
ii. denied due to ineligibility
iii. denied due to fraud or other violation of the immigration law
iv. denied due to criminal history
v. deported from the United States.

6. **Denials:** How many DACA applications have been denied? What is the process for an adjudicator to deny an application? For what reasons have DACA applications been denied? Please break down the number of applications denied and from which service center they originate.

7. **USCIS financial health due to DACA:** Is there any concern about the fiscal health of the agency in charge of DACA – the U.S. Citizenship and Immigration Service? Is the current amount being charged for DACA covering all related costs, including processing, background checks, and fraud prevention efforts? Is there any discussions taking place about increasing the application costs for DACA?

2. Luis Abrahan Sanchez Zavaleta

1. Regarding the Luis Abrahan Sanchez Zavaleta case, you said at the hearing, "I did not learn about it until January [2013] and nor did my aides." However, all Republican members of the Senate Judiciary Committee sent you a letter on December 19, 2012, regarding the matter.
   a. Would you like to correct the record with the Committee regarding when you first learned of the Sanchez Zavaleta case, or do you stand by your statement that you did not learn of the case until January 2013?
   b. When was the first time the case was raised with anyone else at DHS headquarters? What was the context? What action was taken in response?

2. On the application for Deferred Action for Childhood Arrivals (DACA), Form I-821D, question 1 of Part 3 asks, "Have you ever been arrested for, charged with, or convicted of a felony or misdemeanor in the United States?" Question 5.d of Part 3 asks if the respondent has ever had "any kind of sexual contact or relations with any person who was being forced or threatened." Sanchez Zavaleta answered no to both questions, despite having been arrested for aggravated sexual assault on October 11, 2009.

   However, Elliot Williams, ICE Assistant Director for the Office of Congressional Relations, informed Senate Judiciary Committee staff in a February 4, 2013, briefing that lying on a DACA application was not considered a crime.

   h. Why is it not a crime to lie on a DACA application?
   i. When false information is provided on a DACA application, how should USCIS deal with such a situation?
   j. If there are no consequences for lying on a DACA application, please explain how this is not an invitation to lie to the federal government on a DACA application.

3. **ICE and Border Patrol Union Concerns**
   - When was the last time you met with the head of each union to discuss concerns by agents?
   - How do you respond to the ICE union's complaint that they are handicapped from fulfilling their missions?
   - Do you have plans to meet with either union in the near future?

4. **Future Guest Workers**
   - Why is the President's plan silent on the need for future guest workers, particularly low-skilled workers?
   - Do you believe that a new legal avenue for low-skilled workers is needed in order to stem the flow of illegal immigration?

5. **Legalization Program Details**
   - Should people here illegally who are in removal proceedings be allowed to benefit from a legalization program?
   - Should people that have ignored the government's orders to leave the United States – after a thorough legal proceeding—be allowed to benefit from a legalization program?
   - Should an alien convicted of a felony criminal offense or multiple misdemeanors be allowed to benefit from a legalization program?
   - Should gang members be allowed to benefit from a legalization program?

- If an alien provides information in an application that is law enforcement sensitive or criminal in nature, should that information be used by our government and not be protected under confidentiality provisions?
- Should people here illegally be given probationary status, or legal status, without a background check done first?
- Should aliens (rather than taxpayers) who benefit from a legalization program pay for all costs associated with it?
- Should there be a time limit imposed for federal agents with regard to background checks on aliens who apply for legalization?
- Should people that apply for legalization be required to submit to an in-person interview with adjudicators?
- Should people that have been denied legalization be placed in immigration proceedings and removed?
- If the Secretary of Homeland Security must revoke a visa for someone on U.S. soil, should that decision be reviewable in the U.S. courts?

6. **Entry/Exit System:** Until immigration reform is passed by Congress, what will your Department be doing to comply with the 1996 law that requires the Executive Branch to implement a biometric entry and exit system?

7. **Cook County**
There has been a lot of discussion about the ordinance in place in Cook County, Illinois. Despite the strong stance taken by you and Director Morton, nothing has changed and the safety of the public is still at risk. Please provide an update on what options are being discussed on how to deal with the ordinance and its impediment on ICE's mission. Also, please outline what discussions have taken place with the Department of Justice about withholding SCAAP funds for places like Cook County.

8. **Detention Standards**
Last February, ICE announced changes to its detention standards, providing more accommodations and benefits to illegal aliens. The manual says that transgender detainees who were already receiving hormone therapy when taken into ICE custody shall have continued access. Does that mean taxpayers will be paying for these therapies, or will the costs of the therapy be the burden of the detainee? To date, have taxpayers paid for these therapies? If so, what has been the cost to taxpayers?

9. **Visa Security Program**
What is the status of the Visa Security Program, specifically how many units are deployed and where are they deployed? Do you believe that the Visa Security Program should be expanded to all 57 visa-issuing posts determined to be high risk by DHS and the Department of State? If so, how much would it cost to expand the VSP to all high-risk posts? Why haven't you asked Congress for that amount as part of your proposed budget?

Senator Grassley's Question for Jessica Vaughan, CIS

1. Entry-Exit System: In 1996, Congress required the creation of an automated entry/exit system to record the entries and departures of every alien. The law was intended to track visa overstays. However, administration after administration has failed to implement the "exit" portion, citing costs and burden to airlines and government agencies. The outline of a plan circulated by the eight senators includes an entry/exit system, but only at air and sea ports. It doesn't include land points of entry. Do you believe that any effective entry-exit system must cover land points of entry?

2. Temporary Worker Program: On January 29, President Obama offered an outline of a plan for comprehensive immigration reform. It has four broad parts, including a pathway to citizenship for illegal immigrants. And, while he addresses legal immigration by talking about family reunification, increasing numbers, and enhancing tourism, he does not mention the need for a future guest worker program to help low-skilled immigrants. What's your reaction to the President's proposed plan, particularly on this point?

3. E-Verify: On January 31st, I introduced the *Accountability Through Electronic Verification Act,* a bill that would make E-Verify a staple in every workplace. When we passed the 1986 amnesty, we made it illegal for an employer to knowingly hire someone here unlawfully. Do you believe that the E-Verify program should be mandatory? Do you think that increasing penalties on employers will help deter them from hiring people here illegally?

4. Biometric Social Security Cards: Some members of Congress have proposed the creation of a new biometric Social Security card for all Americans. Do you have any thoughts about such proposals?

5. Spending on Enforcement Efforts: In January, the Migration Policy Institute released a report entitled *Immigration Enforcement in the United States: The Rise of a Formidable Machinery.* The report aims to convince the public that the government has succeeded in immigration enforcement and suggests that spending cuts might be in order. What's your reaction to the report released by the Migration Policy Institute?

6. Record Deportation Statistics: Administration officials have pointed to what they claim is a record number of removals and returns-- 409,000 in 2012, out of more than 12 million people here illegally. What's your response to the administration's claims that its enforcement numbers and efforts are record breaking?

7.

"Comprehensive Immigration Reform"

February 13, 2013

Questions for Steve Case, Chairman and CEO, Revolution from Senator Lee

STEM Visas

Your experiences in the tech industry are consistent with my conviction that educating, training, and retaining the best and brightest, whether from the U.S. or abroad, is essential to safeguarding the vibrancy of our economy and ensuring continued innovation. I have been a fierce advocate for the removal of the per-country caps for employer-sponsored visas and have consistently called for improvements to our visa system. My colleagues, Senator Hatch and Senator Klobuchar, have introduced S. 169, the I-Squared Act, which takes important steps toward realizing the potential that STEM jobs present. This bill, of which I am a cosponsor, takes a market-based, commonsense approach to high-skilled immigration in a manner designed to meet the needs of U.S. employers and promote economic growth.

The critics of STEM legislation are few but vocal. Some of their concerns center on claims that U.S. workers can adequately fill the STEM positions that are vacant.

- In your opinion, would bringing in foreign STEM workers oversaturate the job market?

In your written statement, you stated that "every 100 additional foreign-born workers in STEM fields created 262 additional employment positions for native U.S. workers."

- Why do new foreign workers correlate with such growth in STEM industries?

In your statement you argued that we must both "draw the best talent from across the globe and develop more talent in science, math, technology, and engineering here at home."

- Why do you think our schools have not produced more STEM workers?

- What could our state and local governments do to encourage young people to consider entering STEM programs?

"Comprehensive Immigration Reform"

February 13, 2013

Questions for Chris Crane, President, National Immigration and Customs Enforcement Council 118 of the American Federation of Government Employees from Senator Lee

Prosecutorial Discretion

In your written statement, you recounted several stories that I found troubling regarding the disciplinary action some ICE agents have endured for attempting to perform the duties Congress has requested. In particular, I was disturbed by the experience you described of the three agents in Salt Lake City who were investigated for arresting a man who openly declared his illegal status in court.

- Has it been your experience that the prosecutorial discretion laid out in the Morton memoranda has been implemented on a case-by-case basis, or as a categorical prohibition of enforcement?

- How do the agents you interact with regard the restraints they face while attempting to do their jobs?

"Comprehensive Immigration Reform"

February 13, 2013

Questions for Secretary Napolitano from Senator Lee

Morton Memoranda

In 2011, ICE Director John Morton issued two memoranda that outlined priorities for prosecutorial discretion. I was troubled by the issuance of those memoranda and I remain troubled by their implementation.

Chris Crane, a witness on the second panel here today, submitted written testimony for today's hearing detailing disturbing accounts of the implementation of this prosecutorial discretion directive. Specifically, he recounts the experience of three ICE agents in Salt Lake City, Utah, who arrested an individual after he admitted in open court that he was in the country illegally. The ICE Field Office Director, however, ordered that all the charges be dropped and that the ICE agents be placed under investigation for making the arrest. I understand that this is just one of many instances in which agents' ability to arrest offenders has been restricted.

- Are you concerned that at some point a specific set of so-called "priorities," when universally enforced in rigid fashion, will essentially amount to the enactment of legislation without bicameralism and presentment?

Workplace enforcement

In April 2009, ICE introduced a revised worksite enforcement strategy that prioritizes prosecutions against employers who hire unauthorized workers over the prosecution of unauthorized workers.

- Has this shift in priorities measurably reduced the employment of illegal aliens?

- In what ways might a bill that requires the use of E-Verify increase ICE's ability to enforce employment laws in the workplace?

Border Control

In your written statement, you ascribe the four-year decrease in attempts to cross the Southwest border illegally, as measured by Border Patrol apprehensions, to more effective border security.

- Are you able to account for the effects of a sluggish economy on the decrease in border crossings over the last four years?

Last year, you implemented a new index to track the security of the border -- one that, remarkably, does not seek to track the number of illegal aliens who succeed in crossing the border.

- How can improvements in border security be measured accurately if you have changed the metrics by which you assess security?

Visa Exit System

At a full Committee hearing last April, you testified that a biometric visa exit system could be deployed within 4 years. You then submitted your plan to Congress in May. In your written statement for today's hearing, you suggested that the current phase, which involves automating connections between DHS data sources, would be complete sometime this year.

- When do you expect the biometric exit system to be fully implemented?

I believe that increased international tourism could do much more good for our economy than our current system allows. America is still viewed as the top destination for many foreigners who would come and spend a substantial amount of money here. Travel is one of the easiest ways to spur economic growth in our cities, in our national parks, and at our tourist attractions. With a reliable exit system in place, we could do more, legislatively, to encourage international tourism.

- What effect do you predict a biometric exit system will have on the visa overstay rate?

STEVE CASE

CHAIRMAN AND CEO, REVOLUTION LLC

CO-FOUNDER, AMERICA ONLINE

BEFORE THE U.S. SENATE COMMITTEE ON THE JUDICIARY

HEARING ON "COMPREHENSIVE IMMIGRATION REFORM"

216 HART SENATE OFFICE BUILDING

FEBRUARY 13, 2013

QUESTIONS FROM SENATOR LEE:

In your opinion, would bringing in foreign STEM workers oversaturate the job market?

To the contrary, attracting foreign STEM workers would grow jobs here in the United States, creating more economic opportunity for American workers. Forty percent of Fortune 500 companies were started by first or second generation immigrants, employing ten million people worldwide. In some years, half of Silicon Valley startups had an immigrant founder. Simply-put, high-skilled immigrants are job creators, not job takers. They contribute creativity, innovation, and diversity to our entrepreneurial economy. I understand the sensitivities of recruiting and retaining talented labor, but taken together these men and women will add jobs, not take away jobs, here in the United States.

In your written statement, you stated that "every 100 additional foreign-born workers in STEM fields created 262 additional employment positions for native U.S. workers." Why do new foreign workers correlate with such growth in STEM industries?

My point here is not that foreign born workers in STEM fields generate more domestic jobs that U.S. born workers in those fields, but rather, that both foreign-born and U.S.-born workers in STEM fields generate substantial U.S. employment, so it is in our interest to have more of both. Simply put, we need more STEM workers – wherever they are born – to create jobs for Americans. We should try to prepare as many Americans as possible for these STEM positions. But because we have a severe shortfall, and because we always want to be the magnet of the world's best talent, we should do more to get foreign-born STEM professionals to work here in America.

In your statement you argued that we must both "draw the best talent from across the globe and develop more talent in science, math, technology, and engineering here at home." Why do you think our schools have not produced more STEM workers?

We are undermining our nation's economic competitiveness when we fail to develop more talent in science, technology, engineering, and math here at home. We are not producing STEM graduates and workers at the rates we need because we are not training teachers as well as we can and we are not providing our kids with the tools they need to succeed in these subjects. Our competitors are making this a priority around the world, and we must do the same here at home. Just as we recruit and retain talented innovators from abroad, so too must we better equip our children here in the United States. With more focus and funding on producing more STEM workers here in the United States at the local, state, and federal level, I am confident we can up our game and improve our entrepreneurial economy.

What could our state and local governments do to encourage young people to consider entering STEM programs?

State and local government can encourage more young people to enter STEM programs in a number of ways. First, more targeted funding will enable the best teachers of science, technology, engineering, and math to continue teaching in primary and secondary education. Second, more focus at the university level, including through grants and scholarships, on keeping STEM majors in those majors will pay dividends in the long run. Third, more celebration of the important role innovative STEM fields play in driving our economy and changing the world will encourage more students from Kindergarten through senior year of college to pursue, and stick with, STEM subjects throughout their academic and professional careers.

QUESTIONS FROM SEN GRASSLEY:

Aside from increasing annual caps, what more can we do to ensure that companies get the highly skilled workers they need?

I see the solution to this challenge in the context of a continuum: some talented innovators begin here as graduate students dreaming of starting U.S. companies, some arrive as temporary workers at our big corporations and learn about a market inefficiency that they believe they can address by starting a business and hiring American workers, others are partners of U.S. firms abroad where they learn about American markets and understand what it takes to contribute here. As long as we make it easier to recruit and retain these innovators along this continuum, we will bolster our economic competitiveness by ensuring they create jobs here in the United States, not in competitor nations competing with our workers. Specifically, bipartisan legislation proposed in recent years addresses the talent issue effectively: from the Startup Act, to the I-Squared Act, to the SMART Jobs Act, to the Startup Visa Act, to a few other bills - we have smart legislation teed up.

Do you think we should revamp the way these visas are doled out, and prioritize them based on skills, whether the applicants were educated here, or whether the company is based in the United States?

I defer to members of congress on the particulars of the various high-skilled reform proposals, but I do believe we should make it easier to recruit and retain talented innovators who are educated here in the United States, work for American companies as temporary employees here in the country, or serve as partners of our businesses abroad. As long as we make it easier and attractive for the best and the brightest to start or contribute to businesses here, we will strengthen our economic competitiveness. As I alluded to in my written statement, forty percent of Fortune 500 companies were started by first or second generation immigrants, employing ten million people worldwide, and in some years, half of Silicon Valley startups had an immigrant founder. The choices we make today will determine where the next wave of great companies start-up tomorrow.

Under current law, only "H-1B dependent employers" have to prove that they have recruited American workers and haven't displaced other workers before acquiring an H-1B visa holder. A bill sponsored by Senator Durbin and myself would apply protections for visa holders as well as American workers. Our bill would ensure that all employers that use the H-1B visa program attest that they have tried to find an American who can do the job. Do you believe that companies should try to find qualified Americans before they petition for a foreign worker? If not, why not?

Yes, I believe U.S. companies should make a serious effort to recruit qualified American workers to fill open positions. Indeed, as a country, we need to do a better job equipping teachers with the tools they need to educate American students in STEM fields. Just as we recruit global talent, so too should we improve our education system here at home. The mistake that some opponents of high-skilled immigration reform often make is believing we have to choose between fixing our education system so that more students go on to STEM careers, or recruiting innovators from abroad. We can, and must, do both: attract the top talent and develop more talent here at home.

H-1B Visas - Protections for American Workers: The Durbin-Grassley H-1B reform bill (s. 887 in the 110th Congress) included several provisions aimed at better protecting American workers who may be passed over for high-skilled, high-paying jobs. The bill would require that before an employer may submit an H-1B application, the employer must first advertise the job opening for 30 days on a Department of Labor (DOL) website. DOL would also be required to post summaries of all H-1B applications on its website. Do you support such an effort?

The bill would require that H-1B employers may not advertise a job as available only for H-1B visa holders or recruit only H-1B visa holders for a job. Do you support this provision?

The bill would prohibit employers from hiring H-1B employees who are then outsourced to other companies. This is a method that some companies use to evade restrictions on hiring H-1Bs. Do you support this effort?

The bill would prohibit companies from hiring H-1B employees if they employ more than 50 people and more than 50% of their employees are H-1B visa holders. Do you support this provision?

The bill would require H-1B and L-1 employers to pay employees the prevailing wage to ensure employers are not undercutting American workers by paying substandard wages to foreign workers. Do you support this effort?

I certainly believe that the needs of employers to staff their workforce by use of the H-1-B program needs to be balanced against the rights of American workers to have the opportunities they deserve. I am aware of reports of abuse or misuse of the program, and understand why Congress would want to look at reforms in exchange for a more permanent and stable extension of the program. I am not familiar with the specific reforms outlined in the Grassley-Durbin bill, and would defer to those with more familiarity in these questions.

Senator Grassley's Questions for Chris Crane, ICE Union

1. **Resources Needed By ICE:** *Some outside groups have suggested that more than enough resources are devoted to immigration enforcement. What specific and additional resources does ICE and its agents need to better enforce our immigration laws?*

Only approximately 5,000 officers and agents within ICE perform the lion's share of ICE's immigration mission. A matter that ICE Director John Morton has referenced himself in testimony. Compare that to the Los Angeles Police Department at approximately 10,000 officers.

Approximately 5,000 officers in ICE cover 50 states, Puerto Rico and Guam, and are attempting to enforce immigration law against 11million illegal aliens already in the interior of the United States. Since 9-11, the U.S. Border Patrol has tripled in size, while ICE's immigration enforcement arm, Enforcement and Removal Operations (ERO), has remained at relatively the same size.

Exasperating the situation, of the 5,000 immigration officers nationwide, hundreds don't perform enforcement duties at all due to the elimination of detention facility guard positions during the creation of DHS; hundreds of detention guard positions are now filled by ERO's handful of immigration agents. Also, unlike other law enforcement agencies, ICE has no additional resources for juvenile services, court duties or supervised release (supervised release duties at ICE are similar to probation and parole duties at the city and state level). So 5,000 ICE officers and agents also perform all of these duties as well. Important also to remember, ICE agents and officers do something that no other law enforcement organization in the United States does; they deport approximately 400,000 foreign nationals to every corner of the globe every year. A staggering statistic and a staggering amount of work. Any group that suggests ICE has enough immigration enforcement resources is incorrect. The ICE Office of Enforcement and Removal Operations, ICE's immigration enforcement arm, is the most understaffed and under resourced law enforcement organization in the nation, in my opinion – bar none.

And one final point related to officer resources, while all ERO agents and officers have the same training requirements, its 5,000 officers are broken into two different positions, each with differing arrest authorities, which serves to the detriment of the agency's mission as some officers are limited in their law enforcement authorities without reason. In the field, this regularly results in officers with one arrest authority requiring officers with another arrest authority be present before an arrest can be made. With our limited resources, this approach to law enforcement has proven highly ineffective not only regarding ICE's immigration mission, but also in terms of manning and supporting local

police task forces, such as gang task forces; simply because all of our officers, who have the same training requirements, do not have the same authorities and therefore cannot be utilized for many law enforcement functions.

We believe ICE ERO needs approximately 5,000 more immigration officers putting its total number at approximately 10,000. As a force multiplier, a single officer position for immigration agents within ERO should be established providing all officers with full immigration arrest authorities. This will require no additional training. All immigration officers with full arrest authority should be removed from non-law enforcement functions that they currently serve in, such as those who now serve as detention facility guards. We would suggest that the old INS Detention Enforcement Officer position be reinstated with approximately 2,500 officers to replace detention guard positions that would be vacated. We also suggest that support staff positions, which are almost non-existent within ERO, also be increased at minimum in a similar officer-to-support-staff ratio as currently in use. ICE also needs to streamline its time consuming alien processing systems and procedures to expedite cases and create more time for officers to perform enforcement duties.

2. **Morale:** *You mentioned that morale at Immigration and Customs Enforcement is low and has been falling in recent years. You also stated that agents are regularly prohibited from enforcing the law. Do you have any examples in which ICE agents have been prevented from doing their jobs and from enforcing the law?*

   Most Americans don't know this but ICE agents and officers tasked with immigration enforcement, unlike any other law enforcement organization in the country, are prohibited from making street arrests. If they see an immigration violation in their presence while on duty they are prohibited from making an arrest. The exceptions to this rule are very limited. The street arrests that are made must be approved in writing by a supervisor for a specific individual who officers plan to arrest before an arrest can be made. This type of enforcement is not effective in immigration enforcement where a high volume of arrests are needed. ICE agents and officers working immigration enforcement are for the most part restricted to arresting individuals in jails and prisons who have already been arrested by local police.

   As just a few specific examples, I would mention the Delaware ICE Officer who was forced to release an alien without immigration charges and was then himself charged with a proposed three day suspension for arresting the illegal alien. Also, the three ICE agents in Utah who were forced to release an illegal alien without immigration charges who they witnessed claim to a federal judge in open court that he is an illegal alien. Similar to the Delaware incident, all three ICE officers were placed under investigation by ICE for arresting the illegal alien. Finally, in El Paso, Texas, ICE agents were forced to release

an illegal without immigration charges who was recently arrested by local police for assaulting family members. This alien also attempted escape from ICE agents and allegedly assaulted officers during the attempt resulting in officer injuries. During previous testimony before the house Judiciary Committee I provided internal ICE email correspondences describing orders from ICE headquarters for officers not to arrest illegal aliens that they encounter in the field.

ICE agents are never allowed to simply enforce the law. Every officer and agent is restricted every day from enforcing immigration violations they witness. Enforcement of certain portions of statute are almost completely prohibited from enforcement, such as enforcement of laws regarding public charges and simple illegal entry and visa overstay.

3. **Cooperation Between Federal & Local Law Enforcement:** *I have been vocal about the lack of attention on states and localities that turn a blind eye to people here illegally. There are sanctuary cities that refuse to help the federal government. But, on the other hand, there are local jurisdictions that are eager about helping to protect the homeland and enforcing our immigration laws. What suggestions do you have to improve the level of cooperation between local and federal officers so that we can work better together to enforce our immigration laws?*

You are correct in saying that many local agencies are eager to help. This stems in large part from their first hand knowledge of the impact of large criminal alien populations in their communities that often control the local drug trade or serve as a primary source of gang activity, etc. In my one experience with a "sanctuary type area," the local police officers desperately wanted to work with ICE, but were restrained by the mayor and police chief.

In my opinion, it's ICE's responsibility to initiate measures to improve the level of cooperation, not the other way around. In each area, ICE officers from the field, not just managers, should be permitted to speak with local police officers during their musters or during scheduled meetings to educate local officers regarding ICE ERO's enforcement resources in that area and how and when ICE can assist local officers in their enforcement efforts. This type of outreach and education simply doesn't happen enough and is key to building relationships and cooperation.

Secondly, ICE needs to offer its resources and follow through on a regular basis. ICE ERO must have a stronger presence on local task forces such as gang and drug task forces, and ERO officers must be empowered to exercise their immigration arrest authority. Under current guidance that prohibits making immigration arrests, ICE agents and officers will be greatly restricted in their ability to assist locals in attempting to break up gang and drug activity, etc. Additionally, relationships between local police and ICE

tend to break down in circumstance when ICE officers are prohibited from enforcing the law as locals police perceive contacting ICE as a waste of time and difficult to deal with.

"Comprehensive Immigration Reform"

February 13, 2013

Questions for Chris Crane, President, National Immigration and Customs Enforcement Council 118 of the American Federation of Government Employees from Senator Lee

Prosecutorial Discretion

In your written statement, you recounted several stories that I found troubling regarding the disciplinary action some ICE agents have endured for attempting to perform the duties Congress has requested. In particular, I was disturbed by the experience you described of the three agents in Salt Lake City who were investigated for arresting a man who openly declared his illegal status in court.

- *Has it been your experience that the prosecutorial discretion laid out in the Morton memoranda has been implemented on a case-by-case basis, or as a categorical prohibition of enforcement?*

  It is a categorical prohibition of enforcement. The new ICE detainer policy, which I submitted as evidence at the hearing, is a well documented example of how ICE policy removes discretion from officers and prohibits the arrest of certain individuals and groups. According to the new detainer policy, ICE agents encountering illegal aliens in jails can no longer make arrests based on the most fundamental and important sections of immigration law – illegal entry and visa overstay. ICE officers can only make arrests if these inmates have already been convicted of 3 or more misdemeanor offenses, or arrested or convicted for a felony offense, etc. So a categorical prohibition has been placed on arresting individuals for illegal entry and visa overstay. These practices equate to a form of amnesty for millions of immigration violators in the U.S. They are essentially protected from arrest. Officers who attempt to enforce these sections of law will face disciplinary action.

- *How do the agents you interact with regard the restraints they face while attempting to do their jobs?*

  It's no secret that morale in the agency continues to plummet and the restraints you mention play a large role in that problem. Officers are literally afraid to enforce our nation's laws. They believe that if they attempt to enforce immigration law as it was enacted by Congress, they will be fired and lose the ability to support their families. Most officers in the field speak in terms of "keeping their heads down" until the nation's economic situation recovers so that they can seek employment elsewhere. In large part

the reaction is one of fear, leading officers to look for jobs that do not involve immigration enforcement both within and outside of ICE.

Responses to
Senator Grassley's Questions for Janet Murguia

(NCLR responses are *italicized.*)

1. **Employer Sanctions:** In 1989, Cecelia Munoz [sic][1] – then a Senior Vice President with La Raza, today, Director of President Obama's Domestic Policy Council – wrote a report for your organization entitled "Unfinished Business: The Immigration Reform and Control Act of 1986." The report stated that Congress had a "moral obligation to repeal employer sanctions" put in place by the 1986 law, claiming that they infringed on citizens' civil rights. Does your organization stand by that report and its recommendations? Does your organization support sanctions for employers who hire those unauthorized to work in the United States? Would La Raza oppose a comprehensive immigration reform proposal that includes mandatory E-Verify?

   NCLR Response: *Based on the moral principle that the federal government should not create or maintain policies known to cause significant levels of employment discrimination against an already disadvantaged minority group, NCLR and dozens of other civil rights organizations did indeed call for the repeal of employer sanctions. In the debate leading up to the Immigration Reform and Control Act (IRCA), NCLR and others had raised concerns about the potential for such discrimination, and the case for repeal was strengthened by the actual knowledge that the feared discrimination did in fact occur, and on a broad scale.*

   It is important to understand the context in which this report was written. By the time the NCLR report was printed, more than a dozen reports issued by independent private organizations and government entities had found that the employer sanctions provisions of IRCA, which began to be enforced three years earlier, had led to significant increases in employment discrimination against Latinos, Asians, and others who appeared "foreign," including U.S. citizens, lawful permanent residents, and others authorized to work in the U.S. Two initial General Accounting Office (GAO, now known as the Government Accountability Office) studies mandated by IRCA had come to similar conclusions. In March 1990, the final GAO report in the series found that employer sanctions had resulted in a "widespread pattern" of discrimination caused solely by employer sanctions, against lawful workers, based on characteristics like speech accent, surname, and physical appearance. Specifically, the GAO found that 19% or 891,000 employers had adopted "unlawful discriminatory hiring practices" as a result of employer sanctions. Such practices included 461,000, or 10% of employers engaged in discrimination based on "foreign" appearance or accent; 346,000 or 8% had applied the verification system only to persons who appeared or sounded "foreign"; and an additional 430,00 or 9% adopted "citizens only" hiring policies, thus illegally excluding lawful permanent residents.

[1] *The referenced report was actually printed and issued in 1990, although earlier drafts were circulated in various formats. The correct spelling of Ms. Munoz's first name is "Cecilia."*

In calling for repeal of employer sanctions, NCLR also noted the significant evidence that employer sanctions were ineffective in deterring and preventing unauthorized migration. NCLR recommended, instead, increased border enforcement, a recommendation which policy makers did pursue, and a series of other measures, including strengthened labor laws, more aggressive labor law enforcement and targeting immigration enforcement resources at those employers most likely to violate the law which, unfortunately, policy makers subsequently did not pursue. It is uncertain whether NCLR's recommended enforcement regime would have been as or more effective than that which ultimately was put in place in IRCA, and subsequent to IRCA. The growth of the undocumented population from perhaps three to four million post-legalization to more than 11 million today suggests that an enforcement strategy relying on employer sanctions as its lynchpin has not been especially effective. What is certain is that the hundreds of thousands – and possibly a higher number – of U.S. citizens and other legal residents whose employment opportunities were eliminated or diminished because of discrimination caused by employer sanctions would not have been harmed by the enforcement strategy NCLR proposed in 1989.

Regarding NCLR's views on employer sanctions today, while as a civil rights organization we cannot comfortably "support" any government policy that creates rather than removes incentives for employers to discriminate against Hispanics, Asians, and others who may appear "foreign," we recognize the reality that this policy is firmly in place and unlikely to be repealed any time soon. In that context, we are hopeful that technological and other improvements being tested, including measures to strengthen the accuracy of systems like E-Verify and provide prompt remedies to authorized workers that are adversely affected by errors, may be able to reduce substantially the incidence of sanctions-related discrimination. Assuming the inclusion of a broad earned legalization program with a clear path to citizenship, strengthened labor law enforcement, improvements to legal immigration, and measures to promote more effective integration of immigrants into the mainstream, we are open to supporting a comprehensive bill that might include a mandatory E-Verify system, provided that effective protections and remedies against errors and discrimination that harm lawful workers are also included.

2. **Temporary Worker Program:** On January 29, President Obama offered an outline of a plan for comprehensive immigration reform. While he addresses legal immigration by talking about family reunification, increasing numbers, and enhancing tourism, he does not mention the need for a future guest worker program to help low-skilled immigrants. In your testimony, you stated that "we must provide a way for immigrant workers to enter the U.S. through safe and legal channels in order to meet legitimate workforce needs across sectors of our economy." What's your reaction to the fact that the President has ignored the need for a guest worker program, particularly for low-skilled and year round employment?

NCLR Response: *NCLR's views on guestworker or temporary worker programs are well known, and have been consistent for over three decades. First, we would greatly prefer the admission of permanent legal immigrants, as opposed to guestworkers, to fill legitimate labor market needs, because historical experience demonstrates that*

temporary workers who have less than full labor rights are inherently exploitable, and that such exploitation adversely affects the wages and working conditions of all workers. Second, to the extent that new or expanded guestworker programs are enacted, they should include full labor rights, a standard that few such proposals have met. Third, we have long argued for increased investments in building the human capital of domestic workers, through education and workforce development efforts, to minimize the need for temporary workers. Finally, we note that most other countries that have relied on temporary worker programs experienced both continued illegal migration, as well as the creation of a permanent subclass of ethnic minorities that have not been integrated into the mainstream society. At a minimum, this experience suggests we should approach expansion of such programs with extreme caution.

We would prefer that legitimate labor markets needs be addressed largely through the legal immigration system, and in that connection we are heartened by recent press reports that organized labor and business have agreed on a set of principles that should underlie reforms in that area.

We are aware of, and have reviewed with interest, the various interpretations of both the President's January 29 remarks, and of the subsequent publication of portions of draft legislation. Unlike some who have speculated as to the Administration's motives, we do not assume that the omission of some elements that should be included in a comprehensive bill, especially from a set of leaked documents, is meaningful at this stage of the process.

3. **Limitations on Immigration Levels:** Do you think there should be limits on immigration levels? If not, why not? If so, what limits should be in place and how do we enforce those limits?

***NCLR Response**: NCLR believes that as a sovereign nation the United States has a right to control its borders, and limiting immigration is an inherent part of that right. Limits on immigration – including numbers and characteristics of those permitted to enter from abroad – are thus fully legitimate matters for public discussion and policy debate.*

While we cannot address in this brief response every one of the numerous aspects around what would constitute appropriate limits and how they should be enforced, we can summarize our views in three points. First, many scholars and philosophers have labeled core immigration questions – who is allowed to enter the U.S. and on what terms – as especially challenging because they inevitably require a series of balancing tests. Thus, for example, the "rights" of family members in the U.S. to petition for their relatives abroad are juxtaposed against the "rights" of those already here whose interests might be adversely affected. Similarly, the "right" of a business to petition to hire a worker from abroad must be weighed against workers already here who may be hurt as a result. In short, these are questions of "right vs. right," not "right vs. wrong." And at some level the interests of families must be balanced with those of businesses and workers because

they are inextricably linked. Both serve our goals of strengthening our economy and of successful immigrant integration.

Second, in weighing conflicting rights, we believe a number of factors tip the balance toward a more inclusive immigration policy. For one thing, our long history as a "nation of immigrants" distinguishes us, for the better we believe, from virtually every other country on earth. From our very founding and throughout our history, some suggested that "new factors"—such as changes in the economy, or limits on resources, or the purportedly inferior character of the newest wave of immigrants—required major new restrictions on immigrants. In every case they were proven wrong by subsequent events. New immigrants settled the frontier, helped save the Union, provided the muscle for the Industrial Revolution, contributed mightily to winning two World Wars, and now are at the forefront of both generating new scientific and technological innovations and providing the services the aging Baby Boom generation requires. Immigration also reinforces key American values, such as family reunification, and the notion embodied in the American Dream that in our country anyone can work their way up from nothing to the economic mainstream through hard work and ingenuity.

In addition, while every policy produces both costs and benefits, our reading of the empirical evidence suggests that the vast majority of economists and social scientists from across the ideological spectrum have found that immigration increases economic growth and otherwise benefits the country as a whole. Thus, NCLR believes that maintaining a generous legal immigration system reflects our highest ideals and is good for the economy and the country.

Third, in our view, appropriate limits on immigration would: (A) Reaffirm the principle that family reunification should remain the cornerstone of the legal immigration system. In such a system, U.S. citizens and lawful permanent residents would not have to wait for decades or longer to reunite with family members who live abroad; (B) Include "safe and legal channels to meet legitimate workforce needs" in a way that balances the interests of employers and workers, while also ensuring sufficient resources so that today's "children have the skills they need for the highest-paying jobs of tomorrow," as we noted in our testimony. Such a system must include full labor rights and protections, as well as strengthened labor law enforcement; (C) Be enforced through a combination of measures, including border enforcement, labor law enforcement, removal of violators, with priority on offenders who pose a safety or security threat, and, as we noted in our answers above, targeting immigration enforcement resources on unscrupulous actors who deliberately prey on vulnerable workers and are the most-likely violators. Such a system must not encourage employment discrimination against Latinos and others who may appear "foreign," and should not condone or encourage racial profiling; we are hopeful that improvements in technology can facilitate these outcomes, as well as help develop more effective mechanisms to detect and remove those who overstay their visas.

4. **Legalization Program Details:** Should Congress consider a bill to legalize people unlawfully in the country, who should be eligible for the program? Please answer the following questions related this issue.

- Should people here illegally who are in removal proceedings be allowed to benefit from a legalization program?
- Should people that have ignored the government's orders to leave the United States – after a thorough legal proceeding—be allowed to benefit from a legalization program?
- Should an alien convicted of a felony criminal offense or multiple misdemeanors be allowed to benefit from a legalization program?
- Should gang members be allowed to benefit from a legalization program?
- If an alien provides information in an application that is law enforcement sensitive or criminal in nature, should that information be used by our government and not be protected under confidentiality provisions?
- Should people here illegally be given probationary status, or legal status, without a background check done first?
- Should aliens (rather than taxpayers) who benefit from a legalization program pay for all costs associated with it?
- Should there be a time limit imposed for federal agents with regard to background checks on aliens who apply for legalization?
- Should people that apply for legalization be required to submit to an in-person interview with adjudicators?
- Should people that have been denied legalization be placed in immigration proceedings and removed?
- If the Secretary of Homeland Security must revoke a visa for someone on U.S. soil, should that decision be reviewable in the U.S. courts?

NCLR Response: *NCLR agrees with the bipartisan group of Senators working on immigration reform legislation and many bipartisan, independent commissions that have concluded that a program to legalize those here in unauthorized status is an essential element of immigration reform. Such a legalization program must be broad in scope, excluding only those that pose a demonstrable threat to public safety. While some might disagree, the alternatives are far worse. Any attempt to round up and deport 11 million people in our communities would violate the civil rights and disrupt the lives of millions of U.S. citizens and legal residents. Similarly, attempts to create a climate that is so hostile that unauthorized persons might "self deport," have already resulted in unacceptable levels of racial profiling and abuse, including the unlawful detention and in some cases even deportation of U.S. citizens.*

A this point, it is unclear what the exact sequence of procedural steps will be required to legalize; suffice it to say here that the program should be designed to maximize coverage of the undocumented population and afford the government the opportunity to screen out those that pose a threat to public safety. If the program will involve an initial registration period followed by a final adjudication, then certainly those registered should receive temporary deferred action status with work authorization. This would allow sufficient time for appropriate background checks and, if required, in-person interviews with an examiner. In any event, the deferred status should be renewable until such time as a final decision on the application is made.

Regarding program financing, several studies of IRCA implementation found that the effective operation of legalization was endangered by financing provisions that almost resulted in the closure of INS processing offices at the height of the application surge. NCLR believes that the statute should provide financing sufficient to ensure an effective legalization program.

Consistent with decades of Supreme Court precedents, NCLR supports judicial review of government actions that may have serious consequences for the rights and well-being of individuals in immigration proceedings.

Question#:	1
Topic:	DACA Authority
Hearing:	Comprehensive Immigration Reform
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: Did your Department obtain a legal opinion from the Office of Legal Counsel or anyone else in the administration about your legal authority to implement the Deferred Action for Childhood Arrivals? Please provide copies of any documentation, including any and all legal opinions, memoranda, and emails, that discusses any authority you have or do not have to undertake the program.

Response: The Department of Homeland Security is fully committed to ensuring that its policies, practices, and procedures – including the Deferred Action for Childhood Arrivals process – comply fully with all relevant constitutional and statutory requirements. As a general matter, however, the Department does not disclose what confidential legal advice has been provided or what legal questions may have been presented to the Office of the General Counsel or to the Department of Justice for consideration.

Question#:	2
Topic:	DACA processing
Hearing:	Comprehensive Immigration Reform
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: Are officers being instructed to approve or pressured to "get to a yes" on DACA applications? Is there guidance to officers that Requests for Evidence (RFEs) not be issued, or to be issued only in extremely rare circumstances?

Response: No. Officers are not being instructed to approve or pressured to "get to a yes" on DACA requests. Nor are officers being instructed to issue requests for evidence (RFE) only in extremely rare circumstances. USCIS officers are instructed to issue an RFE, as necessary, to provide requestors an opportunity to submit additional evidence to support their request prior to USCIS issuing a final decision. As of February 14, 2013, the RFE rate is 22 percent, which is consistent with other USCIS programs that generally issue an RFE prior to final adjudication.

Question#:	3
Topic:	background checks (DACA)
Hearing:	Comprehensive Immigration Reform
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: Describe what databases are queried as part of the applicant's background check and what government agency maintains the database. Does the database have audit qualities to determine date, location, and name of official performing the query?

Response: U.S. Citizenship and Immigration Services (USCIS) performs background and security checks for all individuals who request deferred action as a childhood arrival. All deferred action requestors will be subject to a TECS query, and those requestors 14 years of age and older will also be subject to a Federal Bureau of Investigation (FBI) fingerprint check. Both TECS and the FBI fingerprint identification system have logs that can be used to determine the date, location, and name of the user performing a query. TECS is maintained by U.S. Customs and Border Protection (CBP).

Question: Describe what type of queries are being conducted and the information that is provided as a result of the search (i.e. NCIC queries provide a description of the applicant's criminal history).

Response: TECS is a border enforcement system that, among other functions, supports the screening of travelers entering the United States and the screening requirements of other federal agencies. USCIS has access to all wants, warrants, and lookouts listed in TECS and certain files within the National Crime Information Center (NCIC) database through TECS, as well as files which include wants/warrants, foreign fugitives, missing persons, registered sex offenders, deported felons, supervised releases, protection orders, terrorist organization members, and violent gang members.

The FBI Fingerprint Check provides summary information regarding an individual's administrative and/or criminal record within the United States.

Question: Does USCIS receive assistance from any other government agencies when conducting background checks on applicants? If so, what is the extent of this assistance?

Response: USCIS submits biometric data to the FBI for a comparison of FBI records. When the result is a match to an IDENT fingerprint record, the FBI provides USCIS with details of the requestor's arrest history.

When a TECS query results in a match, USCIS contacts the agency/office that entered the relevant record to obtain additional information and to verify that the record relates to

Question#:	3
Topic:	background checks (DACA)
Hearing:	Comprehensive Immigration Reform
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

the requestor. If the requestor has more than one record, it may be necessary to contact multiple agencies/offices.

Question: Is the Intelligence Community provided the names of the applicant's to cross check with their databases? If not, why not?

Response: All deferred action requestors are subject to a TECS query. When this query returns a positive match against the system's records, USCIS, through its FDNS officers, coordinates closely relevant information with the Intelligence Community to ensure information is shared between USCIS and the pertinent Intelligence Community agency to ensure national security interests are served.

Question: At what stage of the background check is the Fraud Detection and National Security (FDNS) unit at USCIS consulted?

Response: Any background check hits indicating immigration fraud, criminal activity, public safety concerns, or national security concerns are referred to FDNS.

Question: If an applicant does not provide the designated background documents are they allowed to submit additional documents in their place?

Response: If the supporting evidence filed with Form I-821D is deemed insufficient, USCIS will generally issue a request for additional evidence. A list of possible supporting documents can be found on the form instructions.

Question: Are the applicants allowed to present a character reference to verify their identity? If so, are these references verified?

Response: No. An individual requesting consideration of deferred action for childhood arrivals may not present a character reference to verify his or her identity. Requestors are informed before attending the biometrics appointment about which documents are needed to establish identity.

Question: Is FDNS reviewing approved applications for quality assurance? If not, why not?

Response: Each deferred action request forwarded to FDNS as a fraud referral is reviewed to verify the evidence or suspicion of fraud. In addition, USCIS is implementing a process to select a random sample of DACA cases for review and analysis. This will include a pre-adjudication file review as well as a post-adjudication

Question#:	3
Topic:	background checks (DACA)
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follow up to ensure USCIS effectively forwards cases with fraud indicators to FDNS and correctly adjudicates all cases.

Question: Is the Department requiring in-person interviews? If so, under what circumstances? If not, why not?

Response: USCIS will conduct DACA interviews to verify and potentially expand upon the representations a requestor makes in the adjudications process.

Question: Does USCIS have a sufficient number of employees to process the background checks for the large volume of applicants? Is USCIS currently hiring employees or have any vacancies for these positions? If so, how many?

Response: Yes, USCIS does have a sufficient number of employees to process the background checks for the large volume of DACA applicants. USCIS has proactively hired staff from the onset of DACA in order to handle the new workload generated from the program. The DACA hiring process is still on-going. USCIS intends to hire 746 positions within the Agency's Service Center Operations Directorate that will support the DACA process, in addition to other Service Center Operations workloads. Approximately 70% of those hires will be adjudicatory staff while the remaining 30% will consist of support and clerical staff. To date, USCIS Service Center Operations has hired 426 positions associated with the expected DACA-related workload increase – 316 of those positions are adjudicatory staff. An additional 196 hiring actions are pending; thus, a total of 622 DACA related hiring actions have been initiated through USCIS Service Center Operations to-date. Further, as is the case with any newly created process, there are additional positions that will be hired outside of the adjudicatory staff to support and maintain all other agency responsibilities. For the DACA program, the total number of hires will be approximately 1,422 positions. This total number of staffing includes more than 130 positions for FDNS as well as additional staff at the National Benefits Center to process existing workloads that were internally shifted in order to free up capacity at USCIS Service Centers. Finally, some additional hires will also occur within the USCIS Management Directorate to support the increased staffing numbers within the agency.

Question#:	4
Topic:	DACA fraud and abuse
Hearing:	Comprehensive Immigration Reform
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: What steps has the administration taken to review and ensure that fraudulent documents are not submitted in support of applications for deferred action?

Response: ICE and USCIS will deploy their considerable fraud prevention resources to guard against fraud in this process – and to take strong action against any individuals who engage in fraud. In addition, USCIS has developed training and various resource guides offering exemplars of documents that may be submitted in support of DACA requests. Initial training for officers reviewing DACA requests—including anti-fraud training—occurred in September 2012. Fraud Detection and National Security (FDNS) continues to supplement this initial training with targeted anti-fraud training. USCIS is also working with U.S. Immigration and Customs Enforcement's (ICE) Forensic Laboratory and other federal, state, and foreign government officials for the purposes of building a repository of government issued documents (e.g., passports, birth certificates, and transcripts). These documents are shared with officers and FDNS personnel and are used as an aid in verifying information provided by the DACA requestor.

Question: What types of fraud detection mechanisms have been used? Which have been successful? Which have not been so successful?

Response: USCIS has made clear in its public guidance that if individuals knowingly make a misrepresentation, or knowingly fail to disclose facts, in an effort to have their case deferred or obtain work authorization through this process, they will be treated as an immigration enforcement priority to the fullest extent permitted by law, and be subject to criminal prosecution and/or removal from the United States. USCIS is utilizing the existing Fraud Detection Standard Operating Procedures (SOP) and is incorporating a data-driven approach to further facilitate the identification of potential fraud. The anti-fraud strategy focuses on gathering and managing data, developing strategies, and taking appropriate action on all fraud related issues (e.g., denial and referral to ICE for removal). TECS and fingerprint checks will provide information on individuals who may pose national security or public safety risks as well as indicators of potential fraud. Requestors with positive criminal history results, substantiated findings of fraud, or public safety or national security concerns will be handled under the current Notice To Appear (NTA) policy. If the evidence establishes that an individual has a felony conviction, a significant misdemeanor conviction, three or more non-significant misdemeanor convictions, has attempted to defraud USCIS, or is otherwise a threat to national security or public safety, USCIS will deny the deferred action request unless exceptional circumstances apply.

Question#:	4
Topic:	DACA fraud and abuse
Hearing:	Comprehensive Immigration Reform
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

The DACA-specific anti-fraud detection strategy is based on USCIS's identification and analysis from observed trends and USCIS's ability to gather and manage data obtained from and in cooperation with law enforcement, the intelligence community, and other government and institutional partners and to take appropriate action when fraud is discovered. When multiple DACA requests are identified that demonstrate similar indicators of potential fraud, USCIS analyzes the noted requests and conducts additional research and coordination with other U.S. Government entities as appropriate. USCIS then works to validate and develop additional indicators which are disseminated on a broader basis to the adjudicative workflow.

One particular fraud indicator developed using this strategy is the list of suspect schools maintained by USCIS to notify USCIS officers of educational institutions that do not exist or are otherwise suspected of providing fraudulent educational documents. USCIS has noted and acted upon submissions of educational documents that do not appear to have been issued by legitimate schools.

Question: How have the veracity of affidavits been assessed?

Response: For most of the guidelines, affidavits are not sufficient on their own as evidence submitted with a request for deferred action for childhood arrivals. However, affidavits may be used to support meeting the following guidelines, if documentary evidence is unavailable:

- A gap in the documentation demonstrating the five year continuous residence requirement; and
- A shortcoming in documentation with respect to the brief, casual and innocent departures during the five years of required continuous presence.

However, if USCIS determines that the affidavits are insufficient to overcome the unavailability or the lack of documentary evidence with respect to either of these guidelines, it may issue a request for evidence indicating that further evidence must be submitted to demonstrate that the person meets these guidelines.

USCIS will not accept affidavits as proof of satisfying the following guidelines:

- The person is currently in school, has graduated or obtained a certificate of completion from high school, has obtained a general education development certificate, or is an honorably discharged veteran from the U.S. Coast Guard (USCG) or Armed Forces of the United States;

Question#:	4
Topic:	DACA fraud and abuse
Hearing:	Comprehensive Immigration Reform
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

- The person was physically present in the United States on June 15, 2012;
- The person came to the United States before reaching his or her 16th birthday;
- The person was under the age of 31 on June 15, 2012; and
- The person's criminal history, if applicable.

Question: In what circumstances does an individual receive a notice of intent to deny and a denial of deferred action?

Response: USCIS officers will not defer removal under the DACA process for requestors who do not meet the guidelines set forth in the Secretary's memorandum. Where evidentiary deficiencies are identified, USCIS officers are instructed generally to issue a request for evidence (RFE) or notice of intent to deny (NOID), as necessary, to provide requestors an opportunity to submit additional evidence to support their request prior to USCIS issuing a final decision. USCIS will issue a denial if the requestor does not provide sufficient evidence to satisfy the guidelines. In some instances an outright denial may be issued without first issuing an RFE or NOID. For example, if the record contains irrefutable evidence that a requestor was age thirty-one or older on June 15, 2012 or did not arrive in the United States before his or her sixteenth birthday, USCIS will issue a straight denial because the requestor is unable to satisfy the guideline.

Question: In what circumstance is an individual who is denied deferred action placed in removal proceedings?

Response: If USCIS decides not to defer action in a particular case, USCIS will apply its existing policy guidance governing the referral of cases to ICE and USCIS' issuance of Notices to Appear (www.uscis.gov/NTA).

Question: Please explain the applicable confidentiality provisions. At what point in the process does confidentiality attach? Is confidentiality protected no matter the case, or is previous fraud, criminal behavior or national security concerns being raised with other law enforcement?

Response: Information provided in a request is protected from disclosure to ICE and U.S. Customs and Border Protection (CBP) for the purpose of immigration enforcement proceedings unless the requestor meets the criteria for the issuance of a Notice To Appear or a referral to U.S. Immigration and Customs Enforcement under the criteria set forth in USCIS's Notice to Appear guidance (www.uscis.gov/NTA). Individuals whose cases are deferred pursuant to the consideration of deferred action for childhood arrivals process will not be referred to ICE. The information may be shared with national security and law

Question#:	4
Topic:	DACA fraud and abuse
Hearing:	Comprehensive Immigration Reform
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

enforcement agencies, including ICE and CBP, for purposes other than removal, including for assistance in the consideration of deferred action for childhood arrivals request, to identify or prevent fraudulent claims, for national security purposes, or for the investigation or prosecution of a criminal offense. The above information-sharing policy covers family members and guardians, in addition to the requestor.

Question: What sort of punishment will be sought for aliens who commit fraud or material misrepresentation? Please elaborate if any punishments have been imposed.

Response: USCIS is committed to safeguarding the integrity of the immigration process. If individuals knowingly make a misrepresentation, or knowingly fail to disclose facts, in an effort to have their case deferred or obtain work authorization through this process, they may face significant consequences. They will be treated as an immigration enforcement priority to the fullest extent permitted by law, and be subject to criminal prosecution and/or removal from the United States.

Question#:	5
Topic:	DACA Data
Hearing:	Comprehensive Immigration Reform
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: Please provide the following detailed data, as requested by Chairman Smith and myself on September 20, 2012:

Question a: The number of submitted Form I-821Ds (applications for deferred action)

Question a-i: received

Response: As of March 14, 2013; USCIS has accepted approximately 480,231 DACA requests at the intake lockbox facilities.

Question a-ii: approved

Response: As of March 14, 2013; USCIS has approved approximately 252,193 DACA requests.

Question a-iii: denied

Response: Generally speaking, USCIS first accepts or rejects filings at a Lockbox facility for intake and, within days, issues a receipt notice. Within the next two weeks, individuals are scheduled for their biometrics services appointments, which in turn, are set two to three weeks in advance to allow individuals to adjust their schedule or arrange transportation to appear in person for biometrics collection. After the appointment, biometric and biographic checks are run through various databases before a case is considered adjudication ready. Cases yielding hits are sent first to specialized units to resolve the matter in question and provide definitive information before a case proceeds to adjudication. Consistent with standard practice, officers reviewing cases who identify a deficiency in the facts or evidence presented generally will first issue a Request for Evidence (RFE) or Notice of Intent to Deny (NOID) before denying the case. Each of these avenues provides the requestor an opportunity to address the deficiency in their request. The agency provides a standard time period of 84 days to respond to an RFE and 30 days to respond to a NOID. If the requestor's response to an RFE or NOID does not adequately address the area of concern, the case will be denied. At present, given that the process has been just over six months in existence, approximately 1,102 cases have reached the stage where they have been denied.

Question a-iv: approved despite a criminal conviction

Question#:	5
Topic:	DACA Data
Hearing:	Comprehensive Immigration Reform
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Response: USCIS does not have these statistics.

Question a-v: approved despite a pending criminal charge

Response: USCIS does not have these statistics.

Question a-vi: approved despite a juvenile criminal conviction

Response: USCIS does not have these statistics.

Question a-vii: denied for suspicion of fraud or on the basis of fraud. Of those, how many have been referred for prosecution or removal, and how many have been prosecuted or removed for such cause?

Response: Since the implementation of DACA, approximately 1,102 denials have been issued. None have been denied for fraud. However, USCIS currently has pending cases that have not yet been decided that are under active investigation for fraud.

Question a-viii: containing fraud indicators

Response: As of March 14, 2013; approximately 2,466 cases have been referred to the Center Fraud Offices (Fraud Detection and National Security) for fraud verification/investigation. The Center Fraud Offices have returned approximately 656 of those cases where fraud was not substantiated. The remaining approximate 1,810 cases are still pending with the Center Fraud Offices for verification and investigation.

Question b: The number of submitted Form I-765s (applications for work permits) submitted along with an I-821D

Question b-i: received

Response: As of March 14, 2013; USCIS has accepted approximately 457,550 I-765 Applications filed concurrently with DACA requests at the intake lockbox facilities.

Question b-ii: approved

Response: As of March 14, 2013; USCIS has approved approximately 254,626 I-765 Applications that were filed concurrently with DACA requests.

Question b-iii: Denied

Question#:	5
Topic:	DACA Data
Hearing:	Comprehensive Immigration Reform
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Response: As of March 14, 2013; USCIS has denied approximately 1,165 I-765 Applications that were filed concurrently with DACA requests.

Question b-iv: granted a fee waiver.

Response: As of March 14, 2013; USCIS has granted approximately 76 fee exemptions. Fee waivers are not available for DACA requests.

Question c: The number of individuals granted deferred action under the DACA policy who

Question c-i: have applied for advanced parole

Response: As of February 28, 2013; USCIS has received approximately 124 DACA related applications for advance parole.

Question c-ii: have been granted advance parole

Response: As of February 28, 2013; USCIS has approved approximately 77 DACA related applications for advance parole.

Question c-iii: have been granted advanced parole, traveled, and been paroled back into the United States and subsequently been granted lawful permanent residency.

Response: USCIS does not keep these statistics.

Question c-iv: have been granted lawful permanent residency under any other means.

Response: USCIS does not keep these statistics.

Question d: The number of parents of applicants for DACA who have

Question d-i: requested prosecutorial discretion
Question d-ii: received prosecutorial discretion
Question d-iii: been denied prosecutorial discretion.

Response: There is no process for parents whose children are granted deferred action to be considered under the deferred action for childhood arrivals initiative unless they independently satisfy the guidelines. Other individuals may, on a case-by-case basis,

Question#:	5
Topic:	DACA Data
Hearing:	Comprehensive Immigration Reform
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request deferred action from USCIS or ICE in certain circumstances, consistent with longstanding practice.

Question e: The number of applications that have been received for individuals in removal proceedings, and the number of deferred action or work permit applications that have been approved for individuals in removal proceedings.

Response: USCIS does not keep these statistics.

Question f: The number of DACA applicants who have been denied deferred action who have been:

Question f-i: placed in removal proceedings

Response: As of February 21, 2013; USCIS has not placed any DACA requestor in removal proceedings. ICE does not track these statistics, as ICE only handles DACA requests from aliens held in ICE custody. ICE does not have any mechanisms in place to identify when a USCIS denial of a DACA application results in ICE placing the alien into removal proceedings.

Question f-ii: denied due to ineligibility

Response: As of March 14, 2013; USCIS has denied approximately 1,102 DACA requests.

Question f-iii: denied due to fraud or other violation of the immigration law

Response: Out of the approximate 1,102 denials to date, none have been denied for fraud. USCIS currently has pending cases that have not yet been decided that are under active investigation for fraud.

Question f-iv: denied due to criminal history

Response: USCIS does not have statistics on how many requests were denied because of criminal history.

Question f-v: deported from the United States.

Response: DHS does not keep these statistics.

Question#:	6
Topic:	Denials
Hearing:	Comprehensive Immigration Reform
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: How many DACA applications have been denied? What is the process for an adjudicator to deny an application? For what reasons have DACA applications been denied? Please break down the number of applications denied and from which service center they originate.

Response: Individuals who do not satisfy the guidelines, or who USCIS adjudicators determine should not receive an exercise of prosecutorial discretion, will be denied. USCIS officers are instructed generally to issue a request for evidence or notice of intent to deny, as necessary, to provide requestors an opportunity to submit additional evidence in support of their request prior to USCIS issuing a final decision. As of March 14, 2013, USCIS has denied 1,102 requests.

Question#:	7
Topic:	financial health (DACA)
Hearing:	Comprehensive Immigration Reform
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: Is there any concern about the fiscal health of the agency in charge of DACA – the U.S. Citizenship and Immigration Service? Is the current amount being charged for DACA covering all related costs, including processing, background checks, and fraud prevention efforts? Is there any discussions taking place about increasing the application costs for DACA?

Response: All individuals that submit a request for Deferred Action for Childhood Arrivals (DACA) must pay a fee of $380 for Form I-765, *Application for Employment Authorization* (which is filed concurrently with Form I-821D, *Consideration of Deferred Action for Childhood Arrivals*, and is processed concurrently with that form as part of an integrated process) and an $85 biometric processing fee for a total of $465. There are no fee waivers available for employment authorization requests filed in connection with DACA, although fee exemptions are permitted in very limited circumstances. Since August 15, 2012, USCIS has been closely monitoring fee receipts associated with DACA and the costs to the agency for processing the request including background checks, and fraud prevention efforts. Revenues have been sufficient to cover all costs to the agency for the DACA process. USCIS will continue to carefully monitor and track revenues from the program to ensure they fully cover costs. USCIS will examine the cost of the DACA program along with all other agency workload processes as part of its 2014-2015 Biennial Fee Review (as required by the CFO Act of 1990) to determine if a fee adjustment is warranted.

Question#:	8
Topic:	Luis Abrahan Sanchez Zavaleta 1
Hearing:	Comprehensive Immigration Reform
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: Regarding the Luis Abrahan Sanchez Zavaleta case, you said at the hearing, "I did not learn about it until January [2013] and nor did my aides." However, all Republican members of the Senate Judiciary Committee sent you a letter on December 19, 2012, regarding the matter.

Would you like to correct the record with the Committee regarding when you first learned of the Sanchez Zavaleta case, or do you stand by your statement that you did not learn of the case until January 2013?

When was the first time the case was raised with anyone else at DHS headquarters? What was the context? What action was taken in response?

Response: At the hearing before this Committee, I misspoke as to the date of the Associated Press (AP) article on the case. I stated at the hearing that the AP ran a story in January. In fact, that AP story ran in December, and that is when I learned of this matter.

However, DHS staff was made aware of this matter prior to then, and assisted in facilitating coordination between USCIS and ICE, and arranged notification to Senator Menendez's office after Mr. Zavaleta was apprehended. To my knowledge, decisions on the merits of this case were made by USCIS and ICE. DHS headquarters did not make those decisions.

Question#:	9
Topic:	deferred action
Hearing:	Comprehensive Immigration Reform
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: On the application for Deferred Action for Childhood Arrivals (DACA), Form I-821D, question 1 of Part 3 asks, "Have you ever been arrested for, charged with, or convicted of a felony or misdemeanor in the United States?" Question 5.d of Part 3 asks if the respondent has ever had "any kind of sexual contact or relations with any person who was being forced or threatened." Sanchez Zavaleta answered no to both questions, despite having been arrested for aggravated sexual assault on October 11, 2009.

However, Elliot Williams, ICE Assistant Director for the Office of Congressional Relations, informed Senate Judiciary Committee staff in a February 4, 2013, briefing that lying on a DACA application was not considered a crime.

h. Why is it not a crime to lie on a DACA application?

i. When false information is provided on a DACA application, how should USCIS deal with such a situation?

j. If there are no consequences for lying on a DACA application, please explain how this is not an invitation to lie to the federal government on a DACA application.

Response: It is false to say there are no consequences for lying on a DACA application. A DACA requestor is required to declare under penalty of perjury that the information provided to support his or her request is true. Lying on a DACA request is a crime and DHS will treat it as such. If false information is provided in a DACA request, that information may be shared with national security and law enforcement agencies, including ICE and CBP, for the investigation or prosecution of a criminal offense, to identify or prevent fraudulent claims, or for national security purposes. USCIS has made clear in its public guidance that if individuals knowingly make a misrepresentation, or knowingly fail to disclose facts, in an effort to have their case deferred or obtain work authorization through this process, they will be treated as an immigration enforcement priority to the fullest extent permitted by law, and be subject to criminal prosecution and/or removal from the United States.

Question#:	10
Topic:	Union concerns
Hearing:	Comprehensive Immigration Reform
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: When was the last time you met with the head of each union to discuss concerns by agents?

Response: The American Federation of Government Employees, AFL-CIO (AFGE), is the certified representative of the nationwide bargaining unit that includes U.S. Immigration and Customs Enforcement (ICE) officers and agents involved in customs enforcement. AFGE has delegated most of the representation functions for this bargaining unit to National Immigration and Customs Enforcement Council 118 (C118), which comprises 26 union locals. Most of ICE's 24 field office directors meet regularly with the union local presidents and their executive board. Although the C118 president elected to discontinue participation in the national ICE labor management relations forums (LMRF), union local presidents continue to participate in local LMRF meetings.

All of ICE's field offices established ICE-LMRFs in early 2011 and, except for those few local presidents who elected not to participate or to discontinue participation in the ICE-LMRFs, ICE field office directors conduct monthly or quarterly LMRF meetings with local presidents and local union officers.

ICE senior leadership, including Director John Morton, has met with C118 as follows:

- January – March 2013 – Executive Associate Director Radha Sekar and Human Capital Officer Kim Bauhs had a series of ongoing briefing regarding Sequestration, Budget and Furlough issues.

- April 2013 – Kim Bauhs meet with C118 regarding Federal Viewpoint Survey and a series of other topics raised by the council. Kim requested additional future meetings regarding issues of common interest.

- February 2012—Director Morton met with the C118 President and John Gage, then AFGE National President, regarding upcoming negotiations concerning the ICE Collective Bargaining Agreement. Negotiations were held in the summer of 2012. A senior advisor to Director Morton served as the chief negotiator.

- November 2011—ICE reached out to the C118 President as part of a study to improve ICE's Labor Relations Program and interactions with the Council. After initial discussions, C118 declined further participation.

Question#:	10
Topic:	Union concerns
Hearing:	Comprehensive Immigration Reform
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- June 2011—Director Morton and ICE senior leadership participated in mediation with C118 led by the Federal Mediation and Conciliation Service (FMCS). Through structured interaction, both parties were able to discuss specific problem areas and identify possible means to resolve the issues. While some matters were addressed through those discussions, areas of disagreement remained. FMCS recommended sessions targeted at improving the nature of the relationship and interactions between labor and management; however, C118 declined to participate.

- March 2011—Per Executive Order 13522, "Creating Labor-Management Forums to Improve the Delivery of Government Services," Director Morton hosted a labor forum with C118 during which numerous issues were discussed of interest to the Council. The Department of Homeland Security (DHS) has also sponsored DHS-wide forums during which ICE senior leadership and C118 have participated. Although C118 initially declined further involvement in the forums, recently, C118 has begun to participate occasionally.

Gary Mead, Executive Associate Director (EAD), ICE Office of Enforcement and Removal Operations (ERO), has also hosted regular opportunities for pre-decisional involvement with C118 about topics as diverse as agent and officer uniforms, parameters for a single agent and officer career path, opportunities for a peer support program, and other issues. Additionally, last year, Director Morton accompanied EAD Mead to many town halls with ICE personnel held across the country and during those trips, met with local union leadership to discuss concerns, mission, and strategy.

Question: How do you respond to the ICE union's complaint that they are handicapped from fulfilling their missions?

Response: The performance of ICE officers has allowed ICE to achieve record-setting results in 2012, demonstrating they are successfully fulfilling the ICE mission.

Overall, in FY 2012, ERO removed 409,849 individuals. Of these individuals, approximately 55 percent, or 225,390 of the people removed, were convicted of felonies or misdemeanors—almost double the removal of criminals in FY 2008. This includes removal of 1,215 aliens convicted of homicide; 5,557 aliens convicted of sexual offenses; 40,448 aliens convicted for crimes involving drugs; and 36,166 aliens convicted for driving under the influence.

ICE continues to make progress with regard to other categories prioritized for removal. In 2012, 96 percent of all of ICE's removals fell into a priority category—a record high.

Question#:	10
Topic:	Union concerns
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Thus, far from being handicapped in fulfilling the ICE mission, the performance of ICE officers and agents has been record-setting in 2012.

Question: Do you have plans to meet with either union in the near future?

Response: ICE's Office of Human Capital officials have made offers to reconstitute the ICE Level LMRF or some method of regular scheduled LMR communications and we are awaiting a positive response from the Council 118 President. ICE has indicated that it would like to reinstate the LMRFs as part of our renewed efforts to establish effective means of constructive dialogue with the national union. Local managers continue to hold LMRF meetings with the local union presidents.

Of note, on March 5, 2013, the C118 president attended the most recent Department of Homeland Security LMRF.

Question#:	11
Topic:	Future guest workers
Hearing:	Comprehensive Immigration Reform
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: Why is the President's plan silent on the need for future guest workers, particularly low-skilled workers? Do you believe that a new legal avenue for low-skilled workers is needed in order to stem the flow of illegal immigration?

Response: The manner in which legislation deals with the potential need for future temporary workers is an important part of immigration reform. We are open to seeing how any proposal from the Senate or House proposes to address future temporary worker programs so that it both protects workers, including immigrant workers, and is based on data-drive workforce needs, and will work with Congress on any such proposals.

Question#:	12
Topic:	Legalization program details
Hearing:	Comprehensive Immigration Reform
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: Should people here illegally who are in removal proceedings be allowed to benefit from a legalization program? Should people that have ignored the government's orders to leave the United States – after a thorough legal proceeding—be allowed to benefit from a legalization program?

Response: The Administration has made clear that any immigration reform package must include a legal way for undocumented immigrants to earn citizenship that will encourage them to come out of the shadows so they can play by the same rules as everyone else, including paying their taxes. Under any earned citizenship plan, immigrants living here illegally must be held responsible for their actions by passing national security and criminal background checks, paying taxes and a penalty, going to the back of the line, and learning English before they can earn their citizenship.

Question: Should an alien convicted of a felony criminal offense or multiple misdemeanors be allowed to benefit from a legalization program?

Response: The Administration has made clear that any immigration reform package must include a legal way for undocumented immigrants to earn citizenship that will encourage them to come out of the shadows so they can play by the same rules as everyone else, including paying their taxes. Under any earned citizenship plan, immigrants living here illegally must be held responsible for their actions by passing national security and criminal background checks, paying taxes and a penalty, going to the back of the line, and learning English before they can earn their citizenship.

Question: Should gang members be allowed to benefit from a legalization program?

Response: The Administration has made clear that any immigration reform package must include a legal way for undocumented immigrants to earn citizenship that will encourage them to come out of the shadows so they can play by the same rules as everyone else, including paying their taxes. Under any earned citizenship plan, immigrants living here illegally must be held responsible for their actions by passing national security and criminal background checks, paying taxes and a penalty, going to the back of the line, and learning English before they can earn their citizenship.

Question: If an alien provides information in an application that is law enforcement sensitive or criminal in nature, should that information be used by our government and not be protected under confidentiality provisions?

Question#:	12
Topic:	Legalization program details
Hearing:	Comprehensive Immigration Reform
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Response: The manner in which legislation deals with the confidentiality of information submitted as part of an earned legalization program is an important part of immigration reform. We look forward to seeing how any proposal from the Senate or House proposes to address this issue, and will work with Congress on any such proposals.

Question: Should people here illegally be given probationary status, or legal status, without a background check done first? Should there be a time limit imposed for federal agents with regard to background checks on aliens who apply for legalization?

Response: The Administration has made clear that any immigration reform package must include a legal way for undocumented immigrants to earn citizenship that will encourage them to come out of the shadows so they can play by the same rules as everyone else, including paying their taxes. Under any earned citizenship plan, immigrants living here illegally must be held responsible for their actions by passing national security and criminal background checks, paying taxes and a penalty, going to the back of the line, and learning English before they can earn their citizenship.

Question: Should aliens (rather than taxpayers) who benefit from a legalization program pay for all costs associated with it?

Response: An earned legalization program should include the payment of fees and penalties to offset the costs of administration.

Question: Should people that apply for legalization be required to submit to an in-person interview with adjudicators?

Response: The manner in which legislation deals with how applications should be processed is an important part of immigration reform. We look forward to seeing how any proposal from the Senate or House proposes to address this issue, and will work with Congress on any such proposals.

Question: Should people that have been denied legalization be placed in immigration proceedings and removed?

Response: The manner in which legislation deals with individuals whose applications for legalization have been denied is an important part of immigration reform. We look forward to seeing how any proposal from the Senate or House proposes to address this issue, and will work with Congress on any such proposals.

Question#:	12
Topic:	Legalization program details
Hearing:	Comprehensive Immigration Reform
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: If the Secretary of Homeland Security must revoke a visa for someone on U.S. soil, should that decision be reviewable in the U.S. courts?

Response: The manner in which legislation deals with judicial review as part of a visa program is an important part of immigration reform. We look forward to seeing how any proposal from the Senate or House proposes to address this issue, and will work with Congress on any such proposals.

Question#:	13
Topic:	Entry/exit system
Hearing:	Comprehensive Immigration Reform
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: Until immigration reform is passed by Congress, what will your Department be doing to comply with the 1996 law that requires the Executive Branch to implement a biometric entry and exit system?

Response: As required by the FY2012 Appropriations Act, DHS provided to the House and Senate Appropriations Committees a Comprehensive Biometric Air Exit Plan in May 2012. In that plan, DHS explained that it will continue to pursue research and development into a biometric air exit plan, led by the DHS Science and Technology Directorate (S&T), while enhancing the existing biographic air exit system that DHS uses today to identify and sanction those who have overstayed their authorized period of admission to the United States. Given the concerns with earlier biometric air exit pilots conducted between 2004 and 2009, DHS S&T will work with subject matter experts from U.S. Customs and Border Protection (CBP) and the National Institute of Standards and Technology (NIST) in order to evaluate recent private sector and international technology deployments to determine additional operational models for a biometric air exit program. Our first step is to identify technology that is viable and not cost-prohibitive before proceeding with a pilot program. The plan also described how the Department will continue to enhance its existing exit system using biographic data between now and 2014, which will:

- Significantly enhance our existing capability to identify and target for enforcement action those who have overstayed their authorized period of admission and who represent a public safety and/or national security threat;
- Establish an automated entry-exit capability that will produce information on individual overstays and determine overstay percentages by country;
- Allow us to take administrative action against confirmed overstays by providing the State Department with information to support visa revocation, prohibiting VWP travel, and placing individuals on lookout lists, in accordance with existing federal laws;
- Establish greater efficiencies to our Visa Security Program, allowing for research and analytic activities to be carried out in the United States and investigative and law enforcement liaison work overseas; and
- Provide the core components of an entry-exit and overstay program that will incorporate and use biometric information, as technologies

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mature and DHS can implement an affordable biometric air exit system.

In the past two years, DHS has worked to better detect and deter those who overstay their authorized period of admission through implementation of the enhanced biographic program. As part of Phase I of this effort, in May 2011, Department components began a coordinated effort to vet all potential overstay records against intelligence community and DHS holdings for national security and public safety concerns. In total, Department components reviewed the backlog of 1.6 million unvetted potential overstay records based on national security and public safety priorities. The resulting individuals of concern were forwarded to U.S. Immigration and Customs Enforcement (ICE) for further investigation, and the remaining records are being manually reviewed by ICE to determine overstay status and will be pursued by ICE in accord with the Administration's enforcement priorities. Phase II of this effort includes automating connections between data sources, allowing the Department's Arrival-Departure Information System, which tracks overstays for the Department, to use additional USCIS data useful to determining overstays, and refining ICE's ability to more effectively target and prioritize overstay leads of concern. This phase was deployed on April 9, 2013.

DHS is also following through on Phase III of the enhanced biographic exit plan. This includes database modernization, further investments in targeting and prioritization capabilities, increased functionality between biometric and biographic repositories, as well as document validation, which will dramatically improve the ability to successfully match entry and exit records biographically. In addition to improving existing biographic capabilities, DHS is finding low cost ways to eliminate existing gaps in data. DHS has partnered with Canada to develop an exit program on the common land border of both countries. Beginning June 30, 2013, each country will exchange entry records on third-country nationals and permanent residents, with the other, such that an entry into one country will be an exit from the other. Thus, DHS will have a functioning biographic land border exit system on the northern border by mid-2013, in addition to the biographic air/sea exit system already in place.

When fully implemented, the biographic program will eliminate backlog of unreviewed overstays, and allow DHS to prioritize and take action on overstays, focusing on national security and public safety, and serve as a solid foundation as DHS continues to research additional methods of collecting biometric data at the point of departure for foreign nationals.

Question#:	14
Topic:	Cook County
Hearing:	Comprehensive Immigration Reform
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: There has been a lot of discussion about the ordinance in place in Cook County, Illinois. Despite the strong stance taken by you and Director Morton, nothing has changed and the safety of the public is still at risk. Please provide an update on what options are being discussed on how to deal with the ordinance and its impediment on ICE's mission. Also, please outline what discussions have taken place with the Department of Justice about withholding SCAAP funds for places like Cook County.

Response: The Department of Homeland Security and U.S. Immigration and Customs Enforcement (ICE) are committed to ensuring the safety of American communities and will continue to consider options to encourage Cook County officials to honor ICE detainers. ICE has engaged with the Cook County Board of Commissioners about this issue. To address Cook County's concerns, ICE has discussed several alternatives regarding the ordinance.

On September 21, 2012, ICE sent a letter to the Bureau of Justice Assistance, within the Office of Justice Programs at the Department of Justice (DOJ), indicating that ICE had completed its review of the fiscal year (FY) 2012 State Criminal Alien Assistance Program (SCAAP) funding requests. The letter informed DOJ that the agency's ability to accurately verify the immigration status of criminal aliens detained by jurisdictions that restrict ICE's access to information and persons who may be in the country unlawfully is undermined. Accordingly, while ICE did complete its review of all FY 2012 SCAAP requests received from DOJ, ICE was not able to verify submissions from Cook County, Illinois, and Santa Clara County, California.

Question#:	15
Topic:	detention standards
Hearing:	Comprehensive Immigration Reform
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: Last February, ICE announced changes to its detention standards, providing more accommodations and benefits to illegal aliens. The manual says that transgender detainees who were already receiving hormone therapy when taken into ICE custody shall have continued access. Does that mean taxpayers will be paying for these therapies, or will the costs of the therapy be the burden of the detainee? To date, have taxpayers paid for these therapies? If so, what has been the cost to taxpayers?

Response: U.S. Immigration and Customs Enforcement's (ICE) new standard governing access to hormone therapy mirrors the policy of the Department of Justice, Bureau of Prisons (BOP). Under ICE policy, detainees who are already receiving hormone therapy when taken into ICE custody are provided continued access to such therapy, and all transgender detainees in ICE custody have access to transgender-related medical care and medications based on medical need. Similar to BOP policy on Gender Identity Disorder (GID), ICE policy requires that inmates diagnosed with GID receive all medically necessary treatment to achieve physical and mental stability, including hormone therapy, regardless of whether or not they had already been receiving such treatment prior to being taken into custody.

All necessary medical care in detention facilities is funded by ICE or the local government entity operating the facility rather than by individual detainees; however, the costs of providing hormone therapy are modest, ranging from approximately $11-35/month for male-to-female hormone treatment, and approximately $15-30/month for female-to-male hormone treatment. In addition, ICE's policy is consistent with medical and legal findings that abrupt termination of hormone therapy can result in adverse, severe medical reactions, treatment of which may cause the government to incur significant medical expenses.

Question#:	16
Topic:	Visa Security Program
Hearing:	Comprehensive Immigration Reform
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: What is the status of the Visa Security Program, specifically how many units are deployed and where are they deployed? Do you believe that the Visa Security Program should be expanded to all 57 visa-issuing posts determined to be high risk by DHS and the Department of State? If so, how much would it cost to expand the VSP to all high-risk posts? Why haven't you asked Congress for that amount as part of your proposed budget?

***** Law Enforcement Sensitive *****

Response: [redacted]

MISCELLANEOUS SUBMISSIONS FOR THE RECORD

Question#:	16
Topic:	Visa Security Program
Hearing:	Comprehensive Immigration Reform
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

[redacted]

*** Law Enforcement Sensitive ***

Question#:	17
Topic:	Morton Memoranda
Hearing:	Comprehensive Immigration Reform
Primary:	The Honorable Mike Lee
Committee:	JUDICIARY (SENATE)

Question: In 2011, ICE Director John Morton issued two memoranda that outlined priorities for prosecutorial discretion. I was troubled by the issuance of those memoranda and I remain troubled by their implementation.

Chris Crane, a witness on the second panel here today, submitted written testimony for today's hearing detailing disturbing accounts of the implementation of this prosecutorial discretion directive. Specifically, he recounts the experience of three ICE agents in Salt Lake City, Utah, who arrested an individual after he admitted in open court that he was in the country illegally. The ICE Field Office Director, however, ordered that all the charges be dropped and that the ICE agents be placed under investigation for making the arrest. I understand that this is just one of many instances in which agents' ability to arrest offenders has been restricted.

Are you concerned that at some point a specific set of so-called "priorities," when universally enforced in rigid fashion, will essentially amount to the enactment of legislation without bicameralism and presentment?

Response: No, this process is simply smart law enforcement policy that will help U.S. Immigration and Customs Enforcement (ICE) effectuate its priorities and effectively use its immigration enforcement resources. The use of prosecutorial discretion in the immigration context has long been recognized by the Supreme Court, including most recently in *Arizona v. United States*.

Question#:	18
Topic:	workplace enforcement
Hearing:	Comprehensive Immigration Reform
Primary:	The Honorable Mike Lee
Committee:	JUDICIARY (SENATE)

Question: In April 2009, ICE introduced a revised worksite enforcement strategy that prioritizes prosecutions against employers who hire unauthorized workers over the prosecution of unauthorized workers.

Has this shift in priorities measurably reduced the employment of illegal aliens?

Response: DHS neither measures nor is aware of any industry that actively measures this type of data.

U.S. Immigration and Customs Enforcement's (ICE) Office of Homeland Security Investigations believes that our revised strategy utilizing enforcement (criminal arrests of employers), compliance (Form I-9 inspections, civil fines and debarment) and outreach (ICE Mutual Agreement between Government and Employers (IMAGE) program) is more effective in creating a culture of compliance. Since its launch in 2009, the current WSE strategy has resulted in record years in criminal arrest of employers/managers, initiation of WSE investigations, I-9 inspections, suspension and debarment of companies, and finals orders of administrative fines.

Question: In what ways might a bill that requires the use of E-Verify increase ICE's ability to enforce employment laws in the workplace?

Response: The Administration believes that mandated the use of E-Verify, in a phased-in manner, is an important component in an immigration reform bill. E-Verify provides businesses with a clear, free, and efficient means to determine whether their employees are eligible to work in the United States. By helping employers ensure their workforce is legal, electronic verification promotes economic fairness and a level playing field, prevents the illegal hiring that serves as a magnet for further undocumented immigration across our borders, and protects workers from exploitation.

Question#:	19
Topic:	Border control 1
Hearing:	Comprehensive Immigration Reform
Primary:	The Honorable Mike Lee
Committee:	JUDICIARY (SENATE)

Question: In your written statement, you ascribe the four-year decrease in attempts to cross the Southwest border illegally, as measured by Border Patrol apprehensions, to more effective border security.

Are you able to account for the effects of a sluggish economy on the decrease in border crossings over the last four years?

Response: Border security is a shared responsibility, and a concept that doesn't begin or end at the border. To be truly effective, it requires a unity of effort, involving a whole of government approach to include Federal, state, local, tribal, and bi-national partnerships. Although there are various factors that influence apprehension rates, the Department believes that the decline is due in large part to the investments that have been made in border security resources. The Department will continue to maintain and expand upon its successes, by further integrating Federal, state, local, tribal, and bi-national border security efforts and by applying a risk-based strategy, based on information and intelligence while moving towards a more flexible and mobile workforce that can rapidly respond to emerging threats.

Question#:	20
Topic:	Border control 2
Hearing:	Comprehensive Immigration Reform
Primary:	The Honorable Mike Lee
Committee:	JUDICIARY (SENATE)

Question: Last year, you implemented a new index to track the security of the border – one that, remarkably, does not seek to track the number of illegal aliens who succeed in crossing the border.

How can improvements in border security be measured accurately if you have changed the metrics by which you assess security?

Response: Border security is not a simple concept and it cannot be measured in a single metric. Border Patrol officers and agents measure success utilizing dozens of metrics, each of which paints a different portion of the overall border security picture and each of which informs tactical decision making. Amongst others, these metrics include apprehensions, recidivism, and crime rates in border communities. While each metric helps inform the overall state of border security, the relative importance of each metric shifts over time. Because no single metric can measure border security, our focus has been on ensuring that Border Patrol agents have the tools necessary to best secure our borders.

Question#:	21
Topic:	Visa Exit System
Hearing:	Comprehensive Immigration Reform
Primary:	The Honorable Mike Lee
Committee:	JUDICIARY (SENATE)

Question: At a full Committee hearing last April, you testified that a biometric visa exit system could be deployed within 4 years. You then submitted your plan to Congress in May. In your written statement for today's hearing, you suggested that the current phase, which involves automating connections between DHS data sources, would be complete sometime this year.

When do you expect the biometric exit system to be fully implemented?

Response: DHS provided to the House and Senate Appropriations Committees a Comprehensive Biometric Air Exit Plan in May 2012. In that plan, DHS explained that it will continue to pursue research and development into a biometric air exit plan, led by the DHS Science and Technology Directorate (S&T), while enhancing the existing biographic air exit system that DHS uses today to identify and sanction those who have overstayed their lawful period of admission to the United States. Given the concerns with earlier biometric air exit pilots conducted between 2004 and 2009, DHS S&T will work with subject matter experts from CBP and NIST in order to evaluate recent private sector and international technology deployments to determine additional operational models for a biometric air exit program. Our first step is to identify technology that is viable and not cost-prohibitive before proceeding with a pilot program.

Question: I believe that increased international tourism could do much more good for our economy than our current system allows. America is still viewed as the top destination for many foreigners who would come and spend a substantial amount of money here. Travel is one of the easiest ways to spur economic growth in our cities, in our national parks, and at our tourist attractions. With a reliable exit system in place, we could do more, legislatively, to encourage international tourism.

What effect do you predict a biometric exit system will have on the visa overstay rate?

Response: A biometric air exit system will have a marginal impact on the visa overstay rate. Biometric air exit data provides additional assurances that an identity departing the United States matches a specific identity that previously entered the United States. While this will provide significant operational benefits to DHS, biometric exit must still be "anchored" by a biographic exit system in order to allow the biometric data to match within the time limits that the entry and exit operational environment requires. Further, biometric air exit does not solve certain data gaps that DHS is addressing elsewhere, such as land border departures.

Senator Grassley's Question for Jessica Vaughan, CIS

1. Entry-Exit System: In 1996, Congress required the creation of an automated entry/exit system to record the entries and departures of every alien. The law was intended to track visa overstays. However, administration after administration has failed to implement the "exit" portion, citing costs and burden to airlines and government agencies. The outline of a plan circulated by the eight senators includes an entry/exit system, but only at air and sea ports. It doesn't include land points of entry. Do you believe that any effective entry-exit system must cover land points of entry?

Answer: Yes; any entry-exit system that fails to cover land ports of entry will miss the majority of visitors entering the country, and probably the majority of overstayers as well. According to U.S. Customs and Border Protection statistics, about two-thirds of international travelers enter the United States by land. Most of these visitors currently are exempt from enrollment in US-VISIT – meaning we currently do not collect biometric information upon either entry or exit, and therefore have not authenticated the visitors' identity nor collected information to determine their compliance with immigration laws. A large share of land-entry visitors are citizens of Mexico (or claiming to be), which is also the top country of origin of the estimated three to four million overstayers. Plans for land port re-design that are currently underway should be expected to incorporate the eventual implementation of entry and exit screening. Those land ports that have already implemented southbound screening for weapons and cash have a head start and should be considered pilots for how to accomplish traveler screening as well. In addition, the expansion of trusted traveler programs should be considered to increase the number of individuals who can be tracked in a less labor-intensive process. Lawmakers should consider imposing entry fees for cross-border commuters and other visitors to help fund the infrastructure improvements and the increased cost of more robust traveler inspections.

2. Temporary Worker Program: On January 29, President Obama offered an outline of a plan for comprehensive immigration reform. It has four broad parts, including a pathway to citizenship for illegal immigrants. And, while he addresses legal immigration by talking about family reunification, increasing numbers, and enhancing tourism, he does <u>not</u> mention the need for a future guest worker program to help low-skilled immigrants. What's your reaction to the President's proposed plan, particularly on this point?

Answer: Our research shows that the President's plan is unlikely to garner sufficient support to pass, and, if passed, would be harmful to American workers, costly for taxpayers, and detrimental to national security and public safety. It would exacerbate our immigration problems, because it completes the amnesty and increases legal immigration before shoring up enforcement of immigration laws and improving border security. With regard to the need for future low-skill guest worker programs, our research indicates that there is no shortage of such workers in the United States at this time. In the fourth quarter of 2012, the standard unemployment rate (referred to as U-3) for U.S.-born adults who have not completed high school was 18.7 percent. Using the broader measure of unemployment (referred to as U-6), which includes those who want to work but have not looked recently, the rate for U.S.-born adults who have not completed high school was 30.8 percent. This suggests that theoretically, U.S. employers in need of low-skilled workers should be able to find U.S. workers. In addition, our family-based legal immigration programs and our existing guest worker programs bring in tens of thousands of additional low-skilled workers each year. However, it could be that some

employers experience spot shortages of workers. I believe that our current guest worker programs could be reformed to better meet the small-scale needs of certain employers without disastrous effects on U.S. workers. Reforms should include transferring some degree of control or input to state workforce agencies, and the programs must be industry-specific, truly temporary (confirm exits), short-term (six months or less), include wage and conditions standards, and limited in the number of workers admitted. The point must be to avoid encouraging employers to become dependent on foreign guest workers, and to promote the development of a stable domestic labor source (or alternatives such as robotics or mechanization). In addition, I recommend that members of the committee seek data from DHS on the visa compliance rates for H-2A and H-2B workers, which was collected under the Visa Exit Program Pilot (terminated in September, 2011). Under the pilot, these visitors were required to exit the United States using specific border crossing points so that their departure could be confirmed. This information might help lawmakers determine if these programs contribute to illegal settlement or if additional compliance requirements need to be implemented.

3. E-Verify: On January 31st, I introduced the *Accountability Through Electronic Verification Act,* a bill that would make E-Verify a staple in every workplace. When we passed the 1986 amnesty, we made it illegal for an employer to knowingly hire someone here unlawfully. Do you believe that the E-Verify program should be mandatory? Do you think that increasing penalties on employers will help deter them from hiring people here illegally?

Answer: Yes, E-Verify should be mandatory. As long as E-Verify remains voluntary, then law-abiding, conscientious employers who are diligent about maintaining a legal workforce will be disadvantaged by their competitors who continue to hire illegal workers. Unless E-Verify is made mandatory, then the unscrupulous employers will not comply. I have interviewed employers around the country in a variety of industries about their use of E-Verify and if they do not use it, when I ask them why, the most common answer is, "because we don't have to." According to a recent Bloomberg Government study, the imposition of E-Verify mandates at the state level have significantly affected employer and employee behavior, with the result that employers comply with the law, illegal workers depart, and legal workers are hired for those same jobs. As for increased penalties, in my view this could be helpful, but it would be even more fruitful for ICE to re-balance its worksite enforcement efforts to include more criminal investigations against egregious employers with a pattern or practice of illegal hiring, or who harbor illegal workers, in addition to the payroll audits, which typically result in paperwork violations. According to ICE statistics, criminal arrests, indictments, and prosecutions of employers have declined by more than 50 percent since 2008. It doesn't do much good to increase the penalties if fewer employers are subject to prosecution to begin with, and if ICE is limiting itself in the types of investigations and subsequent charges that it can bring.

4. Biometric Social Security Cards: Some members of Congress have proposed the creation of a new biometric Social Security card for all Americans. Do you have any thoughts about such proposals?

Answer: In my view, the introduction of a biometric Social Security card would not have a significant effect on illegal immigration, illegal hiring, or preventing illegal immigrants from accessing public benefits, although it would impose burdensome requirements on the federal

government to produce and issue the cards, on Americans and legal workers to apply for and carry the cards, and on employers and government agencies to obtain devices to read the cards. Instead, the focus should be on preventing unauthorized or fraudulent use of the Social Security numbers. This can be accomplished with existing programs and technology. For example, the Social Security Administration and DHS should resume cooperation to issue no-match letters to employers in situations of possible fraudulent use, and to notify individuals when their numbers may have been compromised. The existing E-Verify and SSNVS programs can support these efforts, but they should be used more extensively.

5. Spending on Enforcement Efforts: In January, the Migration Policy Institute released a report entitled *Immigration Enforcement in the United States: The Rise of a Formidable Machinery.* The report aims to convince the public that the government has succeeded in immigration enforcement and suggests that spending cuts might be in order. What's your reaction to the report released by the Migration Policy Institute?

Answer: The MPI report paints a misleading picture of the state of immigration law enforcement. First, MPI grossly inflates the immigration enforcement spending totals by tallying all spending by three Department of Homeland Security agencies -- Immigration and Customs Enforcement (ICE), Customs and Border Protection (CBP) and US-VISIT, much of which is not spent on activities unrelated to immigration enforcement, and compares it to spending on a handful of other federal law enforcement agencies, to give the impression that immigration enforcement spending represents a majority of all federal law enforcement spending. In fact, spending on immigration law enforcement agencies is about one-half of what is spent on all other non-military federal law enforcement agencies, not 24 percent greater, as MPI claimed. And, a large share of the DHS agencies' activities are not immigration enforcement at all; they include customs screening and enforcement, drug and weapons interdiction, cargo inspection, returning stolen antiquities, and intellectual property violations. It is true that we have seen dramatic growth in immigration enforcement spending over the last two decades, but the scale of the illegal immigration problem is much larger than it was two decades ago. And, our nation faces greater threats from terrorism and transnational criminal organization than it did two decades ago. Besides, 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. For this reason, every dollar invested in border security and immigration enforcement has a public safety benefit and a fiscal benefit. No one could seriously suggest that we under-fund our agencies to the extent that they were starved for resources in the 1990s. A more detailed critique of the MPI report can be found here: http://cis.org/Announcements/Immigration-Enforcement-United-States-Rise-Formidable-Machinery.

6. Record Deportation Statistics: Administration officials have pointed to what they claim is a record number of removals and returns-- 409,000 in 2012, out of more than 12 million people here illegally. What's your response to the administration's claims that its enforcement numbers and efforts are record breaking?

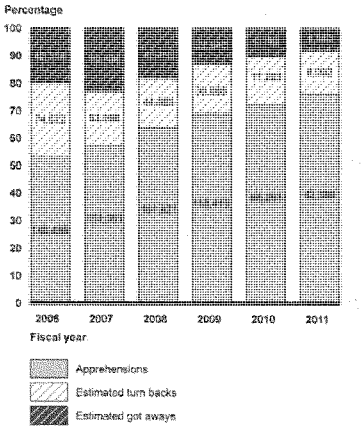
Answer: Statistics on immigration enforcement from a variety of sources present a mixed picture of immigration enforcement, with many indicators suggesting a significant decline in immigration enforcement activity over the last several years, and others showing only modest

increases. While the administration claims that 409,000 is a record number of removals and returns, they have not shared their methodology nor shown exactly what type of cases they are counting. Their deportation statistics include the removal of tens of thousands of individuals who were apprehended by the Border Patrol, and who traditionally were not counted in deportation statistics. Older DHS and INS statistics contradict this claim of a record number of removals and returns; for example, in 1995 removals and returns numbered more than 1.3 million, and in 1996 they numbered more than 1.3 million. The total number of removals and returns reported by DHS has declined 41 percent since 2007, from 1.2 million to 716,000 in 2011. Other metrics also indicate a decline in enforcement. For example, arrests by the ICE-HSI have declined 70 percent since 2007, while arrests by ICE-ERO have been flat, despite the implementation of the Secure Communities program, which has dramatically enhanced ICE's ability to identify criminal aliens. Finally, it appears that the number of aliens who have failed to abide by deportation orders is rising. In 2012, ICE reported that there were 850,000 aliens present in the country who have been ordered removed or excluded, but who had not departed, up from 558,000 fugitive aliens reported in 2008.

Appendix VIII: Estimated Illegal Entries by Data Element (Apprehensions, Estimated Turn Backs, and Estimated Got Aways) by Border Patrol Sector, Fiscal Years 2006 through 2011

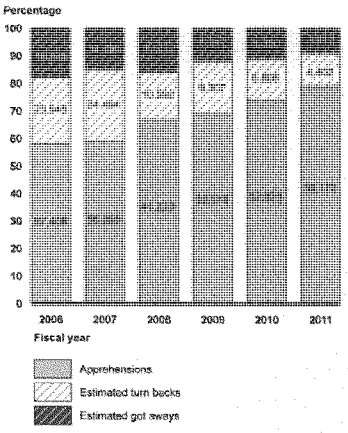
Figures 36 through 44 show the number of apprehensions, turn backs, and got aways as percentages of total estimated known illegal entries for each southwest border sector, from fiscal years 2006 through 2011.

Figure 36: Number of San Diego Sector Border Patrol Apprehensions, Turn Backs, and Got Aways as a Percentage of Estimated Known Illegal Entries, Fiscal Years 2006 through 2011



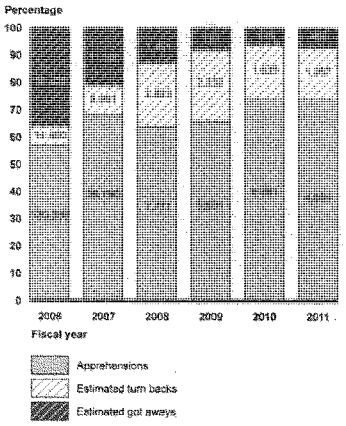
Source: GAO analysis of CBP data

Figure 37: Number of El Centro Sector Border Patrol Apprehensions, Turn Backs, and Got Aways as a Percentage of Estimated Known Illegal Entries, Fiscal Years 2006 through 2011



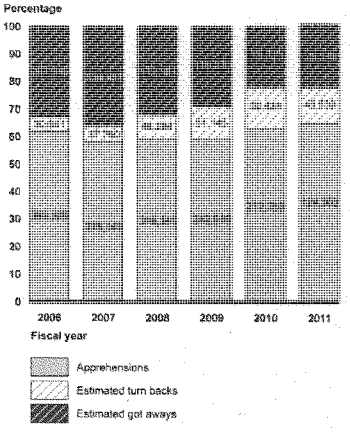
Source: GAO analysis of CBP data.

Figure 38: Number of Yuma Sector Border Patrol Apprehensions, Turn Backs, and Got Aways as a Percentage of Estimated Known Illegal Entries, Fiscal Years 2006 through 2011



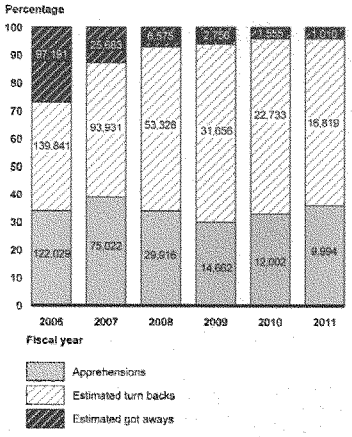
Source: GAO analysis of CBP data.

Figure 39: Number of Tucson Sector Border Patrol Apprehensions, Turn Backs, and Got Aways as a Percentage of Estimated Known Illegal Entries, Fiscal Years 2006 through 2011



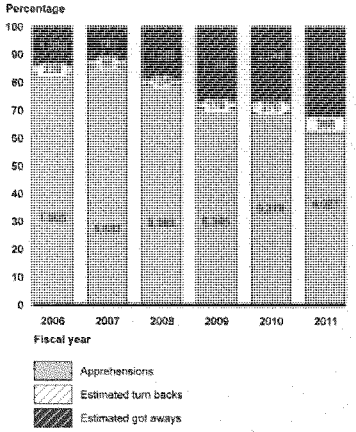
Source: GAO analysis of CBP data.

Figure 40: Number of El Paso Sector Border Patrol Apprehensions, Turn Backs, and Got Aways as a Percentage of Estimated Known Illegal Entries, Fiscal Years 2006 through 2011



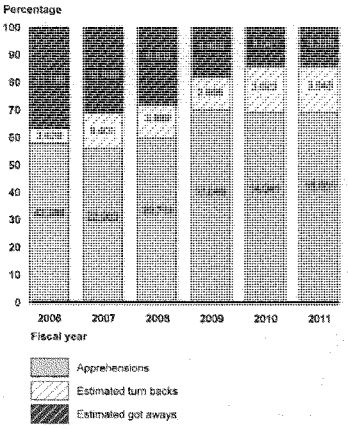
Source: GAO analysis of CBP data.

Figure 41: Number of Big Bend Sector Border Patrol Apprehensions, Turn Backs, and Got Aways as a Percentage of Estimated Known Illegal Entries, Fiscal Years 2006 through 2011



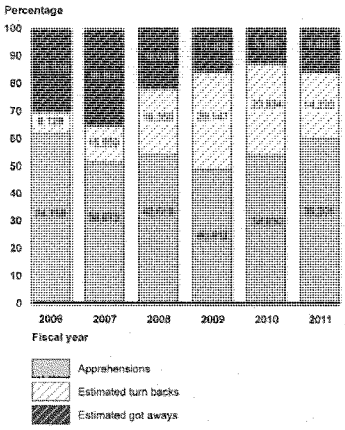
Source: GAO analysis of CBP data.

Figure 42: Number of Del Rio Sector Border Patrol Apprehensions, Turn Backs, and Got Aways as a Percentage of Estimated Known Illegal Entries, Fiscal Years 2006 through 2011



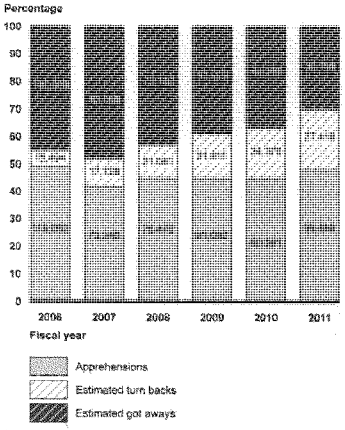
Source: GAO analysis of CBP data

Figure 43: Number of Laredo Sector Border Patrol Apprehensions, Turn Backs, and Got Aways as a Percentage of Estimated Known Illegal Entries, Fiscal Years 2006 through 2011



Source: GAO analysis of CBP data.

Figure 44: Number of Rio Grande Valley Sector Border Patrol Apprehensions, Turn Backs, and Got Aways as a Percentage of Estimated Known Illegal Entries, Fiscal Years 2006 through 2011



Source: GAO analysis of CBP data.

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February 11, 2013

The Honorable Janet Napolitano
Secretary
U.S. Department of Homeland Security
Washington, D.C. 20528

Dear Madam Secretary,

As you are aware, Arizona pays a disproportionate price for the nation's broken immigration system. The renewed attention on immigration reform could provide the opportunity for much needed solutions to long-standing issues that impact both Arizona and the nation as whole.

Unfortunately, the persistent focus on the narrative that the southern border between the U.S. and Mexico is 'safer than ever' is counterproductive. At best, the 'safer than ever' claim refers to the situation we were facing years ago with historic levels of illegal crossings rather than providing any objective assessment of the current security situation. The Department of Homeland Security (DHS) has a determined focus on the level of Border Patrol apprehensions as an indicator of performance relative to border security despite this metric failing to paint a complete picture. Any number of factors, such as the recent economic downturn, could be contributing to lower apprehension rates. The Government Accountability Office (GAO) noted in a report issued in December of last year that apprehensions as in interim measure "does not inform program results and therefore limits DHS and congressional oversight and accountability." In fact, the GAO also noted flatly that "Border Patrol does not yet have performance goals and measures in place necessary to define border security and determine the resources necessary to achieve it."

Federal agents along the southern border are no doubt doing their best and despite the lack of credible performance goals and measures it appears that gains in border security have been realized in certain areas, such as in the Yuma Sector. However, the security issues in the Tucson Sector remain a dangerous problem. Take for example the Ladd Ranch, a 14,000 acre ranch that shares ten miles of the U.S.-Mexico border between Naco, Arizona and the San Pedro River. They report witnessing 14 breaches with a total of 29 trucks over the last 12 months. According to the rancher, the crossings took place in daylight and within sight of four fixed cameras. Having requested an increased Border Patrol presence in the area, they were told the Border Patrol lacks the manpower. The Border Patrol also claims to have apprehended some number of the crossers and is reportedly planning to install a portable camera in the area.

http://www.senate.gov/flake
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Given the persistence of security issues in the Tucson Sector, it would be beneficial to have the Department provide answers to the following questions related to these witnessed crossings:

- Does the Border Patrol have a record of the specific crossings that were witnessed over the last 12 months on the Ladd Ranch?
- Were any of those involved in the witnessed crossings apprehended by the Border Patrol and if so where were they apprehended?
- To what extent was drug trafficking involved and to the Border Patrol's knowledge were any of those crossing armed at the time?
- If any were apprehended, was anyone charged and what was the ultimate disposition of those apprehended?
- Given that the area appears to be frequented by those seeking unlawful entry in into the U.S., what has been the Border Patrol's presence in the area over the last 12 months?
- What is the Border Patrol's plan for addressing what appears to be an area frequented by those seeking to cross illegally?

An attitude of 'at least it's not as bad as it used to be' is slim comfort to border area residents continuing to be faced with an unsafe situation. Like it or not, the U.S. public will be loath to trust the federal government to move forward with the reforms necessary to address widespread issues presented by our broken immigration system unless steps are taken to address security at the border. Toward that end, I look forward to your responses to the questions posed.

Sincerely,

JEFF FLAKE
U.S. Senator

February 12, 2013

Chris Crane
President
National Immigration and Customs Enforcement Council
P.O. Box 471
Oakdale, LA 71463

The Honorable Barack Obama
President
The White House
Washington, DC 20500

Dear Mr. President:

The National Immigration and Customs Enforcement Council represents 7,000 ICE officers and support staff who protect this nation and uphold our immigration laws. I write today to express my sincere and respectful concern that our union and its members have not been invited to participate in White House meetings concerning the crafting of a comprehensive immigration bill. It is my understanding that you recently met with business executives and advocacy groups to discuss immigration reform that would include legalization for those now here illegally, as well as a possible guest worker program and chain migration. These measures would have significant implications for interior immigration enforcement and I believe our officers—who risk their lives every day to secure the nation—have a crucial perspective to offer.

As you may know, ICE officers have been forced to file suit against Secretary Napolitano for actions she has taken that prevent us from doing our jobs and enforcing duly enacted law. Right now, our officers effectively have to choose between enforcing the law as we're trained or losing their jobs. I am plaintiff in this suit. Our union has also previously held our appointed director, John Morton, in no confidence with a unanimous vote.

I have attached to this letter my recent testimony before the House Judiciary Committee, which outlines in detail the concerns our officers have and the threats to public safety created by the constraints which have been placed upon us. Agent morale has been devastated. We are given directions, both verbal and written, that prevent us from being able to arrest those who are in clear violation of the law and who may even pose a threat to public safety. We are also concerned about the practice of releasing without investigation illegal aliens who have allegedly assaulted our officers.

Until these concerns are resolved, I fear that any enforcement mechanisms in a future immigration bill will, like the laws already on the books, not be enforced.

In order to share these concerns in more detail, I would therefore respectfully request, as both an ICE officer and as president of the National ICE Council, that our union be included in any future immigration meetings held at the White House.

Thank you for your consideration.

Sincerely,

Chris Crane
President, National ICE Council

Dear Chairman Patrick Leahy,

Attached please find links to 265,213 petitions calling for a roadmap to citizenship for all 11 million undocumented immigrants living in our country collected by the following organizations:

Presente.org 9,856
CREDO Action 102, 619
Daily KOS 55,129
America's Voice 9,026
National Council of La Raza 4,583
Reform Immigration for America 84,000

presente.org

To the United States Congress:

In past years, previous Comprehensive Immigration Reform (CIR) bills haven't come close to giving all undocumented people a chance at citizenship, and would have left millions behind.
I am calling on you to introduce a bill that would provide a pathway to citizenship for all 11 million undocumented people living and contributing in our country.

Link to 9, 856 signatures:
https://docs.google.com/a/presente.org/file/d/0B-Y3unTzF1tlYUFGMjlaVEdubkk/edit?usp=sharing

CREDO
action

February 12, 2013

Chairman Patrick Leahy
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Leahy:

I am writing to deliver the signatures of **102,619 Americans** who have signed a petition with the following text:

> **"The struggle for immigrants' rights is the next stage in America's movement for civil rights. We need to pass real immigration reform including a roadmap to citizenship for America's 11 million immigrants."**

Over 11 million immigrants live in the United States without the full protection of our legal system or a framework that would provide them with a path to participate in our democracy.

The time is now for real immigration reform that keeps families together, protects immigrants from violence and discrimination, and provides immigrants who are living in America and contributing to our society a pathway to citizenship.

These Americans urge you to support real immigration reform, including a roadmap to citizenship for America's 11 million undocumented immigrants.

A pdf file of the full list of signers can be downloaded here:

http://act.credoaction.com/pdfs/Tell_the_Senate_Immigrant_Rights_are_Civil_Rights_PetitionSignatures_20130208.pdf

If you have any questions about these signatures, please do not hesitate to contact me through the information provided below.

Sincerely,

Murshed Zaheed
Deputy Political Director, CREDO Action
415-369-2000

Link to 102,619 signatures:
https://docs.google.com/a/presente.org/file/d/0B5mVz9iYURyyaVBoU1kzT28zaE0/edit

To President Obama, members of Congress, and all relevant agencies:

The undersigned 55,129 people answered the following online action. Please work to update our immigration process and include a path to citizenship for millions of hardworking immigrants.

Sincerely,
The Daily Kos Staff

Actual text of the call to action petition:

Support President Obama's call for comprehensive immigration reform with a path to citizenship

With President Obama's big speech yesterday, and with the announcement of a bipartisan framework in the Senate, it's clear that comprehensive immigration reform is finally within reach.

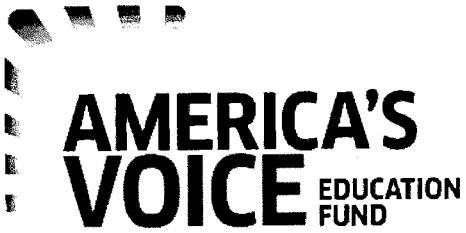
As we move forward, we need to make sure the new policy is rooted in the American Dream by articulating a clear path to citizenship for millions of hard-working immigrants and their children.

Please join with Daily Kos and Workers' Voice by signing our petition supporting President Obama's call for comprehensive immigration reform that includes a path to citizenship. We will send the signatures to the White House.

Dear President Obama:

Thank you for your commitment to update America's immigration policy by creating a path to citizenship for millions of hardworking immigrants. We support you in this fight.

Link to view 55,129 signatures:
https://docs.google.com/a/presente.org/file/d/0Bwg3rvz1-99HVk8yNXE3b093RU0/edit



Dear Chairman Leahy, Ranking Member Grassley and Members of the Senate Judiciary Committee,

As an organization dedicated to harnessing the power of American voices and American values, America's Voice and America's Voice Education Fund works to enact policy changes that guarantee full labor, civil and political rights for immigrants and their families. We work in partnership with progressive, faith-based, labor, civil rights, and grassroots groups, networks and leaders to enact federal legislation that puts 11 million Americans-in-waiting on the road to full citizenship

Americans are ready for action on immigration reform that includes a clear path to citizenship. In anticipation of this week's hearing on comprehensive immigration reform, attached please find the signatures of 9,026 Americans asking Congress to enact a straightforward pathway to citizenship for the 11 million Americans-in-waiting. We kindly ask that this petition be submitted to the record at the hearing. We thank the Committee for its consideration; please feel free to contact us should you have any questions.

Sincerely,

The America's Voice Education Fund Team

Link to 9,026 signatures
https://docs.google.com/a/presente.org/file/d/0By-_rtigt9B7VHhmM0ttbzZvVVk/edit

NCLR

NATIONAL COUNCIL OF LA RAZA

NCLR asked members of its Action Network to send the following letter to their senators in support of passing immigration reform. The NCLR Action Network sent 4,583 letters asking their senators to include a roadmap to citizenship for 11 million aspiring citizens. Those individuals who sent the letters are listed in the attached file.

Dear Senator:

I urge you to join to the bipartisan group of senators who released a set of principles for immigration reform. I expect both political parties to address this pressing issue, and I look forward to your leadership in the debate.

Our great nation deserves a commonsense immigration system that keeps families together and creates a roadmap to citizenship for 11 million new Americans who aspire to be citizens. And the public is in support of such a system. A recent GW/Politico poll on a proposed path to citizenship showed that, overall, voters support it by almost two to one. New immigrants realize the value of working hard and doing their part in exchange for the blessings of liberty.

I urge you to make the road to citizenship for 11 million new Americans the centerpiece of any reform proposal. In addition, I look forward to legislation that reunites all families, including LGBT families, gives DREAMers a roadmap to citizenship, helps new immigrants become new Americans, protects all workers, and advances the due process rights that are central to who we are as a country.

Link to view 4,583 signatures:

https://docs.google.com/a/presente.org/file/d/0BzxxJuC9AjATb1JSZ3JwNUNuaGM/edit

REFORM IMMIGRATION

FOR America

To our leaders in Congress:

During this critical moment in the fight for immigration reform, leaders in Congress on both sides of the aisle are weighing in on plans for legislation -- but true reform is not complete unless it allows for those living in the shadows to come forward and take part in full citizenship in our nation.

We demand nothing less than a path to citizenship for 11 million immigrants as part of immigration reform -- and we call on legislators like you to rise to the challenge of our time, and to support a roadmap to citizenship for 11 million undocumented Americans.

With hope,

More than 84,000 immigrant rights activists across the US

Links to 84,000 signatures:
https://docs.google.com/a/presente.org/file/d/0B4EXZNo3n01JZDgxOXBjOTZZX28/edit
https://docs.google.com/a/presente.org/file/d/0B4EXZNo3n01JM0pEVkh3NU9ycXc/edit
https://docs.google.com/a/presente.org/file/d/0B4EXZNo3n01JbE8tZkY0N3U1Ujg/edit
https://docs.google.com/a/presente.org/file/d/0B4EXZNo3n01JV1NXMnF1SXR2c28/edit
https://docs.google.com/a/presente.org/file/d/0B5mVz9iYURyyaVBoU1kzT28zaE0/edit

Office of the Director

U.S. Department of Homeland Security
500 12th Street, SW
Washington, D.C. 20536

U.S. Immigration and Customs Enforcement

SEP 2 1 2012

MEMORANDUM FOR: All Field Office Directors
All Special Agents in Charge
All Chief Counsel

FROM: John Morton
Director

SUBJECT: Civil Immigration Enforcement: Guidance on the Use of Detainers in the Federal, State, Local, and Tribal Criminal Justice Systems

Purpose

This memorandum provides guidance on the use of U.S. Immigration and Customs Enforcement (ICE) detainers in the federal, state, local, and tribal criminal justice systems. This guidance applies to all uses of ICE detainers regardless of whether the contemplated use arises out of the Criminal Alien Program, Secure Communities, a 287(g) agreement, or any other ICE enforcement effort. This guidance does not govern the use of detainers by U.S. Customs and Border Protection (CBP). This guidance replaces Sections 4.2 and 4.5 of the August 2010 *Interim Guidance on Detainers* (Policy Number 10074.1) and otherwise supplements the remaining sections of that same guidance.

Background

In the memorandum entitled *Civil Immigration Enforcement: Priorities for the Apprehension, Detention, and Removal of Aliens*, issued in June 2010,[1] ICE set forth clear priorities that guide its civil immigration enforcement. These priorities ensure that ICE's finite enforcement resources are dedicated, to the greatest extent possible, to individuals whose removal promotes public safety, national security, border security, and the integrity of the immigration system.

As ICE's implementation of these priorities continues, it is of critical importance that ICE remain focused on ensuring that the priorities are uniformly, transparently, and effectively pursued. To that end, ICE issues the following guidance governing the use of detainers in the nation's criminal justice system at the federal, state, local, and tribal levels. This guidance will ensure that the agency's use of detainers in the criminal justice system uniformly applies the

[1] As amended and updated by the memorandum of the same title issued March 2, 2011.

principles set forth in the June 2010 memorandum and is consistent with the agency's enforcement priorities.

National Detainer Guidance

Consistent with ICE's civil enforcement priorities and absent extraordinary circumstances, ICE agents and officers should issue a detainer in the federal, state, local, or tribal criminal justice systems against an individual only where (1) they have reason to believe the individual is an alien subject to removal from the United States and (2) one or more of the following conditions apply:

- the individual has a prior felony conviction or has been charged with a felony offense;
- the individual has three or more prior misdemeanor convictions;[2]
- the individual has a prior misdemeanor conviction or has been charged with a misdemeanor offense if the misdemeanor conviction or pending charge involves—
  - violence, threats, or assault;
  - sexual abuse or exploitation;
  - driving under the influence of alcohol or a controlled substance;
  - unlawful flight from the scene of an accident;
  - unlawful possession or use of a firearm or other deadly weapon;
  - the distribution or trafficking of a controlled substance; or
  - other significant threat to public safety;[3]
- the individual has been convicted of illegal entry pursuant to 8 U.S.C. § 1325;
- the individual has illegally re-entered the country after a previous removal or return;
- the individual has an outstanding order of removal;
- the individual has been found by an immigration officer or an immigration judge to have knowingly committed immigration fraud; or
- the individual otherwise poses a significant risk to national security, border security, or public safety.[4]

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[2] Given limited enforcement resources, three or more convictions for minor traffic misdemeanors or other relatively minor misdemeanors alone should not trigger a detainer unless the convictions reflect a clear and continuing danger to others or disregard for the law.

[3] A significant threat to public safety is one which poses a significant risk of harm or injury to a person or property.

[4] For example, the individual is a suspected terrorist, a known gang member, or the subject of an outstanding felony arrest warrant; or the detainer is issued in furtherance of an ongoing felony criminal or national security investigation.

Revised Detainer Form

To ensure consistent application of this guidance, ICE will revise the DHS detainer form, Form I-247. The revised detainer form, which should be used in all cases once it is issued, will specifically list the grounds above and require the issuing officer or agent to identify those that apply so that the receiving agency and alien will know the specific basis for the detainer. The changes to the form will make it easy for officers and agents to document the immigration enforcement priorities and prosecutorial discretion analysis they have completed leading to the issuance of the detainer.

Prosecutorial Discretion

This guidance identifies those removable aliens in the federal, state, local, and tribal criminal justice systems for whom a detainer may be considered. It does not require a detainer in each case, and all ICE officers, agents, and attorneys should continue to evaluate the merits of each case based on the June 2011 memorandum entitled *Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities of the Agency for the Apprehension, Detention, and Removal of Aliens* and other applicable agency policies.

Six-Month Review

ICE Field Office Directors, Chief Counsel, and Special Agents in Charge should closely evaluate the implementation and effect of this guidance in their respective jurisdictions for a period of six months from the date of this memorandum. Based on the results of this evaluation, ICE will consider whether modifications, if any, are needed.

Disclaimer

This guidance does not create or confer any right or benefit on any person or party, public or private. Nothing in this guidance should be construed to limit ICE's power to apprehend, charge, detain, administratively prosecute, or remove any alien unlawfully in the United States or to limit the legal authority of ICE or its personnel to enforce federal immigration law. Similarly, this guidance, which may be modified, superseded, or rescinded at any time, is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any party in any administrative, civil, or criminal matter.

This guidance does not cover or control those detainers issued by officers and agents of CBP. Detainers issued by CBP officers and agents shall remain governed by existing CBP policy, and nothing in this guidance is intended to limit CBP's power to apprehend, charge, detain, or remove any alien unlawfully in the United States.

ASIAN AMERICAN JUSTICE CENTER

MEMBER OF ASIAN AMERICAN CENTER FOR ADVANCING JUSTICE

February 13, 2013

The Honorable Patrick J. Leahy
Chairman
Senate Committee on the Judiciary
U.S. Senate
Washington, D.C. 20510

The Honorable Chuck Grassley
Ranking Member
Senate Committee on the Judiciary
U.S. Senate
Washington, D.C. 20510

Re: The Senate Committee on the Judiciary hearing on "Comprehensive Immigration Reform"

Dear Chairman Leahy and Ranking Member Grassley:

On behalf of the Asian American Justice Center (AAJC) and the other affiliate members of the Asian American Center for Advancing Justice, a non-profit, non-partisan affiliation representing the Asian American and Pacific Islander community on civil and human rights issues, we write concerning today's Senate Committee on the Judiciary Hearing: "Comprehensive Immigration Reform". AAJC and our other affiliates[1] commend the Committee for holding this important hearing and we look forward to working with the Committee Members and other Members of Congress to craft fair and humane immigration legislation that benefits all Americans.

We urge you and your members to work for a solution that includes:

- Prioritizing family unity by immediately and expeditiously eliminating visa backlogs and creating a direct, inclusive, and workable path to citizenship;
- Ensuring fairness, equality and due process in our enforcement, detention and deportation systems;
- Promoting our economy by valuing and protecting all workers; and
- Supporting immigrants as they integrate and strive for new opportunities in the U.S.

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 took Congress another 80 years before fully repealing these exclusionary laws. As a result, today approximately 60% of Asian Americans are foreign born, the highest proportion of any racial group nationwide. Asian immigrants continue to make up a significant number of new Americans. For example, in fiscal year 2011, 42% of people who became legal permanent residents were from Asia. In a survey after the November 2012 election, approximately 82% of Asian American voters in California said immigration played an important role in how they viewed presidential candidates. Consequently, comprehensive immigration reform is deeply important to the diverse Asian American community.

PRIORITIZE FAMILY UNITY

Reunite families by reducing visa backlogs: The family immigration system is a critical part of our immigration system and a very important issue to the Asian American community. Asian Americans

[1] In addition to AAJC, the other members of the Asian American Center for Advancing Justice are Asian American Institute in Chicago, Asian Law Caucus in San Francisco, and Asian Pacific American Legal Center in Los Angeles.

make up a growing population of 6% in the U.S. and sponsor more than one third of all family-based immigrants.

Our current broken 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 from Asia. Of the top five countries with the largest backlogs —potential active members in 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 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.

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. 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. 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.

Establish an inclusive and humane path to citizenship: AAJC and our other affiliates advocate for a direct path to citizenship within a reasonable timeframe for all undocumented immigrants in the U.S. Asian Americans and Pacific Islanders (AAPIs) have a tremendous stake in legalizing the status of undocumented immigrants who remain in the shadows and are an indefinitely exploitable class of Americans. More than 1.3 million undocumented immigrants in the U.S. are from Asian countries.[2] According to the Pew Research Hispanic Center, over two-thirds of the undocumented population has lived in the U.S. for over a decade, contributing to this country's economy and culture. Many undocumented immigrants live in "mixed-status" families, and 73% percent of children of undocumented immigrants are U.S. citizens. Legalization furthermore makes good economic sense, generating $1.5 trillion to the nation's GDP over 10 years and adding close to $5 billion in tax revenue over the next three years according to the Cato Institute.

The Chen Family's story is just one of countless stories from aspiring citizens in the Asian American community. The Chen Family (a pseudonym) is a family of five consisting of a father and mother and their three sons. They are of Chinese ethnicity and upon arriving in the U.S., they immediately applied for asylum based on persecution they faced in Brazil on grounds of their ethnicity. An immigration judge denied their application for asylum and for close to a decade, they have been appealing that decision. Mr. Chen works seven days per week as a tile installer to support his family and provide for his sons' education. The family's youngest son recently graduated from the University of California, Santa Cruz, and intends to pursue a Master's Degree in Public Health. Tragically, their middle son was diagnosed with multiple brain tumors and after undergoing surgery and radiation two years ago, he continues to

[2] U.S. Dep't of Homeland Security, "Estimates of the Unauthorized Immigration Population Residing in the United States: January 2011" (March 2012), *available at* http://www.dhs.gov/xlibrary/assets/statistics/publications/ois_ill_pe_2011.pdf.

require intensive supervision and care to meet his most basic needs. Of all three sons, only this son was eligible for the Deferred Action for Childhood Arrivals ("DACA") program. The rest of the family is facing deportation. While the family has been granted a reprieve from deportation in an exercise of prosecutorial discretion, this fix is temporary and lacks the work authorization that is necessary for the family to support itself.

We need solutions for hard-working immigrants like the Chen Family. The process for becoming a citizen should be inclusive, workable, affordable and humane, and should not impose punitive measures on undocumented immigrants. Continuous work or language requirements for legalization would impose additional unnecessary barriers, but in any case should include exceptions for age and disability, among other factors. Fines and fees imposed should be reasonable and should include an exception for those who cannot afford to pay.

Furthermore, aspiring citizens should be moving down a direct and inclusive path to citizenship at the same time that measures to erase the family-based visa backlogs are being implemented. Current proposals that undocumented immigrants "go to the back of the line" are not reasonable where the wait time for family members of U.S. citizens is up to 24 years and undocumented immigrants would need to wait 29 years to apply for citizenship. Moreover, three of the largest undocumented AAPI populations (Pilipino, Indian, and Chinese) are also among the top five ethnic communities in the U.S. with the longest visa processing backlogs. The path should also not be contingent on enforcement benchmarks.

Ensure Fairness, Equality and Due Process in Enforcement and Adjudication

In the past decade, we have deported more people than in the preceding century.[3] This unprecedented rise in deportations has come with a parallel rise in the size of our immigration detention system. Today, there are over 32,000 people in immigration detention, nearly a 1700% increase from when immigration reform was passed in 1986 under President Reagan.[4] Expenditures on immigration enforcement have also swelled eclipsing the budgets of all other federal law enforcement agencies combined.[5]

In large part, the rapid growth in our detention and deportation systems came as a result of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) which created new grounds of deportation for long-term Lawful Permanent Residents, stripped judges in many cases of the power to make individualized decisions about detention and deportation, and created broad new mandatory deportation grounds.[6] Today Southeast Asians and Pacific Islanders are deported at a rate three times higher than other immigrants.[7]

The growth of our detention and deportation system also has been fueled by ICE's Secure Communities (S-Comm) Program. Launched in 2008, this controversial program entangles local police with immigration enforcement. Although the stated purpose of this program is to identify and deport

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[3] "A Decade of Rising Immigration Enforcement", Immigration Policy Center (January 2013) *available at* http://www.immigrationpolicy.org/sites/default/files/docs/enforcementstatsfactsheet.pdf at Fn2.

[4] "The Math of Immigration Detention: Runaway Costs for Immigration Detention Do Not Add Up to Sensible Policies", National Immigration Forum (August 2012) *available at* http://www.immigrationforum.org/images/uploads/MathofImmigrationDetention.pdf.

[5] "Immigration Enforcement in the United States", Migration Policy Institute (January 2013) *available at* http://www.migrationpolicy.org/pubs/pillars-reportinbrief.pdf at 12.

[6] *See generally* 8 U.S.C. § 1226; IIRIRA § 303 (expanding mandatory detention); 8 U.S.C. § 1101(a)(43); IIRIRA § 321 (expanded definition of aggravated felony)

[7] U.S. Dep't of Homeland Security, *"2010 Yearbook of Immigration Statistics,"* (2010).

individuals with serious or violent felony convictions, about 7 out of 10 individuals deported nationally either do not have criminal convictions or were convicted of lesser offenses. As a result, S-Comm has come under fire for its lack of transparency, undercutting community policing strategies, and interfering with due process in the criminal justice system. ICE's superficial fixes to the program have not led to any real changes in the impacted communities. We need comprehensive reform that restores fairness, equality and due process to our immigration system.

Further, in keeping with our nation's values of equality and justice, immigration reform legislation should prohibit racial and religious profiling and also guard against overreaching national security justifications in immigration enforcement. Since the tragic events of September 11, 2001, federal immigration enforcement has magnified against Arab, Middle Eastern, Muslim, and South Asian Americans without adequate regard for individual rights.

The National Security Entry-Exit Registration System (NSEERS) Program is a case in point. NSEERS targeted immigrants based solely on their national origin and resulted in approximately 13,000 men from predominantly Muslim and Arab countries being placed in removal proceedings. There was not even one individual who was charged with a terrorism-related criminal offense.[8] Not only should the NSEERS Program be eliminated outright, but the same mistakes should not be repeated with the entry-exit system expansion proposed in the Senate Bipartisan Framework for Comprehensive Immigration Reform. US VISIT opens the door again to selective enforcement based on race, religion, and national origin. Allowing this type of profiling in immigration law as a means to fight terrorism has failed in the past and will continue to be unreliable and inefficient. Rather, the universal norm should be strict and broad prohibitions on the use of race, religion, and national origin in enforcement of federal laws.

PROMOTE OUR ECONOMY BY VALUING AND PROTECTING WORKERS

Restrict and limit the use of electronic employment verification systems: Mandatory E-Verify will harm a disproportionate number of Asian Americans – including citizens and green card holders. A 2009 government-funded report found the error rate for foreign-born workers was *20 times higher* than that of U.S.-born workers.[9] According to recent Census data, throughout the U.S., more than 8 million AAPIs are foreign born. The E-Verify program is of particular concern for the Limited English Proficient members of our community. The already confusing program will be extremely difficult to navigate for the more than 30% of Asian Americans who speak English less than very well.[10]

E-Verify promises to push vulnerable workers underground and lead to billions in lost tax revenue. Expanding or mandating E-Verify encourages employers to take undocumented workers off the books and push them into the underground economy where wage theft, indentured servitude and other workplace abuses are widespread. The loss of local, state and federal revenue to the underground economy is also profound. The U.S. Congressional Budget Office has estimated a loss of more than $17.3 billion in federal tax revenue alone over ten years.

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[8] Kareem Shora and Shoba Sivaprasad Wahdia, NSEERS: The Consequences of America's Effort To Secure Its Borders (March 31, 2009), p.11, available at http://www.adc.org/PDF/nseerspaper.pdf,

[9] Westat, Findings of the E-Verify Program Evaluation (December 2009), p.210, available at http://www.uscis.gov/USCIS/E-Verify/E-Verify/Final%20E-Verify%20Report%2012-16-09_2.pdf.

[10] U.S. Census Bureau, 2007-2009 American Community Survey, 3-years Estimates.

E-Verify also increases regulatory burdens on employers, particularly small business owners. AAPIs own more than 1.5 million small businesses in the U.S., with receipts of $507.6 billion.[11] E-Verify requires compliance training and capable infrastructure for electronic submission and subsequent work verification, taking away time and resources from employers that may not have an infrastructure in place. Businesses will have to direct resources to resolving tentative and false non-confirmations, rather focusing on productivity and growing our economy.

The current guest worker program is ripe with exploitation and abuses and must be overhauled: In making an immigrant worker's legal status contingent upon employment, current guest worker programs subject temporary workers to exploitation and forced labor. Workers lack the basic ability to change jobs if they are abused and instead often risk deportation, blacklisting, and retaliation if they challenge or report abuses.

The allegations in the pending *Signal International* case are illustrative. Represented by the Southern Poverty Law Center (SPLC), the Asian American Legal Defense Fund, and others, the plaintiffs in the case assert that Signal recruited more than 500 guest workers from India to the shipyards after Hurricane Katrina, coerced them into paying exorbitant travel and immigration-processing fees, threatened the workers with legal and physical harm, and then required them to live in Signal's guarded overcrowded labor camps where they were subjected to psychological abuse and wage theft.[12]

SPLC has alleged similar abuses in another pending suit involving more than 350 Filipino guest workers whose passports and visas were confiscated by their employer pending "repayment" of thousands of dollars of recruiting fees and costs – money which the workers had been forced to "borrow" from the employer at predatory interest rates.[13]

Current guest worker programs must be overhauled to prevent such abuses. Workers should be allowed to seek employment with different employers through portable visas and given full labor and workplace rights and protections regardless of status.

ROBUST SUPPORT FOR IMMIGRANT INTEGRATION

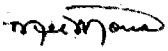
Any immigration reform legislation should require an individual to be subject to all of the responsibilities and afforded all of the rights that citizenship entails to ensure that aspiring citizens have the same opportunities to be healthy and nourished and the same access to the public benefit programs that our taxes support. To ensure successful implementation of health care reform, reduce our overall health care costs, and improve health outcomes, everyone should have access to affordable health care coverage under health care reform. Everyone living in the United States should have the opportunity to be healthy and not hungry, so that they have a fair chance to fulfill their dreams - this includes the 1.3 million undocumented Asian Americans and Pacific Islanders who call the United States home.

* * *

[11] U.S. Census Bureau, Facts for Features: Asian/Pacific American Heritage Month (May 2011), available at http://www.census.gov/newsroom/releases/archives/facts_for_features_special_editions/cb11-ff06.html.
[12] www.aclu.org/intlhumanrights/immigrantsrights/36237lgl20080429.html.
[13] http://www.splcenter.org/sites/default/files/downloads/case/Filipino_teachers_complaint.pdf

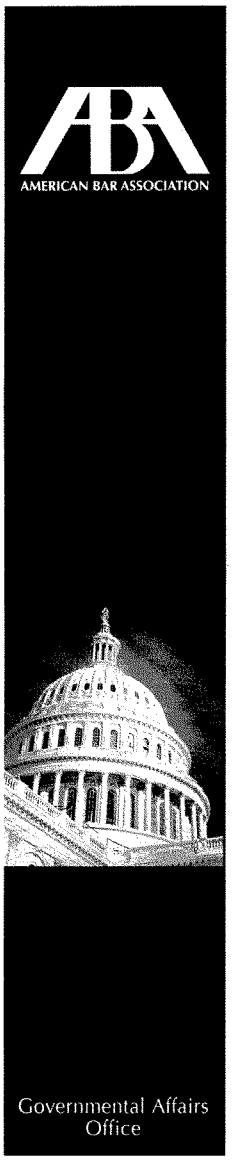
AAJC and the other affiliate members of the Asian American Center for Advancing Justice look forward to working with this Committee and the entire Congress to achieve the goal of fair and just immigration reform.

Sincerely,



Mee Moua
President & Executive Director
Asian American Justice Center

On behalf of:
Asian Pacific American Legal Center
Asian Law Caucus
Asian American Institute



Statement of

LAUREL G. BELLOWS

President

on behalf of the

AMERICAN BAR ASSOCIATION

for the record of the hearing on

COMPREHENSIVE IMMIGRATION REFORM

before the

Committee on the Judiciary

of the

U.S. SENATE

February 13, 2013

740 15th Street, NW • Washington, DC 20005 • (202) 662-1760
www.americanbar.org

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

On behalf of the American Bar Association (ABA), I am pleased to submit this statement for the Committee's February 13, 2013 hearing on "Comprehensive Immigration Reform."

The American Bar Association is the world's largest voluntary professional organization, with a membership of nearly 400,000 lawyers, judges and law students worldwide. The ABA continuously works to improve the American system of justice and to advance the rule of law in the world. Through its Commission on Immigration, the ABA advocates for improvements in immigration law and policy; provides continuing education to the legal community, judges, and the public; and develops and assists in the operation of pro bono legal representation programs.

The United States is a nation of immigrants, and immigration continues to shape and strengthen our country. Today, more than one in every five U.S. residents is either foreign-born or born to immigrant parents. Every day more immigrants seek to come to our country to reunite with close family members, fill jobs, and find protection from persecution in their homelands. The development, implementation and enforcement of our immigration laws should seek to balance this influx with the necessity of controlling our borders through a fair and effective system of immigration. However, even a cursory review of the immigration system today shows that it is plagued with problems at every level.

In the more than fifteen years since Congress last passed major immigration reform legislation, the impacts have been felt keenly throughout every aspect of our society: families too long separated; business' unable to fill necessary jobs to bolster our economy; those suffering persecution lacking access to safe harbor in the land of the free; and a country in fiscal crisis spending an inordinate amount of scarce resources on border security and enforcement. Ultimately what is needed, and what the ABA supports, is comprehensive reform that fairly and realistically addresses the U.S. undocumented population, the need for immigrant labor, the value of family reunification, and the importance of an effective and humane immigration enforcement strategy.

Despite the fact that immigration matters routinely involve issues of life and liberty, the administrative system of justice that exists for immigration matters lacks some of the most basic protections that we take for granted in our American system of justice. As the national voice of the legal profession, the ABA has a unique interest in ensuring fairness and due process in the immigration enforcement and adjudication systems and those topics comprise the primary focus of our recommendations here.

ENSURING ACCESS TO LEGAL COUNSEL AND LEGAL INFORMATION

A hallmark of the U.S. legal system is the right to counsel, particularly in complex proceedings that have significant consequences. Meaningful access to legal representation for persons in immigration proceedings is particularly important. The consequences of removal can be

severe, resulting in separation from family members and communities, or violence and even death for those fleeing persecution. Yet, immigrants have no right to appointed counsel and must either try to find lawyers, which is particularly difficult for those in detention, or represent themselves. Legal assistance is critical for a variety of reasons, including a lack of understanding of our complex immigration laws and procedures due to cultural, linguistic, or educational barriers. Statistics show that asylum seekers and others who have legal representation are significantly more likely to succeed in their immigration cases. Representation is therefore crucial – the outcome of an immigration case should not be determined by a person's ability to secure counsel, but on the merits of his or her claim.

In addition, representation has the potential to increase the efficiency of at least some adversarial immigration proceedings. Pro se litigants may be unfamiliar with immigration laws and court procedures. Their lack of knowledge and understanding, particularly when combined with a language barrier, can create delays that impose a substantial financial cost on the government. As a number of immigration judges, practitioners, and government officials have observed, the presence of competent counsel helps to clarify the legal issues, allows courts to make better informed decisions, and can speed the process of adjudication. Immigration Judges otherwise are forced to try to develop facts and identify potential claims for relief during expensive on-the-record proceedings. Increased representation for noncitizens thus would facilitate the more efficient processing of claims, lessen the burden on the immigration courts, and decrease appeal rates. This is particularly true in detained cases.

The federal Legal Orientation Program should be expanded nationwide and be provided to all detained persons in removal proceedings.

One of the ways that detained immigrants can be provided with relevant legal information is through Legal Orientation Programs (LOP). The federal LOP program is administered by the Department of Justice's Executive Office for Immigration Review, which contracts with nonprofit organizations to provide LOP services at 25 detention facilities around the country. Under this program, an attorney or paralegal meets with the detainees who are scheduled for immigration court hearings to educate them on the law and to explain the removal process. Based on this orientation, the detainee can decide whether he or she potentially qualifies for relief from removal. Persons with no hope of obtaining relief – the overwhelming majority – typically submit to removal.

According to the Department of Justice, LOPs improve the administration of justice and save the government money by expediting case completions and leading detainees to spend less time in detention. In fact, reports have shown that cases for persons participating in LOPs move an average of 12 days faster through the immigration court system. Since the inception of the program, the ABA has provided LOPs at the Port Isabel Detention Center in South Texas and can unequivocally attest to the benefits that these presentations bring to detainees, the facility, and the immigration court system. Legal orientation presentations facilitate noncitizens' access to justice, improve immigration court efficiency, and save government

resources. To maximize these benefits, the Legal Orientation Program should be expanded nationwide to all detained persons in removal proceedings.

Legal representation, including appointed counsel where necessary, should be provided for unaccompanied children and mentally ill and disabled persons in all immigration processes.

There are classes of vulnerable persons for whom it is particularly important to ensure appropriate legal representation for the duration of their cases: unaccompanied alien children and mentally ill and disabled persons. These persons may lack the capacity to make informed decisions on even the most basic matters impacting their cases and are not in a position to determine on their own whether they might qualify for relief. In fact, they may not be able even to understand the nature of, much less be able to meaningfully participate in, their immigration proceedings. However, the particular vulnerabilities of these persons also make it difficult to impossible for them to obtain counsel on their own.

Current law calls for the government to ensure that unaccompanied children have legal representation in immigration proceedings and other matters, but only "to the extent practicable." Similarly, the law allows, but does not require the appointment of a guardian or advocate for vulnerable unaccompanied children. For those who are mentally ill or disabled, the law allows an attorney or other representative to appear on behalf of the respondent, but does not require that legal representation be provided. Fundamental principles of fairness and due process demand that these vulnerable persons receive legal representation and guardians to represent their interests throughout the immigration process. While pro bono representation should be encouraged and utilized to the maximum extent possible, it cannot meet the need in all cases, particularly for those who are detained in remote border areas. The ABA recommends that legal representation be provided for unaccompanied children and the mentally ill and disabled in all immigration proceedings, including by requiring government-appointed counsel where necessary.

Indigent noncitizens with potential relief from removal, and who are unable to secure pro bono counsel, should be provided government-appointed counsel.

About 50 percent of noncitizens in immigration proceedings lack legal counsel; the percentage rises to almost 80 percent for those in detention. The reasons vary, but for many the cost of retaining counsel presents an insurmountable obstacle, and free or low-cost legal services simply may not be available to them. For those in detention, remote facility locations and communication barriers may impede such access. Under U.S. law, noncitizens have a right to counsel in removal proceedings, but at "no expense to the government." This provision does not necessarily preclude government-funded counsel; it merely provides that counsel need not be provided as a matter of right.

The ABA supports establishing a system to identify indigent persons with potential relief from removal and refer them to legal counsel. In such a system, all indigent noncitizens in removal proceedings would be screened by lawyers or other highly trained experts supervised by

lawyers. If a determination is made that there may be an availability of relief from removal, the person should be referred to legal counsel. While qualifying cases could be referred to charitable legal programs or pro bono attorneys if available, where such services are not, then government-paid counsel should be provided.

While establishing such a system would entail some additional cost to the government, the number of persons who are potentially eligible for relief from removal is limited. Roughly 10 percent of those who receive legal orientation presentations have viable claims for relief. Of this figure, many secure pro bono counsel and others can afford to retain counsel. A very small percentage of LOP recipients and others – those eligible for relief from removal who cannot otherwise obtain legal counsel – should be eligible for appointed counsel.

Beyond the obvious interest of affected noncitizens, legal representation also benefits the government and the administration of justice through improved appearance rates in court, fewer requests for continuances, and shorter periods in detention at significant financial savings. It also deters frivolous claims. Above all, increased representation serves the government's interest in seeing that its decisions in these consequential cases turn on U.S. legal standards and merit, and not on an individual's ability to secure and afford paid counsel.

COST-EFFECTIVE AND HUMANE IMMIGRATION DETENTION

The Department of Homeland Security's Immigration and Customs Enforcement (ICE) is one of the nation's largest law enforcement agencies. ICE annually detains over 400,000 foreign nationals in facilities throughout the United States at a cost of $2 billion per year. Of the more than 33,000 daily detention beds available to ICE, over half are rented from private prisons and state and local jails. In recent years, immigration detainees have represented the fastest growing segment of the U.S. incarcerated population.

Noncitizens in removal proceedings should not be detained, except in extraordinary circumstances, such as when national security or public safety is threatened or when a noncitizen presents a substantial flight risk.

Although immigration is a civil, not a criminal, matter, various provisions of the Immigration and Nationality Act provide for detention of foreign nationals. The primary reasons for permitting detention in the immigration context are to ensure that people appear for all scheduled immigration hearings and comply with the final order of the immigration judge. Unfortunately, even immigrants who may be eligible for release often remain detained because they cannot afford to post bond. These persons often are detained for months or even years while their immigration cases work their way through the courts.

The loss of liberty has punitive effects and works to undercut rights on many levels, including the right to counsel. Furthermore, the impact of detention is particularly negative for certain vulnerable groups, such as families enduring indefinite separation, asylum-seekers and victims

of crime suffering from trauma and fearful of government authority, and those with physical or mental conditions that may be exacerbated by the lack of adequate medical care.

Detention also imposes a significant financial burden on the public; the federal government spent about $5 million per day on immigration detention in 2012. Efficient and effective use of scarce public resources should be directed toward detaining only those who pose a threat to public safety or national security, or present a substantial flight risk. Persons who do not meet those criteria should be released under appropriate conditions to ensure compliance with their immigration proceedings.

The use of alternatives to detention should be enhanced and implemented appropriately.

Among the more than 400,000 persons ICE detains annually are long-time permanent residents, sole care providers of U.S. citizen children, survivors of torture and abuse, and people with serious medical conditions who need specialized care. Humanitarian concerns and limited detention capacity have sparked national efforts over the past several years to integrate into ICE's general practices the use of various alternatives to detention. Detention alternatives used by ICE include release on orders of recognizance, release on bond, supervised release, and electronic monitoring.

Alternatives to detention offer the prospect of a considerable cost savings. The cost of detention is approximately $164 per day per person, while alternative programs can cost less than $8 per day. Experience has shown that alternatives programs, designed and implemented appropriately, can be extremely effective. A pilot alternatives program coordinated by the Vera Institute of Justice between 1997 and 2000 resulted in a 93 percent appearance rate for asylum seekers in the program, at about half the cost of detention. ICE's existing alternatives program report compliance rates of 85 to 99.7 percent. Aside from the issue of the cost-effectiveness, utilizing alternatives in appropriate cases also serves to increase access to legal representation and may allow noncitizens to fulfill their family, work, or community responsibilities while awaiting determination of their case.

Congress should provide increased funding for alternatives to detention and direct ICE to implement true alternatives to detention that apply to only those who would otherwise be detained and that use the least restrictive options necessary to ensure that an immigrant appears in court.

Transitioning to a model of civil detention and ensuring humane conditions for those in immigration custody.

The U.S. Department of Homeland Security's (DHS) Immigration and Customs Enforcement (ICE) agency primarily detains persons who are in removal (deportation) proceedings. Persons in ICE custody are not facing criminal trials or serving prison sentences. Under the law, removal proceedings are civil in nature and the detention of immigrants serves to ensure their appearance at court and to effectuate their removal, not to punish them. Despite ICE's civil

legal authority, the U.S. immigration detention system has traditionally held detainees in jails and in jail-like facilities that are administered according to American Correctional Association (ACA)–based standards for persons awaiting criminal trials.

The ABA has worked for many years to ensure that foreign nationals in the U.S. detention system are treated humanely. The ABA worked closely with the Department of Justice over the course of several years to craft the first meaningful set of standards to govern treatment of persons in immigration detention, focusing on four legal access standards: visitation, telephone access, group presentations on legal rights, and access to legal materials. The DHS/ICE detention standards, which have undergone several revisions, have not been codified in a statute or regulation and immigration detainees continue to struggle with lack of access to representation and legal materials, inadequate medical care, and other issues.

While DHS/ICE has initiated a process to reform its detention system, it has not adopted or crafted detention standards that reflect its civil immigration authority. In 2012, the ABA developed and adopted Civil Immigration Detention Standards (Civil Standards)[1] in order to promote access to justice and fair and humane treatment of persons in the immigration detention system. The Civil Standards have a set of guiding principles that reflect the conviction that civil detention facilities and programs should approximate normal living conditions to the extent possible, while ensuring that residents appear at court hearings, can be removed (if so ordered) from the country, and do not present a danger to themselves or to others. The principles provide: 1) that any conditions placed on noncitizens to ensure court appearances or to effect removal should be the least restrictive necessary to further these goals; 2) describe a system that would offer a continuum of strategies, programs and alternatives to meet these goals, up to and including detention; 3) provide that residents should not be held in jails or jail-like settings; 4) highlight the importance of access to legal counsel, materials and courts; and 5) emphasize the need for rigorous oversight by DHS/ICE to ensure compliance with the standards.

We are encouraged that ICE opened a facility in March 2012 in Karnes County, Texas that it says will provide less restrictive detention environments. However, this facility will be able to hold only a fraction of the annual number of detainees, and may be used for those who are well suited for appropriate alternatives to detention. We urge additional measures to transition the immigration detention system to a truly civil system and, in the meantime, to provide full implementation and enforcement of the current ICE Detention Standards at all facilities that currently hold immigration detainees.

A FAIR AND EFFICIENT IMMIGRATION REMOVAL ADJUDICATION SYSTEM

Several changes in recent years have undermined the quality of due process received by noncitizens in the immigration adjudication system. In 2010, the ABA released a report entitled

[1] Available at http://www.americanbar.org/groups/public_services/immigration/civilimmdetstandards.html.

Reforming the Immigration System: Proposals to Promote Independence, Fairness, Efficiency, and Professionalism in the Adjudication of Removal Cases.[2] The report examined the structures and processes of the current removal adjudication system, beginning with the decision to place an individual in removal proceedings through potential federal circuit court review. The findings of this report confirmed that our immigration court system is in crisis, overburdened and under-resourced, leading to the frustration of those responsible for its administration and endangering due process for those who appear before it.

Ultimately the report found, and the ABA believes, that the goals of ensuring fairness, efficiency and professionalism would best be served by restructuring the system to create an independent body for adjudicating immigration cases, such as an Article I court or an independent agency. However, we also recommend a number of incremental reforms that could be made within the current structure that could result in enhancing efficiency in the system if implemented, and we discuss several below. Without question the most serious issue facing the immigration courts, and the one with the most significant impact on the speed and quality of case processing, is the lack of resources throughout the entire system.

Addressing the Need for Adequate Resources

There have been vast increases in the resources devoted to immigration enforcement efforts that have resulted in an ever-burgeoning caseload in the immigration courts — immigration court receipts increased by 28% between FY 2007 (335,923) and FY 2011 (430,574). Yet there has not been a commensurate increase in resources available to the courts. As a result, the case backlog has grown and case processing times are significantly delayed. As of December 2012, the immigration court backlog was at 322,818 cases, with pending cases waiting an average of 545 days, or nearly one and a half years.

The immigration courts simply have too few immigration judges for the workload for which they are responsible. For FY 2011, some 266 immigration judges completed an average of 1,140 proceedings per judge, not including bond hearings and motions, and issued an average of 827 decisions per judge. To produce these numbers, each judge must have issued an average of at least 16 decisions each week, or approximately three decisions per weekday, in addition to conducting their calendaring hearings, even while assuming no absences for vacation, illness, training, or conference participation. A lack of adequate staff support for the immigration judges compounds the problem. On average, there is only one law clerk for every three immigration judges, and the ratio is even lower in some immigration courts. The shortage of immigration judges and law clerks has led to very heavy caseloads per judge and a lack of sufficient time for judges to properly consider the evidence and formulate well-reasoned opinions in each case. We suggest hiring enough additional immigration judges to bring the caseload down to a level roughly on par with the number of cases decided each year by judges in other federal administrative adjudicatory systems (around 700 cases per judge annually) and providing for one law clerk per judge.

[2] Available at http://www.americanbar.org/groups/public_services/immigration/publications.html.

Strategic Decision-Making and Procedural Change to Reduce Unnecessary Litigation

In addition to increasing resources available, the caseload could also be partially alleviated by revising certain Department of Homeland Security (DHS) policies and procedures, consistent with enforcement priorities, to decrease the number of cases being put into the court system. This will enable the enforcement and adjudication functions to work together more strategically and effectively to ensure those the government is most interested in removing are prioritized in the process. For example, prosecutorial discretion, while used widely in the criminal justice context, has been underutilized in the immigration context. In certain cases it is clear that the government will not remove an individual in proceedings – for example because of health issues or eligibility for a hardship waiver. Some individuals are eligible for lawful status but are awaiting the determination of a benefits application from U.S. Citizenship and Immigration Services. Expending significant time and costs in proceedings in these cases does not make sense. These are cases that could be excluded from the court system in the first instance, by increasing the use of prosecutorial discretion and providing DHS attorney review of Notices to Appear before they are filed with the court.

There also is room for improving efficiency in the process for handling asylum claims. Affirmative asylum claims are currently handled by DHS officers, but asylum claims raised in expedited removal proceedings are adjudicated by an immigration judge. These defensive asylum claims also could be reviewed by asylum officers in the first instance, with referral for full adjudication only in appropriate cases. This could prevent thousands of cases from reaching the immigration courts each year, while maintaining the integrity of the asylum process. In addition, another procedural obstacle is the requirement that asylum seekers file their claims within one year of arrival in the country. A recent report found that the one-year deadline not only bars refugees who face persecution from receiving asylum in the U.S., but it also leads thousands of asylum cases – often considered the most time-intensive and factually and legally complex of all immigration cases – that could have been resolved by DHS to be referred to the immigration courts.[3] In fact, both asylum officers and immigration judges spend a substantial amount of time in these cases examining whether the filing deadline was met or if the individual may be eligible for one of the exceptions to the deadline.

Many other recommendations on improving the immigration adjudication system can be found in our 2010 report, which we would be happy to share with the Committee. Implementing these and other needed changes will help to improve the effectiveness of our immigration adjudication system and ensure due process for those caught within it.

Thank you for the opportunity to share the views of the American Bar Association on this critical issue.

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[3] Human Rights First, "The Asylum Filing Deadline: Denying Protection to the Persecuted and Undermining Governmental Efficiency," September 2010, available at http://www.humanrightsfirst.org/wp-content/uploads/pdf/afd.pdf.

WASHINGTON Tuesday, July 13, 2000

Report: 20% of Fatal Wrecks Involve Unlicensed Drivers

One in every five fatal car crashes in the United States each year involves a driver who does not have a valid license or whose license status is a mystery to law enforcement, according to a study released Wednesday.

The report, "Unlicensed to Kill," sponsored by the AAA Foundation for Traffic Safety, said that 8,400 people die on average each year in crashes with unlicensed drivers. It also found that 28 percent of the lawbreaking drivers had received three or more license suspensions or revocations in the three years before their fatal collision.

"It's like a revolving door. These people are being suspended and suspended and suspended again, and still, they're driving," said researcher Lindsay I. Griffin of the Texas Transportation Institute at Texas A&M University.

The researchers did not know the total number of unlicensed drivers on U.S. roads today, but said they believe those drivers are involved in an inordinate number of fatal crashes.

Griffin and colleagues studied five years of data from the Department of Transportation's Fatality Analysis Reporting System, 1993 through 1997. They studied 278,078 drivers involved in 183,749 fatal crashes.

Among the drivers, 13.8 percent, or 38,374, had a license that was suspended, revoked, expired, canceled or denied; had no license at all; or, in some cases, were a mystery because they were hit-and-run drivers, or law enforcement officers could not determine their license status for other reasons.

Among the crashes, 20 percent, or 36,750, involved such a driver.

The researchers found some common characteristics among illegal drivers in fatal crashes:

— One-third were younger than 20.

— They were more likely to be male.

— They were more likely to drive during late night or early morning hours.

Among those with a suspended license, they were about three times more likely to be drunk in the opinion of the investigating officer than properly licensed drivers. Those who had a revoked license were about four times more likely to be drunk.

— They were more than five times as likely to be hit-and-run drivers than legal drivers, in cases where the drivers were identified.

"These are not people who just managed to slip up one time and now they're suspended. They seem to be more of a chronically aberrant group," Griffin said.

Unlicensed drivers pose a particular problem in the West, the researchers found, but the study could not explain the geographic disparity. In New Mexico, nearly a quarter of all fatal accidents involved illegal drivers, making it the state with the highest percentage.

Other high-risk jurisdictions were the District of Columbia, Arizona, California and Hawaii. Maine had the lowest incidence of deadly crashes involving illegal drivers, 6.4 percent.

Lt. Patrick Burke, traffic coordinator for the D.C. police department, said mild penalties are partly to blame.

"If I were to, let's say, arrest a 17-year-old this afternoon who doesn't have a driver's permit, never had a driver's permit, that 17-year-old could pay $75 at the local police station and be on the street in a car an hour later," he said.

The researchers said a California policy of impounding the vehicles of unlicensed drivers and technology being developed, such as "smart cards" that would prevent an illegal driver from taking the wheel, shows promise in preventing fatalities.

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WRITTEN STATEMENT OF
THE AMERICAN CIVIL LIBERTIES UNION

For a Hearing on

"Comprehensive Immigration Reform"

Submitted to the Senate Judiciary Committee

February 13, 2013

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I. Introduction

The American Civil Liberties Union (ACLU) is a nationwide, non-partisan organization of more than a half-million members, countless additional activists and supporters, and 53 affiliates nationwide dedicated to enforcing the fundamental rights of the Constitution and laws of the United States. The ACLU's Washington Legislative Office (WLO) conducts legislative and administrative advocacy to advance the organization's goal to protect immigrants' rights, including supporting a roadmap to citizenship for aspiring Americans. The Immigrants' Rights Project (IRP) of the ACLU engages in a nationwide program of litigation, advocacy, and public education to enforce and protect the constitutional and civil rights of immigrants. The ACLU of New Mexico's Regional Center for Border Rights (RCBR) addresses civil and human rights violations arising from border-related immigration policies. RCBR works in conjunction with ACLU affiliates in California, Arizona, and Texas, as well as immigrants' rights advocates throughout the border region.

The ACLU submits this statement to the Senate Judiciary Committee on the occasion of its hearing addressing "Comprehensive Immigration Reform." Our statement aims to provide the Committee with an appraisal of the civil liberties implications of immigration reform proposals, with a particular focus on the bipartisan reform framework released by eight Senators on January 28, 2013.[1] While the framework contains many positive aspects – including its commitments to create a roadmap to citizenship for aspiring Americans and "to strengthen prohibitions against racial profiling and inappropriate use of force, enhance the training of border patrol agents, increase oversight, and create a mechanism to ensure a meaningful opportunity for border communities to share input, including critiques" – the document also includes, and fails to include, elements which raise concerns:

•By endorsing "immediate deportation" of those "[i]llegal immigrants who have committed serious crimes," the framework can be read to support curtailing due process rights, such as the opportunity to have a hearing in front of a neutral adjudicator, even for persons never convicted of a crime.

•By uncritically adopting the conventional wisdom of inadequate border security, the framework lacks fiscal responsibility and an attention to the true needs of border communities suffering from a wasteful, militarized enforcement regime.

•By advocating for mandatory employment verification, the framework elides the E-Verify database system's fundamental defects, and could create a gateway to compulsory national ID cards.

•By leaving LGBT immigrants in the shadows, the framework would perpetuate a basic inequality offensive to the Constitution.

[1] Available at http://www.nytimes.com/interactive/2013/01/23/us/politics/28immigration-principles-document.html

The ACLU urges the Committee to be steadfast in defending and enacting those parts of the framework which advance our Constitution's principles and American values of family unity and due process. At the same time, the Committee should reject the framework's components at odds with these principles and values, as they run counter to both our traditions and national interests.

II. The framework's commendable commitment to a "path to citizenship for unauthorized immigrants currently living in the United States" should be implemented generously, without unreasonable eligibility criteria, a prolonged waiting period, or retrenchment of due process.

The bipartisan framework laudably places at its core a roadmap to citizenship for aspiring citizens. American history teaches the dire and repugnant consequences when an "underclass" of people live 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.

To bring these aspiring citizens within the full embrace of constitutional protections, the vital roadmap to citizenship promised in the bipartisan framework must be just and fair. It should eschew exclusions for past removal orders or any but the most serious convictions, and be unobstructed by prohibitive fees, penalties, or waiting periods. Federal courts must guarantee effective oversight through judicial review, and statutory protections should be expanded to remedy the current due process iniquity of excluding more than half of those facing deportation from any day in court.[2]

The Obama administration has already deported more than 1.5 million people—setting a record for a single presidential term.[3] One in four Latinos surveyed reported that they knew someone deported or detained by the federal government in the preceding year.[4] In 2012 alone

[2] Meissner, Doris, Kerwin, Donald M., Chishti, Muzaffar and Bergeron, Claire. Immigration Enforcement in the United States: The Rise of a Formidable Machinery, Migration Policy Institute, January 2013. Available at: http://www.migrationpolicy.org/pubs/enforcementpillars.pdf

[3] 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.

[4] Mark Hugo Lopez, Ana Gonzalez-Barrera and Seth Motel, "As Deportations Rise to Record Levels, Most Latinos Oppose Obama's Policy." (Dec. 28, 2011), available at http://www.pewhispanic.org/2011/12/28/as-deportations-rise-to-record-levels-most-latinos-oppose-obamas-policy/

nearly 410,000 people were deported – an all-time record for annual deportations.[5] 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.[6] "In 2011, 188,382 people were deported on criminal grounds. Nearly a quarter were deported after a drug conviction, another 23% for traffic crimes, and one in five for immigration crimes."[7] 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.[8] From a snapshot survey taken in 2011, at least 5,200 children were in foster care as a result of their parents' deportation.[9]

The criteria for legalization must respond to the current crisis of family separation and the lack of discretion and judicial review of individual equities that characterizes the machinery of deportation. By ensuring that: (i) only the most serious convictions bar legalization; and (ii) a waiver exists to consider family unity and other humanitarian equities affected by exclusion, the Judiciary Committee would prevent the exclusion of deserving aspiring citizens from the promise of full American life.

Descriptions such as "felony" conviction are ill-suited as categorical exclusions because state prosecution decisions should not determine who is eligible for legalization. Some states impose felony consequences for immigration status offenses such as "self-smuggling" (Arizona's practice of using its state alien smuggling law to charge immigrants with conspiracy to smuggle themselves[10]), or working under another person's Social Security number.

Minimizing exclusions and preserving individualized discretion must be the Committee's lodestars as it designs the eligibility criteria for legalization. Otherwise, in many cases, families may be permanently separated based on past offenses that have little bearing on the legalization applicant's current fitness to reside in and contribute to the U.S. It is critical to provide a safety-valve for those cases, especially since most legalization candidates will not have known of the criminal exclusion criteria at the time of conviction. Moreover, the principle of discretion should inform the design of future enforcement. The ACLU strongly supports President Obama's

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[5] 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/1212/121221washingtondc2.htm
[6] *Id.*
[7] Tanya Golash-Boza, "Obama's Unprecedented Number of Deportations." CounterPunch (Jan. 25, 21013), available at http://www.counterpunch.org/2013/01/25/obamas-unprecedented-number-of-deportations/
[8] 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.
[9] *Shattered Families: The Perilous Intersection of Immigration Enforcement and the Child Welfare System*, Applied Research Center, Nov. 2011, http://arc.org/shatteredfamilies.
[10] See Ariz. Rev. Stat. 13-2319.

inclusion in his immigration reform framework of a pledge to "revise[] current unlawful presence bars and provide[] broader discretion to waive bars in cases of hardship."[11]

III. The Pathway to Citizenship Must Not Be Contingent on the False Metric of a "Completely Secure Border." Instead, Immigration Reform Should End the Abusive Militarization of Border Communities.

a. The "Mini-Industrial Complex" of Border Spending

The bipartisan framework's implicit demand for an airtight 2,000-mile border ignores the fact that border security benchmarks of prior proposed or enacted legislation (in 2006, 2007, and 2010) have already been met or exceeded.[12] In the last decade, the United States has relied heavily on enforcement-only approaches to address migration, using deterrence-based border security strategies:

•The U.S. government has expanded the powers of federal authorities by creating "Constitution-Light" or "Constitution-Free" zones within 100 miles of land and sea borders.

•Because of "zero-tolerance" initiatives like Operation Streamline, the Department of Homeland Security (DHS) now refers more cases for federal prosecution than the Department of Justice's (DOJ) 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 only 16% of the population, but are now held in large numbers in private prisons.[13]

•Since 2003, the U.S. Border Patrol has doubled in size and now employs more than 21,400 agents, with about 85 percent of its force deployed at the U.S.-Mexico border.[14] So many Border Patrol agents now patrol the southern border that if they lined up equally from Brownsville to San Diego, they would stand in plain sight of one another. This number does not include the thousands of other DHS officials, including Customs and Border Protection (CBP) Office of Field Operations officers and one-fourth of all Immigration and Customs Enforcement (ICE) personnel deployed at the same border. It also does not include 651 miles of fencing, 333 video surveillance systems, and 9 drones for air surveillance.

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[11] See "Fixing our Broken Immigration System so Everyone Plays by the Rules." (Jan. 29, 2013), available at http://www.whitehouse.gov/the-press-office/2013/01/29/fact-sheet-fixing-our-broken-immigration-system-so-everyone-plays-rules

[12] Chen, Greg and Kim, Su. "Border Security: Moving Beyond Past Benchmarks," American Immigration Lawyers Association, (Jan. 30, 2013). Available at: http://www.aila.org/content/default.aspx?bc=25667|43061

[13] 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

[14] Migration Policy Institute, Immigration Enforcement, supra.

From a fiscal perspective, from FY2004 to FY2012, the budget for CBP increased by 94 percent to $11.65 billion, a leap of $5.65 billion; this following a 20 percent post-9/11 increase of $1 billion.[15] By way of comparison, this jump in funding more than quadruples the growth rate of NASA's budget and is almost ten times that of the National Institutes of Health. U.S. taxpayers now spend more on immigration enforcement agencies ($18 billion) than on the FBI, DEA, ATF, U.S. Marshals, and Secret Service—combined.[16]

CBP's spending runs directly counter to data on recent and current migration trends and severely detracts from the true needs of border security. Over the last decade, apprehensions by the Border Patrol have declined more than 72 percent (2000-10). At a time when migrant apprehensions are lower than at any time since the 1970s, wasteful spending by CBP must be reined in.[17] In FY2012, Border Patrol apprehended 340,000 illegal crossers in total, an equivalent of 18 apprehensions a year per agent.[18] A weakening U.S. economy, strengthened enforcement, and a growing Mexican economy have led to a dramatic decrease in unauthorized migration from Mexico. In fact, net migration from Mexico is now zero or slightly negative (i.e., more people leaving than coming).[19]

The costs per apprehension vary per sector, but are at an all-time high. The Yuma, Arizona sector, for example, has seen a 95 percent decline in apprehensions since 2005 while the number of agents has tripled.[20] Each agent was responsible for interdicting just 8 immigrants in 2010, contributing to ballooning per capita costs: each migrant apprehension at the border now costs five times more, rising from $1,400 in 2005 to over $7,500 in 2011.[21] Indeed, despite Border Patrol's doubling in size since 2004, overtime costs have amounted to $1.6 billion over the last six years.[22] The Judiciary Committee should heed House Appropriations Committee Chairman Hal Rogers' warning about the irrationality of border spending: "It is a sort of a mini

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[15] Michele Mittelstadt et al., "Through the Prism of National Security: Major Immigration Policy and Program Changes in the Decade since 9/11." (Migration Policy Institute, Aug. 2011), 3, available at http://www.migrationpolicy.org/pubs/FS23_Post-9-11policy.pdf

[16] Migration Policy Institute, Immigration Enforcement, supra.

[17] Testimony of DHS Secretary Napolitano to the House Judiciary Committee (July 19, 2012); DHS Fact Sheet, "Apprehensions by the U.S. Border Patrol: 2005–2010." (July 2011), available at http://www.dhs.gov/xlibrary/assets/statistics/publications/ois-apprehensions-fs-2005-2010.pdf; see also Jeffrey Passel and D'Vera Cohn, "U.S. Unauthorized Immigration Flows Are Down Sharply Since Mid-Decade." (Pew Hispanic Center, Sept. 1, 2010), available at http://pewhispanic.org/reports/report.php?ReportID=126

[18] Chen Kim, "Border Security," supra.

[19] Philip E. Wolgin and Ann Garcia, "What Changes in Mexico Mean for U.S. Immigration Policy." (Center for American Progress, Aug. 8, 2011), available at http://www.americanprogress.org/issues/2011/08/mexico_immigration.html

[20] Richard Marosi, "Plunge in border crossings leaves agents fighting boredom." *Los Angeles Times* (Apr. 21, 2011).

[21] Immigration Policy Center, *Second Annual DHS Progress Report*. (Apr. 2011), 26, available at http://www.immigrationpolicy.org/sites/default/files/docs/2011_DHS_Report_041211.pdf

[22] "Border Patrol overtime, staffing up; arrests down." Associated Press (Feb. 5, 2012).

industrial complex syndrome that has set in there. And we're going to have to guard against it every step of the way."[23]

b. Lack of CBP Oversight, Racial Profiling and Excessive Use of Force

Unprecedented investment in border enforcement without corresponding oversight mechanisms[24] has led to an increase in human and civil rights violations, traumatic family separations in border communities, and racial profiling and harassment of Native Americans, Latinos, and other people of color – many of them U.S. citizens and some who have lived in the region for generations. The bipartisan framework rightly recognizes the need for strengthened prohibitions against racial profiling and inappropriate use of force. In addition, more must be done to transform border enforcement by prioritizing investment in robust and independent external oversight over unjustified expansion of resources.

Stressed border communities are a vital component of the half-trillion dollars in trade between the U.S. and Mexico, and the devastating effects of militarization on them must be addressed in serious reform. The U.S.-Canada border has experienced an increase in border enforcement resources as well, with northern border residents often complaining about Border Patrol agents conducting roving patrols near schools and churches and asking passengers for their documents on trains and buses that are traveling far from border crossings. The ACLU of Washington State has brought a class action lawsuit to end the Border Patrol's practice of stopping vehicles and interrogating occupants without legal justification. One of the plaintiffs in the case is an African American corrections officer and part-time police officer who was pulled over for no expressed reason and interrogated about his immigration status while wearing his corrections uniform.[25] A local business owner said he's "never seen anything like this. Why don't they do it to the white people, to see if they're from Canada or something?"[26]

CBP also aids and abets state and local police racial profiling practices. U.S. citizens have been ensnared by CBP's unnecessary intertwining of its border protection mission with state and local law enforcement operations. In February 2011, Tiburcio Briceno, a naturalized U.S. citizen, was stopped by a Michigan State Police officer for a traffic violation while driving in a registered company van. Rather than issue him a ticket, the officer interrogated Briceno about his immigration status, apparently based on Briceno's Mexican national origin and limited English. Dissatisfied with Briceno's valid Michigan chauffeur's license, the officer summoned

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[23] Ted Robbins, "U.S. Grows an Industrial Complex Along the Border." NPR (Sept. 12, 2012), available at http://www.npr.org/2012/09/12/160758471/u-s-grows-an-industrial-complex-along-the-border

[24] Tim Steller, "Border Patrol faces little accountability," *Arizona Daily Star* (Dec. 9, 2012), available at: http://azstarnet.com/news/local/border/border-patrol-faces-little-accountability/article_7899cf6d-3f17-53bd-80a8-ad214b384221.html

[25] Complaint available at http://www.aclu-wa.org/sites/default/files/attachments/2012-04-26--Complaint_0.pdf

[26] William Yardley, "In Far Northwest, a New Border Focus on Latinos." New York Times (May 29, 2012) (emphasis added), available at http://www.nytimes.com/2012/05/29/us/hard-by-canada-border-fears-of-crackdown-on-latino-immigration.html?pagewanted=all

CBP, impounded Briceno's car, and told him he would be deported. Briceno says he reiterated again and again that he was a U.S. citizen, and offered to show his social security card but the officer refused to look.

Briceno was released after CBP officers arrived and confirmed that he was telling the truth. "Becoming a U.S. citizen was a proud moment for me," Briceno has since reflected. "When I took the oath to this country, I felt that I was part of something bigger than myself; I felt that I was a part of a community and that I was finally equal to every other American. Although I still believe in the promise of equality, I know that I have to speak out to make sure it's a reality for me, my family and my community. No American should be made to feel like a criminal simply because of the color of their skin or language abilities."[27]

In addition to racial profiling at and within the border, incidents of excessive use of force are on the rise, with at least 19 people killed by CBP officials since January 2010,[28] including five U.S. citizens and six individuals who were standing in Mexico when fatally shot. On April 20, 2012, PBS's *Need to Know*[29] program explored the trend of CBP's excessive use of force, with a focus on Anastasio Hernandez Rojas. New footage depicting a dozen CBP officials surrounding and applying a Taser and other force to Mr. Hernandez, who was shown to be handcuffed and prostrate on the ground contrary to the agency's incident reporting, shocked viewers. The San Diego coroner classified Mr. Hernandez's death as a homicide, noting in addition to a heart attack: "several loose teeth; bruising to his chest, stomach, hips, knees, back, lips, head and eyelids; five broken ribs; and a damaged spine." CBP's version of events described a "combative" person: force was needed to "subdue the individual and maintain officer safety."

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[27] ACLU of Michigan, "ACLU Urges State Police to Investigate Racial Profiling Incident." (Mar. 21, 2012) (emphasis added), *available at* http://www.aclumich.org/issues/racial-justice/2012-03/1685

[28] Jorge A. Solis, 28, shot and killed, Douglas, AZ (Jan. 4, 2010); Victor Santillan de la Cruz, 36, shot and killed, Laredo, TX (March 31, 2010); Anastasio Hernandez Rojas, 32, tortured to death, San Diego, CA (May 28, 2010); Sergio Adrian H. Huereca, 15, shot and killed, El Paso, TX (June 7, 2010); Juan Mendez, 18, shot and killed, Eagle Pass, TX; Ramses Barron Torres, 17, shot and killed, Nogales, Mexico (Jan. 5, 2011); Roberto Pérez Pérez, beaten while in detention and died due to lack of proper medical care, San Diego, CA (Jan. 13, 2011); Alex Martinez, 30, shot and killed, Whatcom County, WA (Feb. 27, 2011); Carlos Lamadrid, 19, shot and killed, Douglas, AZ (March 21, 2011); Jose Alfredo Yañez Reyes, 40, shot and killed, Tijuana, Mexico (June 21, 2011); Gerardo Rico Lozana, 20, shot and killed near Corpus Christi, TX (Nov. 3, 2011); Byron Sosa Orellana, 28, shot and killed near Sells, AZ (Dec. 6, 2011); Alexander Martin, 24, died in car explosion that may have been caused by Border Patrol tasers (March 15, 2012); Charles Robinson, 75, shot and killed, Jackman, ME (June 23, 2012); Juan Pablo Perez Santillán, 30, shot and killed on the banks of the Rio Grande, near Matamoros, Mexico (July 7, 2012); Guillermo Arévalo Pedroza, 36, shot and killed, Nuevo Laredo, Mexico (Sept. 3, 2012); Valerie Tachiquin-Alvarado, 32, shot and killed, Chula Vista, CA (Sept. 28, 2012); José Antonio Elena Rodriguez, 16, shot and killed, Nogales, Sonora (Oct. 11, 2012); and Margarito Lopez Morelos, 19, shot and killed, Baboquivari Mountains, AZ (Dec. 2, 2012). *NOTE:* This count does not include Border Patrol agent Nicholas J. Ivie, 30, who was fatally shot by friendly fire near Bisbee, AZ (Oct. 2, 2012).

[29] PBS Need to Know special, aired April 20, 2012 and entitled "Crossing the line at the border," available at: http://www.pbs.org/wnet/need-to-know/security/video-first-look-crossing-the-line/13597/

After a Congressional letter signed by 16 members was sent to DHS Secretary Janet Napolitano, DHS Inspector General Charles Edwards, and Attorney General Eric Holder,[30] on July 12, 2012, the Associated Press reported that a federal grand jury was investigating the death of Anastasio Hernandez.[31] Border Patrol's use-of-force incidents have attracted international scrutiny with the government of Mexico,[32] the Inter-American Commission on Human Rights,[33] and the Office of the United Nations High Commissioner for Human Rights[34] weighing in.

While the federal government has the authority to control our nation's borders and to regulate immigration, CBP officials must do so in compliance with national and international legal norms and standards. As employees of the nation's largest law enforcement agency, CBP officials should be trained and held to the highest professional law enforcement standards. Systemic, robust and permanent oversight and accountability mechanisms for CBP should be included in the immigration reform the Judiciary Committee will initiate. Congress must seize this moment for immigration reform to transform border enforcement in a manner that is fiscally responsible, enlists border communities in defining the true needs of their communities, and upholds constitutional rights and American values.

IV. Ending the Epidemic of Racial Profiling in Immigration Enforcement

The bipartisan framework importantly identifies remedies for racial profiling as an immigration reform priority. Racial profiling has thrived in the past decade of immigration enforcement, and is currently fueled by ICE's Secure Communities and 287(g) programs, as well as by the CBP enforcement activities at international borders and in the U.S. interior described above.

Racial profiling violates the U.S. Constitution by betraying the fundamental American promise of equal protection under the law and by infringing on the Fourth Amendment guarantee that all people be free from unreasonable searches and seizures. Yet DHS immigration and border enforcement practices continue to promote racial profiling of those perceived to look or sound foreign, even though it is impossible to tell who's here lawfully through these indicators. Racial profiling is ineffective, wasteful, and unconstitutional law enforcement that regularly

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[30] Congressional sign-on letter sent May 10, 2012 to Secretary Janet Napolitano available at: http://serrano.house.gov/sites/serrano.house.gov/files/DHSletter.pdf; letter sent to DHS Inspector General Charles Edwards available at: http://serrano.house.gov/sites/serrano.house.gov/files/DHSIGletter.pdf; letter sent to DOJ Attorney General Eric Holder available at: http://serrano.house.gov/sites/serrano.house.gov/files/DoJLetter.pdf

[31] Grand Jury Probes Anastasio Hernandez Border Death, available http://www.kpbs.org/news/2012/jul/12/grand-jury-probes-border-death/

[32] See, e.g., Bret Stephens, "The Paradoxes of Felipe Calderón." Wall Street Journal (Sept. 28, 2012), available at http://online.wsj.com/article/SB10000872396390443916104578022440624610104.html?mod=hp_opinion

[33] See "IACHR condemns the recent death of Mexican national by U.S. Border Patrol Agents." (July 24, 2012), available at http://www.oas.org/en/iachr/media_center/PReleases/2012/093.asp

[34] See U.N. Radio, "United States urged to probe deaths of Mexican migrants at border." (May 29, 2012), available at http://www.unmultimedia.org/radio/english/2012/05/united-states-urged-to-probe-deaths-of-mexican-migrants-at-border/

deprives people of their freedom without due process. Congress must act and make clear that in America profiling is anathema to the Constitution's guarantee of equal protection.

a. Secure Communities: A Conduit for Racial Profiling of Hispanics, Latinos, and Communities of Color, Including U.S. Citizens

ICE's primary immigration enforcement initiative is Secure Communities (S-Comm), which has been activated across the nation. Under this program, any time an individual is arrested and booked into jail, his or her fingerprints are electronically run through ICE's databases. Because state and local law enforcement officials know that S-Comm will capture the fingerprints of everyone they arrest—even if the arrest is baseless or blatantly unconstitutional—rogue officers have a strong incentive to make pretextual arrests based purely on race, ethnicity, or perceived "foreignness."

S-Comm, therefore, creates an incentive for state and local police to target suspected immigrants to arrest for minor offenses—including, for example, driving with a broken taillight or driving with an expired tag—purely in order to bring them into the jail and trigger the fingerprint-sharing aspect of S-Comm. Police understand that even if an arrest is baseless, even if local officials decline to press charges, or even if the person is later cleared of wrongdoing, they can use S-Comm to bring that person to ICE's immediate attention for potential deportation.

After a similar ICE jail screening program (the Criminal Alien Program or CAP) was initiated in Irving, Texas, the Warren Institute at the University of California, Berkeley, found strong evidence that local police, emboldened by the knowledge that the people they arrested would be brought to ICE's attention once they were booked into jail, engaged in racial profiling and pretextual arrests. The report concluded that there was a "marked rise in low-level arrests of Hispanics" after CAP came into effect.

Racial profiling is a well-studied phenomenon for which detailed studies are widely available. For example, in Milwaukee, a statistical analysis determined that police pulled over Hispanic city motorists nearly five times as often as white drivers, and that "Black and Hispanic drivers were arrested at twice the rate of whites after getting stopped."[35] An ACLU of Arizona study showed that during 2006-2007, the state highway patrol was significantly more likely to stop African Americans and Hispanics than Whites on all the highways studied.[36]

ICE was on clear notice from this history that ostensibly neutral immigration enforcement which relies on state and local police arrests will lead to racial profiling. Yet ICE has given no

[35] Ben Poston, "Racial gap found in traffic stops in Milwaukee." MILWAUKEE JOURNAL SENTINEL (Dec. 3, 2011), *available at* http://www.jsonline.com/watchdog/watchdogreports/racial-gap-found-in-traffic-stops-in-milwaukee-ke1hsip-134977408.html

[36] ACLU of Arizona, *Driving While Black or Brown*, 3 (2008), available at http://www.acluaz.org/DrivingWhileBlackorBrown.pdf

ground on Secure Communities expansion, despite vehement objections by three governors (of Illinois, New York, and Massachusetts) and many local elected officials and law enforcement leaders. Massachusetts Governor Deval Patrick explained that while "[n]either the greater risk of ethnic profiling nor the overbreadth in impact will concern anyone who sees the immigration debate in abstract terms . . . [for] someone who has been exposed to racial profiling or has comforted the citizen child of an undocumented mother coping with the fear of family separation, it is hard to be quite so detached."[37] Not surprisingly, some jurisdictions with a history of racially-motivated police misconduct have abnormally high numbers of non-criminals and low-level offenders among the people processed and removed through S-Comm.[38]

DHS has assured Congress that "[w]e are instituting a whole series of analytical steps working with [DOJ's] Civil Rights Division, the [Office for Civil Rights and Civil Liberties (CRCL)] at DHS, inviting them to literally be part of the analysis with us so that we can root out and identify any jurisdictions that are misusing Secure Communities."[39] ICE subsequently announced that "[f]our times a year, beginning in June 2011, CRCL and ICE will examine Secure Communities data to identify law enforcement agencies that might be engaged in improper police practices."[40] No such data review has yet been released, leaving it to nongovernmental analysts to disclose the troubling figure that "Latinos comprise 93% of individuals arrested through Secure Communities though they only comprise 77% of the undocumented population in the United States."[41] Even if DHS data review does occur in every Secure Communities jurisdiction (3,074 and counting), CRCL has no authority to investigate a state or local law enforcement agency's (LEA's) racial profiling. It is therefore up to Congress to ensure accountability and oversight of immigration enforcement programs.

DHS has deployed Secure Communities in jurisdictions where local law enforcement agencies have been or are being investigated by the Department of Justice ("DOJ") Civil Rights Division for discriminatory policing targeting Hispanics, Latinos, or communities of color. Here are three of many examples:

•DOJ concluded that the New Orleans Police Department ("NOPD") has engaged in patterns of misconduct that violate the Constitution and federal statutes. DOJ documented multiple

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[37] Letter from Gov. Deval Patrick to Bristol County Sheriff Thomas M. Hodgson (June 9, 2011).

[38] Nationwide, just over a quarter (26%) of all those deported under S-Comm from 2008 to 2010 had no criminal convictions. In Maricopa County, Arizona, however, more than half (54%) of all the people deported under S-Comm were non-criminals. And in Travis County, Texas, that percentage was 82%. NDLON, Briefing Guide to Secure Communities (2010), 3.

[39] John Morton, Testimony to the House Appropriations Committee's Subcommittee on Homeland Security (Mar. 13, 2011).

[40] OCRCL, "Overview of CRCL/ICE Quarterly Statistical Monitoring of Secure Communities," *available at* http://www.ice.gov/doclib/secure-communities/pdf/statisticalmonitoring.pdf

[41] Aarti Kohli, Peter Markowitz, and Lisa Chavez, *Secure Communities by the Numbers: An Analysis of Demographics and Due Process*. 5-6 (2011), *available at* http://www.law.berkeley.edu/files/Secure_Communities_by_the_Numbers.pdf

instances of NOPD officers stopping Latinos for unknown reasons and then questioning them about immigration status or posing such questions instead of helping crime victims. Members of the Latino community told DOJ that Latino drivers are pulled over at a higher rate than others for minor traffic violations.[42] DHS has nonetheless continued to operate Secure Communities in New Orleans. In this context, it is unsurprising that in Orleans Parish, Secure Communities' deportations are composed of 59% non-criminals and 20% misdemeanants.[43] This combined rate of 79% far exceeds the national average and makes New Orleans one of the worst-performing jurisdictions when measured against Secure Communities' congressionally mandated focus on the most dangerous and violent convicted criminals.

•In 2011 DHS chose to activate Secure Communities in Suffolk County, New York, even though DOJ was investigating the Suffolk County Police Department ("SCPD"). Many Latino crime victims in Suffolk County described how SCPD demanded to know their immigration status. In September 2011, DOJ informed SCPD that its policy governing the collection and use of information about immigration status of witnesses, victims, and suspects is subject to abuse. DOJ also recommended that SCPD revise its use of roadblocks in Latino communities and prohibit identity checks and requests for citizenship documentation.[44] Nevertheless, DHS took no action to prevent SCPD from serving as a conduit for racial profiling.

•DHS activated Secure Communities across Connecticut on February 22, 2012, only two months after DOJ released findings from its investigation of the East Haven Police Department (EHPD). DOJ concluded that "EHPD engages in a pattern or practice of biased policing against Latinos in violation of the Fourteenth Amendment to the United States Constitution and federal law."[45] On January 24, 2012, four EHPD officers were indicted on federal charges based on their treatment of Latino residents.[46] Yet DHS continues to partner with EHPD in Secure Communities, another instance of conflict with DHS's pledge that its programs are not to "function as a conduit or incentive for discriminatory policing."[47]

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[42] United States Department of Justice, "Investigation of the New Orleans Police Department," Mar. 16, 2011, 63, *available at* http://www.justice.gov/crt/about/spl/nopd_report.pdf

[43] U.S. Immigration and Customs Enforcement, Secure Communities: IDENT/IAFIS Interoperability Monthly Statistics through Feb. 29, 2012, *available at* http://www.ice.gov/doclib/foia/sc-stats/nationwide_interop_stats-fy2012-to-date.pdf

[44] See Suffolk County Police Department Technical Assistance Letter (Sept. 13, 2011), *available at* http://www.justice.gov/crt/about/spl/documents/suffolkPD_TA_9-13-11.pdf

[45] DOJ Findings Letter, December 19, 2011, available at http://www.justice.gov/crt/about/spl/documents/easthaven_findletter_12-19-11.pdf

[46] DOJ indictment, January 18, 2012, available at http://www.courant.com/community/hc-east-haven-officers-indictment-pdf-html,0,39619.htmlpage

[47] Margo Schlanger, Officer for Civil Rights and Civil Liberties and Gary Mead, Executive Associate Director of ICE, "Memorandum to All ICE and CRCL Personnel on Secure Communities Complaints Involving State or Local Law Enforcement Agencies," available at http://www.ice.gov/doclib/secure-communities/pdf/complaintprotocol.pdf, 2.

Secure Communities has also had direct dire racial profiling consequences for U.S. citizens, over whom DHS lacks immigration jurisdiction. In 2011, the Warren Institute estimated that 3,600 U.S. citizens have been apprehended under Secure Communities.[48] Antonio Montejano, a Latino born in Los Angeles, was unlawfully detained for four days after having his immigration status questioned based on an arrest stemming from his children's handling of store merchandise. The incident resulted in his pleading guilty to an infraction, an offense less serious than a misdemeanor. Montejano remained in custody despite repeatedly proclaiming his U.S. citizenship. Upon his release, he says his 8-year-old son asked him, "'Dad, can this happen to me too because I look like you?' I feel so sad when I heard him say this. But he is right. Even though he is an American citizen – just like me – he too could be detained for immigration purposes because of the color of his skin – just like me."[49]

b. 287(g) Agreements: DHS's Partnerships with Sheriff Joe Arpaio and Other Bad Actors

An ICE "287(g) agreement" delegates federal immigration authority to state and local law enforcement agencies under section 287(g) of the Immigration and Nationality Act. The Inter-American Commission on Human Rights has emphasized that "[a]s in the case of . . . Secure Communities . . . , the 287(g) agreements open up the possibility of racial profiling . . . ICE has failed to develop an oversight and accountability system to ensure that these local partners do not enforce immigration law in a discriminatory manner by resorting to racial profiling . . . ."[50]

287(g) agreements disproportionately affect communities with fast-growing Latino populations: 87% of jurisdictions with 287(g) agreements had a Latino population growth rate higher than the national average.[51] Investigations by the ACLU of Georgia in Cobb[52] and Gwinnett[53] counties, and by the ACLU of North Carolina[54] detail pretextual, race-based encounters under 287(g).

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[48] *Id.*; *see also* Sandra Baltazar Martinez, "Santa Fe man one of thousands of legal citizens incarcerated by ICE." SANTA FE NEW MEXICAN (Nov. 20, 2011), *available at* http://www.santafenewmexican.com/Local%20News/Citizens-rounded-up

[49] Statement of Antonio Montejano (Nov. 30, 2011), *available at* http://www.aclu.org/files/assets/antonios_statement.pdf

[50] *See* Inter-American Commission on Human Rights, *Report on Immigration in the United States: Detention and Due Process.* (Dec. 30, 2010), 66, 144, *available at* http://cidh.org/pdf%20files/ReportOnImmigrationInTheUnited%20States-DetentionAndDueProcess.pdf

[51] *See* Justice Strategies, *Local Democracy on ICE: Why State and Local Governments Have No Business in Federal Immigration Law Enforcement.* (Feb. 2009), 16, *available at* http://www.justicestrategies.org/sites/default/files/publications/JS-Democracy-On-Ice-print.pdf

[52] American Civil Liberties Union of Georgia Legal Foundation, *Terror and Isolation in Cobb: How Unchecked Police Power under 287(g) Has Torn Families Apart and Threatened Public Safety.* (Oct. 2009), *available at* http://www.acluga.org/racial%20profiling%20Cobb.pdf

[53] American Civil Liberties Union of Georgia Legal Foundation, *The Persistence of Racial Profiling in Gwinnett: Time for Accountability, Transparency, and an End to 287(g).* (Mar. 2010), *available at* http://www.acluga.org/gwinnettracialreportfinal.pdf

Most culpably of all, DHS's 287(g) partnership with Maricopa County Sheriff Joe Arpaio only ended in December 2011, after DOJ concluded that MCSO "engaged in a widespread pattern or practice of law enforcement and jail activities that discriminate against Latinos. This discrimination flows directly from a culture of bias and institutional deficiencies that result in the discriminatory treatment of Latinos." This biased policing was no secret; DOJ's statistical expert opined that "this case involves the most egregious racial profiling in the United States that he has ever personally seen in the course of his work, observed in litigation, or reviewed in professional literature."[55] Yet DHS refused to suspend the operation of Secure Communities in Maricopa County.

Similarly, in September 2012, after DOJ concluded that the Alamance County, NC, Sheriff's Office – at the time one of ICE's 287(g) partners – lied to Latino detainees about non-existent federal requests for immigration detention, adding that "ACSO discriminates against Latinos in its jail booking and detention procedures,"[56] DHS did not end Secure Communities in Alamance. The continuation of Secure Communities in Maricopa and Alamance Counties means that the very same police departments identified by DOJ as engaged in biased policing can remain confident that their biased arrests will have deportation consequences. Congressional action as part of immigration reform is required to pry apart the latticework of immigration enforcement's intersection with racial profiling practices.

V. Immigration Reform Must Not Create a National ID System or Harm Fundamental Privacy Rights by Mandating the Use of E-Verify Nationwide.

The bipartisan framework calls for a "tough, fair, effective and mandatory employment verification system." Unfortunately, E-Verify is a flawed electronic employment-eligibility screening system that imposes unacceptable burdens on America's workers, businesses and society at large. Nationwide E-Verify would lay the groundwork for a possible biometric national ID system, which would have significant privacy and civil liberties costs for all Americans, including lawful workers, businesses, and taxpayers.

E-Verify is an internet-based system that contains identifying information on almost every American. The current E-Verify system contains an enormous amount of personal information including names, photos from passports and DHS documents, some drivers' license

[54] American Civil Liberties Union of North Carolina Legal Foundation and Immigration & Human Rights Policy Clinic, University of North Carolina at Chapel Hill, *The Policies and Politics of Local Immigration Enforcement Laws: 287(g) Program in North Carolina*. (Feb. 2009), *available at* http://www.acluofnorthcarolina.org/files/287gpolicyreview_0.pdf

[55] U.S. DOJ, Civil Rights Division, Letter from Assistant Attorney General Thomas E. Perez to Maricopa County Attorney Bill Montgomery (Dec. 15, 2011), *available at* http://www.justice.gov/crt/about/spl/documents/mcso_findletter_12-15-11.pdf

[56] U.S. DOJ, Civil Rights Division, Letter of Findings re: United States' Investigation of Alamance County Sheriff's Office (Sept. 18, 2012), available at http://www.justice.gov/iso/opa/resources/1712012918124624881 98.pdf

information, social security numbers, phone numbers, email addresses, workers' employer, industry, and immigration information like country of birth.

This vast collection of personal information has the potential to be converted very quickly into a national identity system. The data in E-Verify, especially if combined with other databases including data on travel, financial information or communications, would be a gold mine for intelligence agencies, law enforcement, licensing boards, and anyone who wanted to spy on American workers. Because of its scope, it could form the basis for surveillance profiles of every American.

Some lawmakers have also called for it to be accompanied by the creation of a biometric national ID card, which would be issued as part of the identity check process in E-Verify. These two proposals – biometric national ID and mandatory E-Verify – could quickly become a wide ranging permission slip from the government necessary to access basic rights and services. Social Security numbers, originally intended to be used for distribution of benefits, were never meant to be used for identification. Now it is almost impossible to function in America without one. If it becomes mandatory, E-Verify could be expanded in much the same way.

As a result, the many errors and problems with E-Verify would quickly become not only employment issues but also problems with travel and other fundamental freedoms. This could lead to unwarranted harassment and denial of access to TSA checkpoints, voting booths, and gun permits, or other harmful consequences not yet envisioned. It is critical that strict limits be placed on the use of information in any employment verification system. It should only be used to verify employment or to monitor for employment-related fraud, and there should be no other federal, state, or private purpose.

While the bipartisan Senate plan calls for "procedural safeguards to protect American workers, prevent identity theft, and provide due process protections," no safeguards can change the fact that creating a biometric national ID would irreparably damage the fabric of American life. Our society is built on privacy, the assumption that as long as we obey the law, we are all free to go where we want and do what we want – embrace any type of political, social or economic behavior we choose—without the government (or the private sector) looking over our shoulders monitoring our behavior. This degree of personal freedom is one of the keys to America's success as a nation. It allows us to be creative, enables us to pursue our entrepreneurial interests, and validates our democratic instincts to challenge any authority that may be unjust. A biometric national ID system would turn those assumptions upside down by making every person's ability to participate in a fundamental aspect of American life – the right to work –contingent upon government approval.

Implementing E-Verify nationwide would require reliance on massive and inaccurate databases, and the room for error is enormous. Currently, E-Verify has been implemented in only a fraction of the country's workplaces. If applied to the entire workforce with a conservative estimate that 1 percent of the population could be wrongly identified as not employment authorized (as a recent MPI paper estimates[57]), 1.5 million work-authorized workers could be terminated if they are unable to fix their records. If applied only to new hires, 517,000 workers could lose their jobs. This poor track record will lead to discrimination against those perceived to look or sound "foreign," as employers required to use E-Verify would avoid hiring individuals they fear are likely to be caught up in the error-prone system. Immigration reform should reinforce anti-discrimination principles in employment law, not increase the chances that employees will face discrimination in the workplace.

Even as E-Verify wrongly ensnares so many eligible workers, it fails to achieve its intended goal of preventing the hiring of undocumented workers. In fact, according to a DHS-funded study, E-Verify fails to identify undocumented workers 54% of the time.[58]

Furthermore, a nationwide verification system would only increase 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. Since the first data breach notification law went into effect in California at the beginning of 2004, more than 607 million records have been hacked, lost or disclosed improperly including e-verify databases.[59] In October 2009, and again in December 2009, Minnesota state officials learned that the company hired to process their e-verify forms had accidentally allowed unauthorized individuals to gain access to the personal information of over 37,000 individuals due to authentication practices and web application vulnerabilities in their system[60].

Finally, E-Verify will impose an enormous economic burden on such small businesses, and every employer required to comply. In fact, implementing a nationwide E-Verify mandate would cost small businesses $2.6 billion each year.[61] Each new hire would cost approximately $147 to screen.[62] Taxpayers would see a huge bill as well, as national E-Verify would reduce tax revenues by $17.3 billion over a decade by pushing employees who are currently paying taxes

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[57] Doris Meissner and Marc Rosenblum, *The Next Generation of E-Verify: Getting Employment Verification Right* (Migration Policy Institute, July 2009), http://www.migrationpolicy.org/pubs/Verification_paper-071709.pdf.
[58] Id at 6.
[59] Privacy Rights Clearinghouse Chronology of Data Breaches, http://www.privacyrights.org/ar/ChronDataBreaches.htm.
[60] John Fay, *FTC Settlement Highlights the Importance of Protecting Sensitive I-9 Data in an Electronic World*, Guardian I-9 And E-Verify Blog, May 4, 2011.
[61] Jason Arvelo, *'Free' Everify May cost Small Business $2.6 Billion: Insight*, Bloomberg Government (Jan. 27, 2011).
[62] Id.

into other jobs on the black market.[63] Estimates also suggest that DHS would spend $765 million implementing the program in the first four years.[64] These costs simply cannot be justified for a system that is so error-prone and that intrudes on the privacy rights of every American.

VI. Immigration Reform Must Include Equality for LGBT Couples.

Missing entirely from the bipartisan framework was any reference to the unjustifiable discrimination faced by committed same-sex bi-national couples. These couples, due to senseless and unconstitutional discrimination enacted in the so-called Defense of Marriage Act (DOMA), are unable to sponsor their spouse or permanent partner in the same way opposite-sex couples have long been able to under current immigration law. The framework's failure even to mention this issue should be addressed by the Judiciary Committee as immigration reform moves forward.

By contrast, the President's January 29, 2013, announcement rightly noted that it is important to treat same-sex immigrant families as what they are – families.[65] The ACLU strongly concurs with this assessment. Indeed, there are at least 31 countries around the world that allow residents to sponsor same-sex permanent partners for legal immigration.[66] Family unity – including for those who are LGBT – is a critical component of immigration reform. To that end, U.S. citizens and lawful permanent residents must be given the ability to seek a visa on the basis of a permanent relationship with a same-sex partner.

VII. Conclusion

The ACLU commends the Judiciary Committee for its prioritization of immigration reform, including reduction of abuses in the currently-oppressive enforcement system which has cost $219 billion in today's dollars since 1986.[67] By jettisoning those components of the bipartisan framework that clash with civil liberties, the Committee can ensure that the framework's roadmap to citizenship is free of unjust obstacles. Members will thereby maximize the historic expansion of constitutional freedoms for spouses, friends, parishioners, and neighbors who contribute to American communities' success and deserve full and prompt citizenship.

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[63] Congressional Budget Office, H.R. 4088, the Secure America Through Verification and Enforcement Act of 2007: http://www.cbo.gov/sites/default/files/cbofiles/ftpdocs/91xx/doc9100/hr4088ltr.pdf

[64] GAO, Employment Verification Federal Agencies Have Taken Steps to Improve E-Verify, But Significant Challenges Remain, December 2010, GAO-11-146.

[65] See "Fixing our Broken Immigration System," supra.

[66] Andorra, Argentina, Australia, Austria, Belgium, Brazil, Canada, Colombia, Croatia, the Czech Republic, Denmark, Finland, France, Germany, Hungary, Iceland, Ireland, Israel, Japan, Liechtenstein, Luxembourg, the Netherlands, New Zealand, Norway, Portugal, Slovenia, South Africa, Spain, Sweden, Switzerland, and the United Kingdom.

[67] Robbins, "*U.S. Grows*," supra.

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Statement of the American Immigration Lawyers Association
Submitted to the
Committee on the Judiciary of the U.S. Senate

Hearing of February 13, 2013
"Comprehensive Immigration Reform"

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.

Immigration Reform is Good for America

Across America, millions of immigrants and their families, businesses and communities—indeed our entire nation—are calling for immigration reform. AILA urges lawmakers to enact 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. 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 Ph.D. 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.

Legalization of the Undocumented

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.

Both Republican and Democratic leaders have spoken out against mass deportation of undocumented men, women and their families, most of whom have deep roots in this country. Such an approach is not only impractical but also damaging to the economy and an unwise use of taxpayer dollars.

A sensible legalization plan should include a rigorous process that requires undocumented immigrants to register with the government, undergo background checks and pay any fees or taxes. Once they complete these steps, they should receive legal status and eventually earn a green card and citizenship. The registration and legalization process would not be an amnesty. By definition, amnesty is an automatic pardon or a free pass granted to a group of people who do not have to do anything in return and are not required to atone for their past actions.

Some reform proposals would require those undergoing legalization to "go to the back of the line" to ensure they do not obtain green cards before others who have been waiting for permanent residence. This requirement could be workable but only if changes are made to the future legal immigration system to ensure that long backlogs existing in the current system are eliminated. As the system stands now, some green card applicants must wait decades, with such extensive backlogs that people literally die waiting. If the legal immigration system is not fixed, the "back of the line" requirement could force millions of people to wait for decades in limbo in a second class status.

The Legal Immigration System – Growing Businesses and the Economy
Currently the immigration system functions so poorly that it is hurting 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 labyrinthine rules and survive extremely long delays in the visa application process. In far too many instances, delays due to backlogs in both temporary and permanent visa availability prevent projects 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 times of recession.

Reforms must update the archaic quota limits that have no relationship to the needs of the economy and the businesses that drive it. This can be done by exempting those who graduate with degrees in science, technology, engineering and math fields as well as accompanying spouses and children from the employment-based visa cap count. Reforms must also revise quotas to increase the number of green cards for people with vital skills, assure the ready availability of needed workers on short-term and temporary bases, while protecting the wages and working conditions of all workers in the United States.

The Legal Immigration System -- Ensuring Family Unity
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 green card in a reasonable period of time. That is hardly the case. Under the current system, the close family members of U.S. citizens and legal permanent residents wait years, or even decades, to get green cards, 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; and 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 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 resources, 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 30, 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 with strategies that often instill fear and distrust of law all enforcement, and, as a consequence, make communities less safe.

Bring Fairness to Immigration Decisions

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 and 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.

STATEMENT OF

JUSTIN MAZZOLA, RESEARCHER

AMNESTY INTERNATIONAL USA

"COMPREHENSIVE IMMIGRATION REFORM"

SENATE COMMITTEE ON THE JUDICIARY

UNITED STATES SENATE

FEBRUARY 13, 2013

Chairman Leahy, Ranking Member Grassley and members of the Committee: I am honored to submit this testimony for the record on behalf of Amnesty International USA regarding today's hearing on Comprehensive Immigration Reform.

Amnesty International is a global movement of more than 3 million supporters, members and activists in more than 150 countries and territories who campaign to end grave abuses of human rights. Our vision is for every person to enjoy all the rights enshrined in the Universal Declaration of Human Rights and other international human rights standards. We are independent of any government, political ideology, economic interest or religion and are funded mainly by our membership and public donations.

We thank you for holding this critical and timely hearing on Comprehensive Immigration Reform. A debate on reforming our nation's immigration laws is welcomed and long overdue. Any attempts at reform must respect the rights of immigrants and their families and address the many human rights violations attributed to the current immigration enforcement system. In 2009, Amnesty International USA released Jailed Without Justice: Immigration Detention in the

USA and in 2012 published In Hostile Terrain: Human Rights Violations in Immigration Enforcement in the U.S. Southwest. Both reports demonstrated that human rights violations are committed by the government during apprehension, detention and deportation. I am offering this testimony for Amnesty International as the lead researcher and author of these two reports on apprehension, detention and removal in the United States.

> **Mr. N, a Buddhist monk from Tibet, fled to the US after he had been arrested, incarcerated, and tortured twice on the basis of his religious beliefs and political expressions in support of Tibetan independence. He arrived in New York and was immediately placed into immigration detention. Mr. N's attorney filed a parole application that included an affidavit from a member of the American Tibetan community who pledged to provide Mr. N lodging and ensure his appearance at any hearings. During Mr. N's ten-month detention, the government provided no response to this request, and Mr. N was never given the opportunity to argue for his release before a judge. Mr. N was granted permission to remain in the US in September 2007.**

Amnesty International documented that tens of thousands of people suffer in U.S. detention facilities every year without a court hearing to determine whether their detention is warranted. In just over a decade the number of immigrants in detention each day has tripled, costing taxpayers hundreds of millions of dollars a year – even though effective and less costly options are available. Also, a recent study undertaken by Amnesty International in the Southwest revealed that communities living along the border are disproportionately affected by a range of immigration control measures, resulting in a pattern of human rights violations, including the risk of discriminatory profiling. Furthermore, survivors of crimes and human trafficking told Amnesty International that many people were reluctant to come into contact with the law enforcement authorities and apply for available remedies because they fear that they will be detained and deported or lose custody of their children. The fact that local law enforcement

officials are used to implement federal immigration programs has exacerbated this problem. Those who do decide to report crimes may still be denied access to justice if law enforcement officials see them not as the victims of crime, but as criminals.

The Immigration and Nationality Act defines the criteria for determining whether non-citizens are eligible to enter or remain in the USA, and sets out the rules and procedures for the detention and removal of non-citizens. The Act gives immigration officers the authority to detain immigrants without a warrant if there is a "reason to believe that the alien... is in the United States in violation of any [immigration] law and is likely to escape before a warrant can be obtained." Under the Act, immigrants who have committed certain types of crimes must be detained. The Department of Homeland Security is empowered to detain immigrants without an individual hearing before an immigration judge so that the detainee does not have an opportunity to challenge the legality or conditions of their detention. The US mandatory detention system, which provides for the automatic detention of individuals without adequate review, amounts to arbitrary detention and is in violation of international law.

The Illegal Immigration Reform and Immigrant Responsibility Act was one of several pieces of legislation enacted in 1996 that significantly expanded the categories of people who were subject to mandatory detention. Mandatory detention is now required for those convicted of a variety of crimes, including non-violent misdemeanors that do not carry a jail sentence. This breaches international law, which obliges governments to ensure that alternatives to detention are made available to immigrants and asylum-seekers, in both law and in practice. Indeed, in order to

establish that detaining an individual is necessary and proportional, governments must first consider less restrictive alternative measures.

In recent years, two immigration bills have been introduced into the US Congress, which, if passed, would have had a significant impact on the human rights of immigrants. The most recent legislative effort to overhaul the current immigration system was the Comprehensive Immigration Reform Act of 2011. Introduced in June 2011 by New Jersey Senator Robert Menendez, the bill included provisions to strengthen border security, develop a legalization program, mandate the use of alternatives to detention for some undocumented immigrants, and create a standing commission to evaluate the labor market and recommend quotas for visas. The bill also incorporated the Development, Relief and Education for Alien Minors (DREAM) Act of 2011. This would have permitted a group of immigrant students to legalize their status if they met certain criteria. Since 2001, the DREAM Act has been introduced into Congress repeatedly, but neither the DREAM Act nor the Comprehensive Immigration Reform Act had been passed. While President Obama issued an Executive Order in June 2012 for Deferred Action for Childhood Arrivals which provides interim relief for individuals who would otherwise qualify for the DREAM Act, this is only a temporary solution. Real immigration reform which respects the US obligations under international law and the human rights of immigrants in the United States is the only real solution.

The recent proposals for immigration reform outlined by the U.S. administration and Members of Congress have all called for securing of the US borders. However all proposals must comply with international law and any proposals for increased enforcement at the borders must respect

US obligations under international law, including protecting the right to life of migrants. Increased immigration enforcement in certain border areas since 1994 has already pushed undocumented immigrants to use particularly dangerous routes through the US desert; hundreds of people die each year as a result.

> **"[I]t may be more dangerous to cross than ever before. Although it seems to be that less people are crossing the border, a higher percentage of people are dying."**
> Dr. Bruce Parks, Former Chief Medical Examiner, Pima County Office of the Medical Examiner, 28 April 2011

The vast increase of enforcement along the Southern border has also placed Indigenous peoples at increased risk of discrimination based on their Indigenous status. Indigenous People whose traditional territories and cultural communities span the US-Mexico border, may need to cross the border frequently in order to maintain contact with members of the community or visit cultural and religious sites on either side of the border. Failure to adequately recognize and protect the border crossing rights of these communities has left them at risk of discrimination and abuse during border crossings and in interactions with Border Patrol agents on Tribal lands.

> **"When I cross the border they ask me, 'Are you American?' I tell them, 'I'm O'odham.' They will then say, 'I didn't ask you that. Where were you born?', 'I was born here [in the USA].' We are all O'odham. That's why I tell them, I'm not Mexican or American, I'm O'odham."**
> Raymond Valenzuela, Tohono O'odham Citizen, 27 April 2011

Any discussions with regards to increased enforcement along the border for Comprehensive Immigration reform must ensure that the border control policies and practices are compliant with the USA's obligations under international law and standards, including with the right to life, and

respect the rights of Indigenous peoples as set forth in the UN Declaration on the Rights of Indigenous Peoples.

Conclusion

While it is generally accepted that countries have the right to regulate the entry and stay of non-nationals in their territory, they can only do so within the limits of their human rights obligations. The US government has an obligation under international human rights law to ensure that its laws, policies and practices do not place immigrants at an increased risk of human rights abuses. Amnesty International calls on members of Congress to craft a fair and humane immigration policy that upholds the following principles:

1) Immigration Law Must Uphold the Right to Due Process in Detention and Deportation

Detention and deportation procedures must be in accordance with due process of law and include guarantees that fundamental human rights will be respected and protected. Immigration detention should only be used as a measure of last resort and detained immigrants should have access to competent counsel and interpretation services, medical and mental health care, and regular and meaningful reviews of their detention status. Non-custodial alternatives to detention should always be considered before the decision to detain, and the law should require that the least restrictive alternative be used in each individual situation. Federal, private, state and local facilities detaining immigrants should be required to abide by enforceable human rights standards of treatment and be held accountable when the standards are transgressed. In deportation proceedings, immigrants should have the right to procedural safeguards including opportunities to remain in the U.S. based on a thorough analysis of individual circumstances,

including family ties and long-time residence, access to competent interpretation services and legal counsel, and independent review of decisions to deport.

2) Undocumented Immigrants Must Be Afforded the Opportunity to Live Legally in the United States.

The presence of a large, often long-term undocumented population and workforce, which is frequently marginalized and unable or unwilling to assert their rights, poses serious human rights challenges in the U.S. As part of a fair and humane immigration policy, a legalization scheme can make a significant contribution towards protecting immigrants' rights, particularly in reducing labor exploitation.

3) No Extension of Agreements between DHS and Local Law Enforcement Agencies until Racial Profiling and Other Discriminatory Actions Are Eliminated

Neither the U.S. constitution nor human rights law permit the arbitrary penalization of individuals or entire communities based solely on their race or ethnicity. Yet, despite government, NGO and newspaper reports documenting discriminatory enforcement actions carried out by local law enforcement pursuant to agreements such as "287(g)," and "Secure Communities," the Department of Homeland Security plans to expand these programs. Neither the Congress nor the administration should invest any money or resources into these programs until independent oversight and accountability systems are in place ensuring that racial profiling and other human and civil rights abuses are not occurring, and clear consequences are developed and enforced if transgressions take place.

4) Family Unity

Immigration law should ensure that people granted legal recognition in the U.S. have the ability to quickly reunite with parents, spouses and children overseas through a fair and efficient family reunification program, including families headed by same-sex couples. Similarly, immigration judges should have the discretion to release from detention and terminate deportation in the interest of family unity. Adverse decisions should be subject to independent review.

Thank you again for this opportunity to express the views of Amnesty International. We welcome the opportunity for further dialogue and discussion about these important issues.

STATEMENT BY THE ANTI-DEFAMATION LEAGUE

TO THE SENATE JUDICIARY COMMITTEE

HEARING ON IMMIGRATION REFORM

FEBRUARY 13, 2013

We commend Chairman Leahy and the Members of the Senate Judiciary Committee for convening today's hearings to advance urgently needed reform of America's immigration system. The current system fails more than just immigrant communities, or families torn apart by visa backlogs, or undocumented students. It fails all communities, all families and all children who deserve a future that embraces diversity and equal access to the American dream.

The Anti-Defamation League (ADL) has advocated for fair and humane immigration policies since its founding in 1913. ADL has helped expose anti-immigrant hate that has been a fixture of the current immigration debate, and has called for a responsible public debate that will honor America's history as a nation of immigrants.

We write to provide the Committee with perspectives in areas in which ADL's expertise and experience give us a particular stake: the need to create a pathway to citizenship for people contributing to American society, eliminate immigration enforcement responsibilities from local law enforcement, remove anti-immigrant rhetoric from the debate, and ensure that reform efforts will reflect our values as a nation of immigrants.

Immigration Reform Must Provide a Real Path to Citizenship

ADL welcomes Administration and bipartisan Congressional support for reform that includes earned legalization with a path to citizenship for unauthorized immigrants already living in the United States.

Congress must reject any measure that would create an underclass of Americans by denying immigrants a path to real citizenship. Americans support a pathway to earned citizenship for their neighbors who want nothing more than to come out of the shadows, to contribute to society, and to follow the rules without fear of deportation and separation from their loved ones. In January, a bipartisan poll sponsored by Service Employees International Union, America's Voice Education Fund, and National Immigration Forum found that 77 percent of voters polled support an immigration reform plan that includes a path to citizenship.

This pathway to citizenship should not be contingent on a trigger, which could delay indefinitely the citizenship process and leave millions of people in limbo. America's immigration debate has seen proposals in different forms to deny citizenship to immigrants or their children. Since the adoption of the 14th Amendment in 1868, all persons born in the United States have been citizens of the United States. Altering the 14th Amendment's citizenship guarantee or creating a form of sub-citizen legal status for certain immigrants would represent the first time since the Civil War era that America would deny full citizenship rights to a minority group.

As a nation of immigrants, all of us once sought to become part of the American fabric. We urge Congress to create a pathway to full citizenship for immigrants who are contributing to American society, allowing them also to take part in the American Dream.

Immigration Reform Must Restore Immigration Enforcement to the Federal Government

As one of the leading nongovernmental organizations in the United States that trains law enforcement officials on hate crimes and extremism, and collaborates with law enforcement on combatting hate crimes, ADL knows well the value of strong police-community partnerships. Establishing and maintaining trust between law enforcement and immigrant communities, who are particularly vulnerable to hate crimes, is of paramount importance. Empowering local police to be involved in Federal immigration enforcement undermines that trust and forces communities underground in a way that adversely impacts both police and the communities they aim to serve and protect.

In the absence of comprehensive immigration reform states have passed laws that compel local law enforcement to act as immigration enforcement agents. For example, state laws that require local law enforcement to check immigration status, commonly known as "papers please" provisions, drive a wedge between law enforcement and immigrant communities. These statutes deter undocumented immigrants (and citizens or in-status immigrants who have family members who are undocumented) not only from calling the police when they become the victim of a crime, but also from coming forward as witnesses to crimes committed against others. And Hispanics or Latinos, who are citizens or in-status, fear unjustified stops or arrests resulting from bias-based policing. When immigrant communities start to fear local law enforcement rather than to trust them, society in general becomes less safe. If well-ordered liberty means anything, it must mean that all persons should be afforded access to police protection if they become victims of crimes.

Congress Must Act to Protect the Safety and Security of Minority Communities

Hate crimes statistics from Arizona provide insight into the impact that "papers please" state provisions may have on immigrants, their families, and minority communities more generally. In 2009, before Arizona passed SB 1070, an anti-immigrant bill that included a "papers please provision," Arizona law enforcement officials reported 219 hate crimes to the FBI. Of those, nineteen percent were categorized as motivated by ethnicity, which includes Hispanic origin. The following year, after the passage of SB 1070, the number of hate crimes in Arizona rose by 7.7 percent. In contrast, the number of reported hate crimes motivated by ethnicity fell by 4.5 percent. Even though a federal court had enjoined SB 1070 at that time, the reporting of hate crimes targeted at Hispanics dropped. There is no proven correlation, but one could reasonably infer that even the specter of the law deterred Hispanics from reporting hate crimes.

A recent study of Hispanic voters bolsters that conclusion. In the study (Latino Decisions Poll with Center for American Progress and America's Voice (July 18, 2012), *available at* http://www.latinodecisions.com/blog/wp-content/uploads/2012/07/July19_SB1070.pdf), 68 percent of Hispanics said that the "papers please" provision would make Hispanics less likely to report a crime or to cooperate with police investigations. These laws threaten to create an

underclass of people who do not have open access to police protection if they become victims of a crime. If Hispanics do not feel they can trust the police, they become uniquely vulnerable to further attacks because they have little legal recourse.

United States history demonstrates all too well the blight on society when certain minority groups feel they cannot trust law enforcement. During the Jim Crow era, African-Americans often refrained from calling the police. While these immigration laws are quite distinct from that era, a similar possibility of dividing society and rendering law enforcement protection inaccessible to some groups looms large.

As a result of ADL's very broad work with law enforcement officials combatting extremism and terrorism, fighting bias crime and discrimination, and training on core values, we have developed a deep appreciation of the professionalism, commitment, and integrity that the vast majority of the members of this profession bring to their work every day. Effective law enforcement is important to everyone. Policies that divide communities, inflame fear, foster mistrust and violate human rights undermine both our nation's core values and our security.

Law enforcement does not work in a vacuum. Officers cannot do their job without community relationships, trust, cooperation, and a shared sense of responsibility for public safety. We encourage Members of Congress to take positive steps forward to promote trust, reject unfair stereotyping, and introduce comprehensive immigration reform that will return immigration enforcement to the hands of federal agents, rather than local law enforcement.

Anti-Immigrant Bigotry Should Have No Place in the Public Debate

ADL is particularly mindful of the role that anti-immigrant rhetoric has played in letting fear hinder progress toward sound policy solutions. We understand that the policies adopted in the halls of government — and the words used in the debate, whether on the floors of Congress or on the nightly news —directly impact our ability to sustain a society that ensures dignity and equality for all. The climate of bias and hostility against immigrants that pervades the immigration debate hurts our country and stands in the way of the kind of reform Americans desperately seek to fix the broken immigration system.

Americans have been moved by the activism of immigrants marching proudly under the banner "We are America," and welcome immigrants' desire to take part in making a contribution to this country. They recognize that immigrants reflect the diversity that makes America unique. But others are swayed by fear and the hate-mongering that has been a fixture of the public debate about immigration reform in the media and on the Internet.

Our own experience in the Jewish community has taught us that, when a society begins to distinguish one group as less deserving of rights than others, discrimination, exploitation, and worse can follow. ADL has issued a series of reports over the last decade exposing extremist forces in our society today that capitalize on the immigration debate to advance their agenda of hate and bigotry. White supremacists have also tried to exploit the issue of immigration to promote their racist views.

ADL has tracked and highlighted these issues. For example, we reported that in February 2013, white supremacists plan on holding anti-immigration rallies across the country. *See* White Supremacists Plan Anti-Immigrant Rallies Nationwide in February 2013, http://blog.adl.org/civil-rights/white-supremacists-plan-anti-immigration-rallies-nationwide-in-february-2013. In addition, our reports and blog have highlighted the ties between the mainstream anti-immigrant movement and more extreme elements within that movement.

The anti-immigrant movement often does not distinguish between undocumented immigrants and minority communities, making sweeping statements about Mexicans, Latinos, and other minority groups. ADL's blog recently featured an article about a leader in a mainstream anti-immigrant movement who promoted conspiracy theories about Mexicans and children of undocumented immigrants on a radio show hosted by the head of a local anti-immigrant group. *See* FAIR's Susan Tully Promotes Bigotry and Conspiracies on Radio Show, http://blog.adl.org/civil-rights/fairs-susan-tully-promotes-bigotry-and-conspiracies-on-radio-show. We have also seen examples of this kind of bigotry at events. For example, at anti-immigrant rallies some have asserted that Mexican immigrants are plotting to reclaim the Southwestern part of the United States, accused immigrants of carrying and spreading infectious diseases, and alleged that crime rates had risen and property values had fallen because of immigrants.

This demonization and anti-immigrant rhetoric not only counteracts progress towards sound policy solutions, but it also puts minority communities at risk. For example, after passage of Proposition 187 in California, a ballot initiative which would have denied public benefits to undocumented immigrants that spurred widespread anti-immigrant rhetoric, hate crimes against Latinos and Asian-Americans spiked in the state. The hate crimes targeted citizens and non-citizens alike.

We call on this Committee and other Members of Congress to maintain a respectful debate that focuses on the issues surrounding comprehensive immigration reform, rather than allowing anti-immigrant rhetoric to derail the conversation and undermine the Framers' vision of a nation that affords life, liberty and the pursuit of happiness to all.

Congress Should Reject Mandatory Worker Verification Because It Creates an Unacceptable Risk of Discrimination

ADL supports efforts to remedy what everyone agrees is a broken system. But ADL has opposed programs like E-Verify, which have been plagued by problems since their inception. Experience shows that prevalent database errors wrongly identify naturalized U.S. citizens as undocumented and ineligible to work. A December 2010 GAO report on E-Verify documents some improvement in the system's accuracy, but also noted that the many Tentative Non-Confirmations (TNC) are "more likely to affect foreign-born employees" and such TNCs "... can lead to the appearance of discrimination." Indeed, the report found that authorized workers who are foreign-born are up to twenty (20) times more likely than U.S.-born workers to be tagged incorrectly as unauthorized to work.

In addition, two government commissions have found frequent misuse of E-Verify by employers for discriminatory purposes, including forcing immigrant workers to accept lower wages and poorer work conditions. Further, when employers who hire unauthorized workers based on the E-Verify system will be penalized, the potential for abuse and profiling exists. Even well-intentioned employers may turn away applicants based on their names, accents, and skin color.

An employment verification system with such significant potential for discrimination is not the answer.

Immigration Policy should be Inclusive of All 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. 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, however, are completely excluded from this benefit. Same-sex couples must be treated the same as other families.

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. We urge Congress to pass the Uniting American Families Act, which would allow gay and lesbian Americans to sponsor their permanent partners for legal residency in the United States, and to extend to LGBT couples the same rights afforded to all other families.

Conclusion

We commend the Senate Judiciary Committee for holding these historic hearings. Our immigration system has been broken for too long. In the absence of reform at the federal level, states have enacted discriminatory immigration policies that endanger immigrant communities and the public safety of society as a whole. We urge Congress to swiftly pass immigration reform that reflects the best of America's founding ideals and creates a pathway to citizenship for immigrants, builds safeguards against bias and discrimination, and extends equal rights to all families.

TESTIMONY BEFORE THE UNITED STATES SENATE COMMITTEE ON THE JUDICIARY

FOR THE HEARING ENTITLED "COMPREHENSIVE IMMIGRATION REFORM"

February 13, 2013

BY THE

ASIAN & PACIFIC ISLANDER AMERICAN HEALTH FORUM

The Asian & Pacific Islander American Health Forum (APIAHF) submits this written testimony for the record for the February 13, 2013 hearing before the Senate Committee on the Judiciary entitled "Comprehensive Immigration Reform." APIAHF is a national health justice organization that influences policy, mobilizes communities, and strengthens programs and organizations to improve the health of Asian Americans, Native Hawaiians, and Pacific Islanders (AAs and NHPIs). For 27 years, APIAHF has dedicated itself to improving the health and well-being of AA and NHPI communities living in the United States and its jurisdictions. We work on the federal, state, and local levels to advance sensible policies that decrease health disparities and promote health equity.

Immigration policy is an issue that touches the lives of almost every Asian American and Pacific Islander. Asian Americans are the nation's fasting growing racial group with a population growth rate of 46% between 2000 and 2010, and account for 40% of recent immigrants to the United States. As of 2011, there are over 17.6 million Asian Americans living in the United States, and over 1.2 million Native Hawaiians and Pacific Islanders.

Asian Americans, Pacific Islanders and other immigrants are the cornerstone of America. They create jobs, employ millions and pay into the tax system. Yet, they must navigate a complex system of policies that the majority of Americans consider broken. America's immigration system separates families, creates barriers to good health and prevents immigrants from fully integrating in and contributing to their communities. Commonsense immigration policies are needed.

Any fix to America's immigration policies must work for all Americans, align with our values of shared responsibility and fairness and promote unity among immigrants and citizens alike.

Federal policies must support immigrants to take responsibility for their health by providing them the same opportunities at attaining good health as their citizen counterparts.

I. Access to Health Care is a Moral and Economic Imperative

Every American must have the opportunity to grow up healthy, see the doctor when they are sick, and have the chance at reaching their optimal health and well-being. Being healthy is a basic need and right. Individuals with health coverage, including Medicaid, report better physical and mental health.[1] They are more likely to have routine access to medical care, less likely to rely on expensive emergency room visits and have better access to essential preventive services, reducing the incidence of chronic diseases that take a major toll on the U.S. health system. In contrast, research shows that the uninsured have significantly worse health outcomes across a number of chronic diseases including cancer and diabetes. [2]

While the Affordable Care Act (ACA) provides new, affordable insurance options for many of the currently 50 million uninsured individuals in the U.S., America will continue to have a population of uninsured workers, children and families even after full implementation of the new law. High rates of uninsurance take a toll not only on the individual, but on communities and state economies and put America's security at risk. Expanding access to affordable health insurance would help to relieve overburdened safety net hospitals and clinics and reduce uncompensated care costs, which often falls to states and the federal government to pick up the tab.

II. Current Federal Polices Exclude Immigrants from Health Care, Further Disparities and Negatively Impact the Nation's Health

The Affordable Care Act is the most sweeping piece of health care reform legislation in the last 50 years and will drastically reduce the number of uninsured, improve access to preventive care and put the nation on a more sustainable path to health. Yet, the law maintains existing exclusions and bars many immigrants from new coverage options. Undocumented immigrants are also prohibited from purchasing health insurance coverage in the newly created insurance marketplaces, even at full price and with their own funds.

In addition, the Department of Health and Human Services (HHS) recently created new exclusions on a population of lawfully present immigrants, a move that undermines the goals and values of the ACA. An Interim Final Rule issued last August excludes youth and young adults

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[1] "What is the link between having health insurance and enjoying better health and finance?" Robert Wood Johnson Foundation, January 2012, *available at* http://www.rwjf.org/content/dam/farm/reports/issue_briefs/2012/rwjf72145.

[2] http://www.iom.edu/~/media/Files/Report%20Files/2009/Americas-Uninsured-Crisis-Consequences-for-Health-and-Health-Care/Americas%20Uninsured%20Crisis%202009%20Report%20Brief.pdf

granted deferred status under the Deferred Action for Childhood Arrivals (DACA) program from key features of the health reform law and prevents children and pregnant women approved for DACA from enrolling in health insurance under the state option available in Medicaid and the Children's Health Insurance Program (CHIP). These are young immigrants, commonly known as DREAMers, who are finishing their education or serving in the military and trying to better their lives and communities, and yet are barred from the new affordable health insurance options their citizen counterparts have access to.

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA, also known as the "welfare reform" law), created arbitrary time limits and other restrictions for lawfully present immigrants to become eligible for federal means-tested public programs. As a result, these aspiring citizens are barred from critical safety net programs for five years and longer, a barrier their native-born counterparts do not have to face.

PRWORA also bars citizens from the freely associated states of Micronesia, Republic of the Marshall Islands and Republic of Palau from the Medicaid program. These individuals, known as COFA (Compact of Free Association) migrants, are persons who are free to enter and work in the U.S. without restriction under long-standing agreements between the U.S. and pacific jurisdictions. COFA migrants suffer from a number of serious health disparities caused by America's militarization of the pacific islands, nuclear test bombing and lack of economic supports, including high rates of cervical cancer and other chronic diseases. The 1996 law revoked Medicaid coverage for COFA migrants, and, coupled with existing disparities and failure on the part of the U.S. to provide required supports, has created serious economic consequences for states like Hawaii and the territory of Guam, who have shouldered the burden of providing health care to this population.

These federal policies undermine America's values, further health disparities and put the entire nation's health at risk. These disparities will only worsen in 2014, when the ACA is fully implemented and the gap between the health of immigrants and those who qualify for new coverage options widens. As a result, immigration status will become one of the leading social determinants of health—affecting everything from whether or not a person can buy health insurance, whether a sick child can see the doctor, and whether a low-income worker can afford the treatment they need.

III. Commonsense Immigration Policies Must Respond to America's Needs and Promote Full Integration. Health Care Must be Part of that Equation.

America needs commonsense immigration policies that align with our values, protect all families and communities, and put the nation on a path to a better, healthier future. Health care access is critical to the safety and security of all individuals and must be part of any immigration solution. APIAHF recommends the following four reforms to ensure that immigration policies support, rather than undermine current federal initiatives and state economies and protect the health of all Americans.

a. Young Adults Granted Deferred Action Must be Allowed Access to Health Reform

Including DACA-eligible youth and young adults in health reform is sound policy and fiscally responsible. DACA-eligible youth, commonly known as DREAMers, are a sizable population, with recent estimates suggesting that as many as 1.76 million young adults could be eligible for administrative relief.[3] An estimated 9% of these youth come from Asian countries, comprising over 170,000 individuals. These young adults are already part of America's fabric, having lived in the country for years, and share the same hopes and aspirations as all young Americans.

There is no principled reason to treat young people who receive deferred action through DACA differently from any other person who has received deferred action. In fact, until HHS decided to carve out DACA beneficiaries, they were covered by the ACA like all other persons who have been granted deferred action. Restoring eligibility for DACA-eligible young adults in health reform would allow these individuals to purchase coverage in the new health insurance marketplaces, pay their fair share of health care costs and see a doctor on a regular basis, instead of remaining uninsured. Including this population of overall younger and healthier individuals in the marketplace creates a more sustainable and robust risk pool and ensures that these young people are able to continue to work, pay taxes and build the nation's economy.

Shutting them out could increase costs for everyone. Excluding a large population of relatively healthy young adults from the insurance marketplaces increases the risk of adverse selection and ultimately drives up premiums for everyone. Even more worrisome is the fact that if premiums rise, citizens and lawfully present individuals alike may find it too costly to purchase coverage through the marketplace and instead choose to remain uninsured, further reducing the marketplace population and in turn driving up costs.

Finally, including DACA-eligible youth and young adults in health reform supports administrative efficiency. As states develop processes to facilitate seamless eligibility determinations and enrollment for individuals in private insurance plans, Medicaid and CHIP,

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[3] "Relief from Deportation: Demographic Profile of the DREAMers Eligible Under the Deferred Action Policy," Migration Policy Institute, August 2012, *available at* http://www.migrationpolicy.org/pubs/fs24_deferredaction.pdf.

they are faced with yet another complicated process. Treating DACA-eligible youth like all other immigrants granted deferred status would ease this process.

b. America Must Uphold its Commitment to the Freely Associated States and Provide Parity in Health Care

Migrants from the Compact territories should be able to access the federal health programs they pay into. COFA migrants are part of the fabric of America and share a complex relationship with the U.S. government, one in which the U.S. government has certain responsibilities. They contribute to the economy and pay taxes and therefore should be eligible for state funded programs. Lifting the current bar on eligibility will provide needed fiscal relief for states like Hawaii and the territory of Guam, which, as a result of the federal government's failure to provide economic supports for this population, have shouldered a disproportionate burden of this population's health care expenses.

c. End Arbitrary Time Limits that Put Legal Aspiring Citizens at Risk

Congress should remove the arbitrary time limits imposed on lawfully present immigrants whose taxes help support the social safety net programs they are barred from participating in. The arbitrary time limits currently in place create substantial barriers for low-income immigrants from being able to benefit from the same support systems critical to preventing needy individuals and families from slipping into poverty. As a result, eligible immigrants have lower rates of enrollment in federally supported programs than their citizen counterparts. This disparity is also true among citizen children living in immigrant households, putting these low-income children at risk of food insecurity and poor health outcomes. Congress took a significant step toward ending these time limits for lawfully present children and pregnant women residing in states that have taken up the option provided in the Children's Health Insurance Program Reauthorization Act of 2009 to waive the five-year bar. We urge Congress to act again to permanently eliminate this arbitrary restriction for all lawfully present immigrants.

d. All Immigrants Must be Allowed the Same Opportunity to Take Responsibility for their Health by Being Able to Purchase Coverage in the Insurance Marketplaces

Federal law currently excludes undocumented immigrants from purchasing health insurance in the newly created insurance marketplaces. This policy undermines our country's efforts to reduce the number of uninsured and prevents a large population of mostly healthy, working adults from being included in state insurance risk pools. It's good fiscal policy to offer health coverage to the largest number of people. Allowing everyone to pay in increases competition and spreads risks and costs across a larger population. As these immigrants continue to

contribute to the U.S. economy, support their families and work toward a path of obtaining legal status, they must be able to take responsibility for their health by having the same opportunity to purchase affordable insurance.

IV. Conclusion

Every individual, regardless of immigration status, should have a fair opportunity to attain optimal health and well-being. Any fix to the nation's immigration system must include access to health care. The alternative risks putting recent reforms and advances at risk, potentially shifts costs to states and safety net providers, and could create generations of health disparities.

For more information or questions, please contact Priscilla Huang, APIAHF Policy Director at phuang@apiahf.org or (202) 466-3550.

STATEMENT OF
Maya Berry, Executive Director
ARAB AMERICAN INSTITUTE
HEARING ON: COMPREHENSIVE IMMIGRATION REFORM
SENATE COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

February 13, 2013

Chairman Leahy, Ranking Member Grassley and members of the Committee: I am honored to submit this testimony for the record on behalf of the Arab American Institute regarding today's hearing on immigration reform.

The Arab American Institute applauds the efforts of President Obama and members of Congress to address fundamental immigration reform, including holding 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. Our community's success is a poignant illustration of how the immigrant experience has shaped the United States. 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.

Over the last decade, a number of "national security" initiatives have been added to our already overburdened and inefficient immigration system. The Arab American community believes that real immigration reform must include the termination of enforcement measures that target individuals or communities based 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 the inappropriate use of force at the borders. We look forward to the incorporation of that language in a final bill on comprehensive immigration reform.

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 addressing 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 led to arrests based 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 in order to check immigration status. 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 Government Accountability Office (GAO) affirms that 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, lacks certain controls that would abate potential misuses of the program. Numerous studies conducted by the federal government as well as academic and advocacy groups, evaluating the nationwide impact of 287(g) programs, 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 individuals remain in legal limbo as a result of purported 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 testimonies. We look forward to working with members and staff of the Senate Judiciary Committee to ensure that 2013 will serve as a year of meaningful and fair immigration reform, and we thank you for your efforts.

February 8, 2013

Re: Recommendations on the U.S. Asylum System for Immigration Reform Legislation

Dear Member of Congress,

This country has a long history of global leadership in protecting persecuted refugees and displaced persons. We believe that 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. Together, as 162 faith-based groups, refugee protection organizations, and legal experts on the U.S. asylum system, we urge the U.S. to take steps to ensure that the U.S. asylum system reflects U.S. values and commitments to protecting the persecuted. We support the recommendations listed below for inclusion in immigration reform legislation, many of which were proposed in the Refugee Protection Act (RPA) of 2011 (S. 1202 and H.R. 2185).

Congress should support inclusion of the following changes in immigration reform legislation to repair the U.S. asylum system:

1. **Eliminate the wasteful and unfair asylum filing deadline** that is barring refugees with well-founded fears of persecution from asylum and diverting overstretched adjudication resources.[1] This change is included in RPA Section 3. In connection with this legislative change, permit individuals who, due to the filing deadline, were granted withholding of removal but not asylum, to adjust their status to lawful permanent resident and petition to bring their spouses and children to safety.

2. **Require and support a fair and efficient adjudication process** authorizing legal representation in particularly vulnerable and complex cases, including for children, persons with mental disabilities and vulnerable immigrants in immigration detention, authorizing increased Immigration Judges and other staffing at immigration courts, requiring all asylum claims to be initially adjudicated at the asylum office level, and mandating that EOIR's Legal Orientation Program is provided in all facilities that detain immigrants for ICE for more than 72 hours. Related proposed changes are included in RPA 2011 Sections 10 and 13.

3. **Protect refugees from inappropriate exclusion and free up administrative resources** by amending INA §212(a)(3)(B) so that it targets actual terrorism and does not exclude bona fide refugees. Specifically, the "terrorist activity" definition should be limited to the use of armed force against civilians and non-combatants, as proposed in RPA 2011 Section 4, and

[1] DHS confirmed that it concluded that the asylum filing deadline should be eliminated, confirming that it expends resources without helping uncover or deter fraud (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). The Administration has publicly pledged to work with Congress to eliminate the deadline (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). Several studies underscore this issue including Human Rights First, The Asylum Filing Deadline, (New York: 2010) available at http://www.humanrightsfirst.org/wpcontent/uploads/pdf/afd.pdf and 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), available at http://wmlawreview.org/files/Schrag.pdf.

the definition of a "Tier III" organization should be eliminated. The definition of "material support" should be revised to specify that the term applies only to support that is quantitatively significant and qualitatively of a nature to further terrorism.

4. **Implement lasting immigration detention reforms to protect detained individuals, including asylum seekers, and reduce unnecessary costs** through expanding cost-effective alternatives to detention, immigration court review of detention decisions, strengthened oversight and compliance mechanisms, and standards and conditions in line with the American Bar Association's proposed civil immigration detention standards.[2] Congress should also mandate a study on the expanded use of the expedited removal process to ensure that refugees are being not returned to persecution. Related proposed changes are included in RPA 2011 Sections 10 and 13.

5. **Ensure adequate substantive and procedural safeguards for all child asylum seekers,** given their vulnerability. Measures should include giving the Asylum Office initial jurisdiction over applications of principal child asylum seekers, employing a child centered analysis to their claims, and – as proposed in the RPA 2011 Section 15 - exempting them from such bars as Safe Third Country, previous denial of asylum, and the one year filing deadline (provisions already enjoyed by unaccompanied children).

6. **Ensure that gender-based asylum claims are properly recognized** by supporting legislative clarifications proposed in the RPA 2011, Section 5, especially the provisions clarifying what can constitute a "particular social group" (the statutory ground under which many women's asylum claims are brought), what kinds of evidence can support such claims, and other clarifications needed to remove obstacles currently posed to gender-based claims.

7. **Ensure that asylum-seekers interdicted in international or U.S. waters are not subjected to refoulement** by requiring that all U.S. authorities taking control of irregular maritime vessels in international or U.S. waters make available to irregular boat migrants the opportunity to apply for asylum or to express a fear of persecution and shall refer any such asylum-seeker to a U.S. asylum officer for an interview according to INA 235(b)(B); and requiring that all authorities patrolling the U.S. borders, including the U.S. Coast Guard, receive effective training from UNHCR on international human and refugee rights and on U.S. domestic asylum law and other forms of protection. Related proposed changes are included in RPA 2011 Section 24.

We look forward to working with you and your staff and would like to respectfully request a meeting with you at your earliest convenience to discuss these recommendations further. Sara Jane Ibrahim, Advocacy Counsel at Human Rights First, is our focal point and can be reached at ibrahims@humanrightsfirst.org; 202-370-3318. Thank you for your attention to our views.

Sincerely,

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[2] American Bar Association, ABA Civil Immigration Detention Standards, available at http://www.americanbar.org/groups/public_services/immigration/civilimmdetstandards.html.

National/International Organizations

American Civil Liberties Union
New York, NY/Washington, DC

Americans for Immigrant Justice
Miami, FL/Washington, DC

American Immigration Lawyers Association (AILA)
Washington, DC

American Jewish Committee
Washington, DC

Blacks in Law Enforcement of America
Washington, DC

Breakthrough
New York, NY

Center for Gender and Refugee Studies (CGRS)
San Francisco, CA

Civil Liberties and Public Policy
Amherst, MA

Ethiopian Community Development Council, Inc.
Arlington, VA

Fahamu Refugee Programme
International

Family Equality Council
Washington, DC

Franciscan Action Network
Washington, DC

Gay & Lesbian Advocates & Defenders
Boston, MA

HIAS (Hebrew Immigrant Aid Society)
New York, NY/Washington, DC

Human Rights Advocates International (HRAI)
Elizabeth, NJ

Human Rights First
New York, NY/Washington, DC

Human Rights Watch
New York, NY

Immigration Equality
New York, NY/Washington, DC

International Foundation for Gender Education
Waltham, MA

Jesuit Refugee Service/USA
Washington, DC

Kids in Need of Defense (KIND)
Washington, DC

Lambda Legal
New York, NY

Leadership Conference of Women Religious
Silver Spring, MD

Lutheran Immigration and Refugee Service
Baltimore, MD/Washington, DC

Muslim Legal Fund of America (MLFA)
Richardson, TX

National Center for Transgender Equality
Washington, DC

National Council of Jewish Women (NCJW)
New York, NY

National Gay and Lesbian Task Force Action Fund
Washington, DC

National Immigrant Justice Center
Chicago, IL

National Immigration Law Center
Los Angeles, CA/Washington, DC

National Latina Institute for Reproductive Health
New York, NY/Washington, DC

NETWORK, a National Catholic Social Justice Lobby
Washington, DC

Organization for Refuge, Asylum & Migration (ORAM)
San Francisco, CA

Physicians for Human Rights (PHR)
Cambridge, MA

Refugee Women's Network, Inc.
Decatur, GA

Survivors of Torture, International
San Diego, CA

Tahirih Justice Center
Falls Church, VA/Houston, TX

The Center for Victims of Torture
St. Paul, MN

The Episcopal Church
Washington, DC

Unid@s, The National Latin@ LGBT Human Rights Organization
Washington, DC

US Committee for Refugees and Immigrants
Arlington, VA

Women's Refugee Commission
Washington, DC

State/Local Organizations

Advocacy for Justice and Peace Committee of the Sisters of St. Francis of Philadelphia
Philadelphia, PA

Advocates for Survivors of Torture and Trauma (ASTT)
Baltimore, MD

American Gateways
Austin, TX

Capital Area Immigrants' Rights Coalition
Washington, DC

Casa Esperanza
Plainfield & Bound Brook, NJ

Casa Latina
Seattle, WA

Cleveland Immigrant Support Network
Cleveland, OH

Coalition for Humane Immigrant Rights of Los Angeles (CHIRLA)
Los Angeles, CA

Community Immigration Law Center (CILC)
Madison, WI

Congregation of St. Joseph
Cleveland, OH

DRUM - Desis Rising Up & Moving
Jackson Heights, NY

Georgia Women's Action for New Directions (WAND)
Atlanta, GA

HIAS Pennsylvania
Philadelphia, PA

Holy Cross Ministries of Utah
Salt Lake City, UT

Human Rights Initiative of North Texas
Dallas, TX

Immigrant Legal Advocacy Project
Portland, ME

IRATE & First Friends
Elizabeth, NJ

Jesuit Social Research Institute/Loyola University New Orleans
New Orleans, LA

L.A. Community Center Legal & Educational
Los Angeles, CA

La Raza Centro Legal
San Francisco, CA

Las Americas Immigrant Advocacy Center
El Paso, TX

Lutheran Social Services of New England
Worcester, MA

Nebraska Appleseed
Lincoln, NE

Pangea Legal Services
San Francisco, CA

Political Asylum/Immigration Representation Project (PAIR Project)
Boston, MA

Program for Torture Victims
Los Angeles, CA

Reformed Church of Highland Park, NJ
Highland Park, NJ

Refugee and Immigrant Center for Education and Legal Services (RAICES)
San Antonio, TX

Sisters' Home Visitors of Mary
Detroit, MI

Sisters of Mercy West Midwest Justice Team
Omaha, NE

Sisters of Saint Joseph of Chestnut Hill, Philadelphia
Philadelphia, PA

Sisters of St. Francis of Philadelphia
Aston, PA

Sisters of St. Joseph of Rochester
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The Advocates for Human Rights
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The Florence Immigrant & Refugee Rights Project
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BLACK IMMIGRATION NETWORK

STATEMENT OF

Colette Pichon Battle, Esq., National Board Member

Black Immigration Network

HEARING ON: COMPREHENSIVE IMMIGRATION REFORM

SENATE COMMITTEE ON THE JUDICIARY

UNITED STATES SENATE

February 13, 2013

Chairman Leahy, Ranking Member Grassley and members of the Committee: I am honored to submit this testimony for the record on behalf of the **Black Immigration Network** regarding today's hearing on immigration reform.

The Black Immigration Network (BIN) envisions national unity around racial justice and migrant rights toward achieving social, economic and political power. BIN's mission is to establish a "kinship" among Black immigrant and African Americans to connect, learn and build towards policy and cultural shifts for a racial justice and migrant rights agenda.

We thank you for holding this critical and timely hearing on immigration reform. We urge that the Senate Committee base reform on the principles of human dignity and racial equity. The first step toward reform must be the acknowledgement of the impact of free trade policies on the increased migration of people into the U.S. Priority to the movement of goods translates into the need for prioritizing the humane movement of people across U.S. borders. In addition, upcoming revisions must work to dismantle overt and structural discrimination found in current policies and

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BLACK IMMIGRATION NETWORK

practices of the immigration/naturalization system. Moreover, discussions relating to the abolition of the birthright to citizenship established in the 14th Amendment of the United States Constitution should be outwardly dismissed as racist and unacceptable.

In furtherance of the above acknowledgements and in collaboration with our national membership, BIN has developed four main principles upon which we offer specific recommendations to decision-makers allies and other participants in the immigration reform process. These principles are entrenched in the real impacts faced by Black immigrants as they navigate the current immigration system. Moreover, these principles seek to address the negative and historical practices of government policies and social institutions on the realities of Black citizenship- even outside of the current immigration process. Now is the time to choose to move in a positive direction around race, immigration and citizenship in the United States. To do this BIN's priority principles of immigration reform include:

1. **Family reunification must be a core principle of immigration reform;**
2. **Temporary status holders (E.G. TPS, DED, Refugee, Asylum, etc.) must be prioritized in any Legalization Program;**
3. **Immigration Enforcement can no longer support mass detention/incarceration; and,**
4. **Economic Justice must guide the establishment of penalties and immigrant community economic support.**

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The Black Immigration Network applauds the bi-partisan group of Senators' recent decision to endorse a path to citizenship for undocumented people living in the United States. We urge the Senate to create such a path and ensure that it is inclusive, accessible, and fair.

Family Reunification. Family reunification must be a core value of immigration reform and it stands as one of BIN's top priorities in the current legislative efforts around immigration reform. BIN's membership continues to witness the generational devastation that occurs when families are separated by policy or practice. We believe that in-tact families act as an essential element of strong communities and a stronger United States of America.

Family reunification for Black immigrants, moreover, requires an acknowledgement that immigrant families are located both inside and outside of U.S. borders. Reunifying family members will require visa processes that do not cause an undue burden to restrict accessibility to move in and out of the country. In addition, immigration reform should value the unique ways that families are defined in both African and Diaspora traditions. Legal definitions using familial degrees of connection or DNA connection should be expanded. Western processes of family-building (E.G. biological birth, formal adoption) should be honored, but should not be seen as the sole process for creating and maintaining families.

Prioritize Temporary Status Holders in Legalization. Reform rooted in fairness should not marginalize those who have struggled to enter the U.S. lawfully and maintain their status. While, any program or legislation that provides a process of legalization or "pathway to citizenship"

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should include those with unlawful legal status, such an effort must prioritize those temporary status holders already in the U.S. Unlike the mainstream face of immigration, a large percentage of Black immigrants from the African Diaspora[1] enter the U.S. lawfully. It is the backlogged U.S immigration system that often serves as the culprit for the need to maintain "temporary" or "non-immigrant" status instead of allowing for an adjustment to a "long-term" or "immigrant". Instead of an unlawful entry, Black immigrants in particular are penalized by this backlog which often pushes them to "age-out" of benefits or overstay a temporary visa - a document obtained after criminal background checks and approval by the Department of State. The temporary status of these Black immigrants should not be credence to be excluded in a new path to a more permanent status or citizenship.

Enforcement Disconnected from Mass Incarceration. BIN views the mass incarceration of Black Americans and the detention of Black immigrants as part of the same systemic problem that should be eradicated. Black immigrants and African Americans continue to be disproportionally represented in the U.S. prison system. Despite civil violation of immigration law, immigrants are often detained as criminal offenders, often with limited access to legal counsel. BIN, therefore urges the Senate to disconnect enforcement of immigration laws from the practice of mass incarceration for profit and the policy of racial targeting to reach incarceration goals. The privatization of prisons acts as incentive to incarcerate society's most disenfranchised groups, which is often determined by race or skin color. This type of human-capital market encourages racial profiling and other discriminatory practices within the criminal justice and various social

[1] BIN defines the African Diaspora as Africa and countries that received Africans during the centuries of the Trans-Atlantic Slave Trade.

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systems. Moreover, the practice of mass incarceration of Black people (immigrant and citizen alike) maintains- and in many ways strengthens - the larger social structures of race and class divisions.

Too often, the long- term impacts of discriminatory race targeting and mass incarceration go unmentioned. However, communities and families of Color bear the real costs of mass incarceration. The long-term impact of mass incarceration eventually leads to the disenfranchisement of Black voters - sometimes for a life. It strips away (either by law or desire) the participation in democracy- thereby further silencing Black voices.

The Black Immigration Network urges the Senate to ensure that reform of the immigration law enforcement system upholds our Constitution and protects due process and human rights for all people in the United States. Years of "enforcement first" or "enforcement only" policies have lead to record numbers of detentions and deportations, excessive use of force and rampant racial profiling. This approach has eroded due process and human rights for those detained and threatened the privacy and freedom of citizens and non-citizens alike.

Economic Justice in Immigration Reform. Finally, we encourage the Senate to commit to principles of Economic Justice in immigration reform. By having a justice-based and innovative approach to economic justice, current efforts on immigration reform offer an opportunity to create positive impacts in various Black communities.

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Any fines or other penalties associated with the path to legalization should not be disproportionally burdensome. Even with high levels of education, Black immigrants tend to earn low wages compared to other similarly trained immigrant or native workers. In 2011 black immigrants had the highest unemployment rate—12.5 percent—of any foreign-born group in the United States. Similar statistics can be offers as it relates to African Americans- and has been more pronounced in during the most recent financial crisis and economic recession.

In addition new federal legislation should provide support to the communities that receive Black immigrants who are often marginalized once lawfully present as contributors to the U.S. economy. Priority should be given to investing in resources for job training initiatives or entrepreneurial support programs that promote the success of Black immigrants specifically and the Black community in general.

Conclusion

The Black Immigration Network commends the Committee's leadership in holding this hearing and we are grateful for the opportunity to present our position. Congress should take this opportunity to move forward with an immigration reform bill that prioritizes racial justice and human dignity.

Thank you again for this opportunity to express the views of the Black Immigration Network. We welcome the opportunity for further dialogue and discussion about these important issues.

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Statement to the Senate Judiciary Committee

Hearing on:
"Comprehensive Immigration Reform"

Curt Goering, Executive Director
The Center for Victims of Torture
Minneapolis, Minnesota

February 13, 2013

Introduction:

The Center for Victims of Torture (CVT) commends Chairman Patrick Leahy (D-VT) and Ranking Member Chuck Grassley (R-IA) for holding this hearing on "Comprehensive Immigration Reform." CVT is an international non-profit organization that provides treatment and rehabilitation services to torture survivors in the U.S. and abroad. Founded in Minnesota in 1985, CVT was the first organized program of care and rehabilitation for torture survivors in the U.S. and one of the very first in the world. To date, we have extended care to more than 21,000 victims of torture and war trauma at our healing sites in Minnesota, Africa and the Middle East. Our experience over 27 years has given us a unique perspective on the long-term devastation that torture inflicts on individuals and communities.

A high percentage of the survivors we treat in our clinic in St. Paul, MN are asylum seekers who have suffered unimaginable abuse at the hands of repressive regimes. For those going through the asylum process, survivors of torture live with the constant fear that they may be returned to their torturer. Delays in the asylum and immigration court processes leave them in an agonizing state of legal limbo, during which they often spend years separated from family who may still be in danger overseas.

Receiving asylum in the United States is their lifeline, yet many face such dire obstacles as they seek protection and freedom that the flawed process itself exacerbates the severe mental health symptoms of the torture they've suffered. This makes their healing, adjustment and integration even more challenging.

Recommendations:

CVT believes it is essential that immigration reform does not leave out vulnerable refugees and asylum seekers who have fled their home countries because of torture and persecution. Specifically, CVT urges Congress to address the following:

- **Eliminate the filing deadline for asylum-seekers.**

Asylum seekers must demonstrate by clear and convincing evidence that they filed their application within one year of arrival in the United States or they are barred from asylum status, absent changed or extraordinary circumstances that led to their failure to file within one year. The deadline prevents legitimate asylum-seekers from having their asylum cases adjudicated on the merits and leads bona fide applicants, including survivors of torture, to be denied the protection they need and for which they are otherwise eligible, solely due to a technicality.

In addition to the negative consequences for applicants, the filing deadline leads cases that could otherwise be resolved with the asylum office to be referred to the immigration courts, resulting in long delays and contributing to the growing backlog of cases pending in the immigration courts.

- **Refine the Terrorism Related Inadmissibility Grounds (TRIG) to target actual terrorists.**

The overly-broad definitions of "terrorist" activity, "terrorist" organization and what constitutes "material support" to terrorism in the Immigration and Nationality Act (INA) should be revised. Presently, the terms are defined so broadly that for many individuals the circumstances triggering their ineligibility are their very basis for seeking asylum or refugee protection. To avoid mislabeling refugees as terrorists, the INA should be amended to explicitly recognize an exception for activities conducted as a result of coercion; the term "material," as it relates to "material support," should be defined as something of value given in the furtherance of terrorism; and the category of undesignated "tier three" terrorist organization standard should be eliminated.

The current discretionary exemption process is slow and overly bureaucratic, creating long delays with thousands of applications languishing "on hold." Applicants "on hold" are in legal limbo and often remain separated from family members. For survivors of torture, these false labels and extended delays significantly impede their healing and rehabilitation process.

- **Reform the immigration detention system.**

For many survivors of torture, whose torture may have occurred while in a confinement setting, the immigration detention experience is often retraumatizing and may lead survivors to relive their horrid experiences of torture, contributing to further psychological damage. Torture survivors who seek asylum in the United States may be detained upon arrival at an airport or

border port of entry or may be arrested on the border or in the interior of the United States prior to filing an application for relief. The detention experience is particularly detrimental to survivors of torture who, as a result of their torture, may already be struggling with severe anxiety, depression, sleep abnormalities, medical conditions, physical pain, and/or Post Traumatic Stress Disorder (PTSD) and are facing the possibility of deportation to country where they were tortured and where they fear being tortured again.

Whenever possible, torture survivors should not be detained. Immigration reform should eliminate provisions "mandating" detention, expand humane alternatives to detention programs—including community release programs, and improve due process and review standards to avoid arbitrary or prolonged detention.

Conclusion:

When torture survivors seek asylum in the United States, they are seeking healing and protection from those responsible for their torture. The United States has a system designed to provide that save haven but that system is badly broken and in need of urgent repair. As Congress lays the groundwork for comprehensive immigration reform, it is essential that this reform does not leave out vulnerable refugees and asylum seekers who have fled their home countries because of torture and persecution.

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DEPARTMENT OF HOMELAND SECURITY
IMMIGRATION DETAINER - NOTICE OF ACTION

Subject ID Event #	File No: Date:
TO: (Name and Title of Institution - OR Any Subsequent Law Enforcement Agency)	FROM: (Department of Homeland Security Office Address)

MAINTAIN CUSTODY OF ALIEN FOR A PERIOD NOT TO EXCEED 48 HOURS

Name of Alien: _____

Date of Birth: _____ Nationality: _____ Sex: _____

THE U.S. DEPARTMENT OF HOMELAND SECURITY (DHS) HAS TAKEN THE FOLLOWING ACTION RELATED TO THE PERSON IDENTIFIED ABOVE, CURRENTLY IN YOUR CUSTODY:

☐ Determined that there is reason to believe the individual is an alien subject to removal from the United States. The individual (*check all that apply*):

has a prior a felony conviction or has been charged with a felony offense;	has illegally re-entered the country after a previous removal or return;
has three or more prior misdemeanor convictions;	has been found by an immigration officer or an immigration judge to have knowingly committed immigration fraud;
has a prior misdemeanor conviction or has been charged with a misdemeanor for an offense that involves violence, threats, or assaults; sexual abuse or exploitation; driving under the influence of alcohol or a controlled substance; unlawful flight from the scene of a accident, the unlawful possession or use of a firearm or other deadly weapon, the distribution or trafficking of a controlled substance, or other significant threat to public safety;	otherwise poses a significant risk to national security, border security, or public safety; and/or
has been convicted of illegal entry pursuant to 8 U.S.C. § 1325;	other (specify): _____

☐ Initiated removal proceedings and served a Notice to Appear or other charging document. A copy of the charging document is attached and was served on _____ (date).

☐ Served a warrant of arrest for removal proceedings. A copy of the warrant is attached and was served on _____ (date)

☐ Obtained an order of deportation or removal from the United States for this person.

This action does not limit your discretion to make decisions related to this person's custody classification, work, quarter assignments, or other matters. DHS discourages dismissing criminal charges based on the existence of a detainer.

IT IS REQUESTED THAT YOU:

☐ Maintain custody of the subject for a period NOT TO EXCEED 48 HOURS, excluding Saturdays, Sundays, and holidays, beyond the time when the subject would have otherwise been released from your custody to allow DHS to take custody of the subject. This request flows from federal regulation 8 C.F.R. § 287.7. **You are not authorized to hold the subject beyond these 48 hours.** As early as possible prior to the time you otherwise would release the subject, please notify DHS by calling _____ during business hours or _____ after hours or in an emergency. If you cannot reach a DHS Official at those numbers, please contact the ICE Law Enforcement Support Center in Burlington, Vermont at: (802) 872-6020.

☐ Provide a copy to the subject of this detainer.

☐ Notify this office of the time of release at least 30 days prior to release or as far in advance as possible.

☐ Notify this office in the event of the inmate's death, hospitalization or transfer to another institution.

☐ Consider this request for a detainer operative only upon the subject's conviction.

☐ Cancel the detainer previously placed by this Office on _____ (date).

_____ (Name and title of Immigration Officer) _____ (Signature of Immigration Officer)

TO BE COMPLETED BY THE LAW ENFORCEMENT AGENCY CURRENTLY HOLDING THE SUBJECT OF THIS NOTICE:

Please provide the information below, sign, and return to DHS using the envelope enclosed for your convenience or by faxing a copy to _____. You should maintain a copy for your own records so you may track the case and not hold the subject beyond the 48-hour period.

Local Booking/Inmate #: _____ Latest criminal charge/conviction: _____ (date) Estimated release: _____ (date)

Last criminal charge/conviction: _____

Notice: Once in our custody, the subject of this detainer may be removed from the United States. If the individual may be the victim of a crime, or if you want this individual to remain in the United States for prosecution or other law enforcement purposes, including acting as a witness, please notify the ICE Law Enforcement Support Center at (802) 872-6020.

(Name and title of Officer)

(Signature of Officer)

NOTICE TO THE DETAINEE

The Department of Homeland Security (DHS) has placed an immigration detainer on you. An immigration detainer is a notice from DHS informing law enforcement agencies that DHS intends to assume custody of you after you otherwise would be released from custody. DHS has requested that the law enforcement agency which is currently detaining you maintain custody of you for a period not to exceed 48 hours (excluding Saturdays, Sundays, and holidays) beyond the time when you would have been released by the state or local law enforcement authorities based on your criminal charges or convictions. **If DHS does not take you into custody during that additional 48 hour period, not counting weekends or holidays, you should contact your custodian (the law enforcement agency or other entity that is holding you now) to inquire about your release from state or local custody. If you have a complaint regarding this detainer or related to violations of civil rights or civil liberties connected to DHS activities, please contact the ICE Joint Intake Center at 1-877-2INTAKE (877-246-8253). If you believe you are a United States citizen or the victim of a crime, please advise DHS by calling the ICE Law Enforcement Support Center toll free at (855) 448-6903.**

NOTIFICACIÓN A LA PERSONA DETENIDA

El Departamento de Seguridad Nacional (DHS) de EE. UU. ha emitido una orden de detención inmigratoria en su contra. Mediante esta orden, se notifica a los organismos policiales que el DHS pretende arrestarlo cuando usted cumpla su reclusión actual. El DHS ha solicitado que el organismo policial local o estatal a cargo de su actual detención lo mantenga en custodia por un período no mayor a 48 horas (excluyendo sábados, domingos y días festivos) tras el cese de su reclusión penal. **Si el DHS no procede con su arresto inmigratorio durante este período adicional de 48 horas, excluyendo los fines de semana o días festivos, usted debe comunicarse con la autoridad estatal o local que lo tiene detenido (el organismo policial u otra entidad a cargo de su custodia actual) para obtener mayores detalles sobre el cese de su reclusión. Si tiene alguna queja que se relacione con esta orden de detención o con posibles infracciones a los derechos o libertades civiles en conexión con las actividades del DHS, comuníquese con el Joint Intake Center (Centro de Admisión) del ICE (Servicio de Inmigración y Control de Aduanas) llamando al 1-877-2INTAKE (877-246-8253). Si usted cree que es ciudadano de los Estados Unidos o que ha sido víctima de un delito, infórmeselo al DHS llamando al Centro de Apoyo a los Organismos Policiales (Law Enforcement Support Center) del ICE, teléfono (855) 448-6903 (llamada gratuita).**

Avis au détenu

Le département de la Sécurité Intérieure [Department of Homeland Security (DHS)] a émis, à votre encontre, un ordre d'incarcération pour des raisons d'immigration. Un ordre d'incarcération pour des raisons d'immigration est un avis du DHS informant les agences des forces de l'ordre que le DHS a l'intention de vous détenir après la date normale de votre remise en liberté. Le DHS a requis que l'agence des forces de l'ordre, qui vous détient actuellement, vous garde en détention pour une période maximum de 48 heures (excluant les samedis, dimanches et jours fériés) au delà de la période à la fin de laquelle vous auriez été remis en liberté par les autorités policières de l'État ou locales en fonction des inculpations ou condamnations pénales à votre encontre. **Si le DHS ne vous détient pas durant cette période supplémentaire de 48 heures, sans compter les fins de semaines et les jours fériés, vous devez contacter votre gardien (l'agence des forces de l'ordre qui vous détient actuellement) pour vous renseigner à propos de votre libération par l'État ou l'autorité locale. Si vous avez une plainte à formuler au sujet de cet ordre d'incarcération ou en rapport avec des violations de vos droits civils liées à des activités du DHS, veuillez contacter le centre commun d'admissions du Service de l'Immigration et des Douanes [ICE - Immigration and Customs Enforcement] [ICE Joint Intake Center] au 1-877-2INTAKE (877-246-8253). Si vous croyez être un citoyen des États-Unis ou la victime d'un crime, veuillez en aviser le DHS en appelant le centre d'assistance des forces de l'ordre de l'ICE [ICE Law Enforcement Support Center] au numéro gratuit (855) 448-6903.**

AVISO AO DETENTO

O Departamento de Segurança Nacional (DHS) emitiu uma ordem de custódia imigratória em seu nome. Este documento é um aviso enviado às agências de imposição da lei de que o DHS pretende assumir a custódia da sua pessoa, caso seja liberado. O DHS pediu que a agência de imposição da lei encarregada da sua atual detenção mantenha-o sob custódia durante, no máximo, 48 horas (excluindo-se sábados, domingos e feriados) após o período em que seria liberado pelas autoridades estaduais ou municipais de imposição da lei, de acordo com as respectivas acusações e penas criminais. **Se o DHS não assumir a sua custódia durante essas 48 horas adicionais, excluindo-se os fins de semana e feriados, você deverá entrar em contato com o seu custodiante (a agência de imposição da lei ou qualquer outra entidade que esteja detendo-o no momento) para obter informações sobre sua liberação da custódia estadual ou municipal. Caso você tenha alguma reclamação a fazer sobre esta ordem de custódia imigratória ou relacionada a violações dos seus direitos ou liberdades civis decorrente das atividades do DHS, entre em contato com o Centro de Entrada Conjunta da Agencia de Controle de Imigração e Alfândega (ICE) pelo telefone 1-877-246-8253. Se você acreditar que é um cidadão dos EUA ou está sendo vítima de um crime, informe o DHS ligando para o Centro de Apoio à Imposição da Lei do ICE pelo telefone de ligação gratuita (855) 448-6903**

THÔNG BÁO CHO NGƯỜI BỊ GIAM GIỮ

Bộ Quốc Phòng (DHS) đã có lệnh giam giữ quý vị vì lý do di trú. Lệnh giam giữ vì lý do di trú là thông báo của DHS cho các cơ quan thi hành luật pháp là DHS có ý định tạm giữ quý vị sau khi quý vị được thả. DHS đã yêu cầu cơ quan thi hành luật pháp hiện đang giữ quý vị phải tiếp tục tạm giữ quý vị trong không quá 48 giờ đồng hồ (không kể thứ Bảy, Chủ nhật, và các ngày nghỉ lễ) ngoài thời gian mà lẽ ra quý vị sẽ được cơ quan thi hành luật pháp của tiểu bang hoặc địa phương thả ra dựa trên các bản án và tội hình sự của quý vị. **Nếu DHS không tạm giam quý vị trong thời gian 48 giờ bổ sung đó, không tính các ngày cuối tuần hoặc ngày lễ,** quý vị **nên liên lạc với bên giam giữ quý vị** (cơ quan thi hành luật pháp hoặc tổ chức khác hiện đang giam giữ quý vị) để hỏi về việc cơ quan địa phương hoặc liên bang thả quý vị ra. **Nếu quý vị có khiếu nại về lệnh giam giữ này hoặc liên quan tới các trường hợp vi phạm dân quyền hoặc tự do công dân liên quan tới các hoạt động của DHS, vui lòng liên lạc với ICE Joint Intake Center tại số 1-877-2INTAKE (877-246-8253). Nếu quý vị tin rằng quý vị là công dân Hoa Kỳ hoặc nạn nhân tội phạm, vui lòng báo cho DHS biết bằng cách gọi ICE Law Enforcement Support Center tại số điện thoại miễn phí (855) 448-6903.**

对被拘留者的通告

美国国土安全部（DHS）已发出对你的移民监禁令。移民监禁令是美国国土安全部用来通告执法当局，表示美国国土安全部意图在你可能从当前的拘留被释放以后继续拘留你的通知单。美国国土安全部已经向当前拘留你的执法当局要求，根据对你的刑事起诉或判罪的基础，在本当由州或地方执法当局释放你时，继续拘留你，为期不超过 48 小时（星期六、星期天和假日除外）。如果美国国土安全部未在不计周末或假日的额外 48 小时期限内将你拘留，你应该联系你的监管单位（现在拘留你的执法当局或其他单位），询问关于你从州或地方执法单位被释放的事宜。如果你对于这项拘留或关于美国国土安全部的行动所涉及的违反民权或公民自由权有任何投诉，请联系美国移民及海关执法局联合接纳中心（ICE Joint Intake Center），电话号码是 1-877-2INTAKE (877-246-8253)。如果你相信你是美国公民或犯罪被害人，请联系美国移民及海关执法局的执法支援中心（ICE Law Enforcement Support Center），告知美国国土安全部。该执法支援中心的免费电话号码是 (855) 448-6903。

Immigration Enforcement and the War on Drugs:
Drug-Related Immigration Policies Need Reform

Hearing on "Comprehensive Immigration Reform"
U.S. Senate Committee on the Judiciary

Wednesday, February 13, 2013

Submitted by
Grant Smith, Policy Manager, Office of National Affairs, Drug Policy Alliance

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Chairman Leahy, Ranking Member Grassley, and members of the Committee:

I am honored to submit this testimony for the record on behalf of the Drug Policy Alliance regarding the hearing on comprehensive immigration reform that occurred on February 13, 2013.

As the nation's leading organization promoting drug policies grounded in science, compassion, health and human rights, the Drug Policy Alliance is concerned that tens of thousands of noncitizens are forcibly deported every year for nonviolent drug law violations, separated from family members residing in the United States, and deprived of the ability to fulfill their financial, occupational and personal commitments. We urge you to end the practice of deporting and refusing admission of noncitizens solely for admission of drug use or past low-level drug law violations.

In the 1980s and 1990s Congress enacted immigration policies that greatly expanded the grounds for removal of noncitizens for drug law violations.[1] Federal immigration authorities interpret these policies broadly and have applied them aggressively against noncitizens. In recent years, noncitizens who interact with the criminal justice system or possess a criminal record have become the focus of federal immigration enforcement efforts to remove "criminal aliens" from the U.S. without consideration of mitigating factors such as the length of time since applicable convictions occurred, the nature and severity of each offense, any ties or obligations to U.S.-born children or other dependents, and the extent to which the noncitizen eligible for removal contributes to society.

Removal of noncitizens occurs without regard for their legal status or their efforts to meet legal requirements to maintain lawful permanent residency status. Thousands of noncitizens with legal permanent resident status are deported every year for a drug law violation -- and many are even deported for drug law violations that occurred years or even decades in the past.[2] Many deportations are triggered by an arrest or conviction for the simple possession of marijuana or other drugs. Although a waiver exists for noncitizens arrested for simple possession of 30 grams or less of marijuana, the conditions for obtaining the waiver are excessively stringent.[3] Lawful permanent residents and other noncitizens are also subject to deportation for a drug law violation when they are sentenced to probation or other alternatives to incarceration. Noncitizens who plead guilty to participate in drug courts and other diversion programs expose themselves to deportation, since immigration officials view a guilty plea as a conviction. A deportation on account of a prior drug law violation can also be triggered when a lawful permanent resident seeks to renew their "green card," applies for naturalization, or faces review by an immigration officer upon returning to the U.S. after traveling abroad.

Every year, hundreds of millions of noncitizens seek admission into the U.S. Noncitizens traveling to the U.S. can be denied admission for a drug law violation that occurred in the United States or in a foreign country. Immigration officials also question noncitizens about experience with drug use in the present as well as in the past. Noncitizens who admit to an immigration officer that they use drugs or have used drugs *any time in the past* are inadmissible.[4] In addition, noncitizens who have written about personal experience with drug use on the Internet or other sources may face inadmission after an immigration officer reviews this information.[5]

Noncitizens eligible for the Visa Waiver Program are questioned about drug use and drug law violations as part of the Electronic System for Travel Authorization (ESTA) preclearance process that must be submitted to immigration authorities before an eligible noncitizen can travel to the United States. A noncitizen who might otherwise have traveled to the U.S. for tourism and other nonimmigration purposes may be deterred from traveling when confronted with these questions. Evidence that these questions have a deterrence effect can be found in abundance on the Internet. In just the United Kingdom alone, media reports and local law enforcement have warned the public in recent years that a drug offense – no matter how minor - will jeopardize entry into the United States.[6]

Case Samples

In 1978, **Sandra Kenley** emigrated from Barbados and obtained lawful permanent resident status. In 1984 and 2002, Sandra was convicted for possession of cocaine and sentenced to probation both times. In a letter to immigration authorities, Sandra's probation officer who supervised her following her 2002 conviction wrote that Sandra "completed a drug treatment program and was successful in her treatment goals" and was "granted early termination based on her performance."[7] Following her release, Sandra made significant changes in her life. She completed a nursing course and began working as a nurse and was awarded sole custody of her granddaughter. However, in 2005, Sandra was denied re-admission as a lawful permanent resident following a trip to Barbados with her granddaughter to visit family.[8] Sandra was placed into Immigration and Customs Enforcement (ICE) custody after officials decided that her prior drug convictions made her deportable.[9] Prior to her detention, Sandra notified ICE officials that she suffered from a large fibroid that hemorrhaged every day, which her doctor was scheduled to surgically remove.[10] ICE officials, however, allegedly failed to provide Sandra the medication or medical attention that her fibroid condition required. Ultimately, Sandra died in ICE detention – weeks after being detained for years-old misdemeanor drug charges for which she never served any jail time.[11]

Nearly seven years ago, **Glendene Grant** lost contact with her daughter, Jessie Foster, who had moved to Las Vegas from her native Canada. A private investigator hired by Glendene determined that Jessie had been forced into prostitution by human traffickers.[12] Glendene subsequently made three trips to Las Vegas in search of her daughter, and appeared on the *Montel Williams Show* in New York to raise awareness about her disappearance.[13] Glendene was on her way to Las Vegas for a fourth time to meet with police officials when a U.S. customs officer at the border crossing discovered that Glendene had been convicted more than twenty years ago in 1986 on marijuana and cocaine possession charges in Canada and thus she was not allowed to enter the U.S.[14] Glendene appealed to the U.S. Customs and Border Protection Chief but was told there was no relief available. "I'm not going to Vegas for a holiday – I'm going because my daughter is missing," Glendene told the *Calgary Sun* at the time.[15]

Time for Reform

Many state and local jurisdictions have reformed their drug policies in recognition that drug enforcement-centered policies are too costly to taxpayers and do greater harm than good for our nation's families and communities. Fourteen states have decriminalized possession of small amounts of marijuana, while eighteen states and the District of Columbia allow access to medical marijuana. Voters in two states – Colorado and Washington – recently approved the legal regulation of marijuana production and sales, a policy that 50 percent of Americans now support.[16] Moreover, the public overwhelmingly believes that the war on drugs has failed and supports treating drug use as a health issue rather than a criminal justice issue.

Under current immigration policies, noncitizens must satisfy requirements that are more stringent than those set for U.S. military recruits or individuals seeking employment with the Federal Bureau of Investigation, which now considers applicants with some illicit drug use in the past.[17] Federal immigration policy toward noncitizens with any history of drug use is excessive, cruel, inhumane and out of step with drug policies established by a growing number of state and local governments.

Recommendations

- End the removal of lawful permanent residents for admission of drug use or low-level drug law violations that occurred more than one year in the past or did not result in arrest or conviction.[18]

- Repeal provisions that deny admission to noncitizens who admit to drug use or have committed – or admit to committing – a drug law violation in a foreign country or the United States more than one year in the past.[19]

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[1] Anti-Drug Abuse Act of 1986, Subtitle M - Narcotics Traffickers Deportation Act, P.L. 99-570; Immigration Act of 1990, P.L. 101-649; Antiterrorism and Effective Death Penalty Act of 1996, P.L. 104-132; Illegal Immigration Reform and Immigrant Responsibility Act of 1996, P.L. 104-208

[2] Human Rights Watch, *Forced Apart: Families Separated and Immigrants Harmed by United States Deportation Policy* (New York, July 2007), p. 69

[3] see 8 U.S.C. § 1182(h), Immigration and Nationality Act

[4] see 8 USC § 1182, Immigration and Nationality Act § 212(a)(1)(A)(iv); Immigration and Nationality Act § 212(a)(2)(A)(i)(II)

[5] Adam Liptak, "The Nation's Borders, Now Guarded by the Net," *New York Times*, May 14, 2007

[6] Simon Calder, "*Inside Travel: Fortress USA Blocks Tourism*," *The Independent (London)*, January 1, 2004; Gill Charlton, "Will my HIV-positive friend get his US visa?," *The Daily Telegraph (London)*, October 29, 2005; Tim Shipman, "US records UK visitors' race and reading habits," *The Sunday Telegraph (London)*, September 23, 2007

[7] Court Services and Offender Supervision Agency for the District of Columbia, Community Supervision Services, General Supervision Branch "A", Written Correspondence from Lisa Silor, Community Supervision Officer to U.S. Custom and Border Protection, Deferred Inspection Unit, Dated October 26, 2005; Court Services and Offender Supervision Agency for the District of Columbia, Community Supervision Services, General Supervision Branch "A", Request for Early Termination of Regular Probation, Docket Number F-2740-02, August 28, 2003

[8] U.S. Congress, 110th Congress, First Session, U.S. House of Representatives, Committee on the Judiciary, Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law, "Detention and Removal: Immigration Detainee Medical Care," October 4, 2007

[9] Nina Bernstein, "Deaths of immigrants in U.S. held for deportation spark scrutiny," *The New York Times*, June 26, 2007
[10] U.S. Department of Justice, Immigration and Naturalization Service, Form I-831 Continuation Page, Case Number WAS0610000392/A021668804, November 2, 2005; U.S. Department of Justice, Immigration and Naturalization Service, Record of Sworn Statement in Administrative Proceedings, Form Number I-877, File Number A021668804, November 2, 2005
[11] U.S. Congress, 110th Congress, First Session, U.S. House of Representatives, Committee on the Judiciary, Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law, "Detention and Removal: Immigration Detainee Medical Care," October 4, 2007
[12] Cathryn Atkinson, " 'I get a strong feeling that ... she needs to be found and rescued'; A year ago, a young woman with a secret vanished in Las Vegas," *The Globe and Mail*, April 4, 2007
[13] Tarina White, "Montel to air tragic story," *Calgary Sun*, April 15, 2007
[14] Lena Sin, "Mother's hunt for missing daughter blocked at border: mother's trip stopped over old conviction," *The Province (Canada)*, June 3, 2007
[15] Sarah Kennedy, "Past conviction halts search; U.S. security guards stop mother from looking for daughter in Las Vegas," *Calgary Sun*, June 10, 2007
[16] *Rasmussen Reports Poll, May 12, 2012.* poll results retrieved June 4, 2012 from Rasmussen Reports; *Angus-Reid Public Opinion Poll, May 29-30, 2012,* poll results retrieved August 6, 2012 from Angus-Reid; *Gallup Poll, October 6-9, 2011.* Poll results retrieved June 4, 2012 from Gallup Politics
[17] Nancy Morawetz, "Rethinking Drug Inadmissibility," William and Mary Law Review, Vol. 50, No. 163, pp. 31, 34, 40, 47
[18] See Immigration and Nationality Act (INA)§ 237(a)(1)(A); § 237(a)(2)(B)(i); § 237(a)(2)(B)(ii); § 237(a)(2)(A)(iii)
[19] See Immigration and Nationality Act (INA)§ 212(a)(1)(A)(iv); §212(a)(2)(A)(i)(II)

UNITED STATES COMMISSION ON CIVIL RIGHTS

1331 PENNSYLVANIA AVENUE, NW, WASHINGTON, DC 20425 www.usccr.gov

February 12, 2013

Dear President Obama:

We write in our individual capacities as two members of the eight-member U.S. Commission on Civil Rights, and not on behalf of the Commission as a whole. In light of your proposal to reform the immigration system, we are writing to address a rarely-discussed effect of granting legal status or effective amnesty to illegal immigrants. Such grant of legal status will likely disproportionately harm lower-skilled African-Americans by making it more difficult for them to obtain employment and depressing their wages when they do obtain employment.

In 2008, the Commission held a briefing regarding the impact of illegal immigration on the wages and employment opportunities of African-Americans.[1] The testimony at the briefing indicated that illegal immigration disproportionately impacts the wages and employment opportunities of African-American men.[2]

The briefing witnesses, well-regarded scholars from leading universities and independent groups, were ideologically diverse. All the witnesses acknowledged that illegal immigration has a negative impact on black employment, both in terms of employment opportunities and wages. The witnesses differed on the extent of that impact, but every witness agreed that illegal immigration has a discernible negative effect on black employment. For example, Professor Gordon Hanson's research showed that "Immigration . . . accounts for about 40 percent of the 18 percentage point decline [from 1960-2000] in black employment rates."[3] Professor Vernon Briggs writes that illegal immigrants and blacks (who are disproportionately likely to be low-skilled) often find themselves in competition for the same jobs, and the huge number of illegal immigrants ensures that there is a continual surplus of low-skilled labor, thus preventing wages from rising.[4] Professor Gerald Jaynes's research found that illegal immigrants had displaced U.S. citizens in industries that had traditionally employed large numbers of African-Americans, such as meatpacking.[5]

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[1] U.S. COMMISSION ON CIVIL RIGHTS, THE IMPACT OF ILLEGAL IMMIGRATION ON THE WAGES AND EMPLOYMENT OPPORTUNITIES OF BLACK WORKERS [hereinafter THE IMPACT OF ILLEGAL IMMIGRATION], *available at* http://www.usccr.gov/pubs/IllegImmig_10-14-10_430pm.pdf.

[2] *Id.* at 3, Finding 5:

> Illegal immigration to the United States in recent decades has tended to depress both wages and employment rates for low-skilled American citizens, a disproportionate number of whom are black men. Expert economic opinions concerning the negative effects range from modest to significant. Those panelists that found modest effects overall nonetheless found significant effects in industry sectors such as meatpacking and construction.

[3] *Id.*,at 26.

[4] *Id.*at 37, 38-39

[5] *Id.*at 31.

Illegal immigration has a disparate impact on African-American men because these men are disproportionately represented in the low-skilled labor force. The Census Bureau released a new report on educational attainment after the Commission issued its report. This report, released in February 2012, found that 50.9 percent of native-born blacks had not continued their education beyond high school.[6] The same report found that 75.5 percent of foreign-born Hispanics had not been educated beyond high school, although it does not disaggregate foreign-born Hispanics who are legal immigrants from those who are illegal immigrants.[7] However, Professor Briggs estimated that illegal immigrants or former illegal immigrants who received amnesty constitute a third to over a half of the total foreign-born population.[8] Foreign-born Hispanics who are in the United States illegally are disproportionately male.[9] African-Americans who have not pursued education beyond high school are also disproportionately male.[10] These poor educational attainment levels usually relegate both African-American men and illegal immigrant men to the same low-skilled labor market, where they must compete against each other for work.[11]

The obvious question is whether there are sufficient jobs in the low-skilled labor market for both African-Americans and illegal immigrants. The answer is no. As Professor Briggs noted in his testimony to the Commission, "[i]n February 2008 . . . the

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[6] CAMILLE L. RYAN & JULIE SIEBENS, U.S. CENSUS BUREAU, EDUCATIONAL ATTAINMENT IN THE UNITED STATES: 2009 (Feb. 2012), at 7, *available at* http://www.census.gov/prod/2012pubs/p20-566.pdf.

[7] *Id.*

[8] THE IMPACT OF ILLEGAL IMMIGRATION, *supra* note 1, at 35-36.

[9] Peter Skerry, *Splitting the Difference on Illegal Immigration*, NATIONAL AFFAIRS (Winter 2013), at 5 ("Of the undocumented immigrants over the age of 18 currently residing in the U.S., there are approximately 5.8 million males, compared to 4.2 million females."), *available at* http://www.nationalaffairs.com/doclib/20130102_Skerry.pdf.

[10] THE IMPACT OF ILLEGAL IMMIGRATION, *supra* note 1, at 52; *see also* Anne McDaniel, Thomas A. DiPrete, Claudia Buchmann & Uri Shwed, *The Black Gender Gap in Educational Attainment: Historical Trends and Racial Comparisons*, 48 DEMOGRAPHY 889, 890 (2011) ("It is well known that black males trail black females on a range of key educational outcomes, including high school graduation, college enrollment, and college completion."), *available at* http://jrnetsolserver.shorensteincente.netdna-cdn.com/wp-content/uploads/2011/10/fulltext.pdf.

[11] THE IMPACT OF ILLEGAL IMMIGRATION, *supra* note 1, *Statement of Vernon M. Briggs, Jr.*,at 37.

> [I]t is not everywhere that there is likely to be significant competition between low skilled black workers and illegal immigrant workers, but there are ample circumstances where there is – such as the large metropolitan labor markets of Los Angeles, New York, San Francisco, Chicago, Miami and Washington-Baltimore. Moreover, some of the fastest growing immigrant concentrations are now taking place in the urban and rural labor markets of the states of the Southeast – such as Georgia, North Carolina and Virginia, which never before were significant immigrant receiving states in previous eras of mass immigration. Indeed, about 26 percent of the nation's foreign-born population are now found in the states of the South – the highest percentage ever for this region. There is mounting evidence that many of these new immigrants in this region are illegal immigrants.

national unemployment rate was 4.8 percent, but the unemployment rate for adults (over 25 years old) without a high school diploma was 7.3 percent."[12] During 2007, "Black American adult workers without a high school diploma had an unemployment rate of 12.0 percent, and those with only a high school diploma had an unemployment rate of 7.3 percent."[13] These statistics suggest both that there is an overall surplus of workers in the low-skilled labor market, and that African-Americans are particularly disfavored by employers.[14]

Furthermore, these statistics reflect an economy that was not experiencing the persistent stagnation we are experiencing today. The country's economic woes have disproportionately harmed African-Americans, especially those with little education. In 2011 24.6 percent of African-Americans without a high school diploma were unemployed, as were 15.5 percent of African-Americans with only a high school diploma.[15] Two and half years into the economic recovery, African-Americans face particular difficulty obtaining employment. According to the Bureau of Labor Statistics, the seasonally adjusted January 2013 unemployment rate for all black Americans – not just those with few skills – was 13.8 percent, nearly twice the white unemployment rate of 7.0 percent.[16] The economy has a glut of low-skilled workers, not a shortage.

Not only do illegal immigrants compete for jobs with African-Americans, but that competition drives down wages for the jobs that are available. It is a truism that illegal immigrants are willing to work long hours for low pay, even under poor conditions. As Professor Briggs noted in his testimony, it is not that there are American citizens who are unwilling to perform the jobs taken by illegal immigrants. It is that American citizens are unwilling to take these jobs for the same wages as illegal immigrants, and are unwilling to endure the same poor working conditions. When faced with a willing, albeit illegal, workforce, some employers hire the people who will work for less money and will not complain about working conditions. This drives down the prevailing wage.

Julie Hotchkiss, a research economist and policy advisor at the Federal Reserve Bank of Atlanta, estimated that "as a result of this growth in the share of undocumented workers, the annual earnings of the average documented worker in Georgia in 2007 were

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[12] *Id.* at 36.

[13] *Id.*

[14] *Id.*, *Statement of Harry J. Holzer*, at 41.

> Other evidence, including that by ethnographers, indicates that employers filling low-wage jobs requiring little reading/writing or communication clearly prefer immigrants to native-born blacks, and encourage informal networks through which immigrants gain better access to these jobs. The native-born black workers likely would be interested in some, but not all of these jobs, depending on their wages.

[15] U.S. DEPT. OF LABOR, *The African-American Labor Force in the Recovery* (Feb. 29, 2012), at Chart 3, *available at* http://www.dol.gov/_sec/media/reports/BlackLaborForce/BlackLaborForce.pdf.

[16] BUREAU OF LABOR STATISTICS, *Employment situation summary* (Feb. 1, 2013), *available at* http://www.bls.gov/news.release/empsit.nr0.htm.

UNITED STATES COMMISSION ON CIVIL RIGHTS

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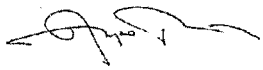
2.9 percent ($960) lower than they were in 2000. . . . [A]nnual earnings for the average documented worker in the leisure and hospitality sector in 2007 were 9.1 percent ($1,520) lower than they were in 2000."[17] A $960 annual decrease may not seem like much to a lawyer or a doctor. But as you noted in regard to the 2012 payroll tax cut extension, an extra $80 dollars a month makes a big difference to many families: "It means $40 extra in their paycheck, and that $40 helps to pay the rent, the groceries, the rising cost of gas . . . ."[18]

Granting amnesty to illegal immigrants will only further harm African-American workers. Not only will the low-skilled labor market continue to experience a surplus of workers, making it difficult for African-Americans to find job opportunities but African-Americans will be deprived of one of their few advantages in this market. Some states require private employers to use E-Verify to establish that their workers are in the country legally. This levels the playing field a bit for African-Americans. If illegal immigrants are granted legal status, this small advantage disappears.

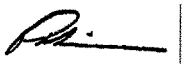
Furthermore, recent history shows that granting amnesty to illegal immigrants will encourage more people to come to the United States illegally. The 1986 amnesty did not solve the illegal immigration problem. To the contrary, that amnesty established the precedent that if you come to America illegally, eventually you will obtain legal status. Thus, it is likely that if illegal immigrants are granted legal status, more people will come to America illegally and will further crowd African-American men (and other low-skilled men and women) out of the workforce.

Before the federal government decides to grant legal status to illegal immigrants, due deliberation should be given to what effect such grant will have on the employment and earnings prospects of low-skill Americans generally and black Americans specifically. We respectfully submit that granting such legal status is not without substantial costs to American workers.

Sincerely,



Abigail Thernstrom
Vice Chair



Peter Kirsanow
Commissioner

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[17] THE IMPACT OF ILLEGAL IMMIGRATION, *supra* note 1, at 46.

[18] Amie Parnes, *Obama: Payroll tax cut extension will help with higher gas prices*, THE HILL, Feb. 21, 2012, *available at* http://thehill.com/blogs/e2-wire/e2-wire/211765-obama-payroll-tax-cut-extension-will-help-with-higher-gas-prices.

UNITED STATES COMMISSION ON CIVIL RIGHTS

1331 PENNSYLVANIA AVENUE, NW, WASHINGTON, DC 20425 www.usccr.gov

Cc: Representative Bob Goodlatte (Chair, U.S. House of Representatives Committee on the Judiciary)
Representative John Conyers (Ranking Member, U.S. House of Representatives Committee on the Judiciary)
Representative Marcia Fudge (Chair, Congressional Black Caucus)

Senator Patrick Leahy (Chair, U.S. Senate Committee on the Judiciary)
Senator Charles Grassley (Ranking Member, U.S. Senate Committee on the Judiciary)
Senator Charles Schumer (Chair, U.S. Senate Committee on the Judiciary Subcommittee on Immigration, Refugees, and Border Security)
Senator John Cornyn (Ranking Member, U.S. Senate Committee on the Judiciary Subcommittee on Immigration, Refugees, and Border Security)

Statement for the Record
Former Utah Attorney General Mark Shurtleff

Senate Judiciary Committee

"Comprehensive Immigration Reform"

February 13, 2013

Mark L. Shurtleff was the first three term attorney general in Utah history; he was re-elected in November 2008 with a strong 70 percent of the vote. Attorney General Shurtleff was born and raised in Utah, graduating from Brighton High School, Brigham Young University and the University Of Utah College of Law. He is a Past Chairman of the Conference of Western Attorneys General (CWAG) and has served several times on the Executive Committee for the National Association of Attorneys General (NAAG). In addition, he serves on the Board of Directors of the America-Israel Friendship League, Fight Crime: Invest in Kids Association and the Washington Legal Foundation. Locally, he serves on the Boards of the Utah Prosecution Council, Commission on Criminal & Juvenile Justice, the Constitutional Defense Council, Governor's Child & Family Cabinet Council and Utah Citizens Against Pornography. In January 2013, he joined the international law firm of Troutman Sanders LLP as a Partner, and he will work out of their Washington, D.C., office.

I applaud the Committee for holding this hearing on the matter of America's broken immigration system and urge the Committee to fix our immigration system the American way, by taking up a broad immigration reform approach that includes a path to citizenship.

I believe Congress must seize upon the momentum that has been building around 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, I was one of over 250 faith, law enforcement and business leaders from across the country — including one of today's witnesses, Chairman and CEO of Revolution Steve Case — who came to Washington, D.C., for a National Strategy Session and Advocacy Day. We told policymakers and the press about the new consensus on immigrants and America. More importantly, faith, law enforcement and business leaders from across the country committed to work together to urge Congress

to pass broad immigration reform in 2013. This week we launched the Bibles, Badges and Business for Immigration Reform Network to achieve that goal.

As the Committee discusses reforming our immigration system, I am encouraged to see that four of the committee's members, including Senators Richard Durbin, Charles Schumer, Lindsey Graham and Jeff Flake, are involved in working on a bipartisan immigration reform bill. The principles released by this group are an encouraging sign that Congress will finally fix our broken immigration system. I am also pleased that Senator Mike Lee of Utah has been engaging in these bipartisan negotiations and hope he continues to be involved in the process.

However, it is also important that the discussion does not become singularly focused on enforcement. Over the last few years we followed the enforcement-only approach on immigration and it has led to less law and less order. We need a commonsense, workable approach. Chris Crane, an Immigration and Customs Enforcement (ICE) agent based in Salt Lake City, Utah, and President of the National Immigration Customs Enforcement Council 118 of the American Federation of Government Employees, would have you believe that ICE does not do its job. He says ICE agents have been verbally told by their headquarters not to detain and arrest certain undocumented immigrants, even if they have illegally re-entered the country.

While Mr. Crane is entitled to his own opinion as to how our immigration enforcement works, he is not entitled to his own facts. In Fiscal Year (FY) 2011 ICE detained a *record* number of people: 429,000. In FY 2012 ICE deported a *record* 409,849 people. Of these, approximately 55 percent, or 225,390, were convicted of felonies or misdemeanors — almost double the number of criminals removed in FY 2008. On top of this, 96 percent of all removals (also a *record* high) fell under ICE's priorities for deportation.

Contrary to what Chris Crane would lead you to believe, ICE priorities include recent border crossers and people who re-enter the country illegally. An enormous amount of resources are devoted to prosecuting individuals who enter the country illegally. For example, in the first 10 months of FY 2011, over 63,000 people were charged with illegal entry or illegal re-entry, making up 46 percent of *all* federal prosecutions during that time. In light of all of these statistics, it is hard to reconcile Mr. Crane's statements with reality.

However, we are not going to deport our way to a controlled immigration system. The American people want this problem solved. In poll after poll the American people demand law and order, secure borders and broad immigration reform that includes earning U.S. citizenship.

I urge the Committee to focus today, and in subsequent hearings, on enacting commonsense, broad immigration reforms that help to fix our broken immigration system.

2/12/13

To: United States Senate Committee on the Judiciary

C/o The Honorable Senator Chuck Grassley

Dear Sirs:

Rebecca Bowie and Jeff Bowie would like to submit our testimony for the pending committee hearing on Illegal Immigration and the need for Immigration Reform in the United States. We wish to thank the committee for allowing us the opportunity to present our story.

We, like so many of our fellow Americans, were bystanders and unconcerned with the issue of immigration reform until we were unwillingly brought into the debate. On the morning of July 29, 2008 at approximately 6:30 AM our 28 year old daughter was brutally murdered. She was killed while dressing for work in the bedroom of her condo located in Smyrna, GA. We did not know this until July 31, 2008. On the afternoon of July 31 the life of the Bowie family was altered forever more. The circumstances are described as follows: Elizabeth Bowie, our daughter, was in the midst of changing school districts and was attending a new teacher orientation. She did this on Monday July 28 and then did not appear on either of the next two days. One of the assistant principals contacted me by email to ask if there was something wrong with Elizabeth. This was surprising news to me as she was excited about her new opportunity. Here cell phone was broken and after unsuccessfully trying to reach her by email, her mother and I went over to her condo to find out what was happening. We did not have a key and were unable to contact her so we called the police. They discovered her body. An autopsy determined her cause of death and established that she had been murdered. As a parent the world stops at that moment. Then to find out that your child had been murdered was not something you can comprehend. The pain you feel as you think about all the times you held her as a child is beyond proper description. To think that someone would hurt her to point of death was devastating.

The city of Smyrna has a small CSI department and they began a very thorough investigation of everyone she knew and had contact with. We gave them all of the names we knew but never dreamed that anyone she knew could have killed her. However, the investigation pieced

together enough evidence to link her to an illegal alien she had dated. Once presented with the fact that someone illegal committed the crime a comment by the chief detective struck me. "How do you find a ghost?" This underground society that has come here illegally does not use their real names, identities, addresses or anything. So how do you find someone? It strains our precious resources even more. The Smyrna police force was able to piece together a connection to the killer. She had met him through one of her students at school. This student came to school crying and upset one day. His father was very sick and because he was illegal he had no insurance or standing. Elizabeth intervened on his behalf and got him into Northside Hospital. He subsequently died in spite of the good care and Elizabeth saw to it his son was returned to his mother in Mexico. This man had three brothers, two were in the landscaping business and the third worked for them. They had children that were in elementary school and Elizabeth helped them with their studies. During this time the younger brother named Juan Lazaro Abrego became interested in Elizabeth and dated her. Her mother and I were not in favor of her dating an illegal and expressed this to Elizabeth. After this most communication ceased and I thought he had returned to Mexico. He apparently did so a couple of times but Juan returned to kill Elizabeth. We are expressing all this to you so you can see the wide divide in value systems that would create a situation leading up to murder. It is my belief that people committed to joining a society have more feeling for and stake in the outcome of their behavior. Elizabeth had done so much good for this family you cannot imagine any of them killing her.

We realize that every parent is proud of their children but in the case of Elizabeth we have much to tell about. She was the type of citizen that America can be proud of. She was a school teacher that had taught at Marietta Middle School for 5.5 years. She brought personal experience and heart to classroom every day. The school is a mix of ethnic backgrounds and very diverse family backgrounds. There were many single family homes and many issues that plague our society and educational institutions today. Elizabeth was uniquely qualified to bring life and hope to so many of her students. She knew the Lord Jesus Christ as her personal savior and had a relationship with Him shared by very few. As a result of this she was a world traveler, going to Kenya, Jordan, Cambodia, and Thailand and over the United States. She brought these personal experiences to life in her social studies' classes. They loved her.

Elizabeth was very giving. She gave up her bed twice and slept on the floor for months because she felt the people she gave the bed to needed it more than she did. Liz gave up her television to a student going to college who was too poor to dream of having one while she went without for more than a year. She gave away my clothes to the homeless and fed them in Atlanta's Woodruff Park with what little she had.

During Elizabeth's memorial service one of her former fellow students in the Master's program in Education at Georgia State University got up to say Elizabeth was his only white friend. As I listened I thought she truly had gotten the essence of life. No color, no prejudice, no discrimination defined a person for Elizabeth. Wouldn't it be a great place if we all felt that way?

I say all this to describe a citizen of the United States that we need more of and not less of. Her death by someone who should have not been here in the first place is a tragedy for her family and her country. Elizabeth was a much understated person. No one knew of all the generous things she had accomplished as most of this was never known by anyone until after her death. We would like to encourage you to do something positive in her memory to reform this broken immigration system.

We need strong borders between the United States and Mexico. This revolving door has to stop. We must stop letting who knows who walk into this great country with the purpose of making money at any cost and not seeking to adopt our country as their own. They can either make it rich with their contribution to society or they can rob it blind and steal away the ideals of our citizens. If we don't protect our country who will? Letting millions of illegal's come and go at will is not protecting our borders or our citizens. Elizabeth's death proves that.

We need an immigration program that recognizes the need to welcome enough labor to meet the needs of our economic system legally. Elements of our system feed off the illegal work force that reduce wages and reduce the value of our fellow man. The ability to get work visas in a controlled manner should be expanded to meet the labor demands of our economic system. After we have a permitting system that lets us pursue enough labor E Verify should be made stronger not weaker and we should prosecute those that violate the laws of the land.

We owe it to the immigrants who came here legally and waited their turn to not provide blanket amnesty. We also cannot round up millions and bus them back across the border. The issue is complex but we must face the complexity and think outside the box.

Elizabeth's killer still roams loose in Mexico. What's sad is that three weeks after her murder we knew who did it and where he was. It took a whole year in the Department of Justice to get the extradition paperwork done to go get him and by that time he was long gone. He still roams free in Mexico with not much fear that he will ever get caught. Our agreements with Mexico need to be simplified and improved so that this does not happen.

Finally, we need compromise to get action. I am frankly exasperated at the lack of action in Congress to get something done. We need compromise to accomplish what has to be done on immigration. Don't think for a minute that either party has a mandate from the citizens of this country. We elected you collectively to do a job and we expect the debates to bring about good ideas and good collective thinking not inaction. For the sake of Elizabeth's memory stop procrastinating and bring about real change. Good ideas come from outside the Beltway so get the citizenry involved. You might be pleasantly surprised. Thank you very much.

Jeff and Rebecca Bowie

Suwanee, GA 30024

CITY OF GARDEN CITY
POLICE DEPARTMENT

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February 12, 2013

My name is James Hawkins and I have been the Chief of Police of Garden City, Kansas for seventeen years. Garden City is a community in southwestern Kansas which is predominantly populated by immigrants, of both lawful and unlawful status. Garden City is a community of majority minority status.

The history of immigration to Garden City is one that starts in the early 1900s and since then there has been a steady stream of immigrants. The agricultural economy of the area relies very heavily on immigrants and they are a very productive element of the community. They contribute both socially and economically to the community.

I applaud the efforts of this committee to attempt to achieve a consensus on immigration that will assist those already in the Unites States and provide guidance for future, legal immigration while maintaining secure borders.

As a law enforcement officer with almost thirty years of experience I have seen the value of cooperation between law enforcement and the community it serves. Law enforcement cannot operate effectively without the confidence and cooperation of the community regardless of whether the residents are lawfully in the United States or not. When things go awry in the community, it is usually with the help of citizens that crimes are solved and ultimately adjudicated. This community policing approach works very effectively.

The Garden City Police Department has worked diligently to treat all residents, whether citizens or not, fairly and equitably and remain neutral regarding the immigration status of residents. The Garden City Police Department, and I'm certain, almost every other municipal law enforcement agency, does not have the resources to enforce federal immigration laws and it would be counter-productive to community policing efforts to do so.

Providing a legal status to undocumented immigrants already here would provide a means for immigrants to lawfully obtain driver's licenses and insurance, and assist law enforcement in identifying those who should not be here. Consequently it will assist those immigrants to continue to stay involved and invest in the community in which they already live and work.

Thank you for thoughtful consideration.

James R. Hawkins
Chief of Police

Quotes for the Record

Law Enforcement Officials

Senate Judiciary Committee

"Comprehensive Immigration Reform"

February 13, 2013

"Now is the time to finally pass comprehensive immigration reform. We can keep our borders secure, deal humanely and fairly with the millions of undocumented workers already here, establish a guest worker program, and reform the system to attract the best and the brightest who want to come to America. This has been our tradition and it can be a vibrant part of our future."

Grant Woods. (R-Ariz.)

Arizona Attorney General (1991-1999)

"What we have had here is a failure to communicate due in part to the uncharitable and at times hate filled rhetoric of some in politics and the media that play on our worst of emotions. Please move forward on reform and fix our system so that we can once again act humanely and justly."

Mark C. Curran, Jr., Sheriff, Lake County, Ill.

"Each day we delay the enactment of comprehensive immigration reform, is a day we fail to bring an untold number of people residing in our communities into the fold as it relates to our collective public safety efforts. But for their immigration status, these individuals are otherwise law abiding and productive members of our society. Unfortunately, the vitriolic rhetoric directed toward immigrants has created an environment of fear and intimidation where all too often victims of crime and witnesses to crime hesitate to assist law enforcement. Bringing legitimacy to this segment of society will undoubtedly strengthen the ability of peace officers to bring criminals to justice and justice to the victims of crime and their families."

Art Acevedo, Chief of Police, Austin, Tex.

"As a sheriff along the Texas-Mexico border, my role is to ensure the safety and well-being of our citizens and all those who enter our country," said Webb County Sheriff Martin Cuellar. "But in doing so, and while protecting them, we must also keep our human hat on and keep in mind that it is not healthy to separate families. This is why a well thought of pathway to citizenship is very important."

"It is my honor to serve you as your Sheriff."

Martin Cuellar, Sheriff, Webb County, Tex.

"Law enforcement knows firsthand the need for immigration reform. Police officers and sheriff's deputies who work the streets need clear direction and the current law just doesn't provide that. A new law with clear policy objectives and broad bipartisan consensus will allow local law enforcement to focus on criminal conduct and not on immigration status. For the sake of public safety, we have to move beyond the status quo."

William D. Gore, Sheriff, San Diego County, Cal.

and the United Church of Christ, Justice and Witness Ministries; UCC GenderFold Action Alliance; United Methodist Church, General Board of Church and Society; Auburn Seminary; Transgender Law Center

<u>The Need for LGBT-Inclusive Comprehensive Immigration Reform</u>

Testimony Submitted to U.S. Senate Committee on the Judiciary

Hearing: "Comprehensive Immigration Reform"

Wednesday February 13, 2013

Statement of Rachel B. Tiven, Esq., Executive Director, Immigration Equality; National Gay and Lesbian Task Force Action Fund; National Center for Transgender Equality; Family Equality Council; Queer Undocumented Immigrant Project (QUIP), a project of United We Dream; United Methodist Church, General Board of Church and Society; Association of Welcoming & Affirming Baptists; United Church of Christ, Justice and Witness Ministries; UCC GenderFold Action Alliance; Auburn Seminary; Gay, Lesbian & Straight Education Network; Out4Immigration; Gay & Lesbian Advocates & Defenders (GLAD); Transgender Law Center

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 Senate 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")[i] 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.[ii] 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.[iii] 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.[iv] 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.[v] 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.[vi] 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.[vii] 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 withaut 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."[viii]

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 two dozen countries that allow their citizens to sponsor long-term, same-sex partners for immigration benefits.[ix]

No Comprehensive Immigration Reform can be truly comprehensive if it leaves out thousands of LGBT families. We urge the Senate 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.[x] 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.[xi] LGBT undocumented youth face discrimination at every turn and have fought hard to ensure that CIR is inclusive of their multiple identities.[xii] 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.[xiii] 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.[xiv] 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.[xv] 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.[xvi] Thus there is no legitimate reason to continue to deny applicants with valid claims based on an artificial application deadline.

We therefore urge the Senate 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.[xvii] 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, receiving ongoing medical care, particularly primary care and preventative care, are crucial to maintaining their health and productivity. Access to regular medical care makes it more likely that HIV will be detected early and that the effects of the virus can be minimized. Moreover, access to health care not only benefits individuals, but also benefits 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 Senate 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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[i] UAFA 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.

[ii] 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 3available at http://www.dhs.gov/xlibrary/assets/statistics/publications/lpr_fr_2011.pdf

[iii] 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 .

[iv] Department of Homeland Security, Annual Flow Report, March 2009, available at http://www.dhs.gov/xlibrary/assets/statistics/publications/lpr_fr_2008.pdf .

[v] Family, Unvalued, at 176.

[vi] *Id.*

[vii] *Id.* In female binational households, 87% of the children were U.S. citizens; in male households, 83% were U.S. citizens

[viii] Available at http://immigrationequalityactionfund.org/images/BusinessCoalition_signonletter.pdf .

[ix] 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. *See* Family, Unvalued.

[x] 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 Service; Be between the ages of 12 and 35 at the time of bill enactment; Have graduated from an American high school, obtained a GED, or been admitted to an institution of higher education; Be of good moral character.

[xi] 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&

[xii] 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 .

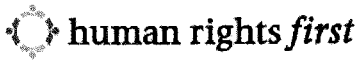
[xiii] See "LGBT Identity: A Demographer's Perspective," by Gary J. Gates, June 2012, available at http://williamsinstitute.law.ucla.edu/research/census-lgbt-demographics-studies/lgbt-identity-a-demographers-perspective/

[xiv] Department of State Visa Bulletin, available at http://www.travel.state.gov/visa/bulletin/bulletin_5856.html .

[xv] 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.

[xvi] 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 .

[xvii] See, National Immigrant Justice Center, "Stop Abuse of Detained LGBT Immigrants," http://www.immigrantjustice.org/stop-abuse-detained-lgbt-immigrants



STATEMENT FOR THE RECORD OF ELEANOR ACER

Director, Refugee Protection Program

HUMAN RIGHTS FIRST

On

"Comprehensive Immigration Reform"

Submitted to the

Senate Judiciary Committee

February 13, 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, working in partnership with volunteer attorneys at U.S. law firms. 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 "Comprehensive Immigration Reform." 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."[1]

How to Repair the U.S. Asylum System in Immigration Reform Legislation[2]

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 eliminate barriers to asylum that are inconsistent with America's commitment to protecting refugees. In letters sent to the Administration and Congress on February 8, 2013, 162 national refugee protection organizations, faith based groups, state and local organizations, and legal experts on the U.S. asylum system supported these principles.[3]

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

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[1] 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/p20030.

[2] For a full set of recommendations, see Human Rights First's 2012 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, and *How to Repair the U.S. Immigration Detention System,* at http://www.humanrightsfirst.org/wpcontent/uploads/pdf/blueprints2012/HRF_Immigration_Detention_blueprint.pdf

[3] Human Rights First, 162 Sign Immigration Reform Letter Urging Congress, Administration to Protect Those Fleeing Persecution, at http://www.humanrightsfirst.org/2013/02/08/162-sign-immigration-reform-letter-urging-administration-congress-to-protect-those-fleeing-persecution. (Letters with signatories at http://www.humanrightsfirst.org/wp-content/uploads/AWGCIRSignOnLetter-Administration.pdf and http://www.humanrightsfirst.org/wp-content/uploads/AWGCIRSignOnLetter-Congress.pdf).

to be shifted 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 refugees—would have been granted asylum by DHS without the need for further litigation in the immigration courts. [4]

For example, as detailed in Human Rights First's report:[5]

- An Eritrean woman, who was tortured and sexually assaulted due to her Christian religion, was denied asylum in the United States based on the filing deadline even though an immigration judge found her testimony credible and compelling.

- A student who was jailed by the Burmese military regime for his pro-democracy activities was denied asylum by the United States based on the filing deadline despite his isolation in the U.S. and lack of English.

- A Chinese woman who feared persecution and torture in China for her assistance to North Korean refugees was determined by the immigration judge to face a clear probability of torture but was denied asylum based on the filing deadline and ordered removed by the U.S. Board of Immigration Appeals.

- A man from Togo who was tortured because of his pro-democracy activities had his asylum request rejected based on the filing deadline, and the request was only granted - three years after his initial filing - after subsequent immigration court litigation.

- A Congolese nurse who was persecuted and tortured due to her human rights advocacy and her Catholic faith was denied asylum based on the filing deadline even though the immigration court found her to be a credible refugee who faced a clear probability of persecution.

- A teenager who was battered, kidnapped, and raped in Albania while plans were made to traffic her into prostitution was denied asylum after her application was ruled untimely.

The exceptions to the filing deadline – for changed or extraordinary circumstances – have not prevented genuine refugees from being denied asylum in the United States. Indeed, as detailed in Human Rights First's report on the filing deadline, many refugees with well-founded fears of persecution have been denied asylum by U.S. adjudicators despite the fact that there are exceptions to the filing deadline. The lack of federal court review on the issue in most circuits also means that refugees in many parts of the country cannot get mistaken filing deadline denials corrected by the federal courts.

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[4] 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.

[5] Ibid.

While proponents of the filing deadline were, at the time it was created, concerned about the abuse of the asylum system by individuals filing fraudulent claims, this procedural impediment has actually prevented refugees with credible non-fraudulent asylum cases from receiving asylum in the United States. Moreover, as detailed in the report, U.S. immigration authorities implemented a series of major reforms to the asylum system beginning in 1995. These reforms targeted incentives for filing fraudulent applications, increased staffing at the asylum office, and improved the pace of adjudications so that individuals who did not have credible cases were put into the deportation process much more quickly. In the intervening years, additional controls to counter abuse have also been added to the system. As detailed in the Human Rights First report, there are numerous mechanisms in place that are actually designed to combat abuse and fraud.[6]

In addition, the filing deadline wastes government resources in the immigration courts and at the Board of Immigration Appeals . When a case is rejected by the asylum office based on the filing deadline, it is referred into the removal process and placed into immigration court removal proceedings. The court process – which is an adversarial process - involves a significantly greater use of government resources. Since the filing deadline went into effect, over 53,400 asylum seekers have had their requests for asylum rejected by the asylum office based on the deadline and not on the merits of their cases.[7] As a result, thousands of asylum cases have been put into the overloaded immigration court system. Some (though not all) of those cases could have been – and would have been – resolved at the asylum office level through a grant of asylum if the filing deadline did not exist, thus saving a tremendous amount of government resources.

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.[8] In connection with the 60th anniversary of 1951 Refugee Convention, the Administration pledged to work with Congress to eliminate the deadline.[9]

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.

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[6] Ibid., pp. 26 – 27.

[7] Filing deadline data provided to NGOs, including Human Rights First, by the USCIS Asylum Division on Dec. 16, 2009.

[8] 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

[9] 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.

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.[10] 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.[11] As the Council on Foreign Relation's 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."[12] A January 2012 Heritage Foundation report also recognized the cost-effectiveness of alternatives to detention.[13]
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 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.[14]

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

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[10] National Immigration Forum, "Math of Immigration Detention" (August 2012) available at http://www.immigrationforum.org/images/uploads/MathofImmigrationDetention.pdf.
[11] Ibid.
[12] Council on Foreign Relations, *supra* note 1, p. 29.
[13] 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.
[14] See INA § 236(c); 8 CFR § 208.30, 212.5, 235.3, and 1003.19.

seekers.[15] 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."[16]

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.[17] 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.

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.[18] 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.[19]

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

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[15] USCIRF, Asylum Seekers in Expedited Removal Volume II, p. 189, at http://www.uscirf.gov/images/stories/pdf/asylum_seekers/ERS_RptVolII.pdf; USCIRF, Expedited Removal Study Report Card (2007), p. 5.

[16] 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.

[17] 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, at http://www.humanrightsfirst.org/wp-content/uploads/pdf/HRF-Jails-and-Jumpsuits-report.pdf, citing ICE, "Fact Sheet: 2009 Immigration Detention Reforms," 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, at 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.

[18] 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.

[19] See ABA Civil Immigration Detention Standards at http://www.americanbar.org/content/dam/aba/administrative/immigration/abaimmdetstds.authcheckdam.pdf.

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."[20]

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 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).[21] 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.[22] 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."[23]

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.

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[20] USCIRF, *Asylum Seekers in Expedited Removal*, p. 240.
[21] TRAC, *Latest Immigration Court Numbers, as of* December 2012 at http://trac.syr.edu/immigration/reports/latest_immcourt/#backlog
[22] 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.-Adj.-Recommendation-for-Plenary-5-22-12.pdf.
[23] 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

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 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.[24]

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 whose 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

[24] *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/.

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.

Attachments:

- Sign-on Letter to Congress, Re: Recommendations on the U.S. Asylum System for Immigration Reform Legislation, also at http://www.humanrightsfirst.org/wp-content/uploads/AWGCIRSignOnLetter-Congress.pdf.
- Human Rights First, Blueprint for the Next Administration, December 2012, *How to Repair the U.S. Asylum and Resettlement Systems*, also at http://www.humanrightsfirst.org/wp-content/uploads/pdf/blueprints2012/HRF_Asylum_blueprint.pdf
- Human Rights First, Blueprint for the Next Administration, December 2012, *How to Repair the U.S. Immigration Detention System*, also at http://www.humanrightsfirst.org/wp-content/uploads/pdf/blueprints2012/HRF_Immigration_Detention_blueprint.pdf.

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How to Repair the U.S. Asylum and Refugee Resettlement Systems

BLUEPRINT FOR THE NEXT ADMINISTRATION

December 2012

BLUEPRINT FOR THE NEXT U.S. ADMINISTRATION

ABOUT US

On human rights, the United States must be a beacon. Activists fighting for freedom around the globe continue to look to us for inspiration and count on us for support. Upholding human rights is not only a moral obligation; it's a vital national interest. America is strongest when our policies and actions match our values.

Human Rights First is an independent advocacy and action organization that challenges America to live up to its ideals. We believe American leadership is essential in the struggle for human rights so we press the U.S. government and private companies to respect human rights and the rule of law. When they don't, we step in to demand reform, accountability and justice. Around the world, we work where we can best harness American influence to secure core freedoms.

We know that it is not enough to expose and protest injustice, so we create the political environment and policy solutions necessary to ensure consistent respect for human rights. Whether we are protecting refugees, combating torture, or defending persecuted minorities, we focus not on making a point, but on making a difference. For over 30 years, we've built bipartisan coalitions and teamed up with frontline activists and lawyers to tackle issues that demand American leadership.

Human Rights First is 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.

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How to Repair the U.S. Asylum and Refugee Resettlement Systems

BLUEPRINT FOR THE NEXT ADMINISTRATION

"Our values and our interests dictate that the protection of the most vulnerable is a critical component of our foreign policy. We have a moral imperative to save lives. We also have interest in sustaining U.S. leadership, which enables us to drive the development of international humanitarian principles, programs, and policies like no other government in the world. Such efforts promote reconciliation, security, and well-being in circumstances where despair and misery threaten stability and critical U.S. national security interests."

President Obama on World Refugee Day
June 20, 2011

Introduction

The Obama Administration, as it embarks on its second term, should reaffirm U.S. leadership on the protection of refugees by repairing flaws in the U.S. asylum and resettlement systems. Many of these flaws have persisted for years, undermining U.S. leadership and leaving refugees in difficult and vulnerable situations. The White House should lead this effort and launch stronger mechanisms to safeguard protection throughout U.S. agencies. The administration should also look for opportunities to move some of these repairs forward in concert with broader immigration reform initiatives.

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. The U.S. resettlement program is in many ways a success, but it also needs improvements in order to protect some of the most vulnerable refugees and to ensure that refugees can successfully rebuild their lives after arriving in the United States.

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 whether this country's policies and programs 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. Yet, 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.

The challenges facing both the asylum and resettlement systems have only been compounded by the failure to promptly resolve the steady stream of interagency asylum and refugees issues—now involving over seven

U.S. government agencies—and the lack of senior leadership focused on protection.

Over the last four years, the Obama Administration has taken some important steps towards addressing some of the significant challenges that are undermining the U.S. asylum and resettlement systems. But, as it embarks on its second term, these efforts should be accelerated because far too often the United States is—still—depriving refugees of access to its asylum system, detaining them in a costly system that relies on jails and jail-like facilities, leaving some of the most vulnerable refugees stranded even though they face imminent risks of harm and prolonging the separation of refugee families for years due to delays in the under-resourced immigration court system and the unworkable system for issuing "exemptions" from bars under the immigration law.

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."[1]

Building on the long history of bipartisan support for U.S. leadership in protecting refugees, the Obama Administration—with leadership and engagement from the White House—should in its second term reevaluate and reform provisions of law, policies, and practices that are inconsistent with U.S. human rights commitments and values. Many of these policies and practices can be changed administratively. Some of these reforms—like the elimination of the one-year asylum filing deadline—can and should be included as components of comprehensive immigration reform initiatives.

How to Repair the U.S. Asylum and Refugee Resettlement Systems

SUMMARY

During his second term, President Obama should renew and restore U.S. leadership in protecting refugees, both at home and abroad. This blueprint provides a detailed roadmap of recommendations and summarizes these recommendations immediately below:

RESTORE ACCESS TO ASYLUM AND OTHER PROTECTION

- Prioritize work with Congress to eliminate the counterproductive asylum filing deadline.
- Safeguard refugees from expedited removal and effectively implement protection measures.
- Revise the U.S. approach to maritime interdiction and require interviews, interpreters, and other safeguards.
- Promulgate regulations clarifying "particular social group," "nexus," and lack of state action.

PROMOTE FAIR, TIMELY, AND EFFECTIVE ADJUDICATION FOR ASYLUM CASES

- Increase immigration judges, support staff and Board of Immigration Appeals (BIA) staffing.
- Support elimination of asylum filing deadline.
- Improve access to legal counsel and legal orientation presentations:
  - Expand Legal Orientation Programs (LOP).
  - Promote efficiency and justice through support of legal representation funding.
  - Facilitate recruitment of pro bono counsel.
- Give U.S. Citizenship and Immigration Services (USCIS) Asylum Office initial jurisdiction over all asylum and withholding claims.
- Revise asylum "clock" regulation so asylum seekers are not deprived of opportunity to support themselves for years.
- Limit use of video conferencing for hearings.

ELIMINATE UNNECESSARY AND INAPPROPRIATE IMMIGRATION DETENTION

- Implement cost-effective alternatives to detention, in place of unnecessary detention.
- Revise regulations, and support legal positions and legislation, to provide access to Immigration Court custody hearings.
- Stop using prisons, jails, and jail-like facilities.
- Adopt and implement standards appropriate to civil immigration detention.
- Increase access to legal representation, legal information, and fair procedures.

PROTECT REFUGEES FROM INAPPROPRIATE EXCLUSION

- Support legislative adjustments to immigration law definitions to actually target terrorism.
- Implement August 2012 exemption swiftly and ensure additional exemptions are signed soon.
- Adopt sensible legal interpretations.
- Issue regulations to prevent unjust exclusion under "persecutor" bar.

IMPROVE U.S. REFUGEE ADMISSIONS PROGRAM TO STRENGTHEN PROTECTION FOR VULNERABLE REFUGEES

- Meet U.S. resettlement goals and facilitate access for particularly vulnerable.
- Continue to improve security checks and reduce delays in U.S. resettlement processing.
- Provide appropriate support for refugee integration.

STRENGTHEN EXPEDITED RESETTLEMENT AND EXPEDITED PROTECTION

- Strengthen coordination of the multiple steps in the U.S. resettlement process, including:
  - Develop regional guidelines with target time frames.
  - Appoint expedite specialists at U.S. Resettlement Support Centers (RSCs).
  - Increase capacity to expedite security checks.
  - Designate RSC staff to conduct prescreening.
  - Provide prompt USCIS interviews.
- Report on number and timing of expedited cases.
- Address delays due to high rates of positive TB tests later shown to be TB-free upon further testing.
- Improve emergency protection through Emergency Transit Facilities and safe shelter.

STRENGTHEN PROTECTION AND INTERAGENCY COORDINATION

- Improve White House and interagency coordination:
  - Institute annual interagency protection meeting.
  - Prioritize and Increase staff to facilitate coordination on protection.
  - Create senior director for protection at the National Security Council (NSC).
- Institutionalize protection within the Department of Homeland Security (DHS):
  - Create undersecretary for immigration and protection.
  - Create and staff senior protection office.
  - Allocate more staff to DHS policy office.
  - Direct DHS general counsel to ensure protection compliance.

How to Repair the U.S. Asylum and Refugee Resettlement Systems

RESTORE ACCESS TO ASYLUM AND OTHER PROTECTION

BACKGROUND

A range of barriers limit access to asylum or other protection for many refugees and other vulnerable persons. These barriers include: the one-year filing deadline on U.S. asylum applications, the expedited removal system, U.S. maritime interdiction policies that lack adequate protection safeguards, and the twelve-year delay in issuing regulations on the "particular social group" and "nexus" elements of the refugee definition.

Asylum Filing Deadline: 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 refugees—would have been granted asylum by DHS without the need for further litigation in the immigration courts.[2]

Expedited Removal: Under § 235 of the INA, U.S. immigration officers have the power to order the immediate, expedited deportation of people who arrive in the United States without proper travel documents. While measures were put in place to protect asylum seekers with "credible fears" of persecution from this summary deportation, a study by the bipartisan U.S. Commission on International Religious Freedom (USCIRF) found serious flaws in the implementation of these measures.[3] DHS has, however, *expanded* the use of this flawed process. In 2002, 34,624 individuals were deported through expedited removal, but this number more than tripled to 123,000 in fiscal year 2011. In recent months, Human Rights First has learned of a number of cases in which asylum seekers who evinced a fear of return were not referred for credible fear interviews.

Maritime Interdiction: The United States has a long history of interdicting Cuban, Haitian, Chinese, and other asylum seekers and migrants at sea—a history that has triggered international criticism and set a poor model for other states around the world.[4] The United States moreover does not have effective, fair, transparent, and nondiscriminatory standards to govern its interdiction actions and ensure compliance with its commitments under the Refugee Protocol and other human rights conventions. The UNHCR Executive Committee (of which the United States is a member) has made clear that "interception measures should not result in asylum seekers and refugees being denied access to international protection, or result in those in need of international protection being returned, directly or indirectly, to the frontiers of territories where their life or freedom would be threatened on account of a Convention ground, or where the person has other grounds for protection based on international law."[5] U.S. interdiction policies are flawed for all who attempt to come by sea—but they are inconsistent and particularly flawed for Haitians. Haitians are not informed, either in writing or verbally, that they can express any fear or concern about repatriation. By contrast, Cubans are at least told that they can raise any concerns with a U.S. officer, though some of the language read to Cubans encourages return to Cuba to seek U.S. protection.

Sexual and Gender-based Persecution Claims: While the United States has played a leading role in advancing protection for victims of sexual and gender-based persecution, a number of significant gaps continue to undermine the ability of refugees who face these and other harms to access and receive U.S. asylum or resettlement. Despite the pressing need for legal guidance on the particular social group and nexus elements, and a December 2009 announcement in the

Federal Register that the Departments of Homeland Security and Justice intended to relaunch the rulemaking process, the Obama Administration has not yet promulgated regulations, leading to inconsistent and arbitrary decision making at all levels of the immigration adjudication system.[6] As a result of the twelve-year delay in resolving these issues, asylum applicants have been denied protection and returned to the hands of their persecutors, or have remained in legal limbo, postponing their ability to reunite with their children and bring them out of harm's way.

RECOMMENDATIONS

- **Prioritize work with Congress to eliminate the counterproductive asylum filing deadline**. The administration should make it a top priority to work with Congress to eliminate the wasteful and counterproductive asylum filing deadline (contained in INA §208(a)). It should fulfill the December 2011 pledge, made in connection with the 60th anniversary of 1951 Refugee Convention, to work with Congress to eliminate the deadline. This reform should be included in any legislative immigration reform initiatives. The legislation should also 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 to petition to bring their spouses and children to safety.

  The administration should work with Senator Orrin Hatch, one of the main proponents of the deadline, who promised "[I]f the time limit and its exceptions do not provide adequate protections to those with legitimate claims of asylum, I will remain committed to revisiting this issue in a later Congress."[7] In 2011, the U.S. Department of Homeland Security confirmed that it had concluded that the filing deadline should be eliminated because it leads genuine refugees to be denied asylum, expends resources without helping uncover or deter fraud and only makes the process more difficult.[8] Ironically, while the deadline was initially proposed as a tool to prevent fraud, it actually leads the United States to deny asylum to *credible* refugees while also delaying asylum adjudications and diverting governmental resources from adjudicating the actual merits of asylum requests.

- **Safeguard refugees from expedited removal and effectively implement protection measures**. The administration should work with Congress to revise INA §235 to limit the use of expedited removal to migration emergencies as the process lacks sufficient safeguards to ensure asylum seekers are not mistakenly deported.[9] In the meantime:

  - DHS and its component agencies U.S. Customs and Border Protection (CBP) and U.S. Immigration and Customs Enforcement (ICE) should ensure that procedures designed to protect asylum seekers from return to persecution are followed, publicly report on credible fear referral rates, and implement USCIRF recommendations on expedited removal.[10]
  - DHS and USCIS should conduct credible fear interviews within two weeks, request and allocate funding so interviews are conducted in person rather than by telephone or videoconferencing, and assess reasons for any declines in rates of referrals to credible fear interviews or grant rates.
  - Support, and ensure cooperation with, congressional authorization for USCIRF to conduct a review of the expanded implementation of expedited removal.

- **Revise U.S. approach to maritime interdiction and require interviews, translators, and other safeguards.** The White House should revise its approach to interdiction, and allow interdicted persons with fears or concerns of return to seek asylum or other protection in the United States. While the practice of interdiction continues:

- **DHS should develop transparent, nondiscriminatory written standards governing interdiction and rescue operations.** These standards should require interpreters, individual screening interviews, and effective safeguards so that those with protection concerns are referred for protection screening interviews. Not only would individual screening interviews help identify anyone who may require a full protection interview, but they are also essential to identify urgent medical concerns, victims of trafficking, and whether children are unaccompanied or at risk of harm. The set of very basic protection questions and language included on form I-867A&B, for use by border officials in expedited removal, would provide a model for use during individual interdiction screening interviews and assist in identifying individuals who should be referred for protection screening interviews.
- **The U.S. Coast Guard should use interpreters in any interdiction operations.** Interpreters are essential to ensure individuals can actually communicate any fear, concern, or need for a protection interview. Without interpreters, interdicted Haitians who do not speak English are somehow expected to indicate their fear of return by shouting (the much-criticized "shout test").
- **DHS, USCIS, the Bureau of Population, Refugees, and Migration (PRM), and other agencies should work together to promptly resettle those found to be refugees**, in the United States or in places where they have family or other significant ties. They should not be held for extended periods at the U.S. base on Guantanamo Bay.
- **The Coast Guard and other U.S. representatives engaged in interdiction efforts should be trained on implementation of U.S. protection commitments.** The administration should direct the Coast Guard and other U.S. authorities engaged in interdiction operations to hold regular and repeated protection trainings, and should fulfill the pledge made, in connection with the 60th Anniversary of the Refugee Convention, to conduct updated training to U.S. Coast Guard personnel to focus on identifying manifestations of fear by interdicted migrants.
- **Promulgate regulations clarifying interpretation of "particular social group," "nexus" and lack of state protection.** The White House should direct the Department of Justice (DOJ) and DHS to promulgate regulations providing that:
  - Either direct or circumstantial evidence is sufficient to fulfill the nexus requirement, including evidence that legal or social norms in the home country tolerate persecution of individuals like the applicant. This framework is consistent with the Supreme Court's nexus analysis in *INS v. Elias-Zacarias*. If direct or circumstantial evidence establishes that race-religion, nationality, membership in a particular social group, or political opinion is one central reason for persecution, nexus is established, regardless of whether the persecutor also has other motives.
  - The definition of "particular social group" should be guided by the "fundamental and immutable characteristics" standard, as articulated in the BIA's precedential decision *Matter of Acosta*,[11] without additional requirements. This standard requires that members of a particular social group demonstrate that they share a common characteristic they either cannot change, or should not be required to change because the characteristic is fundamental to their identity or conscience. Reversion to the BIA's long-established and well-regarded *Acosta* standard would eliminate the demand that a particular social group be "socially visible," a requirement that is posing severe obstacles to a broad range of meritorious asylum claims, including claims based on gender violence.
  - Where an asylum applicant fears persecution at the hands of nongovernmental actors, the applicant may qualify for protection by showing that the home state is unable *or* unwilling to

protect the applicant, and this requirement is satisfied where the government fails to provide effective protection.

PROMOTE FAIR, TIMELY, AND EFFECTIVE ADJUDICATION FOR ASYLUM CASES

BACKGROUND

The immigration court system within the Executive Office for Immigration Review (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 immigration enforcement have increased steeply or remained high in recent years, the resources for the immigration court system have lagged far behind leaving the immigration courts under-staffed and under-resourced. The immigration court backlog, as of October 2012, was at 321,044 cases, with pending cases already waiting an average of 532 days.[12] 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.[13] 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."[14]

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. Without access to work authorization while awaiting their immigration court hearings, many asylum seekers are unable to support themselves and their families. Some become homeless or destitute. Lengthy court delays also increase the difficulty of recruiting pro bono counsel.

The delays and burden on the immigration courts are compounded when cases that could or should be granted at the asylum office level are put into the immigration court system. As noted above, thousands of asylum cases have been placed into the immigration court system unnecessarily due to the inefficient asylum filing. Many other asylum cases could also be more efficiently resolved at the asylum office level. Immigration court resources are also diverted in other ways, including by the asylum "clock" which has been reported to take at least 20% of court administrators' time.[15]

The efficiency, effectiveness, and fairness of the immigration court system, as well as the administration of justice, are further undermined by the lack of legal counsel in asylum and immigration court proceedings. As the EOIR has explained: "Non-represented cases are more difficult to conduct. They require far more effort on the part of the judge."[16] The ABA study found that fewer than half of immigrants in immigration court had the benefit of representation, and for those in detention, about 84 percent were unrepresented.[17] The academic statistical study *Refugee Roulette* found that represented asylum seekers win their cases at a rate that is about three times higher than the rate for the unrepresented.[18] The fairness of the immigration court system is also undermined by the increasing conduct of asylum hearings via video teleconferencing (VTC), particularly for asylum and other merits hearings where the stakes are extraordinarily high and the outcomes can hinge on the immigration judge's finding of credibility.

RECOMMENDATIONS

- **Increase the number of immigration judges, support staff, and Board of Immigration Appeals personnel.** The White House and the Department of Justice/Executive Office for Immigration Review should urge Congress to provide DOJ/EOIR with adequate resources to conduct timely and fair proceedings and specifically to (1) increase staffing at the immigration courts and the Board of Immigration Appeals and (2) provide mandatory initial training and ongoing professional development for all BIA members, immigration judges, and legal support staff.

- **Support elimination of asylum filing deadline** which, as detailed above, would reduce the number of asylum cases referred to the immigration courts.
- **Improve access to legal counsel and legal orientation presentations:**
  - **Significantly expand the Legal Orientation Program** (LOP) to improve immigration court efficiency and justice, as detailed below in the immigration detention section of this blueprint.
  - **Promote efficiency and justice through support of legal representation funding.** EOIR should, as ACUS recommended, make the case to Congress that funding legal representation for respondents in removal proceedings, including those in detention, as well as children and those with mental health issues, will promote justice and produce efficiencies and net cost savings. The Obama Administration should actively support these efforts, as well as the appointment of guardian ad litem for unaccompanied minors and individuals who lack competency.
  - **Grant requests for earlier hearing dates.** EOIR should welcome, and immigration judges should grant, requests to schedule immigration court hearing dates within several months, rather than in two years or longer. This would allow asylum seekers with family stranded at risk abroad, or with children on the verge of "aging out," to have their cases resolved sooner. A reliable system for requesting earlier hearing dates might also help individuals secure counsel, including pro bono counsel, who might be hesitant to commit to take on cases with hearings two or three years away.
- **Give USCIS Asylum Office initial jurisdiction over all asylum and withholding claims.** DHS and DOJ should adopt a single non-adversarial interview process before the USCIS Asylum Office for all asylum seekers, including "arriving" asylum seekers and "defensive" asylum seekers. Key steps are detailed in the 2012 ACUS report.[19]
- **Revise asylum "clock" and work authorization regulations and procedures so asylum seekers are not deprived of opportunity to support themselves for years.** DHS and DOJ should revise their regulations and procedures[20] to allow asylum and withholding applicants to qualify for work authorization provided that at least 150 days have passed since the filing of an asylum application. This adjustment would address multiple problems relating to the work authorization "clock" and would enable many asylum seekers to avoid becoming destitute and homeless while waiting for their hearing dates. It would also improve immigration court efficiency. USCIS should also allow applicants to view their asylum clock information online, as recommended by the USCIS ombudsman.[21] In January 2012, USCIS committed to explore the feasibility of making an applicant's asylum clock information available online in the Electronic Immigration System (ELIS).[22]
- **Limit use of video conferencing for hearings.** The Obama Administration should work with Congress to secure adequate funding for EOIR so that judges can conduct merits hearings in person rather than via video-conference (VTC). The administration should also facilitate coordination between ICE and EOIR so that ICE uses detention facilities close to immigration courts, and EOIR provides immigration judges to work at these facilities. The administration should limit VTC to some "master calendar" hearings, and bar the use of VTC in asylum and other merits hearings. EOIR should take steps to address problems with VTC including those identified in the 2012 ACUS report. EOIR should also encourage immigration judges to afford favorable consideration to requests that hearings be conducted in person and EOIR should require coding of asylum and other hearings conducted via video to allow for data collection and analysis. EOIR and ICE should make VTC available to allow counsel to communicate with detainees.

ELIMINATE UNECESSARY AND INAPPROPRIATE IMMIGRATION DETENTION

BACKGROUND

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 cost $164 per person, per day, the U.S. immigration detention system costs taxpayers over $2 billion annually, despite the availability of less costly, less restrictive and highly successful alternative to detention programs.[23] 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.[24] As the Council on Foreign Relation's 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."[25] A January 2012 Heritage Foundation report also recognized the cost-effectiveness of alternatives to detention.[26]

While ICE has expanded its use of 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 a specific number of detention beds (33,400 for fiscal year 2012).

Immigration detainees are held in over 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 visit with family through a Plexiglas barrier. The bipartisan U.S. Commission on International Religious Freedom concluded that these kinds of facilities "are structured and operated much like standardized correctional facilities" and are inappropriate for asylum seekers.[27] 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."[28]

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.[29] In a statement of objectives for new facilities, ICE described "less penal" conditions that would include increased outdoor access, contact visitation with families, and "non-institutional" clothing for some detainees. 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.[30]

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 Detention Dialogue Symposia, 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.[31]

DHS and ICE have 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% held in actual jails. These facilities are often in remote locations, far from already limited pro bono legal resources, the immigration courts, or U.S. asylum offices. At many of these remote facilities, immigration officials are also—increasingly—turning to the use of video-conferencing to conduct immigration court hearings and even credible fear screening interviews, compounding the challenges that detained asylum seekers face in accessing protection.

RECOMMENDATIONS

The Obama Administration should prioritize immigration detention reform as detailed in Human Rights First's blueprint, *How to Fix the Immigration Detention System.* Some key steps include:

- **Prioritize immigration detention reform with strong White House leadership.** The Obama Administration should make transformation of U.S. immigration detention policies and practices a priority in its immigration reform agenda and should announce a major initiative to advance immigration detention reforms, many of which can be implemented without congressional action. The administration also should designate immigration detention transformation as a top priority for DHS and ICE.
- **Implement cost-effective alternatives to detention, in place of unnecessary detention.** ICE should implement an effective nationwide system of Alternatives to Detention (ATD) utilizing appropriate levels and types of supervision, community support, and individualized case management so that individuals who do not present risks can be effectively supervised without resort to much more costly detention.[32] Alternatives programs should be used *in place of* detention that is unnecessary rather than primarily as a supplement to existing levels of detention. The administration should reject the notion that it is mandated to detain daily the number of individuals corresponding to the number of beds Congress funds. The administration should also realize cost savings by urging Congress, in connection with DHS appropriations legislation, to (1) not include language referencing a specific number of detention beds, and (2) recognize ICE flexibility in its allocation of the enforcement and removal budget to shift funds from detention to more cost-effective alternatives to detention—flexibility that it included in the 2013 budget request for DHS.[33]
- **Revise regulations to provide access to immigration court custody (bond) hearings**. The Departments of Justice and Homeland Security should revise regulatory language in provisions located mainly at 8 C.F.R. §1003.19(h)(2)(i) and §212.5, as well as §208.30 and §235.3, to provide arriving asylum seekers and other immigration detainees with the chance to have their custody reviewed in a "bond" hearing before an immigration court. The administration should also support inclusion of this reform in legislation to ensure lasting reform. The UNHCR's 2012 guidelines on detention, as well as recent reports of the U.N. special rapporteur on human rights of migrants and the Inter-American Commission on Human Rights, confirm the need for prompt court review of immigration detention.
- **Stop using prisons, jails, and jail-like facilities.** ICE should phase out the use of prisons, jails, and jail-like facilities to hold asylum seekers and other immigration detainees. After an individualized assessment of the need to detain, ICE should only use facilities with conditions appropriate for civil immigration detention: detainees should be permitted to wear their own clothing, move freely in a "normalized environment" among various areas within a secure facility, access true outdoor recreation throughout the day, access programming and email, have some privacy in toilets and showers, and have contact visits with family and friends. There are a few existing ICE facilities that have conditions, which as detailed in Human Rights First's blueprint *How to Fix the Immigration Detention System*, could be replicated, with improvements in other facilities.
- **Develop and implement standards appropriate to civil immigration detention.** A 2009 report, prepared for DHS and ICE by the expert appointed by Secretary Napolitano to review the immigration detention system, concluded that the detention standards used by ICE—which are based on criminal incarceration standards "impose more restrictions and carry more costs than are necessary to effectively manage the majority of the detained population." DHS and ICE should develop and implement new standards—not modeled on corrections standards—to specify conditions appropriate for civil immigration detention. These new standards should be guided by the American Bar Association's Civil Detention Standards, adopted

by the ABA House of Delegates in August 2012, which confirm some key conditions that should be included in civil immigration detention standards including that immigration detainees be permitted contact visits, be allowed to wear their own clothing (rather than uniforms), and be provided with free access to outdoor recreation throughout the day. USCIRF also recommended that DHS establish more appropriate detention standards.

- **Increase access to legal representation, legal information, and fair procedures.**
  - DOJ, DHS, ICE, and the White House—should work with Congress to ensure that Legal Orientation Programs (LOP) are funded and in place at *all* facilities detaining asylum seekers and other immigration detainees. LOP has received widespread praise for promoting the efficiency and effectiveness of the removal process from immigration judges, who have praised LOP for better preparing immigrants to identify forms of relief. During fiscal year 2012, LOP was operating in 25 detention facilities on a budget of $4.6 million, and it was expected to reach 65,000 of the more than 400,000 individuals held in immigration detention. The president's fiscal year 2013 DOJ budget request included $6 million for adult LOP, a $2 million increase.
  - The administration should also support funding for legal counsel in immigration proceedings and in particular for vulnerable groups such as children, those with mental health issues, and those held in immigration detention.
  - DHS should end the use of detention facilities in remote locations which limit access to legal representation, medical care, and family. The administration should work with Congress to ensure in-person immigration judges and asylum officers for hearings and interviews.

PROTECT REFUGEES FROM INAPPROPRIATE EXCLUSION

BACKGROUND

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 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.

More than four years ago, Congress, in a bipartisan effort lead by Senators Patrick Leahy (D-VT) and Jon Kyl (R-AZ), amended the law to authorize the administration to exempt persons with no actual connection to terrorism from the effects of these statutory definitions. However, to date, the relevant government agencies have failed to establish workable procedures to implement that authority effectively, and have continued the abuses that legislation was supposed to end.

In addition, for many years, DHS and its predecessor agency, the Immigration & Naturalization Service, as well as the BIA, had applied the immigration law's "persecutor bar" to applicants who had been forced under duress to assist in acts of persecution against other people. Victims of this interpretation have included former child soldiers and other refugees who were forced by their persecutors to take part in the persecution of others. Both agencies argued that their interpretation was required by a 1981 Supreme Court decision interpreting provisions of the Displaced Persons Act. In March 2009, the Supreme Court clarified in the case of *Negusie v Holder*, 555 U.S. 511 (2009) that its earlier precedent did not dictate the interpretation of the INA's persecutor bar, and remanded the issue to the BIA for reconsideration. More than three years later, DHS and DOJ have yet to issue regulations revising their interpretations of the persecutor bar.

RECOMMENDATIONS

The exclusive use of unreviewable discretionary waivers is not a manageable long-term solution to the underlying problem of the overly-broad statutory definitions of terrorism in U.S. immigration law. This problem requires a legislative solution. In the short term and in parallel to legislative reform, however, the Obama Administration can make meaningful progress toward resolving certain aspects of this problem by reviewing some of the extreme legal interpretations. Key steps forward include:

- **Support legislative adjustments to immigration law definitions to target actual terrorism.** The administration should support legislation to 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 forced 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 subsection 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 noncombatants, and the definition of a "Tier III" organization at INA § 212(a)(3)(B)(vi)(III) should be eliminated.
- **Implement August 2012 exemption swiftly, and ensure additional exemptions are signed soon.** The DHS secretary should allow USCIS officers to reexamine and provide relief to individuals—on an individual, case-by-case basis—who had voluntary associations with so-called "Tier III" groups. These groups are not designated as terrorist groups anywhere and in many cases are long defunct or are groups the U.S. government sympathizes with and even supports. An exemption issued in August 2012 to allow the case-by-case adjudication of many cases in this category where the applicants (or their spouses) were previously granted protection in this country, was a step in the right direction. But this exemption needs to be implemented swiftly. In addition, the DHS secretary should sign additional exemptions to allow the prompt adjudication of cases of persons who do not bear responsibility for serious human rights abuses or crimes and pose no threat to the security of the United States. Progress in this area is particularly urgent with respect to refugees who are applying for asylum or resettlement now.
- **Adopt sensible legal interpretations.** The White House—in partnership with the Departments of Homeland Security, Justice, and State—should review and revise legal interpretations of the immigration statute inherited from the Bush Administration—including: (1) revise the approach to what constitutes "material support" to specify that the term applies only to support that is quantitatively significant and qualitatively of a nature to further terrorist activity (rather than, for example, to the distribution of prodemocracy pamphlets or the donation of a chicken); (2) clarify that "routine commercial transactions"—like the sale of flowers at a flower shop—do not constitute "material support;" and (3) the material support bar and other terrorism-related (immigration law) bars should not be applied

to persons acting under coercion, to children, or in other circumstances where criminal law would recognize a defense. Statutory interpretations should be brought into line with the purpose of the law, which was to exclude and deny relief to persons responsible for or supportive of terrorist acts or groups, and who are perceived to pose a terrorist threat to the United States.

- **Issue regulations to prevent unjust exclusion under "persecutor" bar.** DHS and DOJ should move forward to issue regulations revising their interpretations of the persecutor bar in the wake of the Supreme Court's 2009 decision in *Negusie v. Holder*. These regulations should include language that ensures that those who are not legally responsible for the persecution of others are not unfairly targeted by these provisions which are aimed at those who knowingly and voluntarily persecuted their fellow human beings.

IMPROVE U.S. REFUGEE ADMISSIONS PROGRAM TO STRENGTHEN PROTECTION FOR VULNERABLE REFUGEES

BACKGROUND

The United States leads the world in resettling refugees, working in partnership with faith groups, civil society, and communities across the country. Not only does resettlement help save lives, but it can be a strategic tool for supporting and encouraging nations in war-torn regions across the world to admit and protect large numbers of refugees who are fleeing from violence, war, and serious human rights abuses. For example, the Obama Administration has reported that U.S. willingness to resettle refugees who had fled from the fighting in Libya to Tunisia and Egypt "helped keep borders open for refugees and helped relieve pressure on these two countries during their own periods of political change."[34]

In fiscal year 2010, the United States resettled over 73,000 refugees. But the level of U.S. resettlement has fallen steeply over the last few years—to about 56,000 refugees in fiscal year 2011 and 58,238 refugees for fiscal year 2012. The president had, however, authorized the resettlement of many more refugees—80,000 for fiscal year 2011 and 76,000 for fiscal year 2012. Many refugees around the world who were slated for potential resettlement to the United States were left stranded in difficult and sometime dangerous situations. Over the last year, the Obama Administration has worked to address many of the processing and security check delays that contributed to this problem, including delays relating to the addition of enhanced security checks. In its September 2012 report to Congress, the Obama Administration reported that "admissions levels remained low until interagency coordination and processing procedures were improved" and that "[t]hese improvements resulted in increased refugee admissions levels beginning in May 2012 and admissions levels are expected to continue at these higher levels in FY 2013."[35]

Although the United States has the world's leading resettlement program, its processing times can be quite prolonged, leaving some refugees stranded in dangerous locations or in difficult circumstances. Moreover, some refugees are found ineligible for resettlement but are not provided with the information that would allow them to submit a meaningful request for review of that denial. Those who are resettled to the United States can face other challenges as they try to rebuild their lives and support themselves in their new home country.

RECOMMENDATIONS

- **Enhance U.S. global leadership by meeting resettlement goals and providing access to resettlement for particularly vulnerable refugees.**
  - The U.S. government agencies involved in the resettlement process— the Department of State (PRM), DHS (including USCIS), and the security vetting agencies—should devote the necessary prioritization and staffing to the Refugee Admissions Program so that the United States meets its goal of resettling 70,000 refugees in fiscal year 2013, maintains or increases that goal for the next fiscal year (taking into account global needs), and continues to reduce the average processing time for resettlement applications.
  - PRM should increase access to U.S. resettlement for particularly vulnerable individuals, and in particular support increased UNHCR capacity to make referrals of particularly vulnerable cases for U.S. resettlement, encourage increased outreach to and identification of vulnerable individuals and support employment or deployment of more resettlement processing staff.
  - The administration should strengthen measures to facilitate resettlement of LGBTI partners together. PRM and USCIS should facilitate access to resettlement, including through "Priority 3" processing, for partners of LGBTI refugees resettled to, or granted asylum in, the United States.
- **Continue to improve security checks and reduce delays in resettlement processing.**
  - The White House should continue to provide leadership and work with PRM, DHS, and the security vetting agencies to address sources of delay in security background checks, including: (1) staff all security vetting agencies sufficiently; (2) remove duplications in the security background check process; (3) reduce the number of cases unnecessarily delayed due to uncleared "holds" relating to potentially derogatory information; and (4) create a proactive auto-alert system so that any emerging derogatory information is flagged as it emerges rather than an additional security check having to be run pre-departure.
  - The White House should continue to work with PRM, USCIS, and other partners to increase or maintain extended validity periods for key steps in the resettlement process, reduce the need for steps to be unnecessarily repeated by maintaining the interagency check validity period of 16 weeks, and allow fingerprints to be electronically resubmitted in all locations.
- **Improve fairness by providing information necessary to request review of mistaken security-check denial.** In order to minimize mistaken denials based on security checks, USCIS should provide sufficient information to enable individuals to file a meaningful request for review of a resettlement denial related to a security check, including clear indications that a case is denied for security reasons as well as the nature of the information.
- **Provide appropriate support for refugee integration.** The Office of Refugee Resettlement (ORR) and PRM should provide appropriate support for refugee integration including:
  - ORR should maintain and increase the current level of support (through the per capita reception and placement grant of $1,850) for refugees resettled to the United States so that they can rebuild their lives.

- PRM and ORR should commission a study by an independent academic expert, with input from civil society, nongovernmental organizations (NGOs), and other relevant stakeholders, on the quality of reception and integration for refugees and asylees, which includes a comprehensive survey of refugees and asylees.
- PRM should provide information to resettlement agencies— prior to and during the resettlement "allocations" process—concerning refugees with particular support needs, such as survivors of sexual and gender based violence (SGBV), survivors of torture and LGBTI refugees, so that these refugees can benefit from specific support services, including services funded by ORR, that have been established in resettlement locations in different parts of the country. ORR has funded specific support programs for groups, including torture survivors and LGBTI refugees, with specific needs, but at present PRM is not providing the relevant information to resettlement agencies so they are not able to identify these cases during the allocations process and cannot place them into these specific programs. As a result, individuals who could benefit from specific care services are instead placed elsewhere, including to locations that may have a negative impact on their welfare. For example, LGBTI refugees have been resettled to locations that are not able to provide the necessary support to, or are not welcoming to, LGBTI persons.

STRENGHTEN EXPEDITED RESETTLEMENT AND EXPEDITED PROTECTION

BACKGROUND

Many refugees continue to face extreme danger even though they have crossed borders in search of safety. In October 2011, PRM issued a fact sheet publicly outlining its criteria for expediting resettlement in some cases. The fact sheet identifies two categories of cases that can be considered by the United States for expedited resettlement—one that involves "life-threatening protection scenarios," and a second in which refugees have suffered or face a range of serious harms or other urgent protection risks. The October 2011 PRM fact sheet indicated that the United States was not able to resettle cases involving life-threatening protection scenarios in less than eight to ten weeks, due to security clearance procedures, the requirement of face-to-face interviews, and protocols relating to the detection and treatment of tuberculosis.

However, in the time since that fact sheet was issued, U.S. government agencies have made significant progress in improving the pace of resettlement and security clearance processing. In its September 2012 report to Congress, the Obama Administration reported that "interagency coordination and processing procedures were improved."[36] The NSS, PRM, and DHS have also worked together to develop measures to expedite security background checks in a limited number of cases—with security vetting agencies returning expedited interagency checks in five working days. Measures are also now in place to expedite Security Advisory Opinion (SAO) background checks (which are not required by all applicants) and PRM is currently taking steps that will further reduce the general SAO processing time. In addition, PRM has supported the hiring of "expedite specialist" staff at two U.S. Resettlement Support Centers to oversee the progress of expedited cases through the U.S. resettlement system. PRM and its resettlement partners have also improved resettlement processing time by extending the "validity period" of some steps in the resettlement process that previously expired too quickly (leading

refugees to have to repeat certain steps in the process needlessly).

This progress has created a new opportunity for improving the U.S. Refugee Admissions Program's capacity to expedite the resettlement of a small number of refugees who face life-threatening or other serious and urgent risks. In the September 2012 Refugee Admissions Report to Congress, the Obama Administration confirmed that the multi-step nature of U.S. resettlement processing "does not exclude the United States from participation in the resettlement of urgent cases." It also reported that "on a case-by-case basis, individual applicants in need of expedited handling are processed on an accelerated schedule."

Outlined below are steps that the Obama Administration should take during its second term to strengthen U.S. capacity to expedite resettlement and to provide protection to refugees who face urgent or life-threatening risks while they are awaiting completion of resettlement processing. These steps would also help respond to President Obama's December 2011 directive on the protection of LGBT persons which instructed agencies to take steps to ensure that the "Federal Government has the ability to identify and expedite resettlement of highly vulnerable persons with urgent protection needs."[37]

While some other countries have procedures that allow refugees at risk to be resettled faster, their programs do not negate the acute need for an effective U.S. expedited resettlement program. For instance, other programs do not always respond to the most at-risk individuals; some have very specific criteria that preclude many of those in need of urgent resettlement. In some cases, at-risk refugees have strong family or other ties to the United States. For example, some Iraqi refugees worked with the U.S military or other U.S. organizations. Refugees with strong U.S. ties should generally be resettled to the United States.

RECOMMENDATIONS

The State Department (PRM) and USCIS, coordinated by the White House, should continue to take steps to improve the U.S. capacity to protect and resettle refugees facing urgent risks within eight weeks or less from some key locations. They should also develop the ability to resettle a small number of refugees facing imminent risks on an emergency basis. Key steps include:

- **Strengthen coordination of the multiple steps in the U.S. resettlement process.** PRM, USCIS, and Resettlement Support Centers should continue to strengthen coordination of the multiple steps in the U.S. resettlement process in order to make expedited processing less resource-intensive, including:
  - **Develop regional guidelines with target time frames.** PRM, USCIS and the RSCs should develop regional guidelines for all resettlement partners in each region with target time frames for each step in the process. These guidelines would improve the efficiency and consistency of expedited processing and promote continuity when current staff departs. PRM developed a draft of global guidelines in 2011, but regional guidelines would be able to reflect local processing realities.
  - **Appoint expedite specialists at RSCs**. PRM should fund RSCs to employ expedite specialists in the different regions to improve case management of expedited cases.
  - **Increase capacity to expedite security checks.** USCIS and PRM should continue to work with the security vetting agencies to increase the number of security background checks that can be expedited in emergency or urgent cases.
  - **Designate RSC staff to conduct prescreening.** RSCs should designate specific staff as responsible for conducting pre-screening in expedited cases, including in emergency cases.

- **Provide prompt USCIS interviews.** USCIS should provide prompt interviews including in cases where no circuit ride is planned. RSCs should request emergency interviews when necessary. In very limited circumstances (given the challenges relating to video-conferencing), USCIS should use videoconferencing where it is not possible to conduct a rapid face-to-face interview of a refugee facing imminent or urgent protection risks.

- **Report on the number and timing of expedited resettlement cases.** PRM should work with its RSC partners to compile and share information regarding the number of urgent cases resettled to the United States each quarter, the average processing time of urgent cases, the quickest case processed, and the major challenges impacting on expedited resettlement.

- **Address delays due to high rates of positive tuberculosis (TB) tests later shown to TB-free upon further testing.** In countries where the Center for Disease Control's 2007 tuberculosis guidelines are implemented, CDC should work with PRM to address the high rates of suspected TB cases that are then shown to be TB-free upon further testing. Suspected TB cases require a further six to eight weeks for sputum cultures to be tested which creates a significant delay for cases needing to be expedited. Particularly problematic is that in some regions a low percentage of suspected TB cases are shown to have actual TB upon further testing. CDC and PRM should work together to implement an alternative and more rapid form of testing to prevent individuals without TB from being unnecessarily delayed by an overly-inclusive initial TB reading.

- **Strengthen use of Emergency Transit Facilities for protection cases.** The United States currently supports and makes regular use of Emergency Transit Facilities (ETFs) in Romania, Slovakia, and the Philippines—particularly in cases where USCIS officers cannot access the country of asylum or the specific location of applicants to conduct resettlement interviews. PRM should make more use of the ETFs for refugees facing urgent or life-threatening protection situations (in addition to using the facilities for "transit" cases). PRM should also allow more efficient use of the facilities by allowing the use of *all* available spaces at a facility once some members of larger groups have departed (rather than limiting new arrivals until the entire group has departed). PRM should also support the training of ETF staff so that they are equipped to address the protection needs that will arise at these facilities for survivors of sexual and gender-based violence (SGBV), LGBTI refugees and persons with disabilities.

- **Strengthen support for safe shelter.** To ensure the safety of refugees who face high risks of violence—including as they await U.S. resettlement processing—PRM and DRL should strengthen support to UNHCR and local NGOs to enable them to provide, or increase their capacity to provide, safe shelter for refugees facing high risks. In many cases, scattered site housing is the safest approach. U.S. support should increase the capacity of existing refugee shelter and scattered housing initiatives as well as support the inclusion of refugees in existing shelters for citizens, such as those for survivors of sexual and gender-based violence (SGBV).

STRENGTHEN PROTECTION AND INTERAGENCY COORDINATION WITHIN THE U.S. GOVERNMENT

BACKGROUND

Asylum seekers and refugees now interact with three separate agencies within DHS – CBP, ICE, and USCIS.[38] The U.S. Coast Guard, also within DHS, interacts with asylum seekers and refugees too, as well as other vulnerable migrants, in the course of maritime interdiction operations. U.S. immigration courts and the BIA are part of EOIR, which is within DOJ, as is the Office of Immigration Litigation (OIL). Multiple government agencies are also involved in U.S. refugee resettlement, including Department of State (PRM), USCIS within DHS, as well as ORR within the Department of Health and Human Services. On top of these bureaus, various "security vetting agencies," with other important priorities, also play a role in background and security check processing.

This overly bureaucratic and fractured system has meant that the interagency issues relating to the protection of asylum seekers and refugees have often fallen through the cracks. The efforts to address and solve these problems are further aggravated by the fact that protection of asylum seekers and refugees has to compete with many other pressing issues that fall within DHS's responsibility.

In 2003, Human Rights First recommended that the department create a high-level office to coordinate and ensure protection for refugees and asylum seekers.[39] A new position of Special Advisor for Refugee and Asylum Affairs was created in 2006, but the office was quickly given broader responsibility over immigration policy, which limited its capacity to address and resolve a range of cross-cutting refugee issues. The position was subsequently converted to a less senior level role, and it still lacked sufficient staffing, authority, and capacity to resolve interagency issues within DHS. Other experts have expressed concern that unresolved cross-cutting immigration issues have undermined DHS performance, due to the lack of mechanisms, at the departmental level, for resolving differing views of the various agencies with immigration-related responsibilities.

Nearly ten years after the creation of DHS and the proliferation of asylum and refugee-related responsibilities among such a multitude of agencies, strong leadership on protection and interagency cooperation have not yet been established, and reforms are either stalled, delayed for years, or simply never adequately addressed. Some examples include: the twelve year delay in issuing clarifying regulations relating to "social group" eligibility for asylum; the failure to effectively address the delays in security check processing until senior National Security officials intervened; the slow pace of exemptions and review of flawed legal interpretations in connection with the immigration law's "terrorism" bars, as well as the inability to agree to more effective approaches to addressing this challenge; the failure to issue timely regulations following the Supreme Court's decision in *Negusie v Holder;* the failure to implement effective and nondiscriminatory protection safeguards in U.S. maritime interdiction; and the location of immigration detention centers far from asylum offices that can conduct credible fear interviews or immigration courts to conduct removal hearings.

Because all of these federal agencies and component agencies are involved in activities relating to U.S. refugee policy and Refugee Convention compliance, strong White House leadership is crucial. A clear signal from the White House that asylum and refugee resettlement issues are a priority would help encourage greater attention to addressing these issues within the agencies and ensure that key reforms are incorporated into comprehensive immigration reform initiatives.

RECOMMENDATIONS

- **Improve White House and interagency coordination on asylum and resettlement.** As the Council of Foreign Relations Task Force on Immigration Policy recommended, the administration should "give greater priority for refugee issues ... within the White House." Key steps include:
  - **Institute annual interagency meeting on protection** The White House should institute an annual interagency cabinet-level meeting to coordinate federal efforts on a range of protection matters, including asylum and refugee resettlement. The meetings would help move forward efforts to address cross-cutting challenges, as they would present a regular opportunity for cabinet-level officials to highlight accomplishments and priorities. This process should be modeled on the president's Interagency Task Force to Monitor and Combat Trafficking in Persons (a cabinet-level entity created by the Trafficking Victims Protection Act of 2000 to coordinate federal efforts to combat trafficking in persons). This meeting should be chaired by the president to hold officials accountable for the problems outlined in this blueprint, and also for the president to communicate his commitment to U.S. leadership in protecting refugees directly to his heads of agencies.
  - **Prioritize and improve coordination across agencies** The White House should prioritize the coordination of refugee and similar protection issues across the multiple agencies. The White House should increase NSS, Domestic Policy Council staffing to support improved coordination (not only around the recent security check delays but going forward on an ongoing basis). As resolving these interagency issues in a timely manner, and ensuring that various agencies fulfill their protection responsibilities—consistent with U.S. global leadership interests and human rights commitments—will require direct engagement by the president and senior White House staff. The president and senior White House staff should monitor and regularly intervene with the heads of the relevant agencies on these matters.
  - **Create a senior director for protection at the NSC.** To give the White House greater capacity to improve protection, the director should be supported by the NSS and the Domestic Policy Council, and coordinate a range of protection issues, including refugee resettlement, asylum, and unaccompanied minors.
- **Institutionalize protection within DHS.**
  - **Create undersecretary for immigration and protection.** The position of undersecretary for immigration and protection should be created at DHS. The undersecretary should have line authority over ICE, CBP and USCIS, and over the Coast Guard on matters relating to protection of refugees and vulnerable migrants. In addition to facilitating resolution and action on matters relating to immigration policy, this position would facilitate coordination and timely resolution of refugee, asylum and other protection related issues so that fewer issues would require the attention of the secretary.
  - **Create and staff a senior protection office.** DHS should create a Senior Protection Office, led by a direct report to the secretary of DHS or the new undersecretary. Both the USCIRF and the CFR Immigration Policy Task Force recommended greater coordination and prioritization of refugee issues at DHS and the creation of an office within DHS that is responsible for refugee protection.[40] This office should have both policy and operational oversight, and should establish mechanisms to ensure that Coast Guard, ICE, CBP and USCIS policies and actions are in accordance with U.S. treaty obligations.

- **Allocate More Staff to DHS Policy office**. DHS and Congress should work together to address the imbalance of policy staff between DHS component agencies with immigration mandates and the DHS policy office. The limited policy staff at DHS in contrast to the much larger policy staffing at ICE, CBP and USCIS, undermines the ability of DHS to resolve immigration policy matters that involve differing agencies and differing views. This imbalance should be addressed by reallocating immigration policy staff from the component agencies—particularly ICE and CBP—to the DHS policy office.

- **Direct DHS general counsel to monitor protection compliance**. The DHS general counsel's office should also be directed to monitor and oversee, as an integral part of its legal role, that U.S. refugee protection and human rights convention commitments are implemented throughout the agency, including within ICE and CBP. The office should, for instance, weigh in on positions taken by ICE on asylum cases to oversee compliance with the Refugee Protocol and on policies—like those relating to lack of court review of detention—that are inconsistent with U.S. commitments under human rights conventions.

Endnotes

[1] Council on Foreign Relations, Independent Task Force Report No. 63, U.S. Immigration Policy, p. 31 available at http://www.cfr.org/immigration/us-immigration-policy/p20030.

[2] The deadline bars an applicant from asylum if she cannot demonstrate by "clear and convincing evidence" that her application was filed within one year of her arrival in the United States, absent a finding of "changed" or "extraordinary" circumstances that would excuse her delayed filing. Examples of changed and extraordinary circumstances can be found at 8 C.F.R. § 208.4(a)(4) – (5). Human Rights First, *The Asylum Filing Deadline: Denying Protection to the Persecuted and Undermining Governmental Efficiency*, (New York: September 2010) available at http://www.humanrightsfirst.org/wp-content/uploads/pdf/afd.pdf. Philip G. Schrag, Andrew I. Schoenholtz, Jaya Ramji-Nogales, and James P. Dombach, *Rejecting Refugees: Homeland Security's Administration of the One-Year Bar to Asylum*, William and Mary Law Review, (December 2010), available at http://wmlawreview.org/files/Schrag.pdf.

[3] USCRIF Report on Expedited Removal, p. 54, available at http://www.uscirf.gov/images/stories/pdf/asylum_seekers/Volume_I.pdf.

[4] Human Rights First, *Renewing U.S. Commitment*

to Refugee Protection Recommendations for Reform on

the 30th Anniversary of the Refugee Act (New York: Human Rights First, March 2010), p. 14, available at http://www.humanrightsfirst.org/wp-content/uploads/pdf/30th-AnnRep-3-12-10.pdf.

[5]UNHCR Executive Committee, *Protection Safeguards in Interception Measures, Conclusion No. 97 (LIV)*, ¶ a(iv) (Oct. 10, 2003), available at http://www.unhcr.org/refworld/docid/3f93b2894.html.

[6] Asylum and Withholding Definitions, 74 Fed. Reg. 64,220 (Dec. 7, 2009).

[7] 142 CONG. REC. S11492 (daily ed. Sept. 27, 1996) (statement of Sen. Hatch).

[8] UNHCR Washington Office, Reaffirming Protection: Strengthening Asylum in the United States, Commemorating the 60th Anniversary of the 1951 Refugee Convention, October 25, 2011, Summary Report, p. 18, available at http://www.unhcrwashington.org/atf/cf/%7BC07EDA5E-AC71-4340-8570-194D98BDC139%7D/georgetown.pdf.

[9] *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) available at http://www.humanrightsfirst.org/our-work/refugee-protection/due-process-is-this-america/.

[10] USCIRF Report on Expedited Removal, *supra* note 3

19 I. & N. Dec. 211 (BIA 1985).

[12] TRAC, *Latest Immigration Court Numbers, as of* October 15, 2012 available at http://trac.syr.edu/immigration/reports/latest_immcourt/#backlog

13 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.-Adj.-Recommendation-for-Plenary-5-22-12.pdf.

[14] American Bar Association, *Reforming the Immigration Detention System* (2010), pp. 2-16 available at http://www.americanbar.org/content/dam/aba/migrated/Immigration/PublicDocuments/aba_complete_full_report.authcheckdam.pdf

[15] Benson and Wheeler, *Enhancing Quality and Timeliness in Immigration Removal Adjudication Interim Draft*, p. 54, available at http://www.acus.gov/wp-content/uploads/downloads/2012/04/Updated-ACUS-Immigration-Removal-Adjudication-Draft-Report-for-4-23.pdf.

[16] Charles H. Kuck, *Legal Assistance for Asylum Seekers in Expedited Removal: A Survey of Alternative Practices* (Dec. 2004), available at http://www.uscirf.gov/images/stories/pdf/asylum_seekers/legalAssist.pdf.

[17] American Bar Association, *Reforming the Immigration Detention System* (Washington, D.C.: ABA, 2010), *supra* note 14, 5-7.

[18] Ramji-Nogales, Schoenholtz & Schrag, *supra* note 1, pp. 45-46.

[19] Heritage Web Memo 3455, "Administrative Reforms Insufficient to Address Flawed White House Immigration and Border Security Policies," by Matt A. Mayer, Jan. 10, 2012, available at http://www.heritage.org/research/reports/2012/01/administrative-reforms-in-immigration-and-border-security-policies

[20] INA § 208(d)(2)(2009); 8 CFR § 208.7(a)(2011); 8 CFR § 1208.7(a)(2011); 8 CFR § 274a.12(c)(8)(2011). Additionally, The authority under INA § 208(d)(2) to promulgate a regulation allowing for employment authorization for asylum applicants rests with the Secretary under INA §103(a), 8 USC 1103(a), as amended by the Homeland Security Act of 2002, Pub. L. No. 107-296, tit. XI, § 1102, 116 Stat. 2273, and the Homeland Security Act of 2002 Amendments, Pub. L. 108-7, Div. L, § 105(a)(1), (2), 117 Stat.

531 (2003). *See* http://www.dhs.gov/xlibrary/assets/cisomb-employment-authorization-for-asylum-08262011.pdf

[21] Citizenship and Immigration Services Ombudsman, *Employment Authorization for Asylum Applicants: Recommendations to Improve Coordination and Communication* (August 26, 2011) available at http://www.dhs.gov/xlibrary/assets/cisomb-employment-authorization-for-asylum-08262011.pdf.

[22] USCIS, Response to Recommendation 50 (January 4, 2012) available at http://www.uscis.gov/USCIS/Resources/Ombudsman%20Liaison/Responses%20to%20Formal%20Recommendations/USCIS%20Response%20to%20Formal%20Recommendation%2050.pdf.

[23] National Immigration Forum, "Math of Immigration Detention" (August 2012) available at http://www.immigrationforum.org/images/uploads/MathofImmigrationDetention.pdf.

[24] Ibid.

[25] Council on Foreign Relations, *supra* note 1, p. 29.

[26] Heritage Foundation, *supra* note 19.

[27] USCIRF, Asylum Seekers in Expedited Removal Volume II, p. 189, available at http://www.uscirf.gov/images/stories/pdf/asylum_seekers/ERS_RptVolII.pdf; USCIRF, Expedited Removal Study Report Card (2007), p. 5.

[28] 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).

[29] 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; DHS press conference, October 6, 2009, video recording, http://www.c-spanvideo.org/program/289313-1; and 2009 DHS/ICE Report, pp. 2-3.

[30] UNHCR, *Detention Guidelines: guidelines on the applicable criteria and standards relating to the detention of asylum-seekers and alternatives to detention* (2012) available at http://www.unhcr.org/505b10ee9.html.

[31] Human Rights First, *supra* note 29.

[32] Council on Foreign Relations, *supra* note 1, pp. 106-109.

33 2011 Council of foreign Relations Report, pp.106-7; DHS Budget-in- Brief, Fiscal Year 2013, available at http://www.dhs.gov/xlibrary/assets/mgmt/dhs-budget-in-brief-fy2013.pdf.

[34] Ibid, page 3.

[35] Ibid, page 15.

[36] Ibid, page 15.

[37] The White House, "Presidential Memorandum - International Initiatives to Advance the Human Rights of Lesbian, Gay, Bisexual, and Transgender Persons," December 6, 2011, available at http://www.whitehouse.gov/the-press-office/2011/12/06/presidential-memorandum-international-initiatives-advance-human-rights-l (accessed January 9, 2012).

[38] When asylum seekers arrive at an airport or a border entry post, they are initially inspected and interviewed by officers from CBP. If encountered in the border areas, asylum seekers are interviewed by officers with the Border Patrol, also part of CBP. When asylum seekers are detained, ICE is the component agency responsible for their detention. ICE "trial attorneys" will also represent the agency in Immigration Court removal proceedings, typically opposing asylum seekers' requests for protection. Before arriving asylum seekers are allowed to request asylum, they will first have to be interviewed by an Asylum Officer with USCIS. USCIS also conducts asylum interviews for asylum seekers who apply for protection after they have entered the country and who are not generally detained.

[39] In November 2003, Human Rights First began urging DHS Secretary Thomas Ridge to create a high level of refugee protection in his office to ensure the proper resolution of refugee issues that cut across DHS component agencies. Human Rights First Letter to Thomas J. Ridge (Nov. 5, 2003), *available at* http://www.humanrightsfirst.org/asylum/ridge_letter110503.pdf.

[40] Council on Foreign Relations, *supra* note 1, p. 108.

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How to Repair the U.S. Immigration Detention System

BLUEPRINT FOR THE NEXT ADMINISTRATION

December 2012

BLUEPRINT FOR THE NEXT U.S. ADMINISTRATION

ABOUT US

On human rights, the United States must be a beacon. Activists fighting for freedom around the globe continue to look to us for inspiration and count on us for support. Upholding human rights is not only a moral obligation; it's a vital national interest. America is strongest when our policies and actions match our values.

Human Rights First is an independent advocacy and action organization that challenges America to live up to its ideals. We believe American leadership is essential in the struggle for human rights so we press the U.S. government and private companies to respect human rights and the rule of law. When they don't, we step in to demand reform, accountability and justice. Around the world, we work where we can best harness American influence to secure core freedoms.

We know that it is not enough to expose and protest injustice, so we create the political environment and policy solutions necessary to ensure consistent respect for human rights. Whether we are protecting refugees, combating torture, or defending persecuted minorities, we focus not on making a point, but on making a difference. For over 30 years, we've built bipartisan coalitions and teamed up with frontline activists and lawyers to tackle issues that demand American leadership.

Human Rights First is a nonprofit, nonpartisan international human rights organization based in New York and Washington D.C. To maintain our independence, we accept no government funding.

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How to Repair the U.S. Immigration Detention System

BLUEPRINT FOR THE NEXT ADMINISTRATION

"[We are] working every day to make sure we are enforcing flawed [immigration] laws in the most humane and best possible way."

President Barack Obama, July 25, 2011

"[T]here is a big difference between managing a detention system for ICE versus running a state-prison system... This is a system that encompasses many different types of detainees, not all of whom need to be held in prison-like circumstances or jail-like circumstances, which not only may be unnecessary but more expensive than necessary."

Department of Homeland Security Secretary Janet Napolitano, October 6, 2009

Introduction

As the Obama Administration embarks on its second term and recommits itself to immigration reform, it should prioritize its commitment to transform the immigration detention system. In 2009, the Department of Homeland Security (DHS) and Immigration and Customs Enforcement (ICE) committed to overhaul the U.S. immigration detention system and shift it away from its longtime reliance on jails and jail-like facilities.[1] Since that time, ICE has taken steps to address some of the problems in the existing system. It has, for example, hired onsite detention service managers to improve oversight, implemented new parole guidance for arriving asylum seekers, and streamlined the process for detainee health care treatment authorization. It has also taken a number of steps towards a broader transformation of the system, such as opening a "model" civil detention facility in Karnes County, Texas, that offers conditions more appropriate for immigration detainees.

More needs to be done to move this transformation forward. The overwhelming majority of detained asylum seekers and other civil immigration detainees are still held in jails or jail-like facilities where they have limited or essentially no outdoor access, wear prison uniforms, and visit with family through Plexiglas barriers. The U.S. Commission on International Religious Freedom, the American Bar Association, a 2009 DHS-ICE report, and a range of international human rights authorities, have all recommended alternatives to detention and conditions more appropriate for civil immigration detainees. As documented in Human Rights First's 2011 report, *Jails and Jumpsuits: Transforming the U.S. Immigration Detention System—A Two-Year Review*, 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.

In its second term, the Obama Administration should prioritize the transformation of detention policies and practices in its immigration reform agenda and should lead this effort from the White House. As detailed in this blueprint, components of this transformation should include: (1) individualized assessments of detention with prompt immigration court review; (2) reliance on cost-effective alternatives to detention in many cases; (3) a corresponding reduction in reliance on detention as the default tool for enforcement; (4) the phasing out of jails and jail-like facilities; and (5) the use of facilities with conditions appropriate for civil immigration detention when detention is used. This transformation should be facilitated as immigration reform moves forward, decreasing demands for detention beds.

The costs of immigration detention have risen dramatically over the past 15 years, as detention levels have more than tripled—from 108,454 detainees in 1996 to an all-time high of 429,247 in fiscal year (FY) 2011. Congress has annually appropriated the funds to sustain and expand the immigration detention system—from $864 million seven years ago to $2.02 billion today. These dramatic increases have continued—and been maintained—even as criminal justice systems across the country have recognized that effective alternatives to detention can create tremendous cost-savings and more humane outcomes for individuals, while also achieving governmental objectives. Alternatives to detention cost ICE on average $8.88 per day per individual —more than $150 a day less than detention. Meanwhile, ICE's requested budget of almost $2 billion for detention in FY 2013 was 18 times its requested budget of $112 million for alternatives to detention.

Not only are U.S. immigration detention practices unnecessarily costly, they are also inconsistent with this country's values and human rights commitments. The United States is a nation of immigrants and a global leader in the protection of refugees. The United States often calls on other countries to end detention that is inconsistent with international human rights law, and to release political dissidents, prodemocracy activists, religious minorities, journalists, and others from such detention. Around the world, other countries detain refugees and asylum seekers in ways that are inconsistent with the Refugee Convention and human rights law, including, for example, Iraqi refugees jailed in Lebanon and North Korean refugees detained in China. U.S. global leadership on refugee protection and human rights is undermined by U.S. immigration detention policies, which set a poor example for the rest of the world and undercut U.S. moral authority to criticize the detention policies and practices of other nations.

Criminal justice systems throughout the United States are striving to transform the way they approach detention to reduce costs, improve efficiency and effectiveness, avoid detaining individuals unnecessarily, and make detention itself more humane. In a series of symposiums held by Human Rights First across the country in fall 2012, former corrections officials, criminal justice experts, attorneys, and politicians from both sides of the aisle have confirmed that alternatives to detention should be used when detention is not necessary, reducing costs significantly, and that when detention is necessary, more normalized conditions can help ensure safer environments for detained individuals as well as officers working at these facilities. Human Rights First will hold a final symposium—scheduled at the Cato Institute in early 2013—to bring experts from across the country to Washington to discuss lessons learned from criminal justice reform and the steps necessary to truly transform the U.S. immigration detention system.

Many of these steps, as detailed below, can be implemented by the Obama Administration without legislation. Some should be included in immigration reform legislation. As noted throughout this blueprint, many of these reforms have been endorsed by bipartisan task forces, U.S. government entities, corrections professionals, and a range of groups from across the political spectrum.

How to Repair the U.S. Immigration Detention System

SUMMARY

The Obama Administration should reform U.S. immigration detention policies and practices. Key steps include:

PRIORITIZE IMMIGRATION DETENTION REFORM.

- Provide strong White House leadership.
- Designate detention transformation a top priority for DHS and ICE.
- Work with Congress to build support.
- Overcome potential roadblocks.

IMPLEMENT EFFECTIVE COURT REVIEW AND SUPPORT INDIVIDUALIZED ASSESSMENTS

- Revise regulations to provide immigration court custody hearings for immigration detainees.
- Provide immigration court custody hearings in cases of prolonged detention.
- Monitor implementation of asylum parole guidance.
- Support revisions to immigration law to require individualized assessment of the need to detain prior to use of detention.

IMPLEMENT EFFECTIVE SYSTEM OF ALTERNATIVES TO DETENTION AND REDUCE UNNECESSARY COSTS

- Reduce costs by utilizing alternatives in place of unnecessary detention.
- Prevent unnecessary detention by implementing validated dynamic risk classification tool nationwide.
- Reduce costs by recognizing that restrictive measures can constitute custody.
- Support steps to reduce delays in the immigration court system.
- Use community-based models and case management in nationwide system of alternatives to detention.

STOP USING PRISONS, JAILS, AND JAIL-LIKE FACILITIES; USE ONLY FACILITIES WITH APPROPRIATE CONDITIONS

- Phase out the use of jails and prisons.
- Use facilities with conditions appropriate for civil immigration detention.
- Develop and implement new standards on conditions for civil immigration detention.
- Reform existing immigration detention facilities to the extent possible.
- Use risk classification assessment tool to identify and properly place any detainees who present safety risks in custody.

IMPROVE ACCESS TO LEGAL COUNSEL AND FAIR PROCEDURES

- End use of detention facilities in remote locations that limit access to legal representation, medical care, and family.
- Support funding and placement of Legal Orientation Programs (LOPs) at all facilities that detain asylum seekers or other immigration detainees.
- Support funding for legal counsel in immigration proceedings, particularly for vulnerable groups.
- Direct that all detained asylum seekers and other immigrants receive merits hearings in person, not via video.
- Ensure prompt and in-person credible fear and reasonable fear interviews.

TAKE OTHER STEPS TO ADDRESS DEFICIENCIES IN IMMIGRATION DETENTION CONDITIONS

- Provide high-quality medical and mental health care.
- Promptly propose and implement Prison Rape Elimination Act (PREA) regulations based on the Department of Justice (DOJ) PREA rule.
- Limit solitary confinement or segregation to only very exceptional cases, as a last resort, and for the briefest time possible.
- Improve training and communication for ICE officers and facility staff.

How to Repair the U.S. Immigration Detention System

PRIORITIZE IMMIGRATION DETENTION REFORM

BACKGROUND

ICE should continue to address deficiencies in the existing immigration detention system, as detailed in the last section of this blueprint. In order to truly transform the existing system, however, and shift it away from its reliance on jails and jail-like facilities, the administration will also need to move forward boldly on several big-picture reforms over the next four years.

The time for this kind of transformation is now. Not only is this a key moment for immigration reform in general. But across the country, criminal justice systems are striving to transform the way they approach detention to reduce costs, improve efficiency and effectiveness, avoid detaining individuals unnecessarily, and make detention itself more humane. DHS and ICE can learn much from these initiatives, many of which have been highlighted through the Dialogues on Detention symposia that Human Rights First has held across the country.[2]

RECOMMENDATIONS

- **Provide strong White House leadership.** The Obama Administration should make transformation of detention policies and practices a priority in its immigration reform agenda. As detailed in this blueprint, components of this transformation should include: (1) individualized assessments of detention with prompt immigration court review; (2) reliance on cost-effective alternatives in place of detention; (3) a corresponding reduction in reliance on detention as the default tool for enforcement; (4) the phasing out of jails and jail-like facilities; and (5) the use of facilities with conditions appropriate for civil immigration detention when, after an individualized assessment, detention is determined to be necessary. The Obama Administration should announce a major initiative to advance immigration detention reforms, many of which can be implemented without congressional action.
- **Designate immigration detention transformation as a top priority at DHS and ICE.** The Obama Administration should designate immigration detention transformation as a top priority for the secretary of DHS and the director of ICE, and should identify specific big-picture objectives relating to key components of this transformation such as: the revision of regulations denying access to immigration court "bond" hearings; the closing of jails and jail-like facilities; a reduction in detention levels and the use of more cost-effective alternatives to detention; the development and implementation of civil detention standards. The administration, DHS, and ICE should allocate the staff necessary to achieve these objectives.
- **Work with Congress to build support.** The administration should also work closely with Congress to build further support for the use of cost-effective alternatives and the reduction of detention levels, and to revise laws to provide individualized assessments and court review of detention. The administration should not agree to additional detention, or sacrifice efforts to reduce unnecessary detention, in connection with negotiations over future immigration reform legislation.
- **Overcome potential roadblocks.** The Obama Administration should proactively address any baseless arguments that reforms turn facilities into "resorts," create unsafe environments, or undermine security, including by pointing out that prison experts have confirmed that more normalized conditions can actually improve facility safety (as Human Rights First has documented through various reports and events[3]). The administration should also encourage investment in alternative economic development plans for towns where jails and jail-like facilities that house ICE detainees provide a significant number of local jobs, so that the closure of inappropriate jails does not inadvertently hurt local economies, and should work closely with members of Congress to minimize resistance to the ending of ICE contracts

with jails based on these concerns. Alongside any plan to build new more appropriate facilities for immigration detention (which should be located near legal counsel and immigration judges), the administration should commit to closing specific jails and jail-like facilities and increasing the use of alternatives, so that new facilities with more appropriate conditions do not lead to an expansion of unnecessary detention.

IMPLEMENT EFFECTIVE COURT REVIEW AND SUPPORT INDIVIDUALIZED ASSESSMENTS

BACKGROUND

Under current U.S. policies, many asylum seekers and immigrants do not have access to prompt court review of their immigration detention. 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. In March 2012, the U.S. Department of Justice (DOJ) denied a petition requesting reform of regulations to provide arriving asylum seekers with immigration court custody hearings. 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.[4]

Article 9(4) of the International Covenant on Civil and Political Rights (ICCPR), which the United States ratified in 1992, provides that "anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court . . ." The 1951 Refugee Convention and its Protocol, to which the United States has also committed, make clear that refugees should not be penalized for illegal entry, and UNHCR's 2012 Guidelines on Detention emphasize that those detained should "be brought promptly before a judicial or other independent authority to have the detention decision reviewed" within 24 to 48 hours. In a 2012 report, the U.N. special rapporteur on the human rights of migrants stressed that states should provide "automatic, regular and judicial review of detention in each individual case," and the Inter-American Commission on Human Rights specifically called on the United States to ensure that immigration courts be allowed to review release decisions made by immigration officers.[5]

RECOMMENDATIONS

The Obama Administration should take steps to implement immigration court review of detention and support individualized assessments, including:

- **Revise regulations to provide immigration court custody hearings for immigration detainees.** DOJ and DHS should revise regulatory language in provisions located mainly at 8 C.F.R. § 1003.19(h)(2)(i) and § 212.5, as well as § 208.30 and § 235.3, to provide arriving asylum seekers and other immigration detainees with the chance to have their custody reviewed in a "bond" hearing before an immigration court. This reform would give arriving asylum seekers the same access to immigration court custody determination hearings that is provided to many other immigrants and would help ensure that individuals are not detained unnecessarily for months without having an immigration court assess the need for continued detention.
- **Provide immigration court custody hearings in cases of prolonged detention.** DHS and DOJ should review and revise their current interpretations of the availability of bond hearings for aliens in prolonged detention who are held under 8 U.S.C. § 1231, § 1225(b), and § 1226(c), and should require bond hearings for immigrants detained six months or more.
- **Monitor implementation of asylum parole guidance.** DHS and ICE should continue to monitor implementation of the asylum parole guidance to ensure that ICE field offices are assessing each arriving asylum seeker for parole eligibility under the

specified criteria and consistently and accurately implementing the guidance. The parole guidance should be applied to all detained asylum seekers, including those picked up in the interior, and should be codified into regulations.

- **Support revisions to immigration law to require individualized assessment of the need to detain.** The Obama Administration should work with Congress to amend § 235 and § 236 of the Immigration and Nationality Act to allow all detention decisions to be made on an individual basis, rather than automatic or mandatory detention. Automatic detention of broad categories of noncitizens precludes individualized, case-specific assessments by immigration judges of humanitarian factors, such as family and community ties, as well as the risk of flight or danger to public safety. Automatic detention also costs taxpayer money—the government spends $164 per night on every detained individual.[6]

IMPLEMENT EFFECTIVE SYSTEM OF ALTERNATIVES TO DETENTION AND REDUCE UNNECESSARY COSTS

BACKGROUND

Alternatives to Detention (ATD) programs generally provide for release from immigration detention with additional supervision measures intended to ensure appearance and compliance. Several successful ATD programs have been tested in the United States over the years, including programs run by the Vera Institute of Justice and by Lutheran Immigration and Refugee Service. These programs documented high appearance rates, and saved government funds by allowing for the release of individuals from more costly immigration detention.

As the Council on Foreign Relations' Independent Task Force on U.S. Immigration Policy noted in its report, alternatives to detention can "ensure that the vast majority of those facing deportation comply with the law, and at much lower costs."7 A January 2012 report on U.S. immigration and border security policies from the Heritage Foundation also recognized the importance of alternatives to detention to "bring costs down," stating that "[f]or a fraction of the costs of holding individuals in deportation centers, ISAP [the current ATD program] steers individuals through deportation proceedings and electronically monitors them to ensure that they leave the country when ordered." The report recommended that more be done "to identify the proper candidates for ISAP-like programs" and that "[o]ther commonsense programs should be analyzed and, if effective, expanded."[8]

ICE's Alternatives to Detention program is currently provided by BI Incorporated, a private company owned by the publicly traded prison company GEO Group. A full-service program provides "intensive case management, supervision, electronic monitoring, and individuals service plans," and a technology-only program uses GPS tracking and phone reporting. BI says its programs help "mitigate flight risk and guide the participant through the immigration court process."[9] A report issued by Lutheran Immigration and Refugee Service indicates that the programs offer "minimal assistance to ensure [participants] are adequately equipped to participate in their immigration proceedings." Still, according to BI's annual report to the U.S. government, in 2010, 93 percent of individuals actively enrolled in ATDs attended their final court hearings, and 84 percent complied with removal orders.[10]

In the criminal justice system, pretrial services are used in jurisdictions across the country to save the cost of jailing individuals whose cases are pending and who pose no flight or public safety risk. The Texas Public Policy Foundation, home to the criminal justice reform coalition Right on Crime, has advocated for expanded use of alternatives like pretrial services for years, citing cost savings.[11] At Human Rights First's Detention Dialogue at the University of California-Irvine in September 2012, the director of the Santa Clara Office of Pretrial Services reported that independent auditors found that pretrial services saved $26 million for Santa Clara County over the course of six months in 2011.[12]

Congress has consistently appropriated the funds to sustain and expand the immigration detention system—from $864 million eight years ago to $2 billion today, an increase of 131 percent. ICE spends an average of $164 per day per detainee.[13] In an April 2010 report to Congress, ICE stated that ATDs costs ICE on average

$8.88 per day per individual—more than $150 a day less than detention. Meanwhile, the administration requested nearly $2 billion for detention in FY 2013—18 times its request of $112 million for alternatives to detention. While ICE has expanded its use of alternatives to detention, it has not used these cost-effective alternatives to reduce unnecessary detention levels and its costs—instead citing to language in DHS appropriations legislation that ICE has viewed as mandating that it maintain a specific number of detention beds (33,400 for FY 2012).[14] Nevertheless, the administration's FY 2013 Budget Request for DHS included "flexibility to transfer funding between immigration detention and the ATD program."

RECOMMENDATIONS

To implement an effective system of alternatives to detention and reduce unnecessary costs, the Obama Administration should:

- **Reduce costs by utilizing alternatives in place of unnecessary detention.** Alternatives programs should be used *in place of* detention that is unnecessary rather than primarily as a supplement to existing levels of detention. The administration should reject the notion that ICE is mandated to detain daily the number of individuals corresponding to the number of beds Congress funds. The administration should also realize cost savings by urging Congress, in connection with DHS appropriations legislation, to (1) not include language referencing a specific number of detention beds, and (2) recognize ICE flexibility in its allocation of the enforcement and removal budget to shift funds from detention to more cost-effective alternatives to detention—flexibility that the administration included in its FY 2013 Budget Request for DHS.[15]
- **Prevent unnecessary detention by implementing validated dynamic risk classification tool nationwide.** ICE should assess eligibility for alternatives to detention in each individual case before resorting to detention, as well as assessing eligibility for ATDs periodically during detention. ICE should identify triggers for rerunning the assessment so that, for example, asylum seekers who have passed their credible fear screening interviews and are no longer subject to mandatory detention will automatically be reassessed for release. ICE should also rerun the assessment on a regular basis for every detained individual. At the Detention Dialogue organized by Human Rights First at the University of California–Irvine in September 2012, the former chief probation officer of Alameda County stressed that effective use of a risk assessment tool is key to ensuring that individuals who do not need supervision are not referred unnecessarily into alternatives programs.
- **Reduce costs by recognizing that restrictive measures can constitute custody.** ICE should consider some restrictive measures that are sometimes characterized as ATD to constitute custody for the purposes of the mandatory detention laws at INA § 236(c) and § 235(b), and enroll detainees subject to mandatory detention who are otherwise eligible for release (because they pose no public safety risk) into those programs. DHS has discretion to recognize the broad meaning of "custody" to include the use of a range of tools, and, as the U.N. special rapporteur on the human rights of migrants noted in his 2012 report, "[s]ome non-custodial measures may be so restrictive, either by themselves or in combination with other measures, that they amount to alternative forms of detention, instead of alternatives to detention." ICE should also utilize other alternate forms of detention, such as "home detention," which would lead to substantial cost-savings.[16]
- **Support steps to reduce delays in the immigration court system.** The administration should prioritize, and ask Congress to prioritize, adequate funding for the immigration courts, which are currently experiencing substantial backlogs and delays. Timely hearings and case resolutions would maximize the cost-savings that can be realized through ATD programs, in addition to advancing justice and fairness.
- **Use community-based models and case management in nationwide system of alternatives to detention.** ICE's alternatives programs should use full-service community-based

models that provide individualized case management, increase access to legal and social service providers through meaningful referrals, and provide information about immigration court and case matters. According to multiple studies, successful alternatives to detention programs in the United States and around the world typically include: individualized case assessment; individualized case management, including referrals; legal advice; access to adequate accommodations; information about rights and duties and consequences of noncompliance; and humane and respectful treatment.[17]

STOP USING PRISONS, JAILS, AND JAIL-LIKE FACILITIES; ONLY USE FACILITIES WITH APPROPRIATE CONDITIONS

BACKGROUND

Over three years ago, DHS and ICE committed to transform the U.S. immigration detention system by shifting it away from its longtime reliance on jails and jail-like facilities, to facilities with conditions more appropriate for the detention of civil immigration law detainees. At the time of these commitments, DHS and ICE recognized that detention beds were in facilities that were "largely designed for penal, not civil, detention." In a statement of objectives for new facilities, ICE described "less penal" conditions that would include increased outdoor access, contact visitation with families, and "non-institutional" clothing for some detainees.[18] ICE also opened one new "model" civil detention facility in 2012.

Despite these efforts, the overwhelming majority of detained asylum seekers and other civil immigration law detainees are still held in jails or jail-like facilities. At these facilities, asylum seekers and other immigrants wear prison uniforms and are typically locked in one large room for up to 23 hours a day, they have limited or no outdoor access, and typically visit with family through Plexiglas barriers. They are often handcuffed and/or shackled by U.S. immigration authorities when they arrive at U.S. airports or border entry points and when they are transported to detention facilities, to immigration court, or to the hospital.[19]

Jails and jail-like facilities have been found to be inappropriate and unnecessarily costly for asylum seekers and other civil immigration detainees by the U.S. government itself, as well as by bipartisan groups and international human rights bodies. In 2005, the bipartisan U.S. Commission on International Religious Freedom concluded that most of the facilities used by DHS to detain asylum seekers and other immigrants "in most critical respects…are structured and operated much like standardized correctional facilities," resembling "in every essential respect, conventional jails." The Council on Foreign Relations' bipartisan task force on immigration policy, co-chaired by Jeb Bush and Thomas McLarty III, concurred in July 2009 that "[i]n many cases asylum seekers are forced to wear prison uniforms [and] held in jails and jail-like facilities." The bipartisan Constitution Project's Liberty and Security Committee similarly concluded in December 2009 that "[d]espite the nominally 'civil'—as opposed to 'criminal'—nature of their alleged offenses, non-citizens are often held in state and local jails." In 2009, DHS's own special advisor—who has run two state prison systems and currently serves as commissioner of correction in New York City—concluded in a report prepared for DHS and ICE that:

> With only a few exceptions, the facilities that ICE uses to detain aliens were built, and operate, as jails and prisons to confine pre-trial and sentenced felons. ICE relies primarily on correctional incarceration standards designed for pre-trial felons and on correctional principles of care, custody, and control. These standards impose more restrictions and carry more costs than are necessary to effectively manage the majority of the detained population.

The use of immigration detention facilities that are penal in nature is inconsistent with U.S. commitments under the 1951 Convention Relating to the Status of Refugees and its Protocol, as well as the International Covenant on Civil and Political Rights. In reports specifically focused on the United States, the Inter-American Commission on Human Rights and the U.N. special rapporteur on the human rights of migrants have both expressed concern about the punitive and prison-like conditions used by the U.S. government in its immigration detention system, with the latter noting that

"freedom of movement is restricted and detainees wear prison uniforms and are kept in a punitive setting." The U.N. Refugee Agency (UNHCR), in its 2012 Guidelines on Detention, stressed that the "use of prison, jails, and facilities designed or operated as prison or jails, should be avoided," and "[c]riminal standards (such as wearing prisoner uniforms or shackling) are not appropriate." The current U.N. special rapporteur on the human rights of migrants, in his 2012 report on immigration detention, confirmed that immigration detainees "should not be subject to prison-like conditions and environments, such as prison uniforms, highly restricted movement, lack of outdoor recreation and lack of contact visitation" and that states should "allow administrative detainees to wear their own clothing" as well as the right to communicate with relatives and friends and to have access to religious advisers.[20]

Ironically, as Human Rights First documented in its 2011 report *Jails and Jumpsuits*, many correctional facilities actually offer less restrictive conditions than those typically found in immigration detention facilities. As corrections officials and experts have confirmed, including during discussions at Human Rights First's Detention Dialogues symposia, more normalized environments can help to ensure the safety and security of any detention facility.

RECOMMENDATIONS

DHS and ICE should move forward—on a priority basis—to transform the current detention system that relies on jails and jail-like facilities to one with conditions appropriate for civil immigration law detainees. Key steps include:

- **Phase out the use of jails and prisons.** As the agency moves forward in transforming the detention system, ICE should phase out its agreements and contracts with county jails and with the federal Bureau of Prisons. Jails and prisons are inappropriate for civil immigration law detainees. ICE should also end the use of jail-like immigration detention facilities.
- **Use facilities with conditions appropriate for civil immigration detention.** After an individualized assessment of whether detention is necessary, ICE should only use facilities with conditions that provide a more normalized environment, permitting detainees to wear their own clothing, move freely among various areas within a secure facility and grounds, access true outdoor recreation for extended periods of time, access programming and email, have some privacy in toilets and showers, and have contact visits with family and friends. Contact visits with family should be permitted in any new and existing ICE facilities. Medical experts as well as corrections administrators affirm the benefits of contact visits for the well-being of individuals held in detention, and indeed the entire federal prison system permits contact visits with family. ICE should also limit the use of handcuffs and shackles to extraordinary circumstances. These more normalized conditions should exist for the vast majority of asylum seekers and other immigrants held in detention; at present, they exist only for a small minority of individuals held in ICE detention.
- There are a few immigration detention facilities with more appropriate conditions that could, with improvements, be replicated. The Berks Family Residential Center in Pennsylvania, Hutto Detention Center in Texas, Broward Transitional Center in Florida, and a new facility in Karnes County, Texas, all permit detained individuals to move freely within certain areas of the facility and offer extended outdoor access and privacy in toilets and showers. At Broward and Karnes, detainees still wear uniform clothing, though, as UNHCR, the U.N. special rapporteur on the human rights of migrants and other authorities have made clear, asylum seekers and other immigration detainees should be able to wear their own civilian clothing. At both Hutto and Berks, detainees do wear civilian clothing.
- **Develop and implement new standards on conditions for civil immigration detention.** ICE should develop, adopt, and enforce new residential detention standards that require all facilities to permit detainees to wear their own clothing, move freely among various areas within a secure facility and grounds, access true outdoor recreation for extended periods of time, access programming and email, have some privacy in toilets and showers,

and have contact visits with family and friends, among other elements. These standards should be modeled on the American Bar Association's Civil Immigration Detention Standards, which were adopted by the ABA House of Delegates in August 2012. The ABA civil immigration detention standards confirm some key conditions that should exist for civil immigration detention—including that immigration detainees should be permitted contact visits, should be allowed to wear their own clothing (rather than uniforms) and should be provided with free access to outdoor recreation throughout the day. The bipartisan U.S. Commission on International Religious Freedom recommended that DHS establish more appropriate detention standards, and the 2009 DHS-ICE detention report concluded that that the standards used by ICE "impose more restrictions and carry more costs than are necessary to effectively manage the majority of the detained population." To promote compliance, new ICE civil immigration detention standards should be incorporated into all contracts and agreements and promulgated into regulations. As an initial step, ICE's existing performance-based detention standards should be revised to incorporate some key elements from the ABA civil detention standards—including to require (not merely to consider "optimal") contact visitation and access to outdoor recreation throughout the day and, rather than uniforms, to allow detainees to wear their own clothing or other nonuniform civilian clothing if a detainee lacks clean or adequate clothing.[21]

- **Reform existing immigration detention facilities to the extent possible.** While existing jails and jail-like facilities remain inappropriate for civil immigration law detainees, some reforms can be implemented at these facilities while the transition to more appropriate facilities moves forward. In these existing facilities, ICE should institute contact visits, true and expanded outdoor recreation, and some privacy in showers and toilets within six months, wherever the physical plant does not preclude these reforms. ICE should also permit detainees to wear their own clothing or at least noninstitutional clothing, rather than prison uniforms. ICE's 2011 Performance-Based National Detention Standards should provide a basis for system-wide implementation of these improvements.[22]
- **Use risk classification assessment tool to identify and properly place any detainees who present safety risks in custody.** ICE should complete the process of automating a risk classification assessment tool for use in all ICE-authorized facilities. An effective and standardized assessment tool can be used to identify individuals who may pose a risk to officers or to other detainees, and in such cases, ICE can ensure appropriate placement separate from lower-risk detainees, or other measures proportionate to the risk, to address safety. In taking such measures, ICE should not automatically hold in a correctional setting all detainees with criminal convictions.

IMPROVE ACCESS TO LEGAL COUNSEL AND FAIR PROCEDURES

BACKGROUND

The overwhelming majority of asylum seekers and immigrants who are held in immigration detention—84 percent—are not represented by legal counsel in removal proceedings, in which they defend themselves against the government's efforts to deport them.[23] The U.S. government does not generally provide funding for legal representation for asylum seekers and other immigrants in their asylum and immigration proceedings. Yet the importance of counsel cannot be overstated.

For asylum seekers, several studies have documented the impact of legal representation on success rates. More broadly, the Department of Justice's Executive Office for Immigration Review (EOIR) has expressed "great concern" about the large number of individuals appearing in immigration court without representation, and has also noted that "[n]on-represented cases are more difficult to conduct," and that they require additional effort and time from immigration judges.[24] Immigration proceedings are a daunting labyrinth for any individual to navigate alone—especially as the consequence of deportation is tremendous—yet the majority of detained immigrants go through the process not only without counsel, but also without sufficient opportunity to seek counsel or access legal information.

While not a substitute for legal representation, the highly successful Legal Orientation Program (LOP)—an EOIR program managed through a contract with the Vera Institute for Justice, which subcontracts with local nonprofit legal service providers—offers basic legal information to immigration detainees so that they can understand their legal options, and helps connect them to pro bono resources. LOP has received widespread praise for promoting the efficiency and effectiveness of the removal process, and immigration judges have lauded LOP for better preparing immigrants to identify forms of relief.[25] The president's FY 2013 budget request recognized the success of LOP and sought to expand its reach by increasing its budget by one-third over FY 2012 levels. At present, EOIR is funded to operate the LOP in just 25 detention facilities, reaching only approximately 15 percent of detained immigrants and 35 percent of detained immigrants in EOIR proceedings annually.

Another obstacle that exacerbates the difficulty of securing legal representation for immigration detainees is the remote location of many immigration detention facilities. In its 2005 study on asylum seekers in expedited removal, the U.S. Commission on International Religious Freedom found that many of the facilities used to detain asylum seekers were "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."[26]

At many of these remote facilities, immigration officials are also—increasingly—turning to the use of video-conferencing to conduct immigration court hearings and even credible fear screening interviews, compounding the challenges that detained asylum seekers face in accessing protection.

RECOMMENDATIONS

DOJ, DHS, and ICE should work with Congress to ensure that detained asylum seekers and other immigration detainees have sufficient access to legal representation, legal information, and in-person hearings of their asylum claims and deportation cases. Key steps include:

- **End use of detention facilities in remote locations that limit access to legal representation, medical care, and family.** The 2009 DHS-ICE report recommended that "facilities should be placed nearby consulates, pro bono counsel, EOIR services, asylum offices, and 24-hour emergency medical care" and that the "system should be linked by transportation." Yet according to Human Rights First calculations, 40 percent of all ICE bed space is located more than 60 miles from an urban center. ICE should end the use of all facilities in remote locations to help ensure that detainees can access not only attorneys, but also their families, doctors, psychiatrists and psychologists, and social services.[27]
- **Support funding and placement of Legal Orientation Programs (LOPs) at all facilities that detain asylum seekers or other immigration detainees**. The DOJ, the White House, and Congress should work together to ensure that LOPs are fully funded at all ICE-authorized facilities used to detain asylum seekers and other immigrants. ICE should not detain immigrants in new facilities until LOP funding to serve those facilities is in place.
- **Support funding for legal counsel in immigration proceedings, particularly for vulnerable groups.** The U.S. government does not generally provide funding for legal representation for asylum seekers and other immigrants in their asylum and immigration proceedings, despite the well-documented importance of counsel. The Obama Administration should support efforts to provide funding for legal representation for vulnerable groups such as children, individuals with mental disabilities, and individuals held in immigration detention.
- **Direct that all detained asylum seekers and other immigrants receive merits hearings in person, not via video.** The Obama Administration should work with Congress to secure adequate funding to the EOIR so that judges can conduct all merits hearings in person rather than via videoconference (VTC). The administration should also facilitate coordination between ICE and EOIR so that ICE uses detention facilities close to immigration courts,

and EOIR provides immigration judges to work at these facilities. The administration should limit the use of VTC to some "master calendar" hearings, and should generally prohibit the use of VTC in asylum and other merits hearings. EOIR should take steps to address the problems in the use of VTC including those identified in the 2012 report of the Administrative Conference of the United States. EOIR should also encourage immigration judges to afford favorable consideration to requests that hearings be conducted in person and EOIR should require coding of asylum and other hearings conducted via video to allow for data collection and analysis. EOIR and ICE should make VTC available to allow counsel to communicate with detainees.

- **Provide prompt and in-person credible fear and reasonable fear interviews.** U.S. Citizenship and Immigration Services (USCIS) should interview asylum seekers and other applicants for protection promptly, conducting credible fear interviews and reasonable fear interviews within 14 days of detention. Interviews should be conducted in person, not via phone or video.

TAKE OTHER STEPS TO ADDRESS DEFICIENCIES IN IMMIGRATION DETENTION CONDITIONS

BACKGROUND

Over the last three years, ICE has taken significant steps to address some of the problems in the existing jail-oriented immigration detention system. It launched an online detainee locator and a community hotline, hired and trained onsite detention service managers to improve oversight as well as an ICE public advocate at headquarters, and developed a risk classification assessment tool (see section above on alternatives to detention). ICE also improved its parole guidance for arriving asylum seekers, developed an access policy that allows nongovernmental organizations to tour facilities and speak with detainees, and revised its detention standards (though these have not yet been implemented in any facility). In addition, since 2009 ICE has streamlined the process for detainee health care treatment authorization and modified the medical benefits package for ICE detainees.

Despite this progress, a range of serious problems remain, including those relating to medical and mental care, mechanisms for preventing sexual assault, and the use of solitary confinement.

Medical and Mental Health Care. In March 2011, the DHS Office of the Inspector General (OIG) released a report that identified a number of problems in the delivery of mental health services to ICE detainees, including inadequate oversight, insufficient staffing, and unclear decision-making authority over transfers of detainees with mental health care needs. Physicians for Human Rights also identified, in a 2011 report, the problem of "dual loyalties," in which health care providers are ethically obligated to act in the best interests of their patients but in the immigration detention system are employed by, and report to, law enforcement authorities or private prison companies. The conflicting pressures that can result often lead to negative health outcomes for detainees.

Sexual Assault. In 2003, both chambers of Congress passed the Prison Rape Elimination Act (PREA) unanimously, and President Bush signed it into law. In its June 2009 report, the Commission created under PREA found that "[a] large and growing number of detained immigrants are at risk of sexual abuse. Their heightened vulnerability and unusual circumstances require special interventions."[28] Indeed, between 2007 and mid-2011, almost 200 complaints of sexual abuse in ICE custody were made to the DHS Office of Civil Rights and Civil Liberties.[29] In May 2012, the DOJ finally issued strong PREA regulations, but despite Congress's intention, those new standards do not apply to ICE facilities. At the same time, however, President Obama issued a presidential memorandum stating that PREA covers all federal confinement facilities and directing all agencies with federal confinement facilities to propose their own PREA "regulations or procedures" within 120 days, and finalize those regulations or procedures within 240 days. As of November 2012, DHS, with ICE and Customs and Border Protection facilities holding hundreds of thousands of immigrants annually, had not yet proposed PREA rules.

Solitary Confinement. A September 2012 report from Physicians for Human Rights and the National Immigrant Justice Center found that "solitary confinement in immigration detention facilities are often arbitrarily applied, significantly overused, harmful to detainees' health, and inadequately monitored." A 2011 report from the U.N. special rapporteur on torture and other cruel, inhuman or degrading treatment or punishment observed that solitary confinement is often used to punish a detained individual who has violated a facility rule, as well as to separate vulnerable individuals, including LGBTI individuals, from the general population. The special rapporteur noted that solitary confinement can lead to anxiety, depression, anger, cognitive disturbances, perceptual distortions, paranoia, and psychosis, and self-harm for any population.[30] Solitary confinement can negatively impact asylum seekers and survivors of torture in particular.

RECOMMENDATIONS

Though ICE has taken some steps toward improving conditions in the existing system, serious deficiencies persist. DHS and ICE should implement a number of improvements in all facilities housing immigration detainees, including:

- **Provide high-quality medical and mental health care.** The administration should take additional steps to improve the timely provision of medical and mental health care for all ICE detainees, including: implement the remaining OIG recommendations on mental health care, require that health care professionals report to a health organization rather than to ICE, and create an independent oversight organization to monitor provision of medical and mental health care.
- **Promptly propose and implement Prison Rape Elimination Act (PREA) regulations based on the DOJ PREA rule.** DHS should propose PREA regulations immediately, and finalize them within the time frame directed by the May 2012 presidential memorandum. These rules should be based on the DOJ PREA rule, and should incorporate the supplemental immigration detention standards developed by the PREA commission.
- **Limit solitary confinement or segregation to only very exceptional cases, as a last resort, and for the briefest time possible.**[31] ICE should revise its policies and practices to: end the use of solitary confinement in place of protective administrative segregation for vulnerable individuals; end the use of non-medical segregation cells for medical isolation or observation; forbid the use of solitary confinement or segregation for mentally ill detainees; forbid continuous solitary confinement or segregation for more than 15 days;[32] ensure that any individual placed in solitary confinement or segregation is afforded the same access to medical and mental health care, telephones, law library, legal presentations, legal visits, and outdoor recreation as the general population; and require that every detention facility submit to its field office monthly reports detailing the number of individuals in solitary confinement and other forms of segregation, the reasons for their segregation, the length of time they are held, and a demonstration that they have received daily visits from qualified mental health care providers.[33]
- **Improve training and communication for ICE officers and facility staff.** ICE should require that all officers and facility staff interacting with ICE detainees throughout the detention system—whether employed by ICE, local jails or prisons, or private contractors—receive in-depth training annually on the particular situation and needs of an immigrant detainee population, among other training and professional development opportunities. The DHS Office of Civil Rights and Civil Liberties should support this training

Endnotes

[1] These commitments are detailed in 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.
[2] More information on Human rights First's *Dialogues on Detention* available at: http://www.humanrightsfirst.org/our-work/refugee-protection/dialogues-on-detention/.
[3] See *Jails and Jumpsuits*; and http://www.humanrightsfirst.org/our-work/refugee-protection/dialogues-on-detention/.
[4] See INA § 236(c); 8 CFR § 208.30, 212.5, 235.3, and 1003.19.
[5] IACHR Report on U.S. Immigration Policy and Practices, ¶ 139, 418, 529, 431.
[6] National Immigration Forum, *The Math of Immigration: Runaway Costs for Immigration Detention Do Not Add Up to Sensible Policies*, (NIF, August 2012), p.2.
[7] Human Rights First, U.S. Detention of Asylum Seekers: Seeking Protection, Finding Prison (New York: Human Rights First, 2009), pp. 63-67; Lutheran Immigration and Refugee Service, Unlocking Liberty: A Way Forward for U.S. Immigration Detention Policy (LIRS, October 2011); Jeb Bush, Thomas F. McLarty III, Edward H. Alden, Council on Foreign Relations, U.S. Immigration Policy, Independent Task Force Report No. 63 (2009), p.29 (Hereinafter "2011 Council on Foreign Relations Report").
[8] Heritage Web Memo 3455, Administrative Reforms Insufficient to Address Flawed White House Immigration and Border Security Policies, by Matt A. Mayer, Jan. 10, 2012, available at: http://www.heritage.org/research/reports/2012/01/administrative-reforms-in-immigration-and-border-security-policies.
[9] BI Incorporated, *Intensive Supervision Appearance Program II: An Alternatives to Detention Program for the U.S. Department of Homeland Security*, (BI Incorporated, CY 2010), pp. 4-5, 17, 21. BI and ICE have named the full-service and technology-only programs together "ISAP II"—a new version of the Intensive Supervision Appearance Program that began as a pilot in 2004.
[10] BI Incorporated, *Intensive Supervision*, p. 4, 5, 17, 21; Lutheran Immigration and Refugee Service, *Unlocking Liberty*, p.8.
[11] See: http://www.texaspolicy.com/center/effective-justice/reports/public-safety-and-cost-control-solutions-texas-county-jails
[12] See: http://www.sccgov.org/sites/bos/Management%20Audit/Documents/PTSFinalReport.pdf
[13] *Supra*, note 5.
[14] Department of Homeland Security, FY 2012 Congressional Budget Justification, pp. 43, 59.
[15] 2011 Council on Foreign Relations Report, pp.106-7.
[16] See AILA memo, "The Use of Electronic Monitoring and Other Alternatives to Institutional Detention on Individuals Classified under INA § 236(c)," (August 6, 2010), available at: www.nilc.org/document.html?id=94. No legal authority directly addresses DHS's discretion to use alternatives to detention for mandatorily detained populations under §236(c), because neither the INA nor any regulations contemplated the use of new tools.
[17] Edwards, Alice, Back to Basics: The Right to Liberty and Security of Person and 'Alternatives to Detention' of Refugees, Asylum-Seekers, Stateless Persons, and Other Migrants (Geneva: UNHCR, 2011), PPLA/2011/01.Rev.1, p. 84; and International Detention Coalition, *There Are Alternatives: A Handbook for Preventing Unnecessary Immigration Detention* (Melbourne: International Detention Coalition, 2011), pp. 7-9.
[18] *Jails & Jumpsuits*, pp.4-6.
[19] Human Rights First has interviewed scores of detained asylum seekers who have been handcuffed and shackled. Asylum seekers may be handcuffed and shackled by Customs and Border Protection officers, if detained in a border area, by ICE officers, or by contractors hired by ICE to transport detainees to and from facilities.
[20] U.N. Human Rights Council, *Report of the Special Rapporteur on the Human Rights of Migrants, Jorge Bustamante: Mission to the United States of America*, A/HRC/7/12/Add.2 (March 5, 2008), ¶ 28, available at: http://www.unhcr.org/refworld/docid/47d647462.html
[21] The ABA's 2012 Civil Immigration Detention Standards are available at: http://www.americanbar.org/content/dam/aba/administrative/immigration/abacivdetstandards.authcheckdam.pdf.
[22] See Standards 4.5, 5.4, and 5.7. The 2011 PBNDS are available at: http://www.ice.gov/detention-standards/2011/.
[23] American Bar Association, *Reforming the Immigration System: Proposals to Promote Independence, Fairness, Efficiency and Professionalism in the Adjudication of Removal Cases* (Chicago: American Bar Association, 2000), p. ES-7. In its 2010 Statistical Yearbook the Executive Office for Immigration Review (EOIR) reported that in FY 2010, 43 percent of immigrants in proceedings—both detained and non-detained—were represented by counsel.
[24] Government Accountability Office, U.S. Asylum System: Significant Variation Existed in Asylum Outcomes Across Immigration Courts and Judges, GAO-8-940 (Washington, DC: GAO, 2008), p. 30. DOJ/EOIR, FY 2010 Statistical Year Book (Washington, DC: Office of Planning, Analysis, & Technology, 2011), p. G-1; and Charles H. Kuck, "Legal Assistance for Asylum Seekers in Expedited Removal: A Survey of Alternative Practices," in US Commission on International Religious Freedom, *Asylum Seekers in Expedited Removal, Volume I: Findings & Recommendations* (Washington, DC: USCIRF, 2005), p. 8.
[25] For more information about the Vera Legal Orientation Program, see Legal Orientation Program, Vera Institute of Justice, http://www.vera.org/project/legal-orientation-program; see Vera Institute of Justice, "Legal Orientation Program: Evaluation and Performance and Outcome Measurement Report, Phase II," (May 2008), available at: http://www.vera.org/download?file=1778/LOP%2Bevalution_updated%2B5-20-08.pdf.
[26] USCIRF, *Asylum Seekers in Expedited Removal*, p. 240.
[27] Dr. Dora Schriro, *Immigration Detention Overview and Recommendations* (Washington, DC: Immigration and Customs Enforcement, 2009), p.18, available at http://www.ice.gov/doclib/about/offices/odpp/pdf/ice-detention-rpt.pdf. Jails & Jumpsuits, p. 31. ABA, "Criminal Justice Standards," Standards 23-8.1; 23-8.5; and 23-9.4.
[28] National Prison Rape Elimination Commission Report, Ch. 9
[29] Information about these complaints was obtained by the ACLU through a Freedom of Information Act request. http://www.aclu.org/sexual-abuse-immigration-detention.

[30] Interim report to the U.N. General Assembly of the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment, A/66/268, Aug. 5, 2011, pp. 13, 26, 27.

[31] The American Bar Association's Standard 23-2.6 (a) on the Treatment of Prisoners suggests that "Segregated housing should be for the briefest term and under the least restrictive conditions practicable and consistent with the rationale for placement and with the progress achieved by the prisoner," at http://www.americanbar.org/publications/criminal_justice_section_archive/crimjust_standards_treatmentprisoners.htm

[32] U.N. Human Rights Council, *Report of the Special Rapporteur*, p.9. The U.N. special rapporteur noted that after 15 days, according to medical literature, "some of the harmful psychological effects of isolation can become irreversible."

[33] ICE's 2011 Performance-Based National Detention Standards—which have not yet been implemented in any facility holding ICE detainees—require daily visits from "health care personnel." This requirement is not sufficient. The daily visits should be conducted by qualified mental health care providers and include periodic out-of-cell assessments.

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National ICE Council
Immigration and Customs Enforcement
of the
American Federation of Government Employees
Affiliated with AFL-CIO

Dear Congressional Representative:

Thank you for meeting with ICE employees regarding the ICE Provisions for the Law Enforcement Component of Immigration Reform. Please find the enclosed documents attached:

1. **ICE Provisions for the Law Enforcement Component of Immigration Reform**
2. **ICE White Paper – Single Career Path Implementation and Funding**
3. **Summary – JHU Study (3 pages)**

If you have any further questions or require any other assistance please contact LeAnn Mezzacapo at leannmezz@yahoo.com .

Sincerely,

National ICE Council

National ICE Council
Immigration and Customs Enforcement
of the
American Federation of Government Employees
Affiliated with AFL-CIO

ICE PROVISONS

LAW ENFORCEMENT COMPONENT - IMMIGRATION REFORM

ICE reports that in FY 2012 it deported 409,849 illegal aliens with approximately 96 percent of those deported falling into Obama Administration priority categories; 225,390 were convicted criminals. The deportation of a quarter million convicted criminals in one year by ICE should alert lawmakers to the staggering number of criminal aliens in the U.S. and the need for more robust enforcement by ICE, with or without immigration reforms.

Of the estimated 11 million illegal aliens currently in the U.S., approximately 40% (4.5 million) are visa overstays. Current proposals by the President as well as proposals found in the bipartisan framework essentially ignore interior enforcement focusing on increasing border security and the creation of a system to track visa overstays. While border security is essential, it will be the job of ICE agents to locate, arrest and deport millions of visa overstays that will exist (and/or be identified by newly developed tracking systems) even after immigration reforms are in place.

Despite successful efforts to secure the border that may occur in the future, a percentage of attempted illegal entries will succeed. Criminal individuals and organizations will be especially persistent in these attempts. Again, ICE will be responsible for locating and arresting these aliens on the interior of the United States. Even if future border security were 90% more successful than current efforts, the number of illegal entrants each year could be in the hundreds of thousands.

Any future reforms that continue to utilize immigrant and non-immigrant visas, or guest worker programs, will introduce over a million new legal entrants into the U.S. each year that will be deportable if the conditions of their visas are violated. Again, ICE will be responsible for enforcing these laws, as well as apprehending violators.

As almost half of all illegal aliens in the U.S. entered legally but overstayed visas, it is clear that eliminating illegal entries is only half of the challenge. When one adds the other enforcement efforts listed above, as well as any future legislation regarding increased worksite enforcement, it is clear that ICE ERO is not prepared for that mission. Important to note, that while the Border Patrol has almost tripled in size since 9/11, immigration enforcement resources within ICE have remained relatively the same. Approximately 5,000 officer and agents within ICE handle the lion's share of ICE's immigration mission, to include not only the arrest of aliens, but also their detention, court proceedings and eventual deportation. ICE ERO may be the most understaffed and under resourced law enforcement organization in the United States. A matter that must be addressed as part of any effort to reform the nation's broken immigration system.

- Increase by 5,000 the number of full-time ICE Deportation Officers
- Merge all ICE Enforcement and Removal Operations Law Enforcement Officers into ICE Deportation Officer Positions (GS-5-GS-12) eliminating differing arrest authorities and antiquated positions providing a force multiplier which allows operational flexibility, efficiency and productivity.
- Increase by 700 the number of support staff for ICE Deportation Officers
- Authorize ICE to hire 2,500 Detention Enforcement Officers to be responsible for detention duties, including transportation and guarding of detainees, facility security, and assisting with processing
- Increase by 10,000 the number of ICE detention beds
- Increase the number of DOJ Immigration judges
- Increase the number of ICE prosecutors
- Require ICE or ICE-trained agents at every federal/state/county prison/jail to place mandatory detainers on all unlawfully present aliens identified by ICE
- Require ICE to assign Deportation Officers and Immigration Enforcement Agents to serve as members of any state or local gang task force, at the request of the task force
- Require that all ICE Deportation Officers, Immigration Enforcement Agents, and Detention Enforcement Officers have adequate equipment, including body armor, Tasers, and M-4 rifles
- Require mandatory issuance of "Notice to Appear" to illegal aliens with criminal convictions, any conviction for operating a vehicle under the influence, or suspected or known gang affiliation, or any illegal alien who assaults a law enforcement officer (the NTA puts the alien before an immigration judge, who then decides whether the alen should be removed or is eligible for relief)
- Deny visas for countries that refuse to repatriate their nationals who come here and commit crimes (as authorized by current law)
- Establish an ICE Advisory Council with seven members, including one appointed by the President, one appointed by the Chairman of the House Judiciary Committee, one appointed by the Chairman of the Senate Judiciary Committee, three appointed by the ICE Officers and Agents Union and one appointed by the ICE Attorneys Union (the Council would report to ICE Headquarters and to the House and Senate Judiciary Committees on a quarterly basis on the current status of law enforcement efforts, prosecutions, removals, equipment and personnel needs, and the effectiveness of policies and regulations promulgated by Headquarters)

Office of Enforcement & Removal Operations

U.S. Department of Homeland Security
Potomac Center North Building
500 12th Street SW
Washington, DC 20536

U.S. Immigration and Customs Enforcement

November 1, 2011

VIA E-MAIL AND CERTIFIED MAIL

Mr. Chris Crane, President
American Federation of Government Employees
National Council 118 ICE

Subject: Update on the IEA/ DO Uniform Career Ladder Initiative

Dear Mr. Crane:

As we have discussed, the establishment of a uniform career path which allows for a single law enforcement position to be hired as a GS-5 with a career ladder to a journeyman grade of GS-12 is among my highest priorities. I believe the enhancements to our operational flexibility, efficiency, and productivity that will come with the new position are essential to the continued success of the Office of Enforcement and Removal Operations (ERO). Also, as you know, I have already taken a significant step in this direction by filling all Deportation Officer (DO) vacancies from among the ranks of our current Immigration Enforcement Agents (IEAs) whenever possible.

Barring any events beyond my control, I intend to take the next broad steps to complete this critical project:

1. No later than the beginning of the third quarter of FY-13, cease hiring IEAs and beginning hiring GS-5 DOs (title subject to change) with promotion potential to GS-12.
2. No later than the beginning of the third quarter of FY-13, begin announcing GS-11/12 competitive merit promotion opportunities for GS-9 IEAs with time in grade.
3. Continue the competitive merit promotion process each year thereafter until a uniform career path and single law position is established.

While I will continue to seek the appropriated funds for this project, I am confident that barring unforeseen financial circumstances, I will be able to fund this project through efficiencies and

the incremental approach outlined above from existing base resources. Should this change, I will notify you immediately.

The role of Council 118 in this process is invaluable. There is much to be done over the months ahead if we are to be ready to proceed in FY-13. I look forward to continuing to work with you and the Council on this important project. In the short run, it would be helpful if you can provide me your comments on the draft proposed position description and performance work plan for the new position, as well as the working group recommendations resulting from the two weeks of meetings between union representatives and managers here in Washington last month. I need this information to move the process forward.

Thank you for your continued support of and valuable input to this initiative.

Respectfully,

Gary Mead
Executive Associate Director

U.S. Immigration and Customs Enforcement

Enforcement Removal Office Career Path Assessment

Executive Summary (Prepared by the National ICE Council)

The Johns Hopkins University, School of Education, Division of Public Safety Leadership (JHU) was tasked by the Immigrations and Customs Enforcement Agency (ICE) of the U.S. Dept. of Homeland Security (DHS) to assess the feasibility of creating a single-track career path for Immigration Enforcement Agents (IEAs) and Deportation Officers (DOs) in the Enforcement and Removal Office (ERO- formerly known as DRO).

The intent of the study was to provide recommendations on how a single career track might:

- Strengthen the overall mission of ICE
- Yield position management efficiencies
- Strengthen career advancement opportunities

The study was also designed to provide ICE executives with information sufficient to determine:

- Impact of decisions
- Budget requests or decisions
- Near term pilot and longer-term transition plan options

This report is based on the findings of 24 confidential interviews conducted over a period of 2 months. 60% were non-supervisory personnel; the remaining 40% were supervisors.

ICE ERO Career Path Study Recommendations

This section contains JHU recommendations for a single career path based on the interview findings, site visits, and literature review.

1. Convert DO and IEA positions into one series, from GS-5 to GS-12, ratifying the ongoing evolution of ERO;

2. Rename new position/series;

3. Write PDs for each position in series, identifying required training and experience to advance;

4. Broadly advertise within the organization the requirements for advancement through the series;

5. Develop GS-13 specialist positions, as investigative duties create need, with a clear justification process;

6. Develop transition training plan and initiate the process of conversion;

7. Develop entry level training requirements to reflect entry at various grades through journeyman GS-12 level;

8. Develop an evaluation approach to weigh in depth functional experience vs rotational experience in the promotion process;

9. Develop cost estimates for transition/conversion of all staff to the new positions;

10. Develop cost estimates for steady state after conversion (e.g., training, promotions, etc);

11. Explore the possibility of "grandfathering" employees who choose not to participate in conversion;

12. Develop measures of success for conversion, including changes in attrition rate, etc.;

13. Explore implications for DRA's of conversion of DOs and IEAs to a single career track;

14. Explore opportunities for further contracting out;

15. Create an Executive Steering Committee to review progress of Working Group, make decisions where necessary, and gain approval for execution;

16. Develop a Communications Plan.

Statements from members of the Interfaith Immigration Coalition for the Senate Judiciary Hearing: "Comprehensive Immigration Reform"

February 13, 2013

Statements submitted from:

1. American Friends Service Committee
2. American Jewish Committee
3. Christian Church (Disciples of Christ)
4. Church World Service
5. The Episcopal Church
6. Franciscan Action Network
7. Friends Committee on National Legislation
8. Hebrew Immigrant Aid Society (HIAS)
9. Leadership Conference of Women Religious
10. Lutheran Immigration and Refugee Service
11. Missionary Society of St. Columban
12. National Advocacy Center of the Sisters of the Good Shepherd
13. United Church of Christ, Justice and Witness Ministries
14. U.S. Jesuit Conference

Addendum: The Interfaith Immigration Coalition principles for comprehensive immigration reform

American Friends Service Committee statement for the Congressional Record pertaining to the Senate Judiciary Committee Hearing
Wednesday, February 13, 2013

The American Friends Service Committee (AFSC) is an almost 100-year old faith-based organization grounded in Quaker belief in the dignity and worth of every person. AFSC provides direct legal services and engages in organizing with immigrants and allies along with advocacy and movement building throughout the U.S. We directly support immigrants and refugee workers and their communities to organize themselves, to seek out and raise their issues as a way to affirm their aspirations and needs, and to continue to make contributions to this nation.

Our immigration policy recommendations are grounded in AFSC's history and values as a faith-based organization and in the voices of the communities with whom we are deeply connected. We believe that the basis of U.S. immigration policy should be the protection of human rights and equal opportunity, not structures that privilege people of certain nationalities, enable employers to tap workers outside the protections of wage and safety laws, or result in the forced separation of families and communities. Humane immigration policy must include a fair mechanism for undocumented workers to gain permanent residency and citizenship in a fair, timely and orderly fashion. At the same time, it must stop the detention and deportation system that has torn apart families, and instead ensure that the human rights of liberty and due process are enforced.

Specifically we urge compassionate and effective immigration policies that are grounded in the following principles:

- Develop humane economic policies to reduce forced migration
- Protect the labor rights of ALL workers
- Develop a clear path to citizenship
- Respect the civil and human rights of immigrants
- Demilitarize the U.S.-Mexico border
- Make family reunification a top priority
- Ensure that immigrants and refugees have access to services

AFSC applauds the "Dear Colleague" letter released by Senators Leahy, Coons, Blumenthal and Hirono calling on Congress to support immigration policy reforms that respect the human and civil rights of immigrants. We agree that the current immigration system is punitive, fails to provide adequate due process protections, results in unnecessary detention in often inhumane conditions and tears families apart. We encourage the Committee to embrace this values-driven approach to reforms.
AFSC urges the Committee to exert visionary leadership and to support new immigration policies that respect the human rights and equal economic opportunity of all in our communities. Thank you for this opportunity to submit testimony.

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American Jewish Committee (AJC)

Submitted on behalf of AJC to
The Senate Judiciary Committee

Hearing on
Comprehensive Immigration Revision

February 13, 2013

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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).

AJC commends Senator Leahy (D-VT) for urging his fellow Senators to enact comprehensive immigration reform that includes a pathway to citizenship for law abiding immigrants already here and:

1. Provides for an enforcement process that matches our values, including a fair hearing before a judge, a bond hearing, federal court review, and access to counsel;
2. Provides for humane treatment of anyone detained by immigration authorities and ensures that no one is deprived of their liberty except as a last resort;
3. Reduces the impact of enforcement on children and families;
4. Clarifies that immigration enforcement is a federal responsibility that should be administered uniformly across the country;
5. Explicitly rejects discrimination and racial profiling; and
6. Ensures that all agencies charged with enforcement operate with accountability and transparency.

AJC also applauds the bipartisan framework for immigration reform introduced by Senators Schumer (D-NY), McCain (R-AZ), Durbin (D-IL), Graham (R-SC), Menendez (D-NJ), Rubio (R-FL), Bennet (D-CO) and Flake (R-AZ) on January 28, 2013. The basic legislative pillars of this bipartisan framework would:

1. Create a tough but fair path to citizenship for unauthorized immigrants currently living in the United States that is contingent upon securing our borders and tracking whether legal immigrants have left the country when required;
2. Reform our legal immigration system to better recognize the importance of characteristics that will help build the American economy and strengthen American families;
3. Create an effective employment verification system that will prevent identity theft and end the hiring of future unauthorized workers; and
4. Establish an improved process for admitting future workers to serve our nation's workforce needs, while simultaneously protecting all workers.

By producing an initiative that accepts the premise of a path to citizenship for undocumented immigrants, the Senators recognize immigration as a key factor in bolstering America's economic strength and democratic pluralism. The proposed reforms to the family and employment visa categories are also encouraging. Allowing immigrant families to more easily reunite with their loved ones promotes a strong social fabric in our communities. In addition, making it easier for high and low-skilled

immigrant workers to come to this country will help to ensure that American businesses have the labor they need to compete in a global economy.

AJC recognizes the need for enhanced enforcement measures directed at assuring an effective and fair immigration system that also protects national security. However, AJC is concerned that the bipartisan framework proposed by the eight Senators does not quantify how and when the border will be deemed secure or provide specifics as to how the government would track visa overstays. Without objectively defining these critical components, it will be difficult to determine when these goals are met. In addition, the employment verification system proposed in this framework must include explicit protections against racial profiling and other civil rights abuses. We applaud Senator Leahy on his principles that explicitly reject discrimination and racial profiling and seek to provide for an enforcement process that includes due process protections. Above all, AJC looks forward to working with the Senate to draft comprehensive immigration reform legislation, and achieving in 2013 a genuine breakthrough on this critical issue.

Following the lead of all of these Senators, AJC declares our commitment to the passage of a common-sense bill that serves our nation's interests and upholds our Constitution. This bill must provide a holistic approach to reforming our immigration system and 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 competiveness 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'tselem 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 out 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.

Christian Church (Disciples of Christ)
IN THE UNITED STATES AND CANADA

"As Christians committed to God's call to welcome the stranger and to promote the wholeness and well being of families, Christian Church (Disciples of Christ) leaders have for years called upon our political leaders to move beyond our current system that leaves our neighbors in the shadows, 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. Ronald J. Degges, President of Disciples Home Missions

Statement in Support of Just, Humane, and Compassionate Immigration Reform from Christian Church (Disciples of Christ) Refugee & Immigration Ministries

The Christian Church (Disciples of Christ) is a denomination of approximately 700,000 members and 3,500 congregations that was born from a frontier movement with immigrants among our first leaders. Our body 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. We recognize the strength of the United States emerges from the diversity of its immigrants, and affirm that immigration has played a major role in the development of our countries and in the advancement of our economies.

Disciples commend the U.S. Congress and the Obama Administration in recognizing the priority need for immigration reform that repairs and updates our current broken immigration system. We welcome immigration reform that is comprehensive and bipartisan, and which is "just, humane and compassionate." To do so falls in line with our sacred scriptures, where "the presence of a stranger is seen as an opportunity for hospitality—the sharing of one's home and resources" (resolution on "Faith and Our New Neighbors," 2007.)

We applaud the principles outlined in the February 5, 2013 letter by Senators Leahy, Hirono, Blumenthal, and Coons which urge commonsense laws that affirm the equality of all persons, seek fair hearings and due process, reject unnecessary detentions, and require accountability and transparency in enforcement practices. As Disciples, we are compelled to

speak against mistreatment of the stranger as we remember God's command that "You shall not wrong or oppress a resident alien, for you were aliens in the land of Egypt" (Exodus 22:21 NRSV). We support reform policies which reflect our church's historical call to "ensure adequate legal representation and appropriate civil liberties to all immigrants being targeted and detained for national security reasons" (resolution "On Assuring Civil Liberties and Equal Justice to Immigrant Communities in the United States," 2003.)

We further insist that security for our country should not result in racial discrimination, threats of deportation, or targeting immigrants on the basis of national, ethnic and religious identity. We support the right of our nation to defend our borders and to ensure the integrity of the workplace through enforcement. However, our nation has pursued policies focused upon enforcement for over twenty five years, and unnecessarily punitive and disproportionate enforcement must not deprive immigrants of their basic human and civil rights.

Therefore, last week we joined our denominational voice with diverse ecumenical partners in the "Christian Churches Together" network from Catholic, Evangelical/Pentecostal, Historic Protestant, Orthodox, and Historic Black churches, to highlight these unified principles for fundamental immigration reform:

- An earned path to citizenship for the 11 million people in the United States without authorization.
- The priority of family reunification in any immigration reform.
- Protecting the integrity of our borders and protecting due process for immigrants and their families.
- Improving refugee protection laws and asylum laws.
- Reviewing international economic policies to address the root causes of unauthorized immigration.

We pray for legislators in their important work of crafting legislation that reflects our values for just, humane, and compassionate immigration reform, and look forward to supporting these reforms together.

Church World Service statement for the Congressional Record pertaining to the Senate Judiciary Committee Hearing on Wednesday, February 13th, 2013

As the U.S. Senate considers how to best fix the U.S. immigration system, Church World Service (CWS), a 67-year old humanitarian organization, urges the Senate to enact immigration reforms that strengthens family unity and provides a pathway to citizenship for immigrants who are currently undocumented. The CWS network of 37 protestant denominations and 36 refugee resettlement offices across the country welcomes newcomers by helping them integrate into their new communities. We advocate for immigration reform not only because it is the right thing to do to improve the lives of our immigrant brothers and sisters, but also because it is the smart thing to do for our economy and communities.

Immigration reform must include a workable, clear, and attainable path to full citizenship for the approximately 11 million men, women and children who are undocumented. These aspiring citizens are American in all but paperwork, and should be provided an opportunity to take the citizenship exam and pledge the oath of allegiance. As shown by a recent bipartisan poll conducted by Hart and Public Opinion Strategies, 80% of Americans support immigration reform that includes a path to citizenship.[1]

Immigration reform must also prioritize family unity. 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.

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. A key example of this are immigrant-owned companies, many of which are run by families, contribute more than $775 billion dollars annually to U.S. gross domestic product, creating jobs that are essential to economic growth.[2]

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. CWS urges Senators to authorize additional visas so that families do not have to wait years to be reunited. We are opposed to any reduction in family visas or proposals that claim a false-choice between family visas and employment visas.

Immigration reform should not continue or increase harmful enforcement policies that have proven ineffective and inhumane. 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.[3] However, border militarization and fence construction, workplace and home invasion raids, utilizing local police to enforce immigration laws, and

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[1] *National Immirgation Reform Survey*. Hart Research Associates / Public Opinion Strategies. <http://www.seiu.org/immigration/Immigration%20Toplines%20Public%20Release.pdf.>
[2] *Open for Business*. The Partnership for a New American Economy. <http://www.renewoureconomy.org/sites/all/themes/pnae/openforbusiness.pdf>.
[3] *Immigration Enforcement in the United States: The Rise of a Formidable Machinery*. The Migration Policy Institute. <http://www.migrationpolicy.org/pubs/enforcementpillars.pdf>.

inhumane detention, coupled with congress's failure to enact real solutions, have only further damaged an already broken system.

CWS is committed to working with all members of the Senate and House to enact immigration reform that will keep families together and provide a pathway to citizenship. 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 Senate to strive toward this goal.

THE
Episcopal
CHURCH

TESTIMONY ON OF ALEXANDER D. BAUMGARTEN AND KATIE CONWAY ON BEHALF OF THE EPISCOPAL CHURCH[1]

FEBRUARY 13, 2013

We thank Senator Leahy, Chairman of the Senate Judiciary Committee, and Ranking Member Grassley for the opportunity to submit this testimony. We welcome this hearing on the need for comprehensive immigration reform because we believe that our immigration system is broken, and that we as a nation deserve an immigration system that reflects our values and our history. Our nation and our faith find foundation in the belief that all people are created in the likeness of God and should therefore be treated with dignity, equality, and fairness under our laws.

The Episcopal Church's support for comprehensive and humane reform of our immigration laws stems from our decades-long commitment to immigrants and refugees, rooted in our biblical mandate to welcome the stranger and serve the "least of these," among us. For over 60 years, the Episcopal Church has resettled refugees fleeing persecution and has served as a forceful advocate for the needs of refugees, immigrants and other at-risk migrants for whom stronger protection is needed under our laws. This commitment to protection has led our highest governing body, the General Convention, to pass multiple resolutions in support of an immigration system that allows undocumented immigrants with established roots in the United States access to a pathway to citizenship. This includes a commitment the rights of all families, including the families of same-sex partners and spouses, to reunify without undue delay; labor protections under the law for both U.S. and migrant workers; and common-sense enforcement policies that respect the dignity and worth of every human being.

Each day, in congregations, diocese and communities across the country, the "strangers" among us enrich our lives and contribute to the multiethnic tradition of the American Dream. Immigrants of all skill levels, from those who pick the food that nourishes us to those who care for our children and elders to those whose technological innovations fix our computers, contribute economically, socially and spiritually to our communities. That is why we believe that any immigration reform must reform the entire system and avoid pitting different causes of migration and groups of immigrants against one another. Workers of all skill levels should be allowed to offer their needed contributions to our economy and they should be allowed to keep their families intact. Our system must not deny the socio-economic necessity of family, and the employment and family-immigration systems should be viewed as complimentary rather than competitive. Family members help one another integrate, pursue job opportunities, start their own businesses, and provide the foundations of healthy communities.

Our immigration system should be reformed so that immigrants who wish to reunify with their families or seek employment in the United States do not have to make impossible choices between our immigration laws and the people they love. Our Church recognizes the importance

[1] 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 nations.

THE
Episcopal
CHURCH

of adhering to our nation's laws, but we believe we must work change the 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 reunification or legal employment. The fundamental principles of legal due process should be granted to all persons and all immigration enforcement policies should be proportional and humane, which is why the Episcopal Church has called for the immediate termination of destructive enforcement programs like Secure Communities, 287-g, and the implementation of community alternatives to the costly prison-like immigration detention system.

We hope that this hearing provides us with the first step towards the justice and peace that we seek. Thank you for carrying the costly burden of public service, and for the opportunity to submit these views to the Committee.

Respectfully submitted,

Alexander D. Baumgarten and Katie Conway

Franciscan Action Network

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

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The Franciscan Action Network welcomes the work of the bi-partisan Senate Committee and the Obama Administration to make humane, common sense immigration reform a priority for this Congress. After years of failure to mend our country's broken immigration system, these efforts offer hope and encouragement to millions of aspiring Americans eager for a path to full citizenship, and to families separated by rigid and unfair practices within the current immigration system.

We support the principles stated by Senators Coons, Blumenthal, Leahy and Hirono in their "Dear Colleague" letter of February 5. We join these Senators in calling for immigration reform that is in accord with our country's values: i.e, provides enforcement that includes transparency, equality, due process, humane treatment, reduces the impact on children and families, and rejects discrimination and racial profiling.

We firmly believe, in accord with the U.S. Conference of Catholic Bishops, that reform must include a fair and reasonable path to citizenship for eleven million undocumented immigrants, many of whom have been working and contributing to U.S. society and economy for many years, and must also prioritize family unity. Principled reform should also address 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 applaud serious bi-partisan efforts to reform the current immigration system, we are concerned about proposals to make a path to citizenship contingent on confirmation that our southern border is secure. Congress must acknowledge that the border is more secure now than it has ever been, with as much as $150 billion dollars spent on enforcement in the past ten years. Migration has decreased while deportations have increased. Demanding "proof" of security could continue to delay enactment of comprehensive and humane immigration reform.

We are eager to work with members of Congress as they develop legislation to bring our immigration system into harmony with American values of fairness, compassion, and the importance of family as the basic unit of a strong United States society.

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FRIENDS COMMITTEE ON NATIONAL LEGISLATION
. . . a Quaker lobby in the public interest

February 12, 2013

Framework for Comprehensive Immigration Reform:
A Good Start for Bipartisan Conversation

The Friends Committee on National Legislation welcomes the Bipartisan Framework for Comprehensive Immigration Reform released on January 28 by eight U.S. Senators. We congratulate the authors of the Framework, who reached across party lines to acknowledge the need to fix our broken immigration system, and to propose some practical solutions.

The Framework includes several positive and important features. It outlines a roadmap to eventual citizenship for undocumented immigrants currently in the U.S. It recommends improvements in the processing of family visas that would help keep families together by reducing backlogs. It proposes to improve the process by which workers of all skill levels can come to the United States, and recognizes the importance of strengthening labor protections for all workers.

However, we are concerned about the Framework's proposal to increase, yet again, enforcement at the border and at ports of entry to the United States, even though the U.S. already invests more in immigration enforcement by the Department of Homeland Security than in all other federal law enforcement agencies combined. According to DHS reports, illegal border crossings have diminished dramatically in the past five years. Evidence indicates that border enforcement has been substantially addressed, and it's time to move on to other repairs needed by our broken system.

The Framework lists practical solutions for many immigration-related problems that need attention, and then frustrates the potential effectiveness of these solutions by creating unnecessary conditions and barriers. For example, the Framework proposes that resolving the situation of the 11 million currently undocumented immigrants who are here in this country should await "completion" of border enforcement measures. We believe that Congress's top priority should be to design practical and durable solutions to resolve current problems and prevent recurrence of the anomalies that characterize our immigration system today. Delays and barriers that prevent necessary solutions from being applied simply lengthen the amount of time that the nation must live with a broken system.

To create an effective repair to our immigration system, legislation will need to include a rational, specific, and attainable metric to describe what is meant by "completion" of border enforcement. Legislation will also need to include a clarification that agricultural workers who sign up for the special agricultural worker program may at some point leave agricultural work and pursue a roadmap toward eventual citizenship. Without such assurance, this legislation would create an anomalous "citizen-second class"– with no right to move or to change jobs or employers. Since the adoption of the Thirteenth Amendment, this country has no such category of citizenship.

Finally, FCNL is concerned about the civil liberties implications of employer-based enforcement mechanisms – particularly a mandatory E-Verify system that will undoubtedly catch citizens, especially those with foreign sounding names – in their nets. Because employer-based enforcement systems that focus on individuals will reach much more widely than other approaches, the legislation must incorporate protections of privacy, due process, and fundamental fairness.

Various industries in the U.S. need more workers; communities need strong families. Families need each other. Everybody needs jobs. Our common future relies on an educated and committed citizenry. These concerns and values can merge in a fair and humane renovation of our immigration laws and programs. FCNL looks forward to seeing the details of the legislation – and to the opportunity to support the good parts and persuade lawmakers away from the parts that fail to fix our broken system.

Submitted to the Senate Judiciary Committee Regarding the Hearing on "Comprehensive Immigration Reform"

February 13, 2013

HIAS, the global migration agency of the American Jewish community, welcomes the opportunity to submit written testimony regarding reforming our country's immigration system. Throughout its more than 130-year history, HIAS has advocated for just and compassionate immigration laws that honor America's tradition as a welcoming nation. HIAS is also a national resettlement agency and an international refugee services organization with programs around the world.

Central to immigration reform, there must be a pathway to citizenship for undocumented immigrants currently in the U.S. – including undocumented students who would be covered by the DREAM Act – and shorter wait times for family members seeking to be reunited with their loved ones in the U.S. Additionally, immigration reform legislation must create legal and orderly avenues for workers and their families seeking migration to work in the U.S. in safe and secure environments with their rights fully protected.

Comprehensive immigration reform presents an opportunity to fix a broken system that adversely affects many immigrants in the U.S., including refugees and asylum seekers. Immigration laws enacted in 1996, intended to crack down on undocumented migration, also included an array of artificial, technical barriers that deny asylum to persecuted people who have fled to the United States. In addition, as Congress and the President work to fix the broken immigration system, they shouldn't neglect the refugees – some of our most vulnerable immigrants – who immigrate to this country each year. In order to ensure that local communities remain welcoming to refugees, we need to update our outdated laws, reverse chronic underfunding, better prepare refugees for life in America, and – for the first time – create clear goals and a comprehensive approach for successful refugee integration. We also need to better demonstrate the benefits of refugee resettlement. The humanitarian act of saving and resettling refugees not only benefits the refugees themselves – it also benefits the local communities where they resettle and the country as a whole, which gain so much from these newcomers.

We encourage Congress to incorporate provisions from the Refugee Protection Act into any comprehensive immigration reform bill. Specifically, the Secretary of State should be authorized to designate certain groups as eligible for expedited adjudication as refugees – currently the State Department lacks this authority and therefore is unable to address situations in which a group is targeted for persecution in their country of origin or country of first asylum and needs expedited resettlement for humanitarian reasons. Furthermore, comprehensive immigration reform legislation should address current laws that threaten the rights and safety of asylum seekers, including a harsh expedited removal system, arbitrary deadlines for filing asylum claims, and other limitations on asylum seekers' ability to obtain protection in the U.S.

As Jews, we support policies that fulfill the Torah's mandate to 'welcome the stranger,' as we know that effective immigration policies have often made the difference between life and death, between oppression and the opportunity for success. It is crucial that we utilize this opportunity to provide safe haven to the persecuted. HIAS looks forward to working with legislators and immigrant communities to revamp and revitalize our country's current immigration system in a way that honors our American and Jewish values.

Statement to the Senate Judiciary Committee
Principles to Guide Immigration Reform
13 February 2013

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 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 our sisters continue to minister to these aspiring citizens in schools and hospitals, in the fields and in the cities. We see the devastating effects of the brokenness of the current immigration system every day. We share the pain of mothers separated from their children and fathers who have risked their lives for love of their families. We know the struggles of survivors of human trafficking and torture who seek comfort and safety.

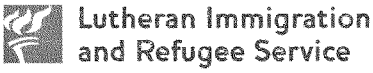
The Senate framework and the principles laid out in the President's speech in Las Vegas provide hope to our immigrant brothers and sisters and promise that the values that are the bedrock of our national identity will flourish—family unity, equal opportunity, due process, and respect for the dignity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

We welcome the letter of Committee Chairman Patrick Leahy (D-Vt.), along with Sens. Chris Coons (D-Del.), Richard Blumenthal (D-Conn.) and Mazie Hirono (D-Hawaii) which echoes our own concerns that any immigration legislation be grounded in the human rights principles that are the bedrock of our national culture.

Today our broken immigration system too often separates families, denies the dreams of youth, incarcerates innocents, and limits the rights of aspiring Americans. Our nation needs, and our people deserve, immigration reform that reflects the best of who we are. Immigration reform must prioritize family unity, provide a fair and reasonable roadmap to citizenship, respect human rights and restore due process to those detained by immigration authorities, protect the rights of all workers, promote the integration of new Americans, and address the poverty, persecution, and inequity that force migrants to flee their homes and families.

We look forward to working with lawmakers as they develop legislation that is grounded in the principles of the Constitution and fully reflects the values which bind this nation together.

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: "Comprehensive Immigration Reform"

Senate Judiciary Committee

February 13, 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 ensuring 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 children, and other vulnerable migrants.
- Ensuring the protection of U.S. citizen and migrant workers.

LIRS supports compassionate immigration reform, including an emphasis on a roadmap to citizenship for undocumented migrants, the importance of family unity, and acknowledgement that oversight and safeguards are necessary components. Bishop Julian Gordy of the Southeastern Synod of the Evangelical Lutheran Church in America's Southeastern Synod stated, "For too long, our families and communities have felt the harmful consequences of federal inaction on immigration reform."

Create a Roadmap to Citizenship for Aspiring Americans

Any comprehensive immigration reform legislation must create an immigration process allowing aspiring Americans the opportunity to become United States citizens. LIRS supports an earned pathway to citizenship for undocumented immigrants and their families that is accessible and reasonable.

Currently, those without legal status must live with the constant possibility of detention, removal, and family separation; uncertainties that have negative impacts on the well-being of individual

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migrants as well as broader society.[1] A life spent living in the shadows violates the inherent dignity of each human being. A roadmap to citizenship will allow people who have been living in and contributing to our nation for many years to become full members of their communities. An earned pathway to citizenship has economic benefits as well: if all legal permanent residents currently eligible to naturalize did so it would increase the United States' Gross Domestic Product between $37 billion and $52 billion.[2]

Reform Immigration Enforcement

LIRS will strive to advance immigration reform that secures migrants' rights and treats everyone with dignity and fairness.

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).[3]

Since the last serious debate on immigration reform in 2007, the budget for the Department of Homeland Security, Immigration and Customs Enforcement's (ICE) enforcement and removal operations has grown from $1.984 billion to $2.75 billion.[4,5] In fiscal year (FY) 2011, ICE detained an all-time high number of persons- 429,000.[6] In just the first six months of 2011, ICE removed 46,486 people with U.S. citizen children.[7] In FY 2012, 409,849 individuals were removed by ICE's Office of Enforcement and Removal Operations[8].

The numbers bear witness to the facts that communities and families experience every day: 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.

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[1] *Legal Violence in the Lives of Immigrants*, Center for American Progress http://www.americanprogress.org/wp-content/uploads/2012/12/MenjivarLegalViolenceReport_execsumm.pdf (December 2012).
[2] *The Dividends of Citizenship*, Immigration Policy Center, http://immigrationpolicy.org/just-facts/dividends-citizenship-why-legalization-must-lead-citizenship (February 2013).
[3] *Immigration Enforcement in the United States: The Rise of a Formidable Machinery*, Migration Policy Institute, http://www.migrationpolicy.org/pubs/enforcementpillars.pdf (January 2013).
[4] *Unlocking Liberty: A Way Forward for U.S. Immigration Detention Policy*. Lutheran Immigration and Refugee Service www.lirs.org/dignity (October 2011).
[5] *Consolidated Appropriations Act of 2012*, PL 122-74 http://www.gpo.gov/fdsys/pkg/PLAW-112publ74/html/PLAW-112publ74.htm (Dec. 23, 2011).
[6] *Immigration Enforcement Actions: 2011*, Office of Immigration Statistics, Policy Directorate, http://www.dhs.gov/sites/default/files/publications/immigration-statistics/enforcement_ar_2011.pdf (Sept. 2012)
[7] *Deportation of Parents of U.S.-Born Citizens*, Immigration and Customs Enforcement, http://www.lirs.org/wp-content/uploads/2012/07/ICE-DEPORT-OF-PARENTS-OF-US-CIT-FY-2011.pdf (March 2012).
[8] *FY 2012: ICE announces year-end removal numbers, highlights focus on key priorities and issues new national detainer guidance to further focus resources*, Immigration and Customs Enforcement, http://www.ice.gov/news/releases/1212/121221washingtondc2.htm (Dec. 2012).

Isatu Jollah, grew up in Sierra Leone during the country's civil war.[9] 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.[10]

To detain a woman like Isatu for one day costs U.S. taxpayers an average of $164.[11] 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.[12] 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.[13]

Any reform of our immigration system must include protections against arbitrary detention and the separation of families and safeguards to ensure enforcement is carried out in a fair, humane, and economically sound manner.

Prevent Family Separation

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.

People of faith all over America wholeheartedly agree on the need for an improvement of the immigration process for families. "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.

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[9] *Broken Promises: Seeking Political Asylum in America*, Ladies Home Journal, http://www.lhj.com/health/news/seeking-political-asylum-in-america/?page=1 (Feb. 2010).
[10] *Immigration Enforcement in the United States: The Rise of a Formidable Machinery*, Migration Policy Institute http://www.migrationpolicy.org/pubs/enforcementpillars.pdf (January 2013).
[11] *The Math of Immigration Detention*, National Immigration Forum, http://www.immigrationforum.org/images/uploads/MathofImmigrationDetention.pdf (August 2012).
[12] *Unlocking Liberty: A Way Forward for U.S. Immigration Detention Policy*, Lutheran Immigration and Refugee Service www.lirs.org/dignity (October 2011).
[13] Ibid.

The avenues for families to legally immigrate must be accessible and sufficient to avoid family separation. 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.[14] 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.

Protect and Integrate Refugees and Other Vulnerable Migrants

As one of the few organizations resettling refugees in the United States, LIRS sees the value of the refugee program as well as the opportunity for improvements in the processing and protection of vulnerable migrants. Comprehensive immigration reform legislation must include provisions to update all channels of migration to the United States and improve protection afforded to vulnerable migrants, refugees and asylum seekers.

Too many vulnerable migrants are denied protection for bureaucratic reasons. Currently, asylum seekers must file their request for asylum within one year of arrival to the United States. There are many reasons asylum seekers are unable to file within the deadline, including lack of access to legal services, the effects of trauma and torture, and language barriers.[15] The impact of this unnecessary and outdated deadline is striking. One in five asylum claims are denied because the case was filed after the deadline, making the deadline a significant barrier to protection in the United States.[16]

Those migrants who lack legal status in the United States may be particularly vulnerable to being targets of crime or violence. The U visa was created in 2000 to protect migrant survivors of violence who assist law enforcement in their investigative efforts.[17] The 10,000 annual limit on U visas has been reached prior to the end of the fiscal year for the last three years.[18] An expansion of the U visa program in comprehensive immigration reform would ensure migrant survivors of violence who work to assist law enforcement receive the protection they need.

LIRS is one of two organizations providing services to unaccompanied migrant children in the United States, placing them in foster care and assisting with family reunification. In 2012, the number of children crossing the border as unaccompanied minors spiked dramatically: 13,625 children were apprehended in fiscal year 2012 compared to 6,855 children in 2011, a significant increase that strained the capacity of service providers.[19] As Congress considers immigration reform

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[14] *Visa Bulletin*, Department of State, http://travel.state.gov/visa/bulletin/bulletin_5856.html (February 2013).

[15] *Repeal the One-Year Asylum Deadline*, National Immigrant Justice Center, http://www.immigrantjustice.org/repeal-one-year-asylum-deadline

[16] *The One-Year Asylum Deadline and the BIA: No Protection, No Process*, National Immigrant Justice Center, http://www.immigrantjustice.org/oneyeardeadline (October 2010).

[17] *VAWA Provides Protections for Immigrant Women and Victims of Crime*, Immigration Policy Center, http://www.immigrationpolicy.org/just-facts/violence-against-women-act-vawa-provides-protections-immigrant-women-and-victims-crime (May 2012).

[18] *U Visas Hit a Ceiling*, The New York Times, http://www.nytimes.com/2012/09/04/opinion/special-visas-for-abused-women-hit-a-ceiling.html?_r=0 (Sept. 3, 2012).

[19] *Protecting Unaccompanied Migrant Children*, Lutheran Immigration and Refugee Service, http://lirs.org/wp-content/uploads/2013/02/LIRS-Backgrounder-on-Unaccompanied-Migrant-Children-12-2012.pdf (December 2012).

legislation, lawmakers must take into account the growing arrivals of unaccompanied children and ensure they are treated with compassion, particularly that they receive the screenings and services to which they are entitled by law.

Protect Workers

LIRS advocates for provisions in comprehensive immigration reform that will ensure protections for U.S. citizen and migrant workers. As Congress builds an immigration system that ensures a supply of labor to meet national demands, future immigration laws must recognize the contributions migrants make to our communities and improve protections to ensure the safety, dignity and fair treatment of every worker.

Conclusion

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.

Additional LIRS Resources

- LIRS's principles for immigration reform may be read here: www.bit.ly/WfmmiH
- The January 29, 2013 press release on President Obama's speech outlining a vision for immigration reform may be read here: www.bit.ly/VxQHYW
- 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/WhPPX2
- LIRS's FAQ's on the Family Immigration System may be read here: www.bit.ly/11Jqt2Z
- LIRS's backgrounder on unaccompanied children may be read here: www.bit.ly/YSeyzU
- The December 15, 2011 press release expressing concerns with increased FY 2012 immigration detention spending may be read here: www.bit.ly/XoeHtA
- The October 2011 report, *Unlocking Liberty: A Way Forward for U.S. Immigration Detention Policy*, may be read here: www.bit.ly/VwrNFE

MISSIONARY SOCIETY OF ST. COLUMBAN
U.S. REGION

February 2013

The Missionary Society of St. Columban is an international Catholic organization committed to justice, peace and the integrity of creation. Our faith teaches us that we are one human family and **we are called to welcome the stranger** (Mt 25:35).

In recognition of the migrants and refugees with whom we live and serve in the U.S. and around the world, Columban missionaries are pleased to see the release of the Senate's bipartisan proposal on immigration reform and to hear the President's pledge to address our nation's immigration system. We are especially gratified to see national leaders prioritize immigration reform with a pathway to citizenship and a commitment to family reunification.

We see immigration reform as a critical step towards restoring right relationships with our immigrant sisters and brothers. For nearly 20 years, we have ministered to immigrants on the U.S.-Mexico border in El Paso, Texas and Juarez, Mexico. In our parishes, mission centers, and communities around the country including Texas, California, Nebraska, Illinois, Rhode Island, New York, and Washington D.C., we hear the stories of migrants and their families; we know the violence they suffer. We witness the shadows in which they are forced to live and the pain that family separation has caused. We also see the suffering of immigrants in detention centers and jails whose only crime was being undocumented.

Internationally we are present in Europe, Asia, South America, the Middle East, and Oceania. We view U.S. immigration as part of a broader global migration reality. We witness how U.S. policies such as the North American Free Trade Agreement, dollarization, and the Merida Initiative have contributed to instability and insecurity in communities and countries across the globe, causing people to move. **We are advocates for the United States to be a good global citizen and restore right relationships both internally and externally.**

The current reforms proposed do not meet these goals. We are concerned that the bipartisan framework makes the path to citizenship contingent upon our success in securing our borders and addressing visa overstays. We question who and how border security is and will be defined. Knowing that we have already spent billions of dollars on securing our borders, it is now time to secure the future of the 11 million immigrants living in our country. **We must not unnecessarily prolong or block the path to citizenship** of immigrants already present, or keep partners, children, and other family members apart any longer.

We question the many stipulations required to earn permanent residency and/or a green card in the United States. Conditions such as additional criminal background and national security checks and high fees and fines do not create a viable and accessible pathway; rather, they establish roadblocks on the ever-lengthening road to citizenship that keep this vulnerable population in the shadows.

We are committed to an immigration policy that addresses the root causes of migration. The current immigration reform proposals fail to adequately address the root causes of migration such as economic policy, climate change, poverty, political conflict, violence of many origins, and persecution that create unlivable conditions at home, forcing people to move and families to separate.

As Catholic missionaries, we dedicate our lives and service to advocating for the dignity and rights of weary and exploited immigrants seeking to work and to contribute to the social fabric of our nation. **Lack of legal documentation forces immigrants to live in a culture of fear, insecurity, and vulnerability**. This applies especially to immigrants on the Southwest border where mass detainment and deportations, criminalization of migrants, and militarization of the region is widespread.

We look forward to compassionate immigration reform, which seeks justice by granting protection and true legalization (permanent legal status and citizenship), to a person of any country or work industry in a timely manner. We seek reform that reunites families, and not on a temporary basis with guest worker programs. We seek reform which recognizes and addresses the increasing danger of creating a permanent underclass (of immigrants) in our society. Lastly, we seek reform in which all immigrants and their families hold the same freedoms and rights as any citizen of the United States.

Rev. Timothy Mulroy, SSC
Director, U.S. Region

Amy Woolam Echeverria
Director, Columban Center for Advocacy and Outreach

Statement in Support of Family-Based Immigration
National Advocacy Center of the Sisters of the Good Shepherd
Sister Gayle Lwanga, RGS
February 13, 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.

UNITED CHURCH OF CHRIST

Justice and Witness Ministries
Washington Office

Statement to the Senate Judiciary Committee
Principles to Guide Immigration Reform
13 February 2013

The United Church of Christ, Justice and Witness Ministries, gladly joins the faith community on this day, as together we witness to the plight of our undocumented brothers and sisters here in the United States.

The Judiciary Committee Hearing on Immigration falls on Ash Wednesday. On this day we wear ashes on our foreheads as a sign of repentance. Today we repent for our lack of hospitality to our immigrant sisters and brothers, and we pray for justice and inclusion.

The United Church of Christ (UCC) is a Christian denomination, descendants of the pilgrims who sailed on the Mayflower seeking religious freedom in a new land. As such, we support the struggle of our sisters and brothers who have journeyed to this land seeking safety, opportunity and peace.

In a recent statement, UCC national officers released a statement in support of immigration reform efforts stating:

> *We applaud the renewed efforts by President Obama and a bipartisan committee of senators to bring proposals for comprehensive immigration reform legislation to the Congress that will move our country beyond the strategy of simply securing our borders. The United Church of Christ has long supported compassionate reform in our country's approach to immigration and we will look to see that the recommendations being proposed will protect the human rights and dignity of our brothers and sisters.*

It is our sincere hope that you will be open to hearing the needs of our undocumented brothers and sisters and will allow mercy to accompany justice for the undocumented.

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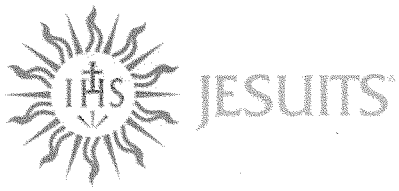

The U.S. Jesuit Conference commends Congress and the Obama Administration on making immigration reform a priority. We urge elected officials to move from the rhetoric of 'America as a land of family values' to the reality of a nation that enacts just immigration laws that protect and reunite families. 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 Conference Welcomes Bi-Partisan Action for Immigration Reform, Urges Congress to Increase Accountability and Oversight for Agencies Charged with Enforcement and Protect Migrants' Due Process Rights

The U.S. Jesuit Conference welcomes bi-partisan initiatives designed to repair our broken and outdated immigration system. We support the principles outlined by Senators Coons, Blumenthal, Hirono, and Leahy in their February 5th "Dear Colleague" letter which calls for comprehensive immigration reform that embraces accountability, transparency, due process and equality under the law. It is our firm belief that these principles *are* the foundation of immigration reform that respects migrants' rights and human dignity.

Through our ministries, we witness on a daily basis the tragic consequences of our nation's current immigration laws and policies. We can and must do better. As our elected officials attempt to develop a viable immigration system, we urge them to place family unity, human dignity, transparency and accountability at the center of their debates.

We assess each immigration policy proposal by whether it adheres to the Catholic and American value of promoting and affirming human dignity As such, we urge Congress to enact policies that prioritize family unity, increase oversight and transparency of immigration enforcement agencies, and ensure that immigrants' due process rights are protected.

As 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 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 Senate leaders as they craft immigration reform legislation, we are concerned that proposals which make earned citizenship dependent upon a "secure border" will leave millions of lives in limbo and prolong indefinitely the irregular status of our undocumented brothers and sisters.

Our borders are best secured and our communities best kept safe by allotting sufficient family and employment visas, and ensuring humane, transparent, and accountable practices which foster trust between border communities and law enforcement entities.

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

INTERFAITH IMMIGRATION COALITION

Interfaith Immigration Coalition Members
African American Ministers in Action
American Baptist Churches, USA
American Baptist Home Mission Societies
American Friends Service Committee
American Jewish Committee
Bread for the World
Church World Service
Columban Center for Advocacy & Outreach
Disciples Justice Action Network (Disciples of Christ)
The Episcopal Church
Franciscan Action Network
Friends Committee on National Legislation
Hebrew Immigrant Aid Society
Interfaith Worker Justice
Irish Apostolate USA
Islamic Information Center
Jesuit Refugee Service
Jewish Council for Public Affairs
Leadership Conference of Women Religious
Lutheran Immigration and Refugee Service
Maryknoll Office for Global Concerns
Mennonite Central Committee U.S. Washington Office
Muslim Public Affairs Council
National Advocacy Center of the Sisters of the Good Shepherd
NETWORK, A Catholic Social Justice Lobby
Pax Christi USA
PICO National Network
Presbyterian Church USA, Immigration Issues Offices
Union for Reform Judaism
Sisters of Mercy of the Americas
Sojourners
3P Human Security
Unitarian Universalist Association of Congregations
United Church of Christ, Justice and Witness Ministries
United Methodist Church, General Board of Church and Society
UNITED SIKHS
World Relief

The Interfaith Immigration Coalition (IIC), a coalition of 35 national faith-based organizations, calls on the 113th Congress to reform of our broken immigration system. For more than a decade, the IIC has been working with hundreds of congregations, service providers, and faith leaders across the country to educate communities, oppose anti-immigrant legislation, and work toward humane immigration reform. In the past four years alone, the IIC network has organized more than a thousand prayer vigils, community forums, and rallies across the country in support of immigrants' rights. As a diverse coalition, we see this as an opportunity to raise issues that should be considered as Congress moves forward with fixing our nation's broken immigration system. The IIC calls on Congress to enact legislation that will:

Address the Causes of Migration

People of faith have witnessed firsthand the suffering caused by extreme poverty, violent conflict, political and religious persecution, and environmental destruction that prompt individuals to leave their homes in search of a better life. U.S. foreign policy must seek smart, effective ways to help reshape financial systems that unduly burden vulnerable populations – including U.S. trade policies, international financial institutions, and local economies in sending countries – toward models that support those in need.

Our faiths compel us to seek to reduce the need for people to leave their homes in order to provide for their families. Rather than current policies which undermine sustainable livelihoods in sending countries, we should invest in environmentally sustainable economic development that preserves and defends the basic human rights of all people. These policies will provide alternatives to unauthorized immigration and reduce the need for costly border enforcement, detention, and deportation.

Create a Process for Undocumented Immigrants to Earn Citizenship

Any meaningful reform of our immigration system must include a fair and generous process that allows undocumented immigrants and their families to earn lawful permanent residency with a pathway to citizenship. The workability of such a program should not be hindered by overly punitive criteria, such as mandating that immigrants leave the country or pay exorbitant fees, or by making the process conditional upon the implementation of enforcement measures. We urge members of Congress to oppose legislation that would curtail the nature of citizenship or restrict access to public benefits and child tax credits.

Keep Families Together

Families are the basic unit of strong communities. Today, thousands of families are separated by our broken immigration system and should be reunited. Backlogs at U.S. Citizenship and Immigration Services and the limited number of visas force family members to choose between being separated for extended periods of time or illegally entering the country. A fair immigration system must improve and strengthen the family immigration process by recapturing visas lost to bureaucratic delay to reduce the current backlog; reclassifying spouses and minor children of lawful permanent residents as immediate relatives; raising the per country visa limits from seven to fifteen percent of total admissions to reduce long wait times for certain nationalities; eliminating unlawful presence bars for the spouse, child, or parent of U.S. citizens and lawful permanent residents; admitting surviving family members of deceased family petitioners; and eliminating the cap on the total number of family-based visas available.

Enact the *Development, Relief, and Education for Alien Minors* (DREAM) *Act*

The faith community sees the DREAM Act as vital in fixing the broken immigration system. The DREAM Act has had many iterations, and the IIC calls

on Congress to enact robust and inclusive legislation that would provide a pathway to citizenship for individuals brought to the United States at age 16 or younger, are currently no older than 35 years of age, and who have graduated from high school, earned a GED in the U.S, or are currently in school. In addition to college and military service criteria, the IIC urges legislators to include volunteer service as a method by which DREAMers can maintain legal status and earn citizenship. DACA recipients should automatically qualify for any legalization process, and their time with DACA status should count toward any conditional status period under the DREAM Act.

Protect Workers' Rights, Including Agricultural Workers

There is a clear need to expand legal avenues for workers to migrate to the United States in a safe, authorized, and orderly manner. It is vital that these workers' rights are fully protected, including the right to bring their families with them, travel as needed, change their place of employment, and apply for lawful permanent residency and eventually citizenship.

Enactment of AgJobs (the *Agricultural Job Opportunities, Benefits and Security Act*) would provide a legal, stable labor force by offering undocumented farmworkers the chance to earn legal status by meeting stringent work requirements and legal obligations. AgJobs would revise the H-2A agricultural guest-worker program to help employers fill critical agricultural positions that have been difficult to fill, sustaining agricultural industries while also protecting workers' rights.

As currently structured, the electronic employment verification (E-verify) program has proven detrimental to migrants, employers, and citizen employees. It leads to increased discrimination and unfair hiring and firing practices. For these reasons, and because we believe all workers benefit from the enforcement of health, safety, wage, and hour laws, as well as the right to peacefully organize, the IIC is opposed to the mandatory expansion of the E-verify program.

Place Humanitarian Values at the Center of Enforcement Policies

Enforcement policies must be made to be consistent with humanitarian values and with the need to treat all individuals with respect, while allowing the United States to identify and prevent the entry of persons who commit dangerous crimes. Over the past twenty years, the federal government has dramatically increased border fence and other infrastructure construction, border patrol presence, immigration detention, and the deportation of immigrants, without regard to cost or effectiveness. Over $10 billion of taxpayers' money has been spent on border security. It is now time to reform the broken immigration system. To truly decrease unauthorized immigration, the United States should improve access to a fair and humane legal immigration system, increasing and improving the efficiency of ports of entry, expanding visa availability, and eliminating application backlogs.

Border security has also proven to be environmentally irresponsible on many levels. It threatens already endangered species and damages public lands and interferes with business and land owners who operate and live along the border. We have also witnessed the desecration of sacred sites and the violation of religious freedom, as well as the unnecessary anguish of community members whose loved ones have suffered or died seeking entry into the United States. Above all else, enforcement policies must treat all individuals with respect and dignity. Citizens and migrants alike have the right to a fair and humane legal immigration system that respects the dignity of all persons, prioritizes the cohesiveness of families and communities, recognizes the economic contributions of immigrants, and upholds our moral obligations to provide refuge and welcome for the sojourner.

Protect Refugees and Migrant Survivors of Violence

The IIC encourages Congress to make life-changing improvements to the U.S. refugee resettlement program that would help refugees integrate in their new homes in the United States. Refugees have fled persecution in their home countries due to their race, nationality, religion, political opinion, or membership in a particular social group, and the United States has a rich tradition of welcoming refugees and helping them begin new lives. Bills such as the *Refugee Protection Act*, *Domestic Refugee Resettlement and Modernization Act*, and *Strengthening Refugee Resettlement Act* include positive reforms that would not only help refugees, but provide important resources to the communities that welcome them.

The *Violence Against Women Act* (VAWA) has a long history of uniting lawmakers with the common purpose of protecting survivors of domestic violence. Congress has consistently recognized the vulnerability of non-citizen survivors of violence by enacting provisions in VAWA that enhance safety for survivors and their children and provide tools for law enforcement to investigate and prosecute crimes. In 2012, the House of Representatives passed a VAWA reauthorization bill that would undermine years of protections for immigrant victims and would actually make immigrants more vulnerable, endangering many lives. The IIC urges that any reauthorization of VAWA maintain and improve protections for migrant survivors, not weaken them.

Testimony

Of

Most Reverend José H. Gomez

Archbishop of Los Angeles

Chairman, U.S. Conference of Catholic Bishops

Before the

Senate Judiciary Committee

On

Comprehensive Immigration Reform

February 12, 2013

I am Archbishop Jose Gomez, Archbishop of Los Angeles, CA, and chairman of the U.S. Conference of Catholic Bishops' (USCCB) Committee on Migration. I testify today on behalf of the Committee of Migration on the Catholic Church's perspective on comprehensive immigration reform.

Mr. Chairman, I am pleased to have the opportunity to testify today on this important topic. I would like to thank Chairman Patrick Leahy, and Ranking Minority Member Grassley for holding this hearing on an issue that is of such vital importance to our nation.

We are hopeful that today's hearing marks the beginning of a process that will result in swift enactment of comprehensive immigration reform. Our nation cannot wait any longer to repair our broken immigration system, which does not accommodate the migration realities we face in our nation today, or respect the basic human rights of migrants who come to this nation in search of employment for themselves and their children.

In order to achieve real reform, the Obama Administration and Congress must work together on a comprehensive package that would provide a path to citizenship for undocumented migrants and their families in the U.S., provide legal means for migrants to enter our nation to work and support their families, and reform the system whereby immigrants come to the United States to reunite with close family members. We also must restore due process protections to immigrants, many of which were taken away under the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. Perhaps most importantly, the United States must work with Mexico and other nations to address the root causes of migration, so that migrants and their families may have a greater opportunity to remain in their homelands and can live in dignity.

Mr. Chairman, in January 2003, the U.S. and Mexican Catholic bishops issued a historic joint pastoral letter on the issue of migration entitled *Strangers No Longer: Together on the Journey of Hope.* Among its many recommendations, it outlines the elements which the bishops of both nations believe are necessary to reform U.S. and Mexican immigration policy in a comprehensive and just manner.

My testimony today will focus on many of the recommendations contained in the U.S.-Mexican bishops' joint letter.

Specifically, my testimony recommends that Congress—

- Enact comprehensive immigration reform legislation that provides a path to citizenship for undocumented workers in our nation; reforms the employment-based immigration system so that low-skilled workers can enter and work in a safe, legal, orderly, and humane manner; and reduces backlogs and waiting times in the family preference system so families can be reunited.

- Examine the "push" factors of migration, such as international economic policies, and enact policies that encourage sustainable economic development, especially in sending communities;

- Restore basic due process protections for immigrants, including the restoration of administrative and judicial discretion in removal proceedings and elimination of the 3- and 10-year bars to re-entry;

- Adopt necessary legal reforms for special populations, such as refugees, asylum seekers, trafficking victims, and unaccompanied children; and

- Include the necessary elements in any legislation to efficiently implement any new immigration program, including taking actions to prepare the U.S. Citizenship and Immigration Service (USCIS) to implement any new program and to properly fund such implementation.

I. Catholic Social Teaching and Migration

The Catholic Church is an immigrant church. More than one-third of Catholics in the United States are of Hispanic origin. The Church in the United States is also made up of more than 58 ethnic groups from throughout the world, including Asia, Africa, the Near East, and Latin America.

The Catholic Church has a long history of involvement in the immigration issue, both in the advocacy arena and in welcoming and assimilating waves of immigrants and refugees who have helped build our nation throughout her history. Many Catholic immigration programs were involved in the implementation of the Immigration Reform and Control Act (IRCA) in the 1980s and continue to work with immigrants today. In fact, the U.S. Conference of Catholic Bishops (USCCB) was a national coordinating agency for the implementation of IRCA. We have a strong working relationship with the Department of Homeland Security (DHS) and with U.S. Citizenship and Immigration Services (USCIS), the agency that would be largely responsible for implementing any new legalization and temporary worker programs. In 1988, the United States Conference of Catholic Bishops (USCCB) established the Catholic Legal Immigration Network, Inc. (CLINIC) to support a rapidly growing network of community-based immigration programs. CLINIC's network now consists of over 212 members serving immigrants and their families in over 300 offices.

The Church's work in assisting migrants stems from the belief that every person is created in God's image. In the Old Testament, God calls upon his people to care for the alien because of their own alien experience: "So, you, too, must befriend the alien, for you were once aliens yourselves in the land of Egypt" (Deut. 10:17-19). In the New Testament, the image of the migrant is grounded in the life and teachings of Jesus Christ. In his own life and work, Jesus identified himself with newcomers and with other marginalized persons in a special way: "I was a stranger and you welcomed me." (Mt. 25:35) Jesus himself was an itinerant preacher without a home of his own as well as a refugee fleeing the terror of Herod.
(Mt. 2:15)

In modern times, popes over the last 100 years have developed the Church's teaching on migration. Pope Pius XII reaffirmed the Church's commitment to caring for pilgrims, aliens,

exiles, and migrants of every kind, affirming that all peoples have the right to conditions worthy of human life and, if these conditions are not present, the right to migrate.[1] Pope John Paul II states that there is a need to balance the rights of nations to control their borders with basic human rights, including the right to work: "Interdependence must be transformed into solidarity based upon the principle that the goods of creation are meant for all."[2] In his pastoral statement, *Ecclesia in America,* John Paul II reaffirmed the rights of migrants and their families and the need for respecting human dignity, "even in cases of non-legal immigration."[3]

In an address to the faithful on June 5, 2005, His Holiness Pope Benedict XVI referenced migration and migrant families; "... my thoughts go to those who are far from their homeland and often also from their families; I hope that they will always meet receptive friends and hearts on their path who are capable of supporting them in the difficulties of the day."

During his visit to the United States in April 2008, His Holiness Pope Benedict XVI chose migration and immigration as one theme of his visit, citing the importance of keeping families together and addressing the issue not only nationally, but regionally and globally as well: "The fundamental solution is that there would no longer exist the need to emigrate because there would be in one's own country sufficient work, a sufficient social fabric, such that no one has to emigrate. Besides this, short-term measures: It is very important to help the families above all." (Interview with His Holiness Pope Benedict XVI on his flight to America, April 15, 2008.)

In our joint pastoral letter, the U.S. and Mexican Catholic bishops further define Church teaching on migration, calling for nations to work toward a "globalization of solidarity." "It is now time to harmonize policies on the movement of people, particularly in a way that respects the human dignity of the migrant and recognizes the social consequences of globalization."[4]

The U.S. and Mexican bishops also point out why we speak on the migration issue. As pastors, we witness the consequences of a failed immigration system every day in the eyes of migrants who come to our parish doors in search for assistance. We are shepherds to communities, both along the border and in the interior of the nation, which are impacted by immigration. Most tragically, we witness the loss of life at points along our southern border when migrants, desperate to find employment to support themselves and their families, perish in the desert.

For these reasons, the Catholic Church holds a strong interest in the welfare of immigrants and how our nation welcomes newcomers from all lands. The current immigration system, which can lead to family separation, suffering, and even death, is morally unacceptable and must be reformed.

II. The Immigration Debate

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[1] Pope Pius XII, *Exsul Familia (On the Spiritual Care of Migrants)*, September, 1952.
[2] Pope John Paul II, *Sollicitudo Rel Socialis,* (On Social Concern) No. 39.
[3] Pope John Paul II, *Ecclesia in America (The Church in America)*, January 22, 1999, no. 65.
[4] *Strangers No Longer: Together on the Journey of Hope. A Pastoral Letter Concerning Migration from the Catholic Bishops of Mexico and the United States,"* January 23, 2003, n. 57.

During the 113th Congress, there is real opportunity to adopt bipartisan immigration reform legislation. We hope Congress can avoid the experience of the 110th Congress, when immigration legislation died on the U.S. Senate floor when there were insufficient votes to invoke cloture on the measure.

During consideration of the bill on the floor and prior to a cloture vote, the U.S. Catholic bishops worked with senators to fashion the most comprehensive and humane legislation possible. Unfortunately, as negotiations ensued, it became clear that the legislation would include provisions that made it difficult for the U.S. Catholic bishops to endorse it.

Primarily, the U.S. bishops were concerned about the inclusion of a point-based system to replace the family-based immigration system that the nation currently employs, among other issues. I will address some of these problem areas in my testimony.

We would like to work with Senate leaders and interested groups to ensure that the product that the Senate Judiciary committee produces, and, indeed that the U.S. Senate and U.S. House of Representatives passes, is one that updates and repairs our broken immigration system in a humane manner.

We are heartened by statements by President Obama that immigration reform is a priority for his Administration, and that he is committed to working with Congress for its enactment in the near future. We also are heartened by recent statements from Republicans and Democrats alike in the House and Senate in support of immigration reform. In order to achieve this goal, Congress and the president will have to work in tandem throughout the legislative process, and both sides in this debate should make efforts to minimize the harsh rhetoric evidenced in previous debates.

We are hopeful that the future national debate on immigration will focus upon the many contributions which immigrants, both documented and undocumented, make to our country. History informs us that our nation has been built, in large measure, by the hard work of immigrant communities. We must remember that, except for Native Americans, we are all immigrants or descendants of immigrants to this great land.

III. Policy Recommendations

Mr. Chairman, the U.S. Catholic bishops believe that any comprehensive immigration reform bill should contain the following elements:

- A path to citizenship that gives deserving migrants who are currently in the United States in undocumented status an opportunity to earn legal permanent residency and eventual citizenship;

- a new worker visa program for unskilled workers that allows migrants to enter the U.S. legally and safely and protects the labor rights of both U.S. and foreign workers;

- reform of our family-based immigration system to reduce waiting times for family reunification, based on the union of a husband and a wife and their children;
- restoration of due process protections for immigrants, including asylum-seekers;
- policies that address the root causes of migration, such as the lack of sustainable development in sending nations, and
- legal remedies for special populations, such as refugees, asylum seekers, trafficking victims, and children.

During my testimony, I will attempt to spell out in more detail our recommendations in this regard, as well as point out the policy provisions the U.S. Conference of Catholic Bishops (USCCB) would oppose in any immigration reform bill.

A. Path to Citizenship for the Undocumented

With regard to immigration policy reform, it is vital that Congress and the administration address a path to citizenship for the undocumented currently in the United States; employment-based immigration through a new worker visa program; and family-based immigration reform. Without addressing reform in each leg of the "three-legged stool," any proposal will eventually fail to reform our immigration system adequately.

A main feature of any comprehensive immigration reform measure should be a path to citizenship that permits undocumented immigrants of all nationalities in the United States the opportunity to earn permanent residency and eventual citizenship. Such a feature would provide benefits to both our nation and to immigrants and their families, who would be able to "come out of the shadows" and become full members of the community. We support requiring applicants to pay a fine, achieve English competency, and wait in the back of the line.

The "Bipartisan Framework for Comprehensive Immigration Reform" (Bipartisan Framework), proposed on January 22, 2013 by a bipartisan group of eight U.S. Senators supports a path to citizenship for legalizing undocumented aliens but would make the path contingent on enforcement goals; moreover, it recommends the establishment of a commission to assess whether the border is "secure." Among the goals stated in the Bipartisan Framework are the completion of an entry-exit system and an increase in the number of Border Patrol agents and technology at the southern border.

We ask the committee to resist making the path to citizenship contingent upon enforcement goals along the border. Mr. Chairman, over the past 25 years our nation has pursued an enforcement-only immigration policy, with little or no reforms to our legal immigration system and no program for bringing millions of the undocumented out of the shadows. Moreover, over the past 12 years, the U.S. government has spent billions of dollars along our southern border, including the tripling of border patrol agents, the addition of unmanned aerial vehicles and other technology, and the construction of nearly 700 miles of border fencing. According to the Pew

Hispanic Center, net migration from Mexico has reached zero. As the Department of Homeland Security has stated, as of 2010, we have obtained "operational control" of our borders.[5]

We should no longer wait to implement other reforms to the system, particularly a path to citizenship for the undocumented. We can work to improve humane border enforcement and implement other reforms simultaneously.

At a minimum, there should be a "date certain" in which qualifying immigrants should be able to apply for permanent residency. It should not be contingent on new initiatives which could take many years to complete and a subjective judgment by a commission.

Additionally, it is vital that any earned legalization program is both **workable** and **achievable.** In other words, the program should not be so complicated as to be unworkable, or not easily administered, nor should the requirements be so onerous as to disqualify or discourage otherwise qualified applicants.

We also would support a shorter waiting time for applicants to apply for permanent residency. Some proposals in the past have suggested waiting times as long as 10 years or more before an applicant could apply for permanent residency. We find this period too lengthy, and believe the American public would agree. Polls and other surveys of the American public find that Americans want immigrants integrated into society as soon as possible, so that they are "playing by the same rules," as U.S. citizens.

We also support broad eligibility requirements for any legalization program, including generous evidentiary standards and achievable benchmarks toward permanent residency. This also would include a recent arrival date. The assessment of fines associated with a legalization program should be reasonable and English competency, not fluency, should be required of legalization applicants, whereby they are permitted to demonstrate that they are working toward fluency.

It is important that any program capture the maximum number of those who currently live in the shadows, so that we significantly reduce, if not eliminate, the undocumented population in this country. To this end, we ask that those individuals who qualify for the DREAM Act or for AgJOBS specifically be given an immediate path to permanent residency and citizenship.

Finally, the U.S. bishops oppose proposals that would only grant legal residence to the undocumented and withhold from them any opportunity for permanent residency and eventual citizenship. We believe that such proposals would create a permanent underclass in our society, without full rights in our communities, and that the establishment of such an underclass would cut against American tradition and values.

In our view, an earned path to citizenship would provide many benefits, as follows:

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[5] Rebecca Gambler, Border Patrol Strategy: Progress and Challenges on Implementation and Assessment Efforts, Testimony Before the Subcommittee of Border and Maritime Security Committee on Homeland Security, House of Representatives, GAO, May 8, 2012.

- **A path to citizenship would keep families together and improve the well-being of U.S.-citizen children.** Legalization would help stabilize immigrant families and would protect U.S.-citizen children in "mixed" status families. More than 5.5 million U.S. citizen children have one or more undocumented parents. [6] Between July 2010 and September 2012, 204,810 parents of U.S.-citizen children were removed from the U.S. away from their U.S.-citizen children.[7]

- **A path to citizenship would recognize and maintain the economic contributions of the undocumented.** Undocumented workers are an integral part of many industries across the country, including agriculture, service, construction, meatpacking, and poultry processing. For example, undocumented workers make up more than 50 percent of the labor force in agriculture. Currently, there are roughly over eight million undocumented workers in the U.S. labor force, representing 5.2% of the total American workforce in 2010.[8] In addition, undocumented workers contribute billions to the tax and Social Security systems, paying $520 billion into the Social Security system since 1975, and contributions from these newly legalized workers would add close to $5 billion in additional tax revenue in just the next three years.[9]

- **A path to citizenship would improve wages and working conditions for all workers.** By legalizing the labor force in a way which allows immigrants to become permanent residents, wages and working conditions would improve for all workers. According to a North American Integration and Development Center study, a new legalization program would increase the wages of immigrant workers by 15 percent, similar to the effect after passage of the 1986 Immigration Reform and Control Act.[10] Legalization also would allow workers to organize and assert their rights, leading to better working conditions and wages for all workers.

- **A path to citizenship would help bring U.S. immigration policy in line with U.S. economic policy.** The United States and Mexico are more integrated than ever. U.S. immigration policy has yet to adjust to the fact that U.S. economic policies such as NAFTA have facilitated rapid interdependence between Mexico and the United States. As economic policies are integrated, so, too, must bilateral migration policies.

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[6] Jeffrey Passel and D'Vera Cohn, Unauthorized Immigrant Population: National and State Trends,:2010 Pew Research Hispanic Center, (2011)

[7] American Immigration Council, *Falling Through the Cracks: The Impact of Immigration Enforcement on Children Caught Up in the Child Welfare System,* December 12, 2012.

[8] Jeffrey Passel and D'Vera Cohn, A Portrait of Unauthorized Immigrants in the United States, Pew Hispanic Research Center (2009-2010)

[9] Marshall Fitz, Time to Legalize 11 Million Undocumented Workers, Center for American Progress, November 14, 2012.

[10] Raul Hinojosa Ojeda, *Comprehensive Migration Policy Reform in North America: The Key to Sustainable and Equitable Economic Integration.* Los Angeles, California: North American Integration and Development Center, School of Policy and Social Research, UCLA, August, 2000.

- **A path to citizenship would make us more secure.** By legalizing the 11 million undocumented and requiring that they register with the U.S. government, law enforcement would be able to focus on others who are in the United States to harm us.

Despite the dire warnings of opponents of a path to citizenship for undocumented workers, evidence suggests that it would yield benefits at many levels by preserving family unity, securing the economic contributions of migrants, and raising the wages and working conditions of all workers.

B. Employment-Based Immigration

Perhaps the most challenging aspect of immigration policy reform is the creation of a new worker program that protects the basic rights of all workers, both foreign and domestic. The history of "guest worker" programs in the United States has not been a proud one. Indeed, the *Bracero* program, the largest U.S. experiment with temporary laborers from abroad, ended abruptly in 1964 because of abuses in the program. The U.S. Catholic bishops have long been skeptical of large-scale "guest worker" programs. Nevertheless, the status quo, which features a large underclass of undocumented workers, unprotected by the law, is unacceptable.

In this regard, the U.S. bishops have proposed a new model for a worker program that includes several elements, better labeled a new worker program. Each of these elements, properly implemented, would, in our view, help protect the rights of foreign and U.S. workers and ensure that legal avenues are provided for future migrants so that they can enter the country in a safe, legal, and humane manner.

- **Wage and Benefit Levels.** Any worker program should ensure that wage levels and benefits for "guest workers" are equal to those afforded to domestic workers in an industry. Overtime pay should be available. Benefits such as worker's compensation, social security, housing, and health-care should be made available.

- **Worker Protections and Job Portability.** Workers in any "guest worker program" should enjoy the same protections of U.S. labor law as U.S. workers, regardless of the industry they are working in. This should include a right to redress grievances in federal court and a transparent arbitration system; safe and sanitary working conditions; and expressed terms of employment. Workers should be able to move to other employment within an industry and not be tied to one employer. Work accrued toward permanent residency should not be affected by changing jobs or employers.

- **Family Unity.** Workers should be able to be joined by their spouse and children in the United States during the length of the worker's visa. Both husband and wife should be eligible for work authorization, regardless of whether they work in the program. Spouses and children should be able to become eligible for permanent residency at the same time as the worker in the program.

- **Labor-Market Test.** A mechanism should be included to ascertain whether U.S. workers within an area are adversely impacted by the hiring of workers from abroad. Employers should be required to advertise job openings to the maximum extent practicable and make good-faith efforts to recruit U.S. workers for a sufficient amount of time.

- **Mobility.** Workers and their families should be able to travel throughout the United States, travel back and forth from the United States to their country of origin, as well as travel from work site to work site, regardless of location, for the duration of their visa. Visas should be renewable as long as workers meet the requirements of the program, and applicable waivers to bars to admission should apply.

- **Enforcement Mechanisms.** Resources should be appropriated to ensure proper enforcement of worker protections in the program. Workers should be given the right to sue in federal court for violation of rights.

- **Path to Citizenship.** Workers should have the option of working to earn permanent residency over time, similar to an earned legalization program, as outlined in my testimony.

In our view, any new worker program must contain these elements in order to avoid the abuses of past such programs and to ensure that workers' rights are protected. In addition, such a program should be enacted in conjunction with a legalization program for the undocumented so that groups of workers are not pitted against each other. A just worker program also would mitigate the amount and effects of undocumented migration, which can lead to the abuse, exploitation, or even death of migrants.

Standing Commission on Labor Markets. There have been proposals in the past that would create commissions to determine annual visa levels, based on economic needs.

While the U.S. bishops do not oppose the concept of a commission, we believe that the scope of its oversight and its authority should be limited.

First, we do not believe that visa programs outside the employment-based system, particularly family-based categories, should be placed under such a commission's purview. We also believe that niche programs, such as the Religious Worker Visa Program, should be excluded from such a commission's jurisdiction, as the levels and structure of such programs should be decided by Congress, in consultation with the full range of faith groups who benefit from it.

In addition, we believe that Congress should establish a floor for annual visas in any new worker program and that any commission's examination of such programs should be limited to examining environmental factors and making recommendations to Congress regarding a level of visas above the floor. We also believe that the commission should consider humanitarian factors, such as the rates of deaths in the American desert, so that the program can be adjusted accordingly.

Religious Workers. We urge you to include a permanent extension of the special immigrant non-minister portion of the Religious Worker Visa Program in any reform legislation. This program permits 5,000 non-minister religious and lay persons each year to enter the United States and work on a permanent basis. They work in religious vocations and contribute to their denominations, but also work in the community helping U.S. citizens.

C. Family-Based Immigration

Family reunification, upon which much of the U.S. immigration system has been based for decades, should remain the cornerstone of U.S. immigration policy. Immigrant families contribute to our nation and help form new generations of Americans. Even while many migrants come to the United States to find employment, many come as families.

The U.S. family-based immigration system, which helps keep families together, is in urgent need of reform. The current visa quota system, last revised by Congress in 1990, established statutory ceilings for family immigration that are now inadequate to meet the needs of immigrant families wishing to reunite in a timely manner. The result has been waiting times of five years or more—and more than eight years for Mexican permanent residents—for husbands and wives to reunite with each other and for mothers and fathers to reunite with minor children. The waiting times for adult siblings to reunite can be twenty years or longer. [11]

Such lengthy waiting times are unacceptable and actually provide unintentional incentive for some migrants to come to the United States illegally. Substantial changes must be made to the U.S. family-based immigration system so that it will meet the goal of facilitating, rather than hindering, family unity. Such changes can be made in several ways, but they should not alter the basic categories in the family preference system.

Opposition to a "point" system to replace family-based immigration. Mr. Chairman, during the 2007 immigration reform debate, the U.S. Senate strongly considered replacing the family-based immigration system with a "point" system, which would have allocated visas to applicants based on the number of points they scored on different criteria. This idea was based on the Canadian model, which currently employs that system.

We oppose the imposition of such a point system, which we fear would place higher value on highly-educated and skilled immigrants than on family ties. We reject the premise that the family-based system has historically not worked in the best interest of this nation. Indeed, there is evidence that immigrant families represent the backbone of communities in this nation, especially in urban areas. They have started and maintained family businesses, from restaurants to dry cleaning stores and from auto mechanic businesses to pastry shops. Immigrant families also take care of each other and ensure that all members of the family are provided for, as well as contribute their talents to the strengthening of local neighborhoods.

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[11] *U.S. Citizenship and Immigration Service Fact Sheet,* January, 2004.

Family reunification has been the cornerstone of the U.S. immigration system since the inception of our republic. It would be foolhardy to abandon this system, as the family unit, based on the union of a husband and a wife and their children, represents the core of our society and culture.

Opposition to the inclusion of the Uniting American Families Act (UAFA) in immigration reform legislation. Mr. Chairman, we are opposed to the inclusion of the Uniting American Families Act (UAFA) in comprehensive immigration reform legislation. This legislation would erode the unique meaning of marriage by allocating spousal immigration benefits to persons in same-sex relationships. The inclusion of this provision would unnecessarily introduce controversy into an already divisive debate. We should not jeopardize the success of comprehensive immigration reform by using it as a vehicle to advance an issue that is already the source of polarizing debate in the states and in the courts.

D. Enforcement Regime and Due Process

Mr. Chairman, we believe that the best way to secure our borders and to ensure that our immigration laws are just and humane is to enact comprehensive immigration reform legislation. Since 1993, when the U.S. Border Patrol initiated a series of enforcement initiatives along our southern border to stem the flow of undocumented migrants, Congress has appropriated and the federal government spent about $50 billion on border enforcement, tripling the number of Border Patrol agents and introducing technology and fencing along the border.

During the same period, as Congress has enacted one enforcement-only measure after another, the number of undocumented in the country has more than doubled and, tragically, nearly 8,000 migrants have perished in the desert of the United States. One of the more troubling and severe enforcement efforts that has been implemented in the name of protecting the border, Operation Streamline, has criminalized unauthorized entry and re-entry of immigrants beyond the civil immigration system, placing them in the U.S. federal criminal justice system. The sheer volume of individuals detained under this program has overwhelmed the U.S. court and prison system and has led to procedural due process violations in the courts and substantive due process violations related to arbitrary detention.

As you may know, Mr. Chairman, the U.S. bishops have expressed concern with the border fence which has been built along our southern border as well as the ongoing implementation of Operation Streamline. We do not believe these approaches will solve the problem of illegal immigration and could send migrants into even more remote regions of the border and into the hands of unscrupulous smugglers.

We are hopeful that comprehensive immigration policy reform that emphasizes legal avenues for migration will mitigate the perceived need for continuing to increase the number of border patrol agents, criminal prosecutions of immigrants and the amount and length of border fencing. Such reform could alleviate the pressure on border enforcement by undermining human smuggling operations and reducing the flow of undocumented migrants across the border. It also could help create a more stable atmosphere for the implementation of enforcement reforms, such as biometric visas and passports, which would help better identify those who come to harm us.

Mr. Chairman, I would like to offer the position of the U.S. Conference of Catholic Bishops on several enforcement issues you may consider during consideration of comprehensive immigration reform:

National Employer Electronic Verification System. Mr. Chairman, we know that there has been significant discussion and debate, including the introduction and markup of legislative proposals, over the question of whether the U.S. should enforce immigration-related work eligibility requirements in the workplace by imposing a mandatory electronic verification system on employers nationwide, so that employees who are hired are in the country legally and authorized to work. While we are not *per se* opposed to such a system, several steps should be taken to ensure that any system is applied uniformly and in an accurate way.

We would not oppose the adoption of a mandatory employer verification system provided that such a system: 1) is accompanied by a broad-based legalization program, so that all workers have an opportunity to become legal and not remain outside of the system; 2) is phased in at a reasonable rate with objective benchmarks so implementation is feasible for both employers and the government; 3) is not reliant on inaccurate, uncorrected government databases that result in the wrongful denial of employment of potential employees; 3) puts protections in place so that employers do not use the system to wrongfully discharge certain employees; and 4) provides a mechanism for employees and potential hires who are falsely identified as ineligible to work to correct any misinformation that leads to the false positive

Reform of Detention Standards and Practices. Mr. Chairman, we are deeply concerned with the status quo when it comes to the detention of aliens who are in removal proceedings, especially vulnerable migrants, such as children and families. We applaud Secretary Napolitano for her initiative to reform the detention system, but we believe that statutory change is necessary. Similarly, we call for the end of Operation Streamline and the corresponding $1.02 billion spent in FY2011 on the incarceration costs of non-violent individuals for basic migration crimes.[12] We support the enactment of provisions which would: end mandatory detention and restore discretion to immigration officials and judges to release individuals who are not a flight risk and do not pose a risk to public safety; create nationwide alternatives to detention programs; improve standards for detention conditions, making the detention system truly civil in nature and including prompt medical care in compliance with accreditation requirements, access to legal counsel, and standards for families, children, and victims of persecution and torture; and establish a new Office of Detention Oversight at the Department of Homeland Security.

Restoration of Due Process Protections. Finally, we urge the committee to reexamine the changes made by the 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), which eviscerated due process protections for immigrants. We urge you to restore administrative and judicial discretion in removal proceedings so that families are not divided, repeal the 3-and 10-year bars to re-entry, and revisit the number and types of offenses considered as aggravated felonies as a matter of immigration law.

[12] FY2011, Budget in Brief, Department of Homeland Security, (2011)

E. Special Populations

Asylum-seekers and refugees should be afforded protection. Those who come to our shores in need of protection from persecution should be afforded an opportunity to assert their claim to a qualified adjudicator and should not be detained unnecessarily. The expansion of "expedited removal," a practice that puts *bona fide* refugees and other vulnerable migrants at risk of wrongful deportation, should be halted. At a minimum, strong safeguards, such as those suggested by the U.S. Commission on International Religious Freedom, should be instituted to prevent the return of the persecuted to their persecutors. We urge the subcommittee to include these reforms in any reform legislation.

We also believe that the definitions of terrorist activity, terrorist organization, and what constitutes material support to a terrorist organization in the Immigration and Nationality Act (INA) were written so broadly and applied so expansively that thousands of refugees are being unjustly labeled as supporters of terrorist organizations or participants in terrorist activities. These definitions have prevented thousands of bona-fide refugees from receiving protection in the United States, as well as prevented or blocked thousands of applications for permanent residence or for family reunification.

We urge the committee to reexamine these definitions and to consider altering them in a manner which preserves their intent to prevent actual terrorists from entering our country without harming those who are themselves victims of terror—refugees and asylum-seekers. At a minimum, we urge you to enact an exception for refugees who provide assistance to a defined terrorist organization under duress.

Additionally, we ask the committee to repeal the one-year filing deadline on asylum applications, which has prevented many asylum-seekers from obtaining immigration relief. Often it takes time for asylum-seekers to adjust to the United States and obtain legal assistance to file these claims. Many are detained and are unable to access the asylum system.

U.S. Refugee Program. Mr. Chairman, we also have several recommendations for reform of the U.S. refugee program. Our nation employs a robust refugee program which has served as an example to the rest of the world that refugees should be afforded protection. However, the U.S. refugee program suffers from inadequate funding and structural and policy deficiencies. We ask for the following changes in the law affecting refugees served in the U.S. refugee program:

- Refugees admitted into the U.S. Refugee Resettlement Program are being extended a special humanitarian protection reserved for those most in need, and have passed through an incredibly rigorous process of screening and background checks before entry. They are here legally and permanently and should therefore be admitted as Legal Permanent Residents, instead of being required to wait at least a year before applying to adjust their status, as current law necessitates. This requirement can lead to a number of delays and complications for refugees, including detention.

- The U.S. Refugee Resettlement Program is in dire need of restructuring and increased funding. In addition to an overall assessment of the program, we advocate strongly for an increase in and annual update of the Reception and Placement Grant; creation of a Resettlement Emergency Fund; significant expansion of the Matching Grant Program, enabling more refugees to become self-sufficient through early employment; expansion of the Unaccompanied Refugee Minor program, which serves some of the most vulnerable refugee children; and establishment of a Refugee Integration Grant Program and a Case Management Program.

- Family reunification is a central tenet of the U.S. Refugee Resettlement Program. However, due to gaps in current U.S. immigration law, some refugees who have a legitimate refugee claim and should be able to join family members here are unable to enter the U.S as refugees. Reforms to address this problem include allowing orphaned refugee children to be resettled along with their adoptive families and speeding up the adjudication of refugees' and asylees' family reunification petitions.

- We support reform of the fee structure to provide for the direct appropriation of funds for refugee and asylum adjudications; the requirement that a refugee applicant whose application for admission as a refugee is denied be notified in writing of the reasons why his or her application was denied; and the establishment of formal training programs in each of the refugee processing regions to provide English as a Second Language (ESL), cultural orientation, and work orientation programs for refugees who have been approved for admission to the United States before they are admitted.

Unaccompanied Alien Minors. Mr. Chairman, the USCCB is also very concerned with the plight of unaccompanied minors who enter the United States. The number of unaccompanied alien minors entering the U.S. has reached new levels with more than 14,000 minors coming into Office of Refugee Resettlement custody in FY2012. With this in mind, we feel strongly that the following changes should be made in laws impacting minors:

- All children at the border, including unaccompanied Mexican children, should be screened for trafficking and fear of return as mandated in the Trafficking Victims Protection Act of 2008. Child welfare experts should assist in the screening and other humanitarian assistance at the border.

- Unaccompanied Alien Minors Special Immigrant Juvenile and U-Visa recipients should qualify for refugee benefits, so they can receive appropriate health-care and social services.

- Small scale community-based programming should be a priority for housing of unaccompanied children in federal custody as opposed to large scale institutionalized settings.

- Legal counsel should be guaranteed to unaccompanied alien minors, so they can navigate the complex legal immigration system and obtain appropriate immigration relief.

- Post release family preservation services should be guaranteed for all unaccompanied minors who are released to sponsors in the United States.

- A transnational family reunification approach should be adopted when deciding on durable solutions in the best interest of unaccompanied children. This includes family tracing and assessment, through international home studies, of the viability of all family reunification options, regardless of geography, for reunification.

- Return and re-integration services in countries of origin should be supported by the U.S. Government, with clear authority and appropriations given to the appropriate federal agency.

- An independent outcome evaluation should be conducted that assesses the well-being of unaccompanied children released from federal custody, taking in account such factors such as legal relief and child permanency outcomes.

F. Addressing the Root Causes of Migration

As the bishops have also taught, all persons have the right to remain in their homeland and to find there the means to support themselves and their families in dignity. Migration flows should be driven by choice, not necessity. To achieve this goal there is a need to develop the economies of sending nations, including particularly Mexico and the countries of Central America.

Only a long-term effort that adjusts economic inequalities between the United States and the nations south of our border will provide indigenous workers with employment opportunities that will allow them to remain at home and to build a dignified life for themselves and their families. The Church has consistently singled out economic inequality between nations as a global disorder that must be addressed. Within the United States-Mexico relationship, for example, we have witnessed the application of economic policies that do not adequately take into account the welfare of individual persons and families who struggle to survive and flourish.

In light of historic relationships, recent migration patterns, and increasing economic integration among the United States, Mexico, and Central America, particular attention should be dedicated to bilateral and multilateral efforts in the hemisphere to reduce the economic and social factors driving irregular migration.

In our pastoral letter on migration, the Catholic bishops of Mexico and the United States wrote, "the realities of migration between both nations require comprehensive policy responses implemented in unison by both countries. The current relationship is weakened by inconsistent and divergent policies that are not coordinated and, in many cases, address only the symptoms of migration and not its root causes."[13]

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[13] *Strangers No Longer, n. 56.*

It is critical that Congress and the administration look at the immigration issue, particularly with Mexico and Central America, as part and parcel of the bilateral relationships with these neighboring countries, including trade and economic considerations. Improving migration management in the region will need to be coupled with bilateral efforts to address the forces which compel migrants to take great risks to come to the United States. Such investment in shared prosperity in the region is an essential element of improved regional migration management.

Without a systematic approach which examines why people migrate, the United States and other governments will not be able to address the underlying causes of migration. It is clear that foreign-born workers continue to come to this nation regardless of enforcement strategies. What attracts them is employment and opportunities to meet the basic needs of their families, opportunities largely unavailable in their home communities. Increasingly, youth and women migrate to reunite with their families or escape violence in their home countries. These populations are particularly vulnerable to sexual assault, kidnapping, human trafficking and other opportunistic crimes frequently perpetrated against migrants.

Particular focus should be given to rural poverty, disaster risk reduction and addressing high youth unemployment, issues particularly associated with emigration in the hemisphere.

Small-scale farm families in Latin America have benefitted little from the region's economic growth over the past two decades. Migration in Central America and Mexico often occurs first from rural to urban areas, and subsequently across borders. Families unable to recoup key assets in the aftermath of natural and environmental disasters and to meet basic shelter and livelihood needs have a greater likelihood of displacement and migration.

The majority of migrants to the United States from Central America and Mexico are between 15-30 years old. In Latin America young people 15-25 years old are three times more likely to be unemployed than other workers, and in 2011-2012 the rate of migration of unaccompanied minors from Central America doubled, with a significant percentage of these youths reporting threat of violence, primarily from gangs, as their primary reason for migrating.

We offer the following policy recommendations to address the root causes of migration:

- ***Trade policy must reflect principles of just development.*** Wealthier countries should reduce the subsidies, tariffs, and quotas that severely constrict poorer countries in their ability to market their own products and sustain their own agriculture. Developing countries should be given some flexibility in using appropriate subsidies, tariffs, quotas, and other support measures to make sure they have sufficient food supplies, enhance rural incomes, and promote rural development.

- ***Trade negotiations should reflect standards of equity and fairness.*** Trade documents should be made available during the process of negotiation for review and public comment. Major elements of civil society, including groups representing poor, business, labor and religious communities, should have greater access to participation in the negotiation process. Wealthier countries should provide technical assistance to help poorer countries be able to participate more fully in trade negotiations and to ensure that sectors that would not benefit from the agreements are supported. Labor and environmental concerns should be treated as integral to trade agreements and not as peripheral matters.

- ***Labor rights need to be recognized in the trade negotiation process.*** Trade agreements should lead to economic and social improvements at home and abroad, particularly for poor and vulnerable workers and their families; this can be accomplished by adopting internationally agreed upon labor standards and by ensuring there is a safety-net in sectors that would be adversely affected by the agreements. Trade agreements should foster the right to organize and bargain collectively. Trade agreements should also encourage and not undermine the ability of poor countries to promote environmental protection and sustainable agricultural practices.

- ***The North American Free Trade Agreement (NAFTA) and other free trade agreements have harmed small businesses and small farmers in Mexico and elsewhere in Latin America, especially in the rural sector.*** Nations should reconsider the impact of economic and trade agreements on persons who work hard at making a living, particularly small farmers. In addition, these agreements must preserve the rights of workers in these countries to work under just labor conditions, and must adequately safeguard human rights and environmental protections.

- ***The creation of employment opportunities in Mexico, the nations of Central America and throughout Latin America would help to reduce poverty and would mitigate the incentive for many migrants to look for employment in the United States.*** The implementation of economic policies in these countries that create living-wage jobs is vital, especially for Latin American citizens without advanced skills. Investments in health, housing and educational systems in these nations must be improved to provide the basis for enhanced employment opportunities for workers. Targeted development projects in municipalities and rural areas that traditionally have had the highest rates of emigration are necessary. Projects and resources particularly should be focused on the agricultural sector and small businesses in Latin America.

- ***Support the identification and promotion of key national and municipal level public policy innovations for poverty reduction and inclusive development in the region.*** Sustainable poverty reduction and more equitable growth in countries of origin require comprehensive economic, political and social policy approaches.

The U.S. Government should expand its partnerships with governments, private sector, and civil society to identify and develop public policy innovations that demonstrate substantive impact on poverty reduction, social inclusion and disaster risk reduction.

- ***Establish a Regional Social Investment and Development Fund to reduce economic and social disparities and migration pressure between NAFTA and CAFTA trading partners.*** Investment in shared prosperity in the region is an essential element of improved regional migration management.

- ***Alleviate rural poverty and revitalize agricultural production in prioritized migrant sending countries, through the granting of Trade Preferences, Most Favored Nation Status or adjustment to current agricultural trade relations, to ensure greater poverty reduction benefits from trade.*** Such assistance should prioritize investment in rural development strategies, marketing support and extension services to small farmers, strengthening of agro-enterprise partnerships, programs that protect or reverse degraded natural resources and expanded access to credit and micro-finance opportunities for small farmers, particularly in regions of highest out-migration.

- ***Support disaster recovery strategies for highly vulnerable populations in Central America and Mexico as part of social safety net and disaster response systems.*** This should include support for the development of mechanisms to expand financial (savings and credit) and non-financial services (property and livelihoods insurance), and environmental adaptation for vulnerable families within Disaster Risk Reduction and Recovery Strategies.

- ***Support comprehensive public-private strategies, partnerships and programs which prioritize income- generation and violence reduction efforts with youth in Central America and Mexico.*** Targeted public-private investment and partnerships to reduce youth unemployment in the region would significantly contribute to poverty and violence reduction, regional stability and investment in human capital and the future of the region.

- ***As border regions are a focal point of the migration phenomenon, resources also should be directed toward communities on the United States-Mexico border.*** Such additional resources should augment existing efforts by border residents to aid migrants in meeting their most basic needs. We urge the initiation of joint border development projects that would help build up the economies of these areas so that border residents may continue to work and live cooperatively, obtaining necessary support for their health, educational and legal needs.

- ***Governments should recognize the importance of preserving the environment and the rights of indigenous populations.*** Economic development and opportunity must be fostered in a context that preserves and protects the

environment. In particular, land policies should respect the rights of indigenous people in the region to use and live on their land.

- ***External economic factors, including excessive levels of foreign debt, must be addressed.*** Government policies at both the national and international level must address the role of excessive debt as a destabilizing element in the economy of a nation. Where appropriate, debt relief and reform must be considered as a critical component of foreign policy to allow foreign governments the opportunity to develop without the undue burdens of high levels of indebtedness.

- ***Efforts must also continue to address the underlying causes of violence in the border regions.*** Policies must reflect the importance of controlling the illicit drug trade, the centrality of curbing corruption at every level of national life, and the need to curtail the arms trade, weapons and human trafficking, as well as the resultant violence that accompanies these illicit activities.

IV. Implementation of Immigration Policy Reform

It is important to understand that the manner in which comprehensive immigration reform is implemented is vital to its success. A public-private partnership is necessary so that immigrant communities are aware of the facts of the application process (thus eliminating the involvement of "notarios") and are able to receive assistance in accessing the program.

It will be essential that Congress provide adequate resources for DHS and community-based legal services programs to implement and execute any earned legalization program. As passed by the Senate, for example, the Comprehensive Immigration Reform Act (CIRA) of 2006 anticipated this need by establishing a fee structure that approximately 66 billion dollars of revenue dedicated to processing applications for earned adjustment.

Fee-generated funds, alone, will not be adequate, however, to meet the needs of an earned adjustment program. Congress will also need to directly appropriate funds to get any such program started. And it will need to be vigilant to ensure that fee-generated funds are not diverted for other purposes, as has often been done in the past.

While some may quarrel with the use of appropriated funds for this purpose, I would suggest that the alternative would likely require the expenditure of far more funds and yield a less desirable result. Imagine how much it would cost to apprehend, detain, and deport the estimated 11 million people who are in the United States illegally? The cost of properly implementing an earned legalization program is tiny when compared to the cost of the alternative approach.

Mr. Chairman, we believe that any comprehensive legislation can be implemented through reasonable fees imposed on applicants and with some supplemental funding appropriated by Congress. Fees should not be so punitive as to place the program out of the reach of qualified applicants.

We recommend the inclusion of the following elements in any legislation to ensure that a program is implemented appropriately:

- **Confidentiality.** Applicants for legalization should be extended confidentiality and not be subject to arrest and deportation if they fail to qualify for the program. This would ensure maximum participation in the program and that those who do qualify are not discouraged or intimidated from applying.

- **Reasonable Implementation Period.** Sufficient time should be given between enactment and implementation so that regulations, procedures, and infrastructure are in place. Deportations of prospective applicants should be suspended between these two dates.

- **Derivative Benefits.** Immediate family members—husband, wife, and children—should receive the same immigration benefits under legalization as the primary beneficiary.

- **Generous Evidentiary Standards.** For purposes of verifying an applicant's eligibility for legalization, evidentiary standards should be based upon "preponderance of the evidence" and should include a wide range of proof, including attestation.

- **A Simple and Broad Registration Process.** Such a process would bring forward eligible applicants for preliminary security screening.

- **Operational Terms Should be Clearly Defined:** Operational terms in the bill, such as "continuous residence," "brief, casual, and innocent," and "known to the government," should be defined in the legislation to avoid later confusion.

- **Broad Humanitarian Waiver.** A broad waiver of bars to admissibility, such as unlawful presence, fraud, or offenses related to unauthorized status, should be included in the legislation.

- **Increased Resources for the Executive Office for Immigration Review:** in order to meet the need for qualified, competent legal services, rapid adjudication of applications for Board of Immigration Appeals (BIA) Recognition and Accreditation will be necessary. Funding for EOIR should be generously appropriated ahead of implementation.

- **Funding for Legal Services:** Funding for BIA recognized agencies should be authorized prior to implementation, to conduct public outreach and to build the capacity of these agencies.

- **Funding to Assist Service Providers and Potential Applicants to Meet Program Requirements:** Funds should be allocated to organizations that will assist immigrants

to become eligible for the legalization program, including for providing civics and ESL instruction.

The inclusion of these elements in any legislation would facilitate the implementation of any program.

In addition, the Congress and the administration should take steps to reduce the immigration adjudication backlogs which now exist so that immigrants receive benefits in a timely way and that the U.S. Citizenship and Immigration Service (USCIS) is able to implement any new program.

Moreover, in 2007 the government enacted an increase in fee applications by three times for green card applications, leaving these benefits financially out of reach of many applicants.[14] This has led to a drop in naturalization applications in 2008 and 2009. USCIS recently announced that it may raise fees even further in the near future. We urge the subcommittee to reassess these fee increases and authorize the use of general funds for processing of applications. Mr. Chairman, reduction in the current backlogs in naturalization and adjustment of status applications as well as the maintenance of affordable fees should be part of our nation's efforts to reform our immigration system. We recommend that Congress evaluate the budget of the U.S. Citizenship and Immigration Service (USCIS) and provide more directly appropriated funding for infrastructure and backlog reduction.

V. Conclusion

Mr. Chairman, we appreciate the opportunity to testify today on the issue of comprehensive immigration reform. Now is the time to finally enact such reforms, and we must do it right.

Mr. Chairman, we urge you and the committee to consider our recommendations as you consider the myriad issues in this vital area. We are hopeful that, as our public officials debate this issue, that migrants, regardless of their legal status, are not made scapegoats for the challenges we face as a nation. Rhetoric that attacks the human rights and dignity of the migrant are not becoming of a nation of immigrants. Neither are xenophobic and anti-immigrant attitudes, which only serve to lessen us as a nation.

Mr. Chairman, the U.S. Catholic bishops strongly believe that comprehensive immigration reform should be a top priority for Congress and the Administration and should be enacted this year. We look forward to working with you and the administration in the days and months ahead to fashion an immigration system that upholds the valuable contributions of immigrants and reaffirms the United States as a nation of immigrants. Thank you for your consideration of our views.

[14] 69 Federal Register 5088 (February 2, 2007)

STATEMENT OF

WADE HENDERSON, PRESIDENT AND CEO
LEADERSHIP CONFERENCE ON CIVIL AND HUMAN RIGHTS

MARGARET HUANG, EXECUTIVE DIRECTOR
RIGHTS WORKING GROUP

HEARING ON: COMPREHENSIVE IMMIGRATION REFORM

SENATE JUDICIARY COMMITTEE

FEBRUARY 13, 2013

Chairman Leahy, Ranking Member Grassley and members of the Committee: We are Wade Henderson, President and CEO of The Leadership Conference on Civil and Human Rights and Margaret Huang, Executive Director of Rights Working Group. Thank you for the opportunity to submit testimony for the record regarding today's hearing.

The Leadership Conference on Civil and Human Rights is the nation's oldest and most diverse coalition of civil and human rights organizations. Founded in 1950 by Arnold Aronson, A. Philip Randolph, and Roy Wilkins, The Leadership Conference seeks to further the goal of equality under law through legislative advocacy and public education. The Leadership Conference consists of more than 200 national organizations representing persons of color, women, children, organized labor, persons with disabilities, the elderly, gays and lesbians, and major religious groups.

Rights Working Group (RWG) was formed in the aftermath of September 11th to promote and protect the human rights of all people in the United States. A coalition of more than 350 local, state and national organizations, RWG works collaboratively to advocate for the civil liberties and human rights of everyone regardless of race, ethnicity, religion, national origin, citizenship or immigration status. Currently, RWG leads the *Racial Profiling: Face the Truth* campaign, which seeks to end racial and religious profiling.

We are very grateful for today's hearing, and we are very encouraged by the renewed bipartisan efforts to overhaul our nation's immigration system. We strongly believe that our nation's immigration system is badly broken. It fails to keep up with economic realities, it fails to provide an orderly way to keep track

of who is here, it inhumanely separates families and keeps them apart, it penalizes children for the actions of their parents, and it is so unfair and so burdensome that it fails to give people enough incentives to play by the rules. America's immigration system clearly needs sweeping changes, and it needs them soon.

We believe that one of the most important – and certainly most-discussed – elements of overhauling our immigration system is giving unauthorized immigrants, living and working in our country, a realistic way to come out of the shadows and legalize their status. This is not an issue of politics or economics but of morality, and it goes directly to our most basic understanding of civil and human rights.

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

When we consider the motives of most of the unauthorized immigrants who live and work in our country, it is clear to us – and hopefully to everyone – that our policies should not treat them as fugitives or "illegal," but as an economic and social reality that must be addressed in a thoughtful manner that best serves our nation and our communities as a whole. For example, immigrants – regardless of their legal status – should not be so afraid of law enforcement that they refuse to report crimes in their own neighborhoods, and they should not fear that they will be singled out because of their perceived race, national origin, religion, or ethnicity. When they go to work, they – like all humans – have a right to know they will be treated safely and paid fairly, which protects the interests of native-born workers as well. If they drive on our roads, it is in the interest of us all to make sure they are doing so safely. Regardless of how they may have initially come here, if they show a willingness to play by the rules and contribute to our economy and our society, we should have policies in place that will reward their hard work. At the very least, we would hope that we can all agree that punishing the children of unauthorized immigrants for the actions of their parents is nothing short of cruel, and is an affront to our deepest values and constitutional traditions.

We also believe that in fixing our immigration system, it is vital that we include more realistic and more humane immigration enforcement. For many reasons, it is undoubtedly important to know who is coming here and under what circumstances, and to protect communities from people who would do us harm when they have no authorization to be here. Yet as evidenced by record-high numbers of deportations in the past four years, the notion that the laws are not being enforced is simply not true. The real problem, when it comes to enforcement, is that ongoing efforts – particularly since the implementation of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 – too often take a heavy-handed and even cruel approach. Countless numbers of immigrants – regardless of their

legal status – are needlessly locked up and removed, even when detention and deportation do not serve the public interest, because immigration judges and other officials no longer have the ability or the incentive to exercise common sense. At the same time, many of the most complicated and sensitive decisions involving immigration law enforcement are being made in many parts of the country by untrained state and local law enforcement officials, or worse, by private for-profit corporations that have a financial incentive to lock up as many people as possible.

As a nation, we can and should take more sensible measures, such as hiring additional inspectors and border patrol agents to work in ports of entry, making better use of technology, and working more closely with Mexico to cut down on problems like human trafficking and the drug trade. At the same time, enforcement efforts must ensure due process and protect the civil rights of all people who are affected.

Finally, we believe that family unity should be a key foundation of our immigration laws, in the same way that it is a key foundation of our society itself. Sadly, our current immigration system is chronically plagued by administrative backlogs in the family-based visa process, as well as by the woefully inadequate numbers of family-based visas that become legally available each year. As a result, it can often take years or even more than a decade for close relatives of U.S. citizens or permanent residents to obtain immigrant visas, and these delays simply encourage people to overstay temporary visas or find other ways to enter the country in order to be with their loved ones. Other families are kept apart by outright discriminatory federal policies, particularly the wrongly-named Defense of Marriage Act of 1996. Addressing these and numerous other problems in our immigration system is an essential component of the modern civil and human rights agenda.

Border Security, Border Communities

Since the 1980s, immigration reforms have opened paths to citizenship for some. More often, however, reforms have expanded the capacity of immigration enforcement. This has been particularly true since the events of September 11th, after which concerns about national security led to an extraordinary escalation of border security, including the building of walls, a military presence, an exponential increase in CBP agents and drones.

Many lawmakers have thus far taken the position that a path to citizenship must be contingent upon further tightening of border security. Such positions overlook the fact that, according to the most reliable demographic and sociological research, the border is already secure. As of 2012, border apprehensions are at a forty-year low point, and levels of violent crime in border cities have declined steadily for the past two decades.[1] In a 2010 poll of border community residents, 87.5% responded that they feel safe walking and driving in their neighborhood, and 69.7% responded that they feel their border neighborhood is as safe as most U.S. neighborhoods.[2] Meanwhile, massive resource increases to

[1] Johnson, Kevin and Alan Gomez, *Violent crimes drop overall in U.S. border cities*, USA Today, Nov. 4, 2012, *available at* http://www.usatoday.com/story/news/nation/2012/11/04/violent-crimes-drop-overall-in-us-border-cities/1681821/.

[2] Border Network for Human Rights, *Border Community Security Poll: Border residents say they feel safe living on the U.S. Border*, Report released August 10, 2010, available at http://www.scribd.com/doc/55556668/Do-you-feel-safe-at-the-U-S-Mexico-Border-Border-Residents-Respond

Customs and Border Patrol (CBP) have doubled the number of Border Patrol agents since 2005 and have led to substantial new investments in CBP infrastructure and technology.[3] The image of the border as a zone of "murder, terror and mayhem," as described by Arizona Governor Jan Brewer, is false and misleading.[4]

One area of border security, however, has been woefully neglected: the security of immigrant communities and communities of color against racial profiling and violations of civil and human rights by law enforcement. Within approximately 100 miles of both the southern and northern borders, Border Patrol agents have been known to respond to 911 calls, sometimes under the pretext of interpreting[5]; to board buses and trains that cross no national border and demand detailed immigration papers from people of color and those perceived as "foreign"[6]; and to raid sensitive locations, such as schools and health clinics. At its best, these activities have led immigrant communities to fear and avoid police, travel, and community institutions; at its worst, it has led to the tragic and unnecessary deaths of border community residents, including U.S. citizens.

The past few years have been marked by excessive enforcement efforts with little to no public accountability. A recent Families for Freedom / NYU Law School report has documented CBP in New York state giving its agents bounties in the form of gift cards for the amount of arrests they made.[7] Muslims have been targeted by CBP agents at the border and ports of entry, questioned invasively about their first amendment protected activity.[8] Excessive use of force has resulted in several deaths over the past few years of men, women and boys - some even U.S. citizens.[9] In short, the border does not need more boots on the ground, walls or drones. Humane border policy needs to include a prohibition on racial profiling, training and accountability for CBP agents, and a separation between border enforcement efforts and state and local policing. Instead, resources should be redirected to ports of entry increasing their capacity to search cargo containers and facilitating the movement of people and trade through border entry points.

Immigration Detention and Human Rights

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[3] Migration Policy Institute, "Immigration Enforcement in the United States: The Rise of a Formidable Machinery," January 2013, available at http://www.migrationpolicy.org/pubs/enforcementpillars.pdf, p. 3

[4] Ann Garcia, "Fact Sheet: Setting the Record Straight on Border Crime: Border States are Safe Today and Only Getting Safer," http://www.americanprogress.org/issues/2010/06/pdf/border_crime.pdf.

[5] See generally "The Growing Human Rights Crisis Along the Northern Border," OneAmerica, April 2012, found at http://www.weareoneamerica.org/northern-border.

[6] See generally "Justice Derailed, What Raids on New York's Trains and Buses Reveal about Border Patrol's Interior Enforcement Practices" New York Civil Liberties Union, November 2011, found at http://www.nyclu.org/files/publications/NYCLU_justicederailedweb_0.pdf.

[7] See generally "Uncovering USBP: Bonus Programs for United States Border Patrol Agents and the Arrest of Lawfully Present Individuals," Families for Freedom and NYU Immigration Clinic, January 2013, found at http://familiesforfreedom.org/sites/default/files/resources/Uncovering%20USBP-FFF%20Report%202013.pdf.

[8] See generally "Unreasonable Intrusions: Investigating the Politics, Faith & Finances of Americans Returning Home," Muslim Advocates, April 2009, found at http://www.muslimadvocates.org/documents/Unreasonable_Intrusions_2009.pdf.

[9] See "Border Patrol Abuses since 2010," Southern Border Communities Coalition, found at http://soboco.org/border-patrol-brutality-since-2010/.

The past few years have seen record numbers of people in immigration detention and the development of Criminal Alien Requirement (CARs) facilities to house those labeled "criminal aliens" by the variety of state laws and federal policies that have co-opted state and local police into immigration enforcement duties. Federal agencies, based on Congressional appropriations language, have been operating on the premise that all 34,000+ immigration detention beds in the United States must be filled at all times. Detention conditions have improved in some locations, but problems with detention conditions in immigration facilities persist. Detention should never be based on mandates – detention should only be used as a matter of last resort. Any immigration reform initiative should refocus resources away from costly, unnecessary detentions to more cost effective and humane community-based alternatives to detention.

A Fair Day in Court

The evolution of immigration laws has seen a marked decrease in judicial discretion and the ability of individuals to have their case considered on the merits. Any immigration initiative should restore due process to the system, expanding judicial discretion to consider individual circumstances so that each immigration case can be evaluated on its own merits. Mandatory detention categories should not be expanded, nor should additional removal grounds be added or expanded. To ensure that all individuals receive their fair day in court, legislation should restore meaningful judicial and administrative review and reform the immigration courts to preserve judicial independence.

Current immigration laws allow the government to deport many without seeing an immigration judge, and the vast majority are unrepresented. Low-level government agents are able to order removal without any higher review. Current law also contains many provisions that require immigrants to be mandatorily detained without any opportunity to see a judge, at times being transferred far from their families as well as any available witnesses in their immigration cases. Immigration reforms should protect the fundamental U.S. Constitutional principle of due process and ensure that everyone has access to courts to argue their case and ask for their freedom outside of the coercive conditions of detention.

E-Verify and a National ID System

E-Verify and biometric ID systems violate privacy rights and threaten to exacerbate employment discrimination and racial profiling against immigrants, people of color, and people with names that might be perceived as foreign. E-Verify, which checks people against a government database before allowing them to work, has been dangerously error-prone. Though the error rate declined from 8% to 2.7% between 2004 and 2009[10], at least 80,000 authorized workers lost out on a new job last year because of a mistake in the system. Employers have told the U.S. Government Accountability Office that errors were more likely to occur with Hispanic employees with hyphenated or multiple surnames, and studies have shown that in 2008 the error rate for those eventually authorized to work was 20 times higher for foreign-born employees than for those born in the U.S. An expansion of E-Verify would spread

[10] Migration Policy Institute, "Immigration Enforcement in the United States: The Rise of a Formidable Machinery," January 2013, p. 8

employment discrimination against U.S. workers perceived as foreign. Moreover, such expansion—especially through the proposed national biometric ID card system—would likely lead to violations of all Americans' privacy rights. As individuals and communities of color are often subject to the most pronounced privacy violations, including unreasonable search and seizure and surveillance, creating a national ID system would almost certainly deepen the problem of racial profiling in the U.S., while also overburdening taxpayers, employers, and government agencies.

State-Federal Collaboration in Immigration Enforcement and Criminalization

The devolution of immigration enforcement to state and local law enforcement has exacerbated profiling based on race, ethnicity, religion, gender, national origin, language and perceived immigration status. Federal programs like the Criminal Alien Program, the 287(g) program and Secure Communities along with state laws like Arizona's SB 1070 have created incentives for the police to make pre- textual arrests based on racial profiling and other impermissible bases so that immigration status can be checked.[11] It has served to criminalize the immigrant and particularly the Latino community, allowing people to be labeled "criminal aliens" for such minor infractions as traffic violations and driving without a license. Current practices that involve state and local police in immigration enforcement have also allowed for the unlawful detention and deportation of individuals with valid claims to remain in the United States—including lawful permanent residents and even U. S. citizens. It has also interfered with long-established community policing practices. These policies have alienated immigrant communities, making them less likely to cooperate with police investigations or come forward when they are victims or witnesses of crime.

Moreover, Operation Streamline, active in several of the sectors on the Southwest border, has mandated the prosecution of border crossers in federal courts. The prosecutions, which do not resemble traditional criminal proceedings, result in groups of 75-90 people being informed of their rights and asked to plead guilty to illegal entry or illegal re-entry en masse. Such trials raise serious due process concerns. Those convicted are then routed toward privately run CARs facilities[12], making Latinos the largest growing segment of the federal prison population. Furthermore, the program has not proven to be a deterrent to those crossing the border as many of those funneled through the process do not fully understand the ramifications of the process and often have strong ties to the U.S. and are willing to risk the threat of prosecution to return.

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[11] See generally "The C.A.P. Effect : Racial Profiling in the ICE Criminal Alien Program," The Warren Institute, September 2009, found at http://www.law.berkeley.edu/files/policybrief_irving_FINAL.pdf, "Secure Communities by the Numbers: An Analysis of Demographics and Due Process," The Warren Institute, October 2011, found at http://www.law.berkeley.edu/files/Secure_Communities_by_the_Numbers.pdf, and "Local Democracy on ICE: Why State and Local Governments Have No Business in Federal Immigration Law Enforcement," Justice Strategies, February 2009, found at http://www.justicestrategies.org/sites/default/files/publications/JS-Democracy-On-Ice.pdf.

[12] See generally "Dollars and Detainees The Growth of For-Profit Detention," The Sentencing Project, July 2012, found at http://sentencingproject.org/doc/publications/inc_Dollars_and_Detainees.pdf and "Privately Operated Federal Prisons for Immigrants: Expensive. Unsafe. Unnecessary," Justice Strategies, September 2012, found at http://www.justicestrategies.org/sites/default/files/publications/Privately%20Operated%20Federal%20Prisons%20for%20Immigrants%209-13-12%20FNL.pdf.

Immigration reform efforts should dismantle laws and policies that transfer the responsibility of immigration enforcement to state and local authorities and put the federal government squarely back in charge of immigration enforcement efforts. Enforcement of immigration law should be smart and targeted, conducted in a way that does not violate the civil and human rights of those targeted by such efforts. Operation Streamline should be reconsidered and the trend of criminalizing immigrant communities should be reversed.

Summary: Racial Profiling and Discrimination, a Common Denominator in Immigration Enforcement Programs

Years of enforcement only immigration policies have lead to exorbitant spending with seemingly limited return. According to a recent report by the Migration Policy Institute, spending on immigration enforcement has eclipsed spending by all other federal law enforcement agencies combined.[13] The path of enforcement only policies has lead to massive spending on a broken system that encourages racial profiling and violates the civil and human rights of those who come into contact with it – migrants, legal residents and citizens alike. Congress should take this opportunity to move forward with an immigration reform bill that accepts the new realities of the U.S. workforce and facilitates workers rights, family unity, and human dignity. Any adjustments to enforcement programs and policies should be to scale down enforcement efforts, focusing on accountability and this country's founding principles of fairness, due process, and equal protection of the law.

[13] Migration Policy Institute, "Immigration Enforcement in the United States: The Rise of a Formidable Machinery," January 2013, Page 9.

In Support of the Uniting American Families Act

Testimony submitted to:
United States Senate Committee on the Judiciary

Hearing:
"Comprehensive Immigration Reform"
February 13, 2013

Statement of:
Martha McDevitt-Pugh, representing Democrats Abroad LGBT Immigration Task Force

Democrats Abroad is the official arm of the Democratic Party of the United States for the more than 7 million Americans living overseas. With organized committees working in 48 countries, and individual members in nearly every country in the world, Democrats Abroad registers U.S. voters for absentee ballots and represents the interests of Americans abroad to lawmakers in Washington.

We applaud Senator Leahy for holding this hearing and for advocating for fair treatment of gay and lesbian Americans in our immigration system.

Democrats Abroad first adopted a resolution calling on Congress to pass the Uniting American Families Act in 2006 (see below). Now more than ever, we urge Congress to take action.

Uniting LGBT families must be part of any comprehensive immigration reform in order to ensure lesbian, gay, bisexual and transgender (LGBT) Americans a fundamental right: the right to live in our country with their permanent partners.

I speak from personal experience.

I am a native-born US citizen and my partner is Australian. Because LGBT couples and our families have no status or protection in US immigration law, I was faced with the painful choice between my country and my partner. I moved to the Netherlands in 2000, leaving behind my family, community and career as a manager in Silicon Valley to be with the love of my life.

Today I am eager to return to the USA to care for my 83-year-old mother. She deserves to have all four of her children around her in her elderly years. Because my spouse does not quality as a family member for US immigration purposes, I am again faced with a choice that no US citizen should have to make.

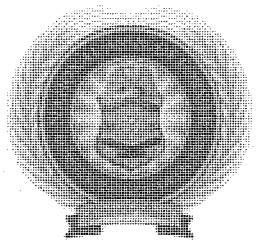
My situation is not unique. Untold numbers of GLBT U.S. citizens, many of them members of Democrats Abroad, share my plight and yearn for this basic right freely granted to opposite-sex couples.

Personally and on behalf of Democrats Abroad, I urge Congress to end the forced exile of U.S. citizens like myself by including the Uniting American Families Act in comprehensive immigration reform.

Resolution supporting the Uniting American Families Act
Adopted by the Democratic Party Committee Abroad, Washington, D.C., March 4, 2006

WHEREAS, every American is entitled to equal protection under the law;
WHEREAS, the U.S. immigration system is largely based upon the principle of family unification;
WHEREAS, federal law does not currently recognize permanent same-sex partners for immigration purposes;
WHEREAS, this results in thousands of US citizens being forced into exile to be with foreign-born partners, causing unnecessary hardship, separation from family members and careers, and loss of valuable skills and resources for our country;
WHEREAS, the Uniting American Families Act (UAFA) has been introduced in Congress by Sen. Leahy (D-VT) and Rep. Nadler (D-NY) to amend the Immigration and Nationality Act and allow U.S. citizens and legal permanent residents to sponsor same-sex partners for immigration;
NOW THEREFORE BE IT RESOLVED that Democrats Abroad urges Congress to pass the Uniting American Families Act at the earliest possible date and supports the removal of legal barriers to immigration by permanent same-sex partners.

Contact Kent Lundgen
Phone (509) 961-7001
Email nafbpo@nafbpo.org
http:www.nafbpo.org



PRESS RELEASE

National Association of Former Border Patrol Officers rejects individual proposals for immigration reform by President Obama and the Senate. Each will reward illegal behavior by the grant of amnesty, and as proposed are unenforceable.

The President and the Senate have recently issued proposals for immigration legislation that would supposedly deal with the unmanaged population of illegal aliens in the United States. The National Association of Former Border Patrol Officers (NAFBPO) must oppose both proposals.

NAFBPO rejects the President's proposal out of hand. It is unacceptable in that it contains not so much as a nod to immigration enforcement or a secure border. It is predicated upon administration claims that the border is secure now, or at least, secure enough. That claim is at best wishful thinking but is more likely willful misdirection of the public's opinion of the situation. A study of Border Patrol operations by the Government Accountability Office indicates that the Border Patrol is about 60% effective, a deplorable figure even if accurate. NAFBPO members maintain contacts with many field officers and managers currently on active duty in the Border Patrol and in most areas those officers tell that at best, they catch only 10% of those who try to enter illegally. Those facts are stifled by higher management because they do not support the administration's narrative that the border is under control.

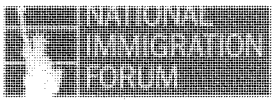
For Release 8:00a.m. PDT, February 3, 2013

One more page

Superficially, the Senate proposal is the least objectionable in that the amnesty proposed for unnumbered millions of illegal aliens is predicated upon a demonstrably secure border. That, however, lacks much. We ask, by what measure is the border to be called secure? That must be addressed. And, why is there no mention made of interior enforcement other than employer penalties for hiring illegal aliens? For example, the Border Patrol and Immigration and Customs (ICE) agents have been forbidden to work cooperatively with other law enforcement officers except on high-level criminal investigations even though a substantial amount of crime and public harm is committed by illegal aliens. Unless convicted of a crime of violence, most illegal aliens are released back into the community. Furthermore, illegal aliens are not generally eligible for most means-tested welfare but that prohibition has been largely flouted. That should be stopped, but there are no efforts in that direction. In short, illegal aliens need not fear arrest or deportation from anyone.

NAFBPO's fundamental objection to both plans, though, comes from this sad fact: the President and his administration have proven themselves unworthy of trust. Congress may pass what it will but it should do so with the certain knowledge that the President will pick and choose what laws or portions of laws he wishes to enforce. And based on his demonstrable record, we may be sure that any enforcement provisions will be ignored while the results of another amnesty will be with us for many decades.

For Release 8:00a.m. PDT, February 3, 2013



Statement for the Record

Senate Judiciary Committee

"Comprehensive Immigration Reform"

February 13, 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, including one of today's witnesses, Chairman and CEO of Revolution Steve Case, 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 urge Congress to pass broad immigration reform in 2013. This week we launched the Bibles, Badges and Business for Immigration Reform Network to achieve that goal.

As the Committee discusses reforming our immigration system, we are encouraged to see that four of the committee's members including Senators Richard Durbin, Charles Schumer, Lindsey Graham and Jeff Flake, are involved in working on a broad bipartisan immigration reform bill. The principles released by this group were an encouraging sign that we will finally fix our broken immigration system.

However, it is also 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.

NATIONAL LATINA INSTITUTE FOR REPRODUCTIVE HEALTH

STATEMENT OF

NATIONAL LATINA INSTITUTE FOR REPRODUCTIVE HEALTH

Hearing on Comprehensive Immigration Reform

SENATE COMMITTEE ON THE JUDICIARY

UNITED STATES SENATE

February 13, 2013

Chairman Durbin, Ranking Member Grassley, and members of the Senate Judiciary Committee: We are honored to submit this statement for the record on behalf of the National Latina Institute for Reproductive Health (NLIRH) regarding today's hearing on Comprehensive Immigration Reform. NLIRH is the only national organization advancing reproductive health, rights, and justice for 24 million U.S. Latinas, their families, and their communities. Through policy advocacy, community mobilization, research, and public education, we work to ensure the fundamental human right to reproductive justice for Latinas, including immigrant Latinas, who face additional barriers to quality and affordable reproductive health care.

NLIRH is a founding Steering Committee member of the National Coalition for Immigrant Women's Rights (NCIWR), the leading national collaboration to assert a gender and women's rights analysis to immigration law, policy, and practices. The Coalition now represents over 70 grassroots and national advocacy organizations working together for immigration reform, fair

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and non-discriminatory implementation of our immigration and enforcement policies, and reproductive and economic justice for immigrant women in the United States. As organizations representing immigrant women, we write today out to commend members of the Judiciary committee for their commitment to improving our immigration laws. We also seek to highlight opportunities for improving policies for immigrant women and families through the bipartisan framework for immigration reform put forth by Senators Schumer, McCain, Durbin, Graham, Menendez, Rubio, Bennet, and Flake.

Immigrant Women are the Backbones of Our Families, Communities

Immigrant women make great contributions to the rich social, cultural, intellectual, and economic fabric of the United States. They are our mothers, grandmothers, sisters, daughters, spouses, partners, and friends. They are students, teachers, laborers, business owners, lawmakers, and much more. Yet, despite their many contributions to our families and communities, issues of concern to women continue to be left out of conversations about immigration reform, and women continue to suffer injustice, discrimination, family separation, and fear because of our nation's immigration laws.

The face of the immigrant in the United States is increasingly that of a woman. Women now make up 51% of the immigrant population,[1] and 100 immigrant women arrive in the United

[1]United States Census Bureau. 2011 American Community Survey 1-Year Estimates. Selected Characteristics of the Native and Foreign-Born Populations. Available at http://factfinder2.census.gov/faces/nav/jsf/pages/searchresults.xhtml?refresh=t. Accessed on January 15, 2013.

States for every 96 men.[2] The majority of women migrate to reunite with family, to make a better life for their children, or to escape oppression, discrimination, and violence that prevent them from living full and free lives in their home countries. Current immigration laws, policies, and programs disproportionally disadvantage women, and women are too often left out of policy discussions that affect their lives. In the absence of sufficient legal channels for migration, more than 5 million women in the United States today are undocumented and living on the margins of our society.[3]

Instead of honoring the contributions of immigrant women to the United States, past efforts at immigration reform have failed to provide for equitable citizenship, adequate protection, and full integration for all women. A reasonable and sustainable solution to current and future immigration needs must take into account gender specific perspectives. In addition, the path forward on immigration must ensure equality for all immigrants, protect and promote their civil and human rights, and empower aspiring Americans to fully participate in and contribute to our economy and society.

Statement of Principles on Women and Immigration Reform

As work to advance comprehensive immigration reform has intensified over the past few

[2] Migration Policy Institute. MPI Data Hub: Foreign-Born Males per 100 Foreign-Born Females, for the United States: 1870 to 2011. Available at http://www.migrationinformation.org/databub/charts/final.malesfemales.shtml Accessed on January 15, 2013.

[3] Hoefer M, Rytina N, and Baker B. U.S. Department of Homeland Security. Estimates of the Unauthorized Immigrant Population Residing in the United States: January 2011. March 2012. Available at http://www.dhs.gov/xlibrary/assets/statistics/publications/ois_ill_pe_2011.pdf . Accessed on January 15, 2013.

months, the National Coalition for Immigrant Women's Rights (NCIWR) and allied organizations organized a series of roundtable discussions to elevate issues immigrant women face as a result of our current immigration laws, policies, and practices. As a result, NCIWR and allied organizations composed a Statement of Principles for Women and Immigration Reform, which advances a vision of immigration reform that is inclusive and responsive to the needs and concerns of immigrant women. The Statement of Principles, endorsed by more than 200 local, state and national organizations representing immigrant rights, reproductive health and justice, children's health and rights, labor and workers' rights, civil rights, faith, and LGBT rights, calls for the inclusion of women in all aspects of immigration reform. For the full statement, please see **Addendum A**. The principles are:

- Any pathway to citizenship and integration must be open, affordable, safe, and accessible to ALL immigrant women, including those whose work is in the home and those who are employed in the informal economy;
- Immigrant women must be afforded equal employment-based migration opportunities and workplace protections so that they may safely pursue economic opportunity and support their families with dignity and pride;
- Immigration reform must protect the right of all families to stay together, regardless of immigration status, family structure, sexual orientation, gender identity, or marital status, and provide sufficient family-based channels for migration in the future;

- Immigration reform must advance all immigrant women's access to public services and family economic support, including comprehensive health coverage and care, and legal and social services that promote equality of opportunity, integration, and the ability to make decisions regarding reproductive and sexual health and the well-being of the family;
- Enforcement, detention, and deportation programs that compromise immigrant women's safety, violate their civil, human, and due process rights, and tear families apart must be replaced by sensible and sufficient legal channels for migration that adequately meet family and labor demands and respect our obligations under international law; and
- Reforms to our immigration policies must bring an end to programs that disproportionately impact women by discouraging reporting of crimes to law enforcement and compromising the safety of communities, and must advance protections for women fleeing state and interpersonal violence and victims of trafficking or exploitation.

Gaps for Immigrant Women Identified in Senate Bipartisan Framework for Comprehensive Immigration Reform

While NLIRH and NCIWR applaud the Senate's commitment to improving our nation's immigration laws and establishing consensus on creating a roadmap to citizenship for the 11 million aspiring citizens currently undocumented, we have identified gaps for immigrant

women's health and rights in the framework put forth by the bipartisan committee in the U.S. Senate.

As currently written, the framework would preserve existing gender inequalities in our immigration system by failing to provide women an equal opportunity to apply for citizenship, and preferencing employment-based migration over expanded opportunities for family unity. Additionally, the policies laid out in the bipartisan framework may endanger immigrant women's health, safety, and well-being by requiring increased immigration enforcement and denying access to federal health and family economic support for those granted provisional status. We know that improving the health of immigrant women and families makes for stronger communities and makes good fiscal sense, and would urge the Committee to consider these issues as the work to reform our immigration system proceeds.

The Impact of Health Care Restrictions on Immigrant Women

Laws enacted over recent decades restricting immigrants' access to vital health care and economic supports have disproportionately impacted women, who are more likely to seek health care and family economic supports for themselves and their children.[i] Moreover, laws allowing public benefits administrations to report immigration status of applicants to immigration enforcement authorities have created a climate of fear. Women do not come forward to participate in family economic security programs, even when they and their children are eligible,

because they are afraid of being detained or deported. [ii] A patchwork of state and federal policies limiting access to health care and family economic supports also create confusion and a "chilling effect" discouraging all immigrant participation in health care and family economic supports. [iii] For example, immigrant women's participation in Medicaid dropped significantly after the enactment of federal legislation restricting immigrant women's access to vital health and family economic security programs.[iv] Additionally, despite the partial restoration of immigrant access to SNAP after 1996, immigrants represent a disproportionately low share of SNAP enrollees.[v] Additionally, immigrant women are more likely than U.S. born women to be uninsured for health care. While immigrants represent 13% of the total U.S. population, they represent 29% of the uninsured.[4] Immigrant women are also less likely to have access to employer-sponsored health care[5] and the lower wages of immigrant women may put costly private insurance out of reach for many immigrant women. Barriers to health insurance and health care programs certainly contribute to widened health disparities. For instance, while cervical cancer (which is preventable in most cases and can be treated if caught early) has been on the decline for U.S. born women, rates for immigrant women have been on the rise.[6] Studies point to lack of health

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[4] United States Census Bureau. 2011 American Community Survey 1-Year Estimates. Selected Characteristics of the Native and Foreign-Born Populations. Available at http://factfinder2.census.gov/faces/nav/jsf/pages/searchresults.xhtml?refresh=t. Accessed on January 15, 2013.

[5] Kaiser Family Foundation. The Role of Employer-Sponsored Coverage For Immigrants: A Primer. June 2006. Available at http://www.kff.org/uninsured/upload/7524.pdf. Accessed on October 5, 2012.

[6] American Congress of Obstetricians and Gynecologists. Health Care for Undocumented Women. January 2009. Available at http://www.acog.org/Resources_And_Publications/Committee_Opinions/Committee_on_Health_Care_for_Underserved_Women/Health_Care_for_Undocumented_Immigrants. Accessed on October 8, 2012.

insurance as a significant barrier for immigrant women in accessing the routine gynecological care necessary to prevent cervical cancer.[7]

Investing in Immigrant Health Makes Fiscal Sense

By and large, immigrants are younger and healthier than the American population as a whole. Allowing immigrants to participate in our health insurance systems and risk pools makes good fiscal sense. When immigrant women and families lack access to health care, the need for medical attention remains, though low-cost preventive care is restricted. Immigrant families without health insurance may either delay treatment for preventable disease, leading to higher costs and greater suffering in the long run, or seek care through under-resourced emergency systems. Immigrant families pay payroll and sales taxes, and many have for years been paying into social security. Many immigrant women and families simply seek the opportunity to pay their fair share and have a fair chance of pursuing the American dream.

Investing in Health is Fair and Good for our Communities

No one should live in fear that because they lack health coverage, one accident or illness could threaten their family's economic security. Access to affordable, quality health care is a widely shared goal. Good health care is essential to workers' productivity and the opportunity for women and families to realize their full potential. Given the crucial role that medical coverage

[7] Rodriguez MA, Ward LM, Perez-Stable EJ. Breast and cervical cancer screening: impact of health insurance status, ethnicity, and nativity of Latinas. *Ann Fam Med.* 2005; 3:235–41.

plays in determining health and well-being, all Americans should have access to coverage. For an immigrant woman, being able to protect her health and care for her family is the first step to full social, economic, and civic integration into the American community.

Conclusion

The National Latina Institute for Reproductive Health urges the Committee to consider the needs and perspectives of immigrant women and families, as well as the unique challenges these groups face, as the work to reform our immigration policies proceeds. NLIRH recommends that the committee consider the Statement of Principles for Women and Immigration Reform as immigration reform proposals are vetted and developed, including the urgent needs to expand access to health care and family economic supports for all immigrant women and families, regardless of their status pre- or post-reform. We are grateful for the opportunity to present this testimony, and thank the Committee for your ongoing work on these important issues.

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[i] Huang P. Anchor Babies, Over-Breeders and the Population Bomb: The Reemergence of Nativism and Population Control in Anti-Immigration Policies. Harvard Law and Policy Review. Vol 2: 2008. Available at Accessed on January 12, 2013.
[ii] *Ibid.*
[iii] *Ibid.*
[iv] Gold RB. Immigrants and Medicaid after Welfare Reform. Guttmacher Report on Public Policy. March May 2003, Volume 6, Number 2. Available at http://www.guttmacher.org/pubs/tgr/06/2/gr060206.html. Accessed on January 13, 2013.
[v] Barrett A, Poikolainen A. Food Stamp Program Participation rates: 2004. U.S. Department of Agriculture, Food and Nutrition Service. 2006. Available at http://www.fns.usda.gov/ora/MENU/published/snap/FILES/Participation/FSPPart2004.pdf Accessed on January 16, 2013.

TESTIMONY PRESENTED TO:

U.S. SENATE
SENATE COMMITTEE ON THE JUDICIARY
FEBRUARY 13, 2013

BY:

DONALD MANN, PRESIDENT

Negative Population Growth
2861 Duke Street, Suite 36 • Alexandria, VA 22314

TESTIMONY OF:
DONALD MANN, PRESIDENT
NEGATIVE POPULATION GROWTH

U.S. SENATE
SENATE COMMITTEE ON THE JUDICIARY
FEBRUARY 13, 2013

Mr. Chairman and distinguished members of the Committee, I submit this testimony in response to the current debate on American immigration reform in the hopes that it will help guide the full Congress to find responsible solutions to one of our nation's most critical challenges.

In speaking for Negative Population Growth (NPG), I carry a message from hundreds of thousands of concerned Americans who have worked with NPG for over 40 years. Together, we seek to make certain that our elected leaders consider the prospect of continuing population growth.

While there is sure to be a number of groups petitioning Congress to focus on their individual agendas, NPG's primary request is that you keep future population growth in mind when shaping national immigration policy.

Studies have shown that immigration is presently, and will continue to be, the single-largest contributor to America's population growth. The U.S. Census Bureau currently estimates our nation's population at over 315 million people, projecting that it will reach 400 million people by 2050 – an increase of at least 85 million people in just 37 years.

Such disastrous population growth would require trillions of tax dollars to repair and expand our nation's crumbling infrastructure of roads, bridges, hospitals, and schools. America's classrooms will become even more overcrowded. Traffic congestion will become commonplace from coast to coast. Development and urban sprawl will cause destruction of precious wildlife habitats and farmland. Pollution will further contaminate our air and water, and more of our dwindling natural resources will be consumed.

Our nation is already confronting an unsustainable future with its present population size. If today's reforms result in amnesty for existing illegal immigrants and allow millions more to arrive, the results will be calamitous. You hold in your hands the power to write immigration policies which contain future population numbers – or to allow short-sighted policies, which will send our population soaring.

We ask that, as you undertake this project, you follow the same tenet that has guided doctors for centuries: "First, do no harm." In each decision you make on immigration, you must ask how this action will contribute to future population growth in five, ten, thirty, or fifty years. What effect will your decision have on the America inherited by future generations?

If Congress allows "politics" to drive this debate and makes the wrong immigration decisions, it will condemn our children and grandchildren to a world of economic, social, and environmental impoverishment. I am sure we can all agree – we must ensure them an acceptable quality of life.

To meet the goals of reforming immigration and arriving at sustainable population numbers, NPG presents the following recommendations:

- America's borders must be made secure. Any new immigration reform legislation is useless without measures to reduce illegal immigration to near zero.
- Undocumented aliens now in the U.S. should not be granted permanent residence or citizenship. Our nation's leaders made that "compassionate" mistake in 1986, which led to a surge of illegal immigration. Today, illegal immigration should be halted via enhanced enforcement. America is in no position to take on the massive social costs (and the resulting population growth) by permitting millions of illegal immigrants to remain in America.

- Current immigration laws must be strictly enforced. In addition, more maximum fines and penalties should be imposed on those who fail to heed them. Those arriving or remaining here illegally should be subject to the "expedited removal" provisions in current law. The breakdown of enforcement of our nation's immigration laws in recent years must not be allowed to continue.
- All employers in the U.S. must be required to use E-Verify to substantiate the legal status of all workers – both current and new. Failure to comply should lead to the government shutting down the business.
- Illegal presence in the U.S. should be made a misdemeanor offense comparable to the existing provisions for illegal entry.
- A workable check-in/check-out system for foreign visitors and students must be put in place and enforced.
- Present policies related to "chain migration" must be radically revised. New rules should be established that limit family reunification to include only members of a new immigrant's nuclear family.
- Existing rules governing nationality and family reunification must be clarified and structured so that automatic birthright citizenship is halted. It is estimated that a growing fraction of the 300,000 births to illegal immigrants each year is the result of "birth tourism".
- The number of legal immigrants permitted to settle in the U.S. annually must be significantly reduced. Recently, this number has topped one million people annually. A sustainable population level for the future is dependent on legal immigration being limited to no more than 200,000 per year.

Mr. Chairman, as I noted earlier, no issue is more tied to America's population growth than immigration. It is crucial that as you write these new immigration laws, which will stand for decades to come, you ensure they help reduce, rather than promote, population growth.

As you hear from other groups on this multi-faceted subject, please keep in mind that while many call for growth as a solution to all our problems, research reflects a very different picture of our present reality and grim future. Perpetual growth is a mathematical absurdity on a finite planet – there must be limits. Science is demonstrating that population size and consumption rates in the United States are already too large and are degrading the natural systems that support us. The challenge before you is to create an immigration system that will not only help stop population growth, but turn it around.

In all, Mr. Chairman, NPG asks that as you advance immigration reforms designed to correct the huge flaws that have existed for far too long, you also take the long-term view. You can bestow a great gift on our nation if our new immigration laws provide future generations with a livable, sustainable, and not overpopulated America. Thank you.

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OneAmerica advances the fundamental principles of democracy and justice at the local, state and national levels by building power within immigrant communities in collaboration with key allies.

STATEMENT OF

RICH STOLZ, EXECUTIVE DIRECTOR

ONEAMERICA

HEARING ON: COMPREHENSIVE IMMIGRATION REFORM

SENATE COMMITTEE ON THE JUDICIARY

UNITED STATES SENATE

February 13, 2013

Chairman Leahy, Ranking Member Grassley and members of the Committee: I am honored to submit this testimony for the record on behalf of OneAmerica regarding today's hearing on immigration reform.

OneAmerica is the largest immigrant advocacy organization in Washington State. 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.

We thank you for holding this critical and timely hearing on immigration reform. Our statement focuses on four areas: **keeping families together through a pathway to citizenship for undocumented immigrants living in the United States, addressing the growing human rights crisis along the northern border caused by unaccountable border enforcement, upholding the principle of family unity in our legal immigration system, and restoring due process and civil liberties to immigration enforcement.**

Keep Families Together through a Roadmap to Citizenship

OneAmerica is encouraged that the bipartisan group of Senators supports a roadmap to citizenship for undocumented immigrants currently living in the United States. We strongly support creating a fair and sensible pathway to citizenship.

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We support proposals like the bipartisan Senate blueprint describes for a probationary status that could immediately take pressure from detention and deportation off of immigrant families in the United States. Yet any such proposal 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. Furthermore, such a program must not exclude immigrants with work histories that may be difficult to document, for example day laborers or domestic workers.

We also recommend that 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.

Finally, we strongly oppose the proposal from the bipartisan group of Senators that could condition a roadmap to citizenship on a vague set of benchmarks associated with border enforcement. More than a decade of debate on immigration reform has seen such benchmarks consistently changed to require ever more resources and greater security. A roadmap to citizenship must be certain in any legislation passed by Congress.

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

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Border Protections activities 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.

This month, Families for Freedom and the New York University School of Law released a report, Uncovering USPB: 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

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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.

Comprehensive immigration reform legislation must acknowledge that more than a decade of increased border enforcement must finally be brought under greater oversight and accountability. Rather than increasing assets along our nation's borders, it is time to reassess their effectiveness and bring into balance the impact on local communities and cross-border commerce. Furthermore, comprehensive immigration

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reform legislation must address the need for clearer policies that protect against racial profiling of ethnic and religious minorities in immigration enforcement.

Uphold the Principle of Family Unity

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 open the door 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 that have led to excessive backlogs, is an important aspect of our nation's success in ensuring the effective integration of immigrants into our society.

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 wos not in CIR ASAP*).

Restore Due Process and Civil Liberties

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.

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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.

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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.

Conclusion

Comprehensive immigration reform, if done correctly, creates the opportunity to strengthen our economy and level the playing field among employers and workers alike. We have the opportunity now to ensure that the needs of key industries, particularly the agriculture and high tech sectors important to Washington State's economy, will have a more stable and reliable workforce. And any such sector based programs must be balanced against the needs of native born workers while also ensuring the robust enforcement of labor protections that must be extended to fully embrace current undocumented workers and future temporary workers.

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The path of "enforcement only" policies has led to massive spending on a broken system that encourages racial profiling and violates the civil and human rights of those who come into contact with it—migrants, legal residents and citizens alike. OneAmerica is heartened by the Committee's leadership in holding this hearing and we are grateful for the opportunity to present our position on unjust, ineffective and counterproductive practices within the immigration enforcement system. Congress should take this opportunity to move forward with an immigration reform bill that accepts the new realities of the U.S. workforce and prioritizes workers' rights, family unity, and human dignity. Any adjustments to enforcement programs and policies should be to scale down enforcement efforts, focusing on accountability and this country's founding principles of fairness, due process, and equal protection of the law.

Thank you again for this opportunity to express the views of OneAmerica. We welcome the opportunity for further dialogue and discussion about these important issues.

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OneAmerica's Principles for Just and Humane Immigration Reform

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,

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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.

Advancing Immigrant Civil & Human Rights

February 13, 2013

The Honorable Patrick Leahy, Chairman
The Honorable Charles Schumer, Chairman, Immigration, Refugees and Border Security
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

RE: Hearing, "Comprehensive Immigration Reform"

Dear Chairman Leahy and Chairman Schumer:

Thank you for holding this hearing and for turning your attention to the critical issue of comprehensive immigration reform. Our broken immigration system harms families, communities and our nation as a whole. It creates instability for families, deprives millions of working Americans of civil rights and workplace protections, and prevents many who are providing for their families, paying taxes and contributing to their communities from fully integrating into our country. In 2012, Americans voted in great numbers for candidates who promised workable, common-sense solutions to our immigration crisis. Piecemeal legislation will not fix our system in the long term. Now is the time to pursue strong, lasting, comprehensive reform.

People For the American Way, our members and supporters across the country, and members of our advocacy networks urge you to create a viable comprehensive immigration reform plan that will strengthen our economic security and conform to our national values. Such a plan must provide undocumented workers already in the country with a path to citizenship so they can fully contribute to our economy and society. It must reduce the backlog of individuals seeking residency and citizenship by creating a more robust and flexible visa program. It must recognize that immigrants are an integral part of our labor force by addressing employment-based immigration needs. It must ensure strong worker protections and address our enforcement needs in a manner that is just and consistent with our existing due process and civil rights laws. And it must reunite American families by allowing US citizens or permanent residents to sponsor their same-sex partners for immigration to the US, a right that is currently denied based solely on their sexual orientation.

People For the American Way's advocacy networks represent three communities that have confronted our broken immigration system firsthand and have strong stakes in comprehensive immigration reform. **YP4 Action** represents youth organizers on campuses across the country, a number of whom have undocumented family members or are themselves undocumented. All of these organizers are leading efforts to create positive social change in their communities and their country, regardless of immigration status. **YEO Action** represents young, progressive elected officials, who feel the impact of federal immigration policy with their constituents at the state and local level. Finally, **African American Ministers in Action** represents a multidenominational network of African American clergy, many of whom serve as faith leaders for immigrant communities, in particular those from Africa, Haiti and the Caribbean.

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Together, People For the American Way and its advocacy networks urge you to adopt a comprehensive immigration reform package that creates a healthy, practical, commonsense immigration system worthy of the country it serves.

YP4 Action

YP4 Action is the advocacy affiliate of People For the American Way Foundation's Young People For program, which develops young progressive leaders on campuses throughout the country. Many of the young people we work with are immigrants or the children of immigrants, and many more have friends and classmates who are personally affected by today's broken immigration system. President Obama's executive order partially implementing the DREAM Act allowed thousands of young undocumented immigrants to come out of the shadows and publicly give back to their country. Any comprehensive reform package must include expanded and strengthened provisions that afford young undocumented immigrants the opportunity to earn a path to citizenship, to pursue an affordable higher education and to give back to the country they love.

Many of our members have also experienced firsthand the impact that our immigration system has on binational families. Any immigration reform package must place a priority on uniting families, including those led by LGBT parents.

YEO Action

YEO Action, the advocacy affiliate of People For the American Way Foundation's Young Elected Officials Network, represents young progressive elected officials in federal, state and local offices. State and local elected officials see firsthand the impact that federal immigration policy has on their constituents. School board members face the challenge of ensuring that the children of undocumented parents have access to education and opportunity. City council members and mayors must ensure that immigrants in their communities – documented and undocumented – have the protection of and are treated fairly by law enforcement. Progressive state legislators face battles over extreme state-level legislation proposed in the absence of federal reform and must work to ensure that all residents of their states have access to education, law enforcement protection, and health and human services.

Too often, our state and local elected officials are left picking up the pieces of a federal immigration system that has not kept pace with reality. A broken immigration system undermines the efforts of state and local elected officials to serve their constituents through effective law enforcement, public safety, public health and education. Congress must pass a comprehensive immigration reform package that acknowledges the contributions that immigrants are making across the country and allows undocumented immigrants and their children to come out of the shadows.

African American Ministers in Action

As community and faith leaders, members of **African American Ministers in Action** are concerned about building a system that works for all immigrants. AAMIA's members work particularly closely with immigrants from Africa, Haiti and the Caribbean, whose needs are too often overlooked in the immigration reform debate. The tragedy last year when eleven Haitians, including four children, drowned after their boat capsized on its way to Florida highlights the necessity of improving the asylum

process, especially for our close neighbors in Haiti. We must also strengthen our refugee resettlement program and provide it with adequate resources to help refugees adjust upon their arrival in the United States.

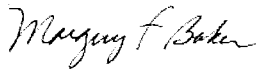
It is critical for all immigrants, including those from Africa, Haiti and the Caribbean, that we build a pathway to citizenship for undocumented immigrants who are already living in our country and contributing to our society. These immigrants, like those before them, have built lives in this country and are contributing to our economic and social fabric. They must be brought out of the shadows.

Lastly, as faith leaders, AAMIA's members wish to ensure that any comprehensive immigration reform treats all individuals and families with dignity and respect. This includes placing a priority on family reunification, providing safety and shelter for refugees and ensuring due process for every immigrant, regardless of country of origin.

Conclusion

The challenges that our country's immigration system faces are complex and require a thoughtful, far-sighted and broad solution. Congress must resist efforts to address these complex problems in a piecemeal fashion and must instead confront this critical issue with a bold, comprehensive plan. With comprehensive immigration reform we have the opportunity to create a positive change in millions of American lives and to set our country on a strong, stable course for the future. We urge Congress to seize this opportunity. People For the American Way and our advocacy networks look forward to working with you to advance these much needed reforms.

Sincerely,



Marge Baker
Executive Vice President for Policy and Program

Andrew Gillum
Director of Youth Leadership Programs

Joy Lawson
Director, YP4 Action

Minister Leslie Watson Malachi
Director, African American Religious Affairs

CC: Ranking Member Chuck Grassley
Ranking Member John Cornyn, Immigration, Refugees and Border Security
Committee Members

Testimony of PICO National Network
Submitted to the
Senate Judiciary Committee

Hearing on Comprehensive Immigration Reform
February 13, 2013

Mr. Chairman, Members of the Senate Judiciary Committee, thank you for this opportunity to submit testimony in support of Immigration Reform that focuses on a path to citizenship for the eleven million aspiring American citizens who live in our communities.

PICO National Network is the nation's largest grassroots faith-based community organizing network. Through our sixty-two state and local member organizations and 1,200 religious congregations, we see first-hand how current immigration policy is breaking apart families at a level unseen in our nation's history. As a multi-racial network of people of faith from 35 different religious traditions, we welcome the decision by Senators from both parties to embrace immigration reform that includes a path to citizenship for our neighbors, friends and fellow parishioners.

As you move ahead with the important work of reforming our nation's immigration policy, we pray that you will keep your hearts and minds focused on the immigrant families who see this nation as their home and want to live free from fear. There is moral urgency to the work you are taking up. Our many faith traditions teach us that each person is created in God's image and has intrinsic dignity. We hope that you will approach this public debate with a spirit of compassion and wisdom.

Citizenship is an American value that makes our communities and nation stronger
Based on our experience working to strengthen families and communities in more than 200 cities and towns across the United States, PICO urges Congress put a direct path to citizenship at the heart of immigration reform legislation. It is urgent that we move forward now with a policy that makes it possible for undocumented immigrants to come out of the shadows and become full-fledged participants in our society.

Our country is now facing a third generation of children growing up in homes with undocumented family members. A total of 16.6 million people live in mixed-status homes with one or more undocumented family members.[i] We urge you to listen carefully to the toll that current federal immigration policy is having on children, families and communities. Never before in our history have we detained and deported so many people, few of whom pose any

risk to our communities. Our hearts go out to the children who have seen their mothers and fathers detained and deported and to those who live in daily fear of losing their parents. A child in Florida told us that she prays that her car would be invisible so that the police would not stop her mother and take her away.

Two-thirds of all undocumented immigrants have been in the United States for more than a decade.[ii] They are Americans in all but paperwork. We urge you to see citizenship as an American value that is good for our families, communities and economy. We are stronger as a nation when all people take on the responsibilities and rights of being citizens.

Legislation should avoid unnecessary obstacles and delays on the path to citizenship
Our shared goal should be more people who live in our country successfully applying to become citizens, not fewer. Therefore it is important that Congress avoid placing unnecessary obstacles or delays that would result in millions of people living in limbo. Once immigrants come forward and complete the process they should be granted temporary status and a certain path to citizenship.

With no net flow of immigrants from Mexico and 21,370 border patrol agents on the federal payroll[iii] much has been done in recent years to secure the border. PICO strongly believes that a path to citizenship should not be contingent on border security measures that have largely been put in place. Nor is it reasonable to make people wait in limbo for citizenship for ten or twenty years.

The success of Deferred Action for Childhood Arrivals (DACA) should guide us forward
We should look to the highly successful Deferred Action for Childhood Arrivals (DACA) policy announced this summer as a guide to establishing an effective path to citizenship that has broad public support. DACA created a clear and straightforward process for undocumented Dream Act eligible immigrants to come forward and apply for temporary legal status. The policy largely avoided creating unnecessary obstacles or exclusions. As a result, as of January 17, 2013, 407,899 people had applied for DACA and 154,404 had been approved.[iv]

Not only has DACA received strong public support, but the policy, and the Dreamers who made it a reality, have also inspired our nation, providing concrete evidence that the American people want to include not exclude undocumented immigrants from our society.

The opportunity to reform enforcement and dramatically reduce detentions and deportations
As we bring undocumented families in from the shadows, we also have a unique opportunity to reform enforcement policies that are imposing devastating costs on families and communities. The Federal Government now spends $18 billion annually on immigration enforcement, outstripping all other federal law enforcement spending.[v] More than 392,000 immigrants were detained in FY 2011, more than half of whom had no criminal convictions.[vi] Our goal should be a smarter system that makes our families safer rather than unnecessarily spending billions of taxpayer dollars on an increasingly privatized detention industry.

PICO encourages people to consult their own faith traditions for guidance on specific elements of legislation.

PICO's Campaign for Citizenship

Over the coming months, through our grassroots Campaign for Citizenship, PICO and our 62 faith-based member organizations will be organizing to make sure that Members of Congress from both parties and the President follow through on the long-delayed promise of full citizenship for all. We will be sending a clear message when it comes to immigration reform, full citizenship is a crucial Litmus Test for Latino voters and all people of faith.

Mr. Chairman, we thank you for the opportunity to submit this testimony and urge you to continue holding hearings that provide an opportunity for Senators to hear directly from immigrant families and religious leaders dealing first hand with the impact of current immigration policy on local communities.

Gordon Whitman, Policy Director
PICO National Network
gwhitman@piconetwork.org
www.campaignforcitizenship.org

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[i] http://www.nationaljournal.com/thenextamerica/immigration/opinion-the-high-price-of-immigration-enforcement-without-immigration-reform-20120830

[ii] http://www.pewhispanic.org/2011/12/01/unauthorized-immigrants-length-of-residency-patterns-of-parenthood/?src=prc-quiz

[iii] http://www.migrationpolicy.org/pubs/enforcementpillars.pdf

[iv] http://www.uscis.gov/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/All%20Form%20Types/DACA/DACA%20Monthly%20Report%20AVer%20II%20PDF.pdf

[v] http://www.migrationpolicy.org/pubs/pillars-reportinbrief.pdf

[vi] http://www.immigrationforum.org/images/uploads/MathofImmigrationDetention.pdf

PICO encourages people to consult their own faith traditions for guidance on specific elements of legislation.

In Support of the Uniting American Families Act

Testimony submitted to:
United States Senate Committee on the Judiciary

Hearing:
"Comprehensive Immigration Reform"
February 13, 2013

Statement of:
Robert Bragar, DNC Member, representing Democrats Abroad

Democrats Abroad is the official arm of the Democratic Party of the United States for the more than 7 million Americans living overseas. With organized committees working in 48 countries, and individual members in nearly every country in the world, Democrats Abroad registers U.S. voters for absentee ballots and represents the interests of Americans abroad to lawmakers in Washington.

We applaud Senator Leahy for holding this hearing and for advocating for fair treatment of gay and lesbian Americans in our immigration system.

Democrats Abroad first adopted a resolution calling on Congress to pass the Uniting American Families Act in 2006 (see below). Now more than ever, we urge Congress to take action.

Uniting LGBT families must be part of any comprehensive immigration reform in order to ensure lesbian, gay, bisexual and transgender (LGBT) Americans a fundamental right: the right to live in our country with their permanent partners.

On this painful subject, I speak on behalf of the members of Democrats Abroad. And I speak from personal experience.

I am a gay American. My same-sex spouse is Dutch. In spite of our long-standing committed relationship, US law bars me from sponsoring him for residence in the US.

Because US immigration law does not recognize same-sex partners, I and many others have been forced to sell our property, cut short satisfying careers, leave our homes and rebuild their lives in distant countries. I left my law practice and sold my apartment to make a new life in the Netherlands, where I have lived since 1994.

This affects my family in America as well. When my mother was ill at the end of her life, I could not be at her side.

My situation is not unique. Untold numbers of GLBT U.S. citizens, many of them members of Democrats Abroad, share my plight and yearn for this basic right freely granted to opposite-sex couples.

Personally and on behalf of Democrats Abroad, I urge Congress to end the forced exile of U.S. citizens like myself by including the Uniting American Families Act in comprehensive immigration reform.

Resolution supporting the Uniting American Families Act
Adopted by the Democratic Party Committee Abroad, Washington, D.C., March 4, 2006

WHEREAS, every American is entitled to equal protection under the law;
WHEREAS, the U.S. immigration system is largely based upon the principle of family unification;
WHEREAS, federal law does not currently recognize permanent same-sex partners for immigration purposes;
WHEREAS, this results in thousands of US citizens being forced into exile to be with foreign-born partners, causing unnecessary hardship, separation from family members and careers, and loss of valuable skills and resources for our country;
WHEREAS, the Uniting American Families Act (UAFA) has been introduced in Congress by Sen. Leahy (D-VT) and Rep. Nadler (D-NY) to amend the Immigration and Nationality Act and allow U.S. citizens and legal permanent residents to sponsor same-sex partners for immigration;
NOW THEREFORE BE IT RESOLVED that Democrats Abroad urges Congress to pass the Uniting American Families Act at the earliest possible date and supports the removal of legal barriers to immigration by permanent same-sex partners.

STATEMENT OF

SERVICES, IMMIGRANT RIGHTS AND EDUCATION NETWORK

HEARING ON: COMPREHENSIVE IMMIGRATION REFORM
SENATE COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

February 13, 2013

Chairman Leahy, Ranking Member Grassley and members of the Committee: I am honored to submit this testimony for the record on behalf of Services, Immigrant Rights and Education Network (SIREN), regarding today's hearing on immigration reform.

Services, Immigrant Rights and Education Network (SIREN) is a leading non-profit organization dedicated to empower diverse immigrant communities in Santa Clara County through policy advocacy, organizing and legal services. We advocate for policies that are inclusive of all immigrants and respect the rights of all people.

As such, SIREN would like to thank you for holding this critical and timely hearing on immigration reform. SIREN applauds the bi-partisan group of Senators' recent decision to endorse a path to citizenship for the 11 million aspiring citizens living in the United States. We urge the Senate to create such a path that is inclusive, accessible, and fair. Our immigration system must reflect the American values of hard work, the importance of family unity and economic prosperity.

Additionally, SIREN urges the Senate to ensure that reform of the immigration law fixes our current legal channels to keep American families together. The current pathways to legalization are outdated and out of touch with our economic and demographic realities. For instance, a parent from the Philippines is currently facing a wait of 15 years to be reunited with their unmarried child in the United States. Our admission system has not been updated for over a decade and results in long waiting periods for immigrant visas. We must enhance the existing channels and reduce the barriers to family unity.

Finally, SIREN urges the Senate that any comprehensive reform bill upholds our Constitution and protects due process and human rights for all people in the United States. Years of "enforcement first" or "enforcement only" policies have lead to record numbers of detentions and deportations, excessive use of force and rampant racial profiling. We must terminate immigration enforcement programs that criminalize immigrants. The erosion of due process, mass incarceration of immigrants, and constant massive deportations has created an unbearable and inhumane environment for American families. Such developments are unacceptable in a nation founded upon democratic values, individual freedom, and equal rights.

Conclusion

Immigrants are a vibrant force and make great contributions to our culture, society and economy. They come to the United States to work, to be reunited with family or in search of a better life. Yet, despite their many contributions, millions of immigrants continue to live in the shadows.
Our immigration laws need to recognize immigrant contributions and reflect our American values of family unity, justice and equality for all.

SIREN is heartened by the Committee's leadership in holding this hearing and we are grateful for the opportunity to present our position on the urgent need for comprehensive immigration reform with a roadmap to citizenship for the 11 million aspiring citizens. Congress should take this opportunity to move forward with an immigration reform bill that accepts the new realities of the U.S. workforce and prioritizes workers' rights, family unity, and human dignity.

Thank you again for this opportunity to express the views of SIREN. We welcome the opportunity for further dialogue and discussion about these important issues.

Sincerely,

Jazmin Segura
Federal Policy Advocate
Services, Immigrant Rights and Education Network
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The New York Times Magazine June 26, 2011

OUTLAW

My life in America as an undocumented immigrant.

By JOSE ANTONIO VARGAS

One August morning nearly two decades ago, my mother woke me and put me in a cab. She handed me a jacket. "*Baka malamig doon*" were among the few words she said. ("It might be cold there.") When I arrived at the Philippines' Ninoy Aquino International Airport with her, my aunt and a family friend, I was introduced to a man I'd never seen. They told me he was my uncle. He held my hand as I boarded an airplane for the first time. It was 1993, and I was 12.

My mother wanted to give me a better life, so she sent me thousands of miles away to live with her parents in America — my grandfather (*Lolo* in Tagalog) and grandmother (*Lola*). After I arrived in Mountain View, Calif., right in the middle of Silicon Valley, I entered sixth grade and quickly grew to love my new home, family and culture. I discovered a passion for language, though it was hard to learn the difference between formal English and American slang. One of my early memories is of a freckled kid in middle school asking me, "What's up?" I replied, "The sky," and he and a couple of other kids laughed. I won the eighth-grade spelling bee by memorizing words I couldn't properly pronounce. (The winning word was "indefatigable.")

One day when I was 16, I rode my bike to the nearby D.M.V. office to get my driver's permit. Some of my friends already had their licenses, so I figured it was time. But when I handed the clerk my green card as proof of U.S. residency, she flipped it around, examining it. "This is fake," she whispered. "Don't come back here again."

Confused and scared, I pedaled home and confronted Lolo. I remember him sitting in the garage, cutting coupons. I dropped my bike and ran over to him, showing him the green card. "*Peke ba ito?*" I asked in Tagalog. ("Is this fake?") My grandparents were naturalized American citizens — he worked as a security guard, she as a food server — and they had begun supporting my mother and me financially when I was 3, after my father's wandering eye and inability to properly provide for us led to my parents' separation. Lolo was a proud man, and I saw the shame on his face as he told me he purchased the card, along with other fake documents, for me. "Don't show it to other people," he warned.

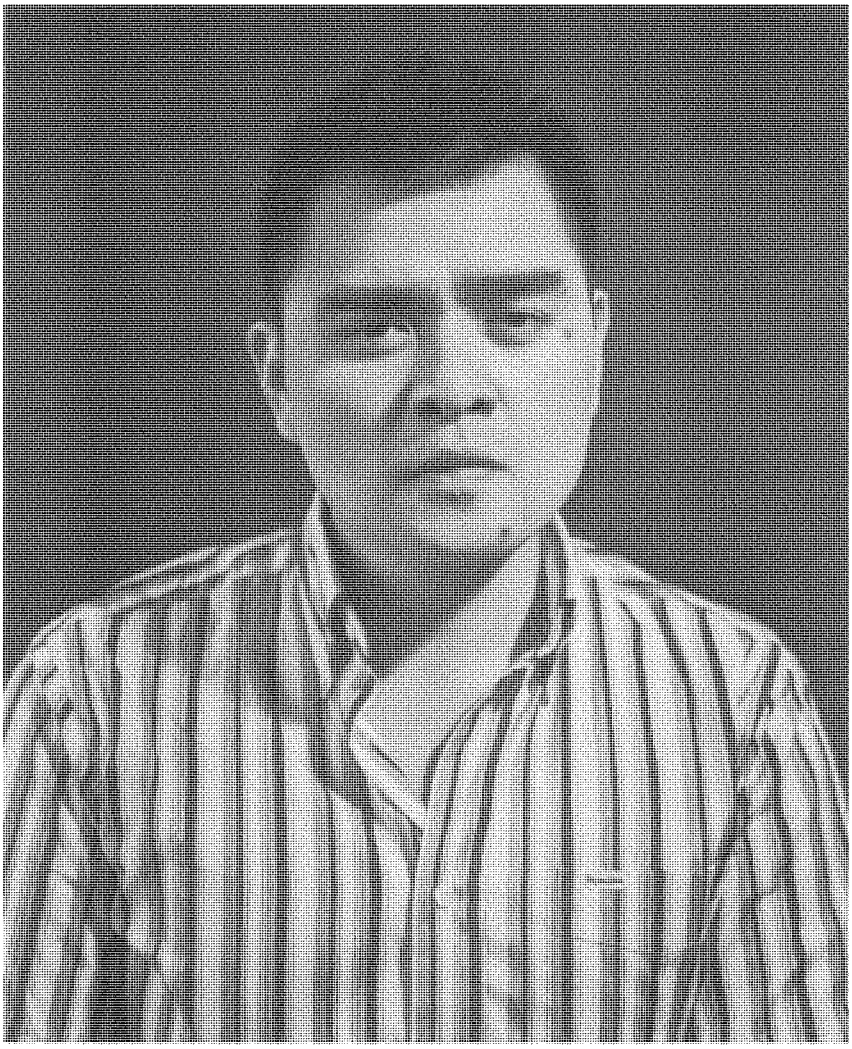
I decided then that I could never give anyone reason to doubt I was an American. I convinced myself that if I worked hard enough, if I achieved high enough, I would be rewarded with citizenship. I felt I could earn it.

I've tried. Over the past 14 years, I've graduated from high school and college and built a career as a journalist, interviewing some of the most famous people in the country. On the surface, I've created a good life. I've lived the American dream.

But I am still an undocumented immigrant. And that means living a different kind of reality. It means going about my day in fear of being found out. It means rarely trusting people, even those closest to me, with who I really am. It means keeping my family photos in a shoebox rather than displaying them on shelves in my home, so friends don't ask about them. It means reluctantly doing things I know are wrong and unlawful. And it has meant relying on a sort of 21st-century underground railroad of supporters, people who took an interest in my future and took risks for me.

Last year I read about four students who walked from Miami to Washington to lobby for the Dream Act, a nearly decade-old immigration bill that would provide a path to citizenship for young people who have been educated in this country. At the risk of deportation — the Obama

PHOTOGRAPH BY RYAN PFLUGER



administration has deported about a million people in the last two and half years — they are speaking out. Their courage has inspired me.

There are believed to be 11 million undocumented immigrants in the United States. Some pick your strawberries or care for your children. We're not always who you think we are. Some are in high school or college. And some, it turns out, write news articles you might read. I grew up here. This is my home. Yet even though I think of myself as an American and consider America my country, my country doesn't think of me as one of its own.

My first challenge was the language. Though I learned English in the Philippines, I wanted to lose my accent. During high school, I spent hours at a time watching television (especially "Frasier," "Home Improvement" and reruns of "The Golden Girls") and movies (from "Goodfellas" to "Anne of Green Gables"), pausing the VHS to try to copy how various characters enunciated their words. At the local library, I read magazines, books and newspapers — anything to learn how to write better. Kathy Dewar, my high-school English teacher, introduced me to journalism. From the moment I wrote my first article for the student paper, I convinced myself that having my name in print — writing in English, interviewing Americans — validated my presence here.

The debates over "illegal aliens" intensified my anxieties. In 1994, only a year after my flight from the Philippines, Gov. Pete Wilson was re-elected in part because of his support for Proposition 187, which prohibited undocumented immigrants from attending public school and accessing other services. (A federal court later found the law unconstitutional.) After my encounter at the D.M.V. in 1997, I grew more aware of anti-immigrant sentiments and stereotypes: *they don't want to assimilate, they are a drain on society.* They're not talking about me, I would tell myself. I have something to contribute.

To do that, I had to work — and for that, I needed a Social Security number. Fortunately, my grandfather had already managed to get one for me. Lolo had always taken care of everyone in the family. He and my grandmother emigrated legally in 1984 from Zambales, a province in the Philippines of rice fields and bamboo houses, to the United States, following Lolo's sister, who married a Filipino-American serving in the American military. She petitioned for her brother and his wife to join her. When they got here, Lolo petitioned for his two children — my mother and her younger brother — to follow them. But instead of mentioning that my mother was a married woman, he listed her as single. Legal residents can't petition for their married children. Besides, Lolo didn't care for my father. He didn't want him coming here too.

But soon Lolo grew nervous that the immigration authorities reviewing the petition would discover my mother was married, thus derailing not only her chances of coming here but those of my uncle as well. So he withdrew her petition. After my uncle came to America legally in 1991, Lolo tried to get my mother here through a tourist visa, but she wasn't able to obtain one. That's when she decided to send me. My mother told me later that she figured she would follow me soon. She never did.

The "uncle" who brought me here turned out to be a coyote, not a relative, my grandfather later explained. Lolo scraped together enough money — I eventually learned it was $4,500, a huge sum for him — to pay him to smuggle me here under a fake name and fake passport. (I never saw the passport again after the flight and have always assumed that the coyote kept it.) After I arrived in America, Lolo obtained a new fake Filipino passport, in my real name this time, adorned with a fake student visa, in addition to the fraudulent green card.

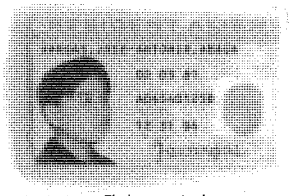
Using the fake passport, we went to the local Social Security Administration office and applied for a Social Security number and card. I remember it was a quick visit. When the card came in the mail, it had my full, real name, but it also clearly stated: "Valid for work only with I.N.S. authorization."

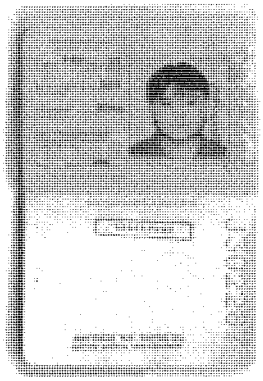
When I began looking for work, a short time after the D.M.V. incident, my grandfather and I took the Social Security card to Kinko's, where he covered the "I.N.S. authorization" text with a sliver of white tape. We then made photocopies of the card. At a glance, at least, the copies would look like copies of a regular, unrestricted Social Security card.

Lolo always imagined I would work the kind of low-paying jobs that undocumented people often take. (Once I married an American, he said, I would get my real papers, and everything would be fine.) But even menial jobs require documents, so he and I hoped the doctored card would work for now. The more documents I had, he said, the better.

While in high school, I worked part time at Subway, then at the front desk of the local Y.M.C.A., then at a tennis club, until I landed an unpaid internship at The Mountain View Voice, my hometown newspaper. First I brought coffee and helped around the office; eventually I began covering city-hall meetings and other assignments for pay.

For more than a decade of getting part-time and full-time jobs, employers have rarely asked to check my original Social Security card. When they did, I showed the photocopied version, which they accepted. Over time, I also began checking the citizenship box on my federal I-9 employment eligibility forms. (Claiming full citizenship was actually easier than





Staying Papers *The documentation that Vargas obtained over the years — a fake green card, a fake passport, a driver's license — allowed him to remain in the U.S. In Oregon, a friend provided a mailing address.*

declaring permanent resident "green card" status, which would have required me to provide an alien registration number.)

This deceit never got easier. The more I did it, the more I felt like an impostor, the more guilt I carried — and the more I worried that I would get caught. But I kept doing it. I needed to live and survive on my own, and I decided this was the way.

Mountain View High School became my second home. I was elected to represent my school at school-board meetings, which gave me the chance to meet and befriend Rich Fischer, the superintendent for our school district. I joined the speech and debate team, acted in school plays and eventually became co-editor of The Oracle, the student newspaper. That drew the attention of my principal, Pat Hyland. "You're at school just as much as I am," she told me. Pat and Rich would soon become mentors, and over time, almost surrogate parents for me.

After a choir rehearsal during my junior year, Jill Denny, the choir director, told me she was considering a Japan trip for our singing group. I told her I couldn't afford it, but she said we'd figure out a way. I hesitated, and then decided to tell her the truth. "It's not really the money," I remember saying. "I don't have the right passport." When she assured me we'd get the proper documents, I finally told her. "I can't get the right passport," I said. "I'm not supposed to be here."

She understood. So the choir toured Hawaii instead, with me in tow. (Mrs. Denny and I spoke a couple of months ago, and she told me she hadn't wanted to leave any student behind.)

Later that school year, my history class watched a documentary on Harvey Milk, the openly gay San Francisco city official who was assassinated. This was 1999, just six months after Matthew Shepard's body was found tied to a fence in Wyoming. During the discussion, I raised my hand and said something like: "I'm sorry Harvey Milk got killed for being gay ... I've been meaning to say this ... I'm gay."

I hadn't planned on coming out that morning, though I had known that I was gay for several years I became the only openly gay student at school, and it caused turmoil with my grandparents. Lolo kicked me out of the house for a few weeks. Though we eventually reconciled, I had disappointed him on two fronts. First, as a Catholic, he considered homosexuality a sin and was embarrassed about having "*ang apo na bakla*" ("a grandson who is gay"). Even worse, I was making matters more difficult for myself, he said. I needed to marry an American woman in a sham marriage in order to gain a green card.

Tough as it was, coming out about being gay seemed less daunting than coming out about my legal status. I kept my other secret mostly hidden.

MY GRANDFATHER SCRAPED TOGETHER ENOUGH MONEY — I EVENTUALLY LEARNED IT WAS $4,500 — TO PAY A MAN TO SMUGGLE ME HERE UNDER A FAKE NAME AND FAKE PASSPORT

While my classmates awaited their college acceptance letters, I hoped to get a full-time job at The Mountain View Voice after graduation. It's not that I didn't want to go to college, but I couldn't apply for state and federal financial aid. Without that, my family couldn't afford to send me.

But when I finally told Pat and Rich about my immigration "problem" — as we called it from then on — they helped me look for a solution. (At first, they even wondered if one of them could adopt me and fix the situation that way, but a lawyer Rich consulted told him it wouldn't change my legal status, because I was too old.) Eventually they connected me to a new scholarship fund for high-potential students who were usually the first in their family to attend college. Most important, the fund was not concerned with my immigration status. I was among its first recipients, with the scholarship covering tuition, lodging, books and other expenses for my studies at San Francisco State University.

As a college freshman, I found a job working part time at The San Francisco Chronicle, where I sorted mail and wrote some freelance articles. My ambition was to get a reporting job, so I embarked on a series of internships. First I landed at The Philadelphia Daily News, in the summer of 2001, where I covered a drive-by shooting and the wedding of the 76ers star Allen Iverson. Using those articles, I applied to The Seattle Times and got an internship for the following summer.

But then my lack of proper documents became a problem again. The Times's recruiter, Pat Foote, asked all incoming interns to hring certain paperwork on their first day: a birth certificate, or a passport, or a driver's license plus an original Social Security card. I panicked, thinking my documents wouldn't pass muster. So before starting the job, I called Pat and told her about my legal status. After consulting with management, she called me back with the answer I feared: I couldn't do the internship.

This was devastating. What good was college if I couldn't then pursue the career I wanted? If I was to succeed in a profession that is all about truth-telling, I couldn't tell the truth about myself.

After this episode, Jim Strand, the venture capitalist who sponsored my scholarship, offered to pay for an immigration lawyer. Rich and I went to meet her in San Francisco's financial district.

I was hopeful. This was in early 2002, shortly after Senators Orrin Hatch, the Utah Republican, and Dick Durbin, the Illinois Democrat, introduced the Dream Act — Development, Relief and Education for Alien Minors. It seemed like the legislative version of what I'd told myself: If I work hard and contribute, things would work out.

But the meeting left me crushed. My only solution, the lawyer said, was to go back to the Philippines and accept a 10-year ban before I could apply to return legally.

If Rich was discouraged, he hid it well. "Put this problem on a shelf," he told me. "Compartmentalize it. Keep going."

And I did. For the summer of 2003, I applied for internships across the country. Several newspapers, including The Wall Street Journal, The Boston Globe and The Chicago Tribune, expressed interest. But when The Washington Post offered me a spot, I knew where I would go. And this time, I had no intention of acknowledging my "problem."

The Post internship posed a tricky obstacle: It required a driver's license. (After my close call at the California D.M.V., I'd never gotten one.) So I spent an afternoon at The Mountain View Public Library, studying various states' requirements. Oregon was among the most welcoming — and it was just a few hours' drive north.

Again, my support network came through. A friend's father lived in Portland, and he allowed me to use his address as proof of residency. Pat, Rich and Rich's longtime assistant, Mary Moore, sent letters to me at that address. Rich taught me how to do three-point turns in a parking lot, and a friend accompanied me to Portland.

The license meant everything to me — it would let me drive, fly and work. But my grandparents worried about the Portland trip and the Washington internship. While Lola offered daily prayers so that I would not get caught, Lolo told me that I was dreaming too big, risking too much.

I was determined to pursue my ambitions. I was 22, I told them, responsible for my own actions. But this was different from Lolo's driving

a confused teenager to Kinko's. I knew what I was doing now, and I knew it wasn't right.

I was paying state and federal taxes, but I was using an invalid Social Security card and writing false information on my employment forms. But that seemed better than depending on my grandparents or on Pat, Rich and Jim, or seeking some kind of government assistance — or returning to a country I barely remembered. I convinced myself all would be O.K. if I lived up to the qualities of a "citizen": hard work, self-reliance, love of my country.

At the D.M.V. in Portland, I arrived with my photocopied Social Security card, my college I.D., a pay stub from The San Francisco Chronicle and my proof of state residence — the letters to the Portland address that my support network had sent. It worked. My license, issued in 2003, was set to expire eight years later, on my 30th birthday, on Feb. 3, 2011. I had eight years to succeed professionally, and to hope that some sort of immigration reform would pass in the meantime and allow me to stay.

It seemed like all the time in the world.

My summer in Washington was exhilarating. I was intimidated to be in a major newsroom but was assigned a mentor — Peter Perl, a veteran magazine writer — to help me navigate it. A few weeks into the internship, he printed out one of my articles, about a guy who recovered a long-lost wallet, circled the first two paragraphs and left it on my desk. "Great eye for details — awesome!" he wrote. Though I didn't know it then, Peter would become one more member of my network.

At the end of the summer, I returned to The San Francisco Chronicle. My plan was to finish school — I was now a senior — while I worked for The Chronicle as a reporter for the city desk. But when The Post beckoned again, offering me a full-time, two-year paid internship that I could start when I graduated in June 2004, it was too tempting to pass up. I moved back to Washington.

About four months into my job as a reporter for The Post, I began feeling increasingly paranoid, as if I had "illegal immigrant" tattooed on my forehead — and in Washington, of all places, where the debates over immigration seemed never-ending. I was so eager to prove myself that I feared I was annoying some colleagues and editors — and worried that any one of these professional journalists could discover my secret. The anxiety was nearly paralyzing. I decided I had to tell one of the higher-ups about my situation. I turned to Peter.

By this time, Peter had become part of newsroom management as The Post's director of training and professional development, a job he still holds. One afternoon in late October, we walked a couple of blocks to Lafayette Park,

Pre-Flight *In the Philippines with his mother, who was supposed to follow him to the United States but never did.*

across from the White House. Over some 20 minutes, sitting on a bench, I told him everything: the Social Security card, the driver's license, Pat and Rich, my family.

Peter was shocked. "I understand you 100 times better now," he said. He told me that I had done the right thing by telling him, and that it was now our shared problem. He said he didn't want to do anything about it just yet. I had just been hired, he said, and I needed to prove myself. "When you've done enough," he said, "we'll tell Don and Len together." (Don Graham is the chairman of The Washington Post Company; Leonard Downie Jr. was then the paper's executive editor.) We sealed the deal with a hug. A month later, I spent my first Thanksgiving in Washington with Peter and his family.

In the five years that followed, I did my best to "do enough." I was promoted to staff writer, reported on video-game culture, wrote a series on Washington's H.I.V./AIDS epidemic and covered the role of technology and social media in the 2008 presidential race. I visited the White House, where I interviewed senior aides and covered a state dinner — and gave the Secret Service the Social Security number I obtained with false documents.

I did my best to steer clear of reporting on immigration policy but couldn't always avoid it. On two occasions, I wrote about Hillary Clinton's position on driver's licenses for undocumented immigrants. I also wrote a story about Senator Mel Martinez of Florida, then the chairman of the Republican National Committee, who was defending his party's stance toward Latinos after only one Republican presidential candidate — John McCain, the co-author of a failed immigration bill — agreed to participate in a debate sponsored by Univision, the Spanish-language network.

It was an odd sort of dance: I was trying to stand out in a highly competitive newsroom, yet I was terrified that if I stood out too much, I'd invite unwanted scrutiny. I tried to compartmentalize my fears, distract myself by reporting on the lives of other people, but there was no escaping the central conflict in my life. Maintaining a deception for so long distorts your sense of self. You start wondering who you've become, and why.

In April 2008, I was part of a Post team that won a Pulitzer Prize for the paper's coverage of the Virginia Tech shootings a year earlier. Lolo died a year earlier, so it was Lola who called me the day of the announcement. The first thing she said was, "*Anong mangyari kung malaman nang tao?*"

What will happen if people find out?

I couldn't say anything. After we got off the phone, I rushed to the bathroom in the fourth floor of the newsroom, sat down on the toilet and cried.

In the summer of 2009, without ever having had that follow-up talk with top Post management, I left the paper and moved to New York to join The Huffington Post. I met Arianna Huffington at a Washington Press Club Foundation dinner I was covering for The Post two years earlier, and she later recruited me to join her news site. I wanted to learn more about Web publishing, and I thought the new job would provide a useful education.

Still, I was apprehensive about the move: Many companies were already using E-Verify, a program set up by the Department of Homeland Security that checks if prospective employees are eligible to work, and I didn't know if my new employer was among them. But I'd been able to get jobs in other newsrooms, I figured, so I filled out the paperwork as usual and succeeded in landing on the payroll.

While I worked at The Huffington Post, other opportunities emerged. My H.I.V./AIDS series became a documentary film called "The Other City," which opened at the Tribeca Film Festival last year and was broadcast on Showtime. I began writing for magazines and landed a dream assignment: profiling Facebook's Mark Zuckerberg for The New Yorker.

The more I achieved, the more scared and depressed I became. I was proud of my work, but there was always a cloud hanging over it, over me. My old eight-year deadline — the expiration of my Oregon driver's license — was approaching.

After slightly less than a year, I decided to leave The Huffington Post. In part, this was because I

wanted to promote the documentary and write a book about online culture — or so I told my friends. But the real reason was, after so many years of trying to be a part of the system, of focusing all my energy on my professional life, I had learned that no amount of professional success would solve my "problem" or ease the sense of loss and displacement I felt. I ask questions for a living, yet I could hardly answer the questions of my own life. I lied to a friend about why I couldn't take a weekend trip to Mexico. Another time I concocted an excuse for why I couldn't go on an all-expenses-paid trip to Switzerland. I have been unwilling, for years, to be in a long-term relationship because I never wanted anyone to get too close and ask too many questions. All the while, Lola's question was stuck in my head: What will happen if people find out?

Early this year, just two weeks before my 30th birthday, I won a small reprieve: I obtained a driver's license in the state of Washington. The license is valid until 2016. This offered me five more years of acceptable identification — but also five more years of fear, of lying to people I respect and institutions that trusted me, of running away from who I am.

I'm done running. I'm exhausted. I don't want that life anymore.

So I've decided to come forward, own up to what I've done, and tell my story to the best of my recollection. I've reached out to former bosses and employers and apologized for misleading them — a mix of humiliation and liberation coming with each disclosure. All the people mentioned in this article gave me permission to use their names. I've also talked to family and friends about my situation and am working with legal counsel to review my options. I don't know what the consequences will be of telling my story.

I do know that I am grateful to my grandparents for giving me the chance for a better life. I'm also grateful to my other family — the support network I found here in America — for encouraging me to pursue my dreams. I wrote a short essay about Pat and Rich in The Washington Post magazine in 2005, referring to them as my parents, and I still feel that way.

It's been almost 18 years since I've seen my mother. Early on, I was mad at her for putting me in this position, and then mad at myself for being angry and ungrateful. By the time I got to college, we rarely spoke by phone. It became too painful; after a while it was easier to just send money to help support her and my two half-siblings. My sister, 2 years old when I left, is almost 20 now. I've never met my 14-year-old brother. I would love to see them.

Not long ago, I called my mother. I wanted to fill the gaps in my memory about that August morning so many years ago. We had never discussed it. Part of me wanted to shove the memory aside, but to write this article and face the facts of my life, I needed more details. Did I cry? Did she? Did we kiss goodbye?

My mother told me I was excited about meeting a stewardess, about getting on a plane. She also reminded me of the one piece of advice she'd given me for blending in: If anyone asked why I was coming to America, I should say I was going to Disneyland. ◆

Benefactors *Vargas with the school officials Rich Fischer and Pat Hyland at his high-school graduation; with his grandfather, Lolo, with whom he lived and who provided most of the resources for his journey to America.*

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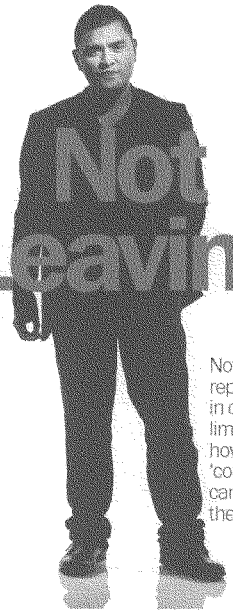
Not Legal

One year ago, Jose Antonio Vargas publicly revealed he's an undocumented immigrant

Vargas, May 24, New York City

Photographs by Gian Paul Lozza for TIME

Not Leaving



Now he reports on life in citizenship limbo and how others' 'coming out' can change the debate

'Why haven't you gotten deported?'

That's usually the first thing people ask me when they learn I'm an undocumented immigrant or, put more rudely, an "illegal." Some ask it with anger or frustration, others with genuine bafflement. At a restaurant in Birmingham, not far from the University of Alabama, an inebriated young white man challenged me: "You got your papers?" I told him I didn't. "Well, you should get your ass home, then." In California, a middle-aged white woman threw up her arms and wanted to know: "Why hasn't Obama dealt with you?" At least once a day, I get that question, or a variation of it, via e-mail, tweet or Facebook message. Why, indeed, am I still here?

It's a fair question, and it's been hanging over me every day for the past year, ever since I publicly revealed my undocumented status. There are an estimated 11.5 million people like me in this country, human beings with stories as varied as America itself yet lacking a legal claim to exist here. Like many others, I kept my status a secret, passing myself off as a U.S. citizen—right down to cultivating a homegrown accent. I went to college and became a journalist, earning a staff job at the Washington *Post*. But the deception weighed on me. When I eventually decided to admit the truth, I chose to come out publicly—very publicly—in the form of an essay for the New York *Times* last June. Several immigration lawyers counseled against doing this. ("It's legal suicide," warned one.) Broadcasting my status to millions seemed tantamount to an invitation to the immigration cops: Here I am. Come pick me up.

So I waited. And waited some more. As the months passed, there were no knocks on my door, no papers served, no calls or letters from U.S. Immigration and Customs Enforcement (ICE), which deported a record 396,906 people in fiscal 2011. Before I came out, the question always

at the top of my mind was, What will happen if people find out? Afterward, the question changed to What happens now? It seemed I had traded a largely hidden undocumented life in limbo for an openly undocumented life that's still in limbo.

But as I've crisscrossed the U.S.—participating in more than 60 events in nearly 20 states and learning all I can about this debate that divides our country (yes, it's my country too)—I've realized that the most important questions are the ones other people ask me. I am now a walking conversation that most people are uncomfortable having. And once that conversation starts, it's clear why a consensus on solving our immigration dilemma is so elusive. The questions I hear indicate the things people don't know, the things they think they know but have been misinformed about and the views they hold but do not ordinarily voice.

I've also been witness to a shift I believe will be a game changer for the debate: more people coming out. While closely associated with the modern gay-rights movement, in recent years the term *coming out* and the act itself have been embraced by the country's young undocumented population. At least 2,000 undocumented immigrants—most of them under 30—have contacted me and outed themselves in the past year. Others are coming out over social media or in person to their friends, their fellow students, their colleagues.

Video | *Watch and hear Jose Antonio Vargas and other undocumented immigrants*

WHERE THEY LIVE
States with the highest shares of undocumented residents

It's true, these individuals—many brought to the U.S. by family when they were too young to understand what it means to be "illegal"—are a fraction of the millions living hidden lives. But each becomes another walking conversation. We love this country. We contribute to it. This is our home. What happens when even more of us step forward? How will the U.S. government and American citizens react then?

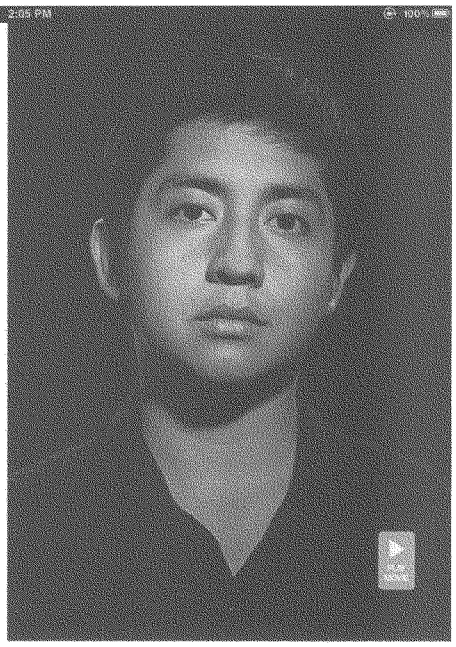
The contradictions of our immigration debate are inescapable. Polls show substantial support for creating a path to citizenship for some undocumenteds—yet 52% of Americans support allowing police to stop and question anyone they suspect of being "illegal." Democrats are viewed as being more welcoming to immigrants, but the Obama Administration has sharply ramped up deportations. The probusiness GOP waves a KEEP OUT flag at the Mexican border and a HELP WANTED sign 100 yards in, since so many industries depend on cheap labor.

Election-year politics is further confusing things, as both parties scramble to attract Latinos without scaring off other constituencies. President Obama has as much as a 3-to-1 lead over Mitt Romney among Latino voters, but his deportation push is dampening their enthusiasm. Romney has a crucial ally in Florida Senator Marco Rubio, a Cuban American, but is burdened by the sharp anti-immigrant rhetoric he unleashed in the primary-election battle. This month, the Supreme Court is expected to rule on Arizona's controversial anti-immigrant law. A decision either way could galvanize reform supporters and opponents alike.

But the real political flash point is the proposed Dream Act, a decade-old immigration bill that would provide a path to citizenship for young people educated in this country. The bill never passed, but it focused

attention on these youths, who call themselves the Dreamers. Both the President and Rubio have placed Dreamers at the center of their reform efforts—but with sharply differing views on how to address them.

ICE, the division of the Department of Homeland Security (DHS) charged with enforcing immigration laws, is its own contradiction, a tangled bureaucracy saddled with conflicting goals. As the weeks passed after my public confession, the fears of my lawyers and friends began to seem faintly ridiculous. Coming out didn't endanger me; it had protected me. A Philippine-born, college-educated, outspoken mainstream journalist is not the face the government wants to put on its deportation program. Even so, who flies under the radar, and who becomes one of those unfortunate 396,906? Who stays, who goes, and who decides? Eventually I confronted ICE about its plans for me, and I came away with even more questions.



UNDOCUMENTED VOICES
Where they were born, what they aspire to

VICTOR PALAFOX
Mexico
'I want to contribute to this country as a history teacher.'

WHERE THEY STAND

DEPORTING THE UNDOCUMENTED

OBAMA
He supports plans that would provide a path to citizenship for some undocumented immigrants living in the U.S. At the same time, he has dramatically stepped up the number of deportations since 2009. In fiscal 2011, the U.S. deported nearly 400,000; almost 55% were convicted criminals.

ROMNEY
He supports increased workplace immigration enforcement to trim the numbers of undocumented residents and opposes a path to citizenship for the more than 11.5 million undocumented immigrants in the U.S. "The answer is self-deportation," he says.

I am not without contradictions either. I am 31 and have been a working journalist for a decade. I know I can no longer claim to be a detached, objective reporter, at least in the traditional sense. I am part of this evolving story and growing movement. It is personal. Though I have worked hard to approach this issue like any other, I've also found myself drawn to the activists, driven to help tell their story.

This is the time to tell it.

'Why don't you become legal?'

asked 79-year-old William Oglesby of Iowa City, Iowa. It was early December, a few weeks before the Iowa caucuses, and I was attending a Mitt Romney town hall at an animal-feed maker. Romney had just fielded questions from a group of voters, including Oglesby and his wife Sharon, both Republicans. Addressing immigration, Romney said, "For those who have come here illegally, they might have a transition time to allow them to set their affairs in order and then go back home and get in line with everybody else."

"I haven't become legal," I told William, "because there's no way for me to become legal, sir."

Sharon jumped in. "You can't get a green card?"

"No, ma'am," I said. "There's no process for me." Of all the questions I've been asked in the past year, "Why don't you become legal?" is probably the most exasperating. But it speaks to how unfamiliar most Americans are with how the immigration process works.

As Angela M. Kelley, an immigration advocate in Washington, told me, "If you think the American tax code is outdated and complicated, try understanding America's immigration code." The easiest way to become a U.S. citizen is to be born here—doesn't matter who your parents are; you're in. (The main exception

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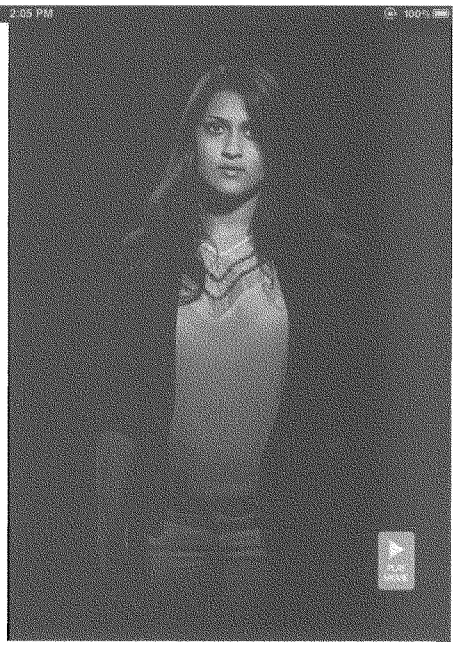
is for children of foreign diplomatic officials.) If you were born outside the U.S. and want to come here, the golden ticket is the so-called green card, a document signifying that the U.S. government has granted you permanent-resident status, meaning you're able to live and, more important, work here. Once you have a green card, you're on your way to eventual citizenship—in as little as three years if you marry a U.S. citizen—as long as you don't break the law and you meet other requirements such as paying a fee and passing a civics test.

Obtaining a green card means navigating one of the two principal ways of getting permanent legal status in the U.S.: family or specialized work. To apply for a green card on the basis of family, you need to be a spouse, parent, child or sibling of a citizen. (Green-card holders can petition only for their spouses or unmarried children.) Then it's time to get in line.



MANDEEP CHAHAL
India
'I hope to go on to become a doctor.'

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WHERE THEY STAND

ON-THE-BORDER SECURITY

OBAMA
He has supported increases in the number of border-patrol agents, new fencing and expansion of aerial patrols as well as new funds for intelligence analysts working on the southern border.

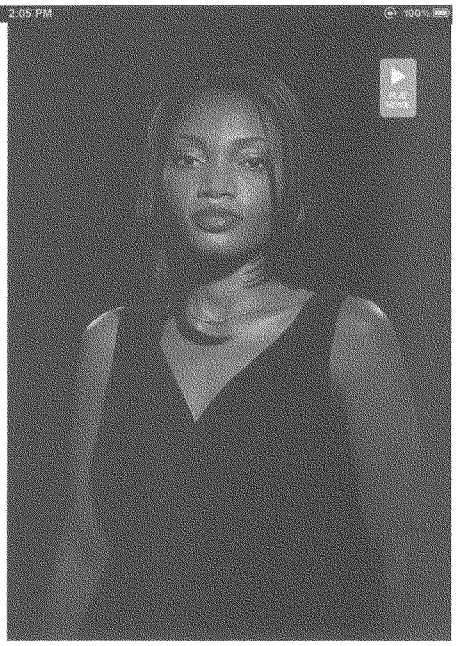
ROMNEY
He has called for a physical fence or "a technologically approved system" to screen and monitor the southern border, which is now a patchwork of fences, waterways and unguarded frontier.

For green-card seekers, the U.S. has a quota of about 25,000 green cards per country each year. That means Moldova (population: 3.5 million) gets the same number of green cards as Mexico (population: 112 million). The wait time depends on demand. If you're in Mexico, India, the Philippines or another nation with many applicants, expect a wait of years or even decades. (Right now, for example, the U.S. is considering Filipino siblings who applied in January 1989.)

Taking the employment route to a green card means clearing a pretty high bar if you have an employer who's willing to hire you. There are different levels of priority, with preference given to people with job skills considered crucial, such as specialized medical professionals, advanced-degree holders and executives of multinational companies. There's no waiting list for those. If you don't qualify for a green card, you may be able to secure one of the few kinds of temporary work visas—including the now famous H1-B visas that are common in Silicon Valley. For those already in the U.S. without documentation—those who have sneaked across a border or overstayed a temporary visa—it's even more complicated. Options are extremely limited. One route is to marry a U.S. citizen, but it's not as easy as the movies would have you think. The process can take years, especially if a sham marriage is suspected. I couldn't marry my way into citizenship even if I wanted to. I'm gay. Same-sex marriage is not recognized by the federal government—explicitly so, ever since Congress passed the Defense of Marriage Act. From the government's perspective, for me to pursue a path to legalization now, I would have to leave the U.S., return to the Philippines and hope to qualify via employment, since I don't have any qualifying family members here. But because I have admitted to

being in the U.S. illegally, I would be subject to a 10-year bar before any application would be considered.

The long-stalled Dream Act is the best hope for many young people. The original 2001 version would have created a path to legal status—effectively a green card—for undocumented people age 21 and under who had graduated from high school and resided in the U.S. for five years. As the bill stalled in Congress and Dreamers got older, the age requirement went up, getting as high as 35. Rubio is expected to introduce his own variation, granting nonimmigrant visas so Dreamers could legally stay in the U.S., go to school and work. Its prospects are dim in a gridlocked Congress. Obama, meanwhile, is said to be weighing an Executive Order that would halt deportation of Dream Act–eligible youth and provide them with work permits. Under both Rubio's bill (details of which are not yet confirmed)



TOLU OLUBUNMI
Nigeria
'I'm a chemical engineer and an advocate for human and civil rights.'

JOBS THEY FILL
Undocumented immigrants as a percentage of the U.S. workforce

WHERE THEY'RE FROM
Top three birthplaces of undocumented immigrants in the U.S.

and Obama's Executive Order (which is being studied), Dreamers could become legal residents. However, both proposals are only the first steps of a longer journey to citizenship.

'Why did you get your driver's license when you knew it wasn't legal?

Do you think you belong to a special class of people who can break any laws they please?"

These were the questions of a polite, mild-mannered man named Konrad Sosnow, who I later learned was a lawyer. In late March, Sosnow and I participated in what was billed as a "civility roundtable" on immigration in my adopted hometown of Mountain View, Calif. About 120 people attended. Sosnow had read my coming-out story and wanted to know why I had such disregard for laws.

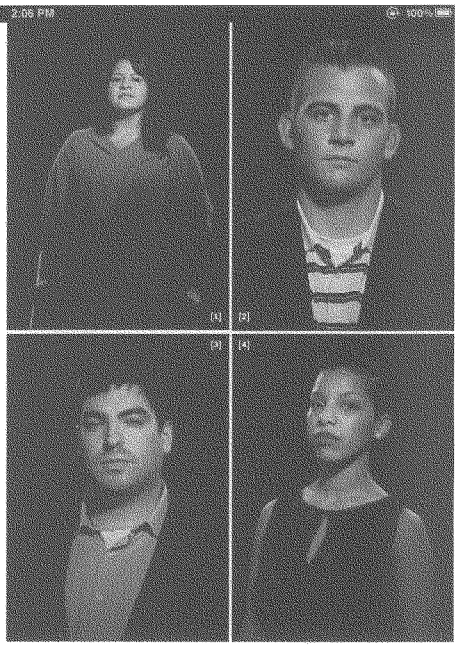
"I don't think I belong to a special class of people—not at all," I remember telling Sosnow. "I didn't get the license to spite you or disrespect you or because I think I'm better than you. I got the license because, like you, I needed to go to work. People like me get licenses because we need to drop kids off at school and because we need to pick up groceries. I am sorry for what I did, but I did it because I had to live and survive." Sosnow nodded, not exactly in agreement but at least with some understanding. We shook hands as the evening drew to a close. Months later, Sosnow told me he's written e-mails to the President and other elected officials, asking for immigration reform.

Everyday life for an undocumented American means a constant search for loopholes and back doors. Take air travel, for instance. Everyone knows that in the post-9/11 era, you can't fly without a government-issued ID. The easiest option for most people is their driver's license. Most states will not issue a license without proof of legal residency or citizenship. But a

few grant licenses to undocumented immigrants, New Mexico and Washington State among them. Like many others, I had falsely posed as a Washington State resident in order to get a license. Weeks after my coming-out essay was published last year, Washington revoked the license—not because I'm undocumented but because I don't actually live in Washington.

For those who don't have a driver's license—that includes me now—a passport from our native country can serve as ID. But it makes every flight a gamble. My passport, which I got through the Philippine embassy, lacks a visa. If airport security agents turn the pages and discover this, they can contact Customs and Border Protection, which in turn can detain me. But for domestic flights, security usually checks just the name, photo and expiration date, not for the visa.

We may be nonpeople to the TSA but not to the IRS. Undocumented workers pay taxes. I've paid income



[1] LORELLA PRAELI
Peru
'I want to push the law to advance justice.'

[2] MANUEL BARTSCH
Germany
'I want to be a member of Congress.'

[3] ROY NAIM
Israel
'I would love to be a motivational speaker.'

[4] YONERKY SANTANA
Dominican Republic
'My dream is to become a naturopathic doctor.'

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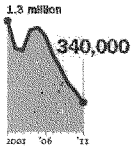
DEPORTATIONS
Number of deportations from the U.S.

2007
291,000

2011
397,000

APPREHENSIONS
Number of undocumented-immigrant apprehensions in the U.S.



taxes, state and federal, since I started working at 18. The IRS doesn't care if I'm here legally; it cares about its money. Some undocumented people, of course, circumvent the system, just like some citizens. But according to the nonpartisan Institute on Taxation and Economic Policy, households headed by undocumented workers collectively paid $11.2 billion in state and local taxes in 2010—$1.2 billion in income taxes, $1.6 billion in property taxes (because undocumented immigrants do own property) and $8.4 billion in consumption taxes. We also pay into Social Security. Even as many of us contribute, we cannot avail ourselves of a great deal of the services those tax dollars pay for.

When you lack legal status, the threat of deportation is a constant concern. In three years, Obama has deported 1.2 million; it took President George W. Bush eight years to deport 1.6 million. "Under both the Bush and Obama administrations, we have reversed ourselves as a nation of immigrants," Bill Ong Hing, a veteran immigration lawyer, told me. (Indeed, nations like Canada now have higher percentages of immigrants than the "melting pot" of the U.S.)

A big driver of the deportation numbers is ICE's Secure Communities program, which was meant to target terrorists and serious criminals but also winds up snaring those whose only crimes are civil violations connected to being undocumented (like driving without a license). Students and mothers have been detained and deported alongside murderers and rapists.

Depending on how the politics plays to the local electorate, many states wind up writing their own immigration laws. Two years ago, Arizona passed SB 1070—its "Show me your papers" bill—then the strictest immigration law in the country. It embodies an attrition-through-enforcement doctrine: the state will

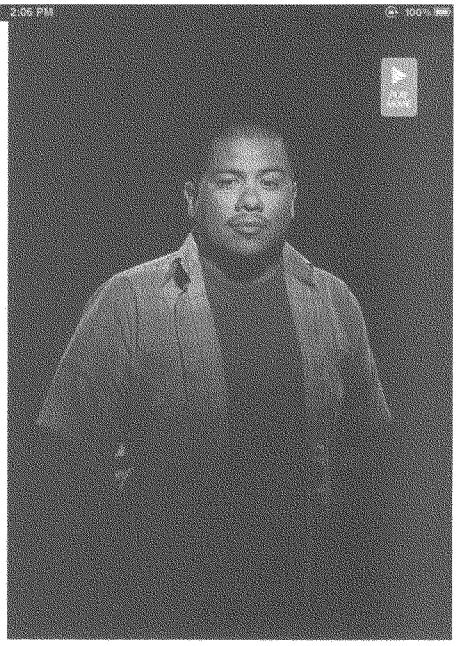
SOURCES: DEPARTMENT OF HOMELAND SECURITY; DEPARTMENT OF JUSTICE; PEW HISPANIC CENTER

so threaten the livelihood of its undocumented population that they will just give up and self-deport. Among the bill's most controversial provisions, currently being reviewed by the Supreme Court, is one giving law-enforcement officials the power to stop anyone whom they suspect to be "illegal." Arizona's law inspired copycat bills across the country.

For all the roadblocks, though, many of us get by thanks to our fellow Americans. We rely on a growing network of citizens—Good Samaritans, our pastors, our co-workers, our teachers who protect and look after us. As I've traveled the country, I've seen how members of this underground railroad are coming out about their support for us too.

'So you're not Mexican?'

an elderly white woman named Ann (she declined to give her last name) asked me when I told her about my undocumented status last October.



JULIO SALGADO
Mexico
'I want to use art to empower my community.'

We stood in front of a Kohl's department store in Alabama, which last year outdid Arizona by passing HB 56, the country's most draconian immigration law. HB 56 requires public schools to collect the immigration status of new students and their parents and makes it a felony for anyone to transport or house an undocumented immigrant. Both provisions are currently blocked by federal courts pending a ruling.

Ann, a registered Republican, was born and raised in the South, where immigration is introducing a new variable into the old racial divide. Alabama's immigrant population, though still relatively small, has nearly doubled in the past decade. The state's Latino population alone grew from 1.7% of the overall population in 2000 to nearly 4% in 2010—about 180,000 people, according to Census figures. But when I told Ann I am Filipino, she scrunched her forehead. "My border," I explained, "was the Pacific Ocean."

Though roughly 59% of the estimated 11.5 million undocumented immigrants in the U.S. are from Mexico, the rest are not. About 1 million come from Asia and the Pacific Islands, about 800,000 from South America and about 300,000 from Europe. Others come from Nigeria, Israel, pretty much everywhere. In the case of countries that don't share a border with the U.S., these are almost always people who entered the country legally—as vacationers or on temporary visas—and overstayed the time permitted.

But perception has become reality. What's cemented in people's consciousness is the television reel of Mexicans jumping a fence. Reality check: illegal border crossings are at their lowest level since the Nixon era, in part because of the continued economic slump and stepped-up enforcement. According to the Office of Immigration Statistics at DHS, 86% of undocumented immigrants have been living in the U.S. for seven years or longer.

Still, for many, immigration is synonymous with Mexicans and the border. In several instances, white conservatives I spoke to moved from discussing "illegals" in particular to talking about Mexicans in general—about Spanish being overheard at Walmart, about the onslaught of new kids at schools and new neighbors at churches, about the "other" people. The immigration debate, at its core, is impossible to separate from America's unprecedented and culture-shifting demographic makeover. Whites represent a shrinking share of the total U.S. population. Recently the U.S. Census reported that for the first time, children born to racial- and ethnic-minority parents represent a majority of all new births.

According to the Pew Hispanic Center, there are also at least

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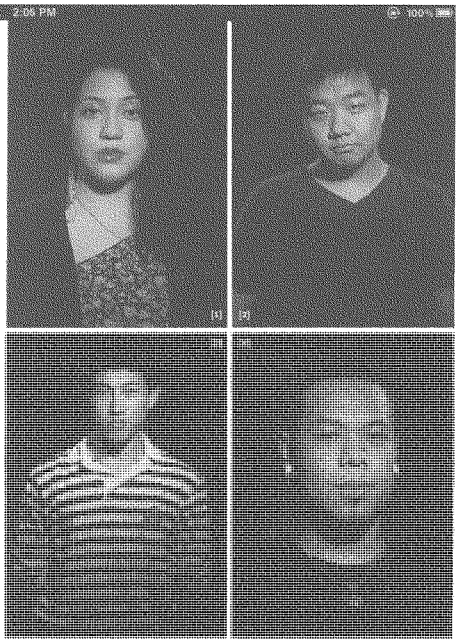
Nation | Immigration

17 million people who are legally living in the U.S. but whose families have at least one undocumented immigrant. About 4.5 million U.S.-citizen kids have at least one undocumented parent. Immigration experts call these mixed-status families, and I grew up in one. I come from a large Filipino clan in which, among dozens of cousins and uncles and aunties and many American-born nieces and nephews, I'm the only one who doesn't have papers. My mother sent me to live with my grandparents in the U.S. when I was 12. When I was 16 and applied for a driver's permit, I found out that my green card—my main form of legal identification—was fake. My grandparents, both naturalized citizens, hadn't told me. It was disorienting, first discovering my precarious status, then realizing that when I had been pledging allegiance to the flag, the republic for which it stands didn't have room for me.



[1] MELISSA VELEZ
Colombia
'I want to become a social worker.'

[2] MYUNG KEUN CHOI
South Korea
'I want to be the change that I want to see in the world.'

[3] WILIAN MEJIA
Honduras
'I want to be a dancer."

[4] OSCAR CHICO
Mexico
'I want to be a tattoo artist and a poet.'

'Why did you come out?' asked 20-year-old Gustavo Madrigal, who attended a talk I gave at the University of Georgia in late April. Like many Dreamers I've met, Madrigal is active in his community. Since he grew up in Georgia, he's needed to be. A series of measures have made it increasingly tough for undocumented students there to attend state universities.

"Why did *you* come out?" I asked him in turn.

"I didn't have a choice," Madrigal replied.

"I also reached a point," I told him, "when there was no other choice but to come out." And it is true for so many others. We are living in the golden age of coming out. There are no overall numbers on this, but each day I encounter at least five more openly undocumented people. As a group and as individuals, we are putting faces and names and stories on an issue that is often treated as an abstraction.

Technology, especially social media, has played a big role. Online, people are telling their stories and coming out, asking others to consider life from their perspective and testing everyone's empathy quotient. Some realize the risks of being so public; others, like me, think publicity offers protection. Most see the value of connecting with others and sharing experiences—by liking the page of United We Dream on Facebook, for example, or watching the *Undocumented and Awkward* video series on YouTube.

This movement has its roots in the massive immigrant-rights rallies of 2006, which were held in protest of HR 4437, a Republican-backed House bill that would have classified undocumented immigrants and anyone who helped them enter and remain in the U.S. as felons. Though the bill died, it awakened activism in this young generation. Through Facebook, Twitter and YouTube, I encountered youths who were bravely facing their truths.

"For many people, coming out is a way of saying you're not alone," says Gaby Pacheco of United We Dream. Her parents came from Ecuador and brought her to the U.S. in 1993, when she was 7. Immigration officials raided her home in 2006, and her family has been fighting deportation since. Now 27, she has three education degrees and wants to be a special-education teacher. But her life remains on hold while she watches documented friends land jobs and plan their futures. Says Pacheco: "In our movement, you come out for yourself, and you come out for other people."

The movement, as its young members call it, does not have a single leader. News travels by tweet and Facebook update, as it did when

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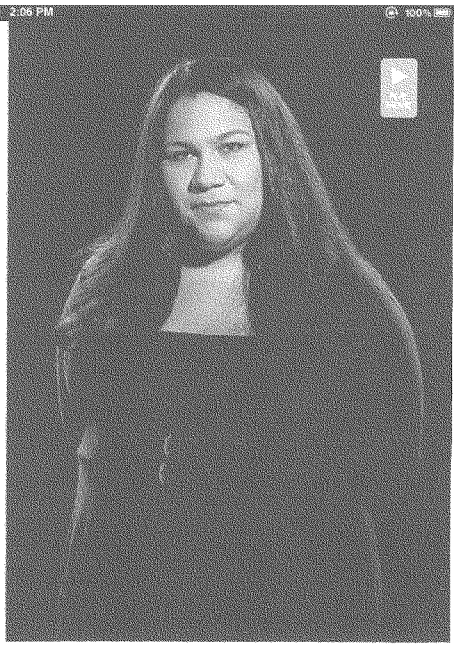
we heard that Joaquin Luna, an undocumented 18-year-old from Texas, killed himself the night after Thanksgiving and, though this is unproved, we instantly connected his death to the stresses of living as a Dreamer. Some Dreamers, contemplating coming out, ask me whether they should pretend to be legal to get by. "Should I just do what you did? You know, check the citizenship box [on a government form] and try to get the job?" a few have asked me. Often I don't know how to respond. I'd like to tell them to be open and honest, but I know I owe my career to my silence for all those years. Sometimes all I can manage to say is "You have to say yes to yourself when the world says no."

'What next?'

Is the question I ask myself now. It's a question that haunts every undocumented person in the U.S. The problem is, immigration has become



GABY PACHECO
Ecuador
'My dream is to be able to be a musical therapist.'

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a third-rail issue in Washington, D.C.—more controversial even than health care because it deals with issues of race and class, of entitlement and privilege, that America has struggled with since its founding. As much as we talk about the problem, we rarely focus on coming up with an actual solution—an equitable process to fix the system.

Maybe Obama will evolve on immigrant rights, just as he's evolved on gay rights, and use his executive powers to stop the deportations of undocumented youths and allow us to stay, go to school and work, if only with a temporary reprieve. The Republican Party can go one of two ways. It will either make room for its moderate voices to craft a compromise; after all, John McCain, to name just one, was a supporter of the Dream Act. Or the party will pursue a hard-line approach, further isolating not just Latinos, the largest minority group in the U.S., but also a growing multiethnic America that's adapting to the inevitable demographic and cultural shifts. In 21st century politics, diversity is destiny.

As for me, what happens next isn't just a philosophical question. I spend every day wondering what, if anything, the government plans to do with me. After months of waiting for something to happen, I decided that I would confront immigration officials myself. Since I live in New York City, I called the local ICE office. The phone operators I first reached were taken aback when I explained the reason for my call. Finally I was connected to an ICE officer.

"Are you planning on deporting me?" I asked.

I quickly found out that even though I publicly came out about my undocumented status, I still do not exist in the eyes of ICE. Like most undocumented immigrants, I've never been arrested. Therefore, I've never been in contact with ICE.

"After checking the appropriate ICE databases, the agency has no records of ever encountering Mr. Vargas," Luis Martinez, a spokesman for the ICE office in New York, wrote me in an e-mail.

I then contacted the ICE headquarters in Washington. I hoped to get some insight into my status and that of all the others who are coming out. How does ICE view these cases? Can publicly revealing undocumented status trigger deportation proceedings, and if so, how is that decided? Is ICE planning to seek my deportation?

"We do not comment on specific cases," is all I was told.

I am still here. Still in limbo. So are nearly 12 million others like me—enough to populate Ohio. We are working with you, going to school with you, paying taxes with you, worrying about our bills with you. What exactly do you want to do with us? More important, when will you realize that we are one of you? ■

WOLA

WASHINGTON OFFICE ON LATIN AMERICA
Promoting human rights, democracy, and social justice

Written Testimony Submitted by Adam Isacson and Maureen Meyer
Washington Office on Latin America

Hearing of the United States Senate Committee on the Judiciary
"Comprehensive Immigration Reform"
February 13, 2013

Since 2011 the Washington Office on Latin America's Border Security and Migration project has visited six of the nine regions into which Border Patrol divides the U.S.-Mexico border. On both sides, we have met with law enforcement and migration officials, human rights advocates, humanitarian workers, lawyers, journalists, scholars, and migrant shelter staff.

Our work has introduced us to a reality quite different from the way the border often gets portrayed in Washington. Mexico's severe recent violence has almost entirely failed to "spill over" into the United States.[1] The number of migrant apprehensions has dropped precipitously, even as drug seizures have climbed.

Our work on the border has made us aware of greatly increased, but questionably allocated, U.S. border security resources; a lack of strategic clarity following a historic buildup; practices that make deportees vulnerable to organized crime; and a sharply rising toll of migrants who die preventably of thirst, exposure, drowning or similar causes while on U.S. soil.

Future efforts to secure our southern border must reflect the reality on the ground, while ensuring that enforcement policies do not multiply risks to migrants' lives and safety. Now is the time for the U.S. government, in collaboration with Mexico, to make the world's busiest frontier more efficient, lawful, and humane for the rest of the twenty-first century.

As Congress begins discussing immigration reform, with further increases in border security spending a likely outcome, we ask that it consider the following elements.

1. Focus additional border security investments on the ports of entry.

It appears likely that any immigration reform measure this year will include a further buildup of security assets and capabilities on the U.S.-Mexico border. If that happens, we

[1] See the discussion of spillover violence data on pages 5-7 of WOLA's recent report Beyond the Border Buildup (Washington: WOLA, April 2012) <http://www.wola.org/files/Beyond_the_Border_Buildup_FINAL.pdf>, and the analysis of Arizona state violent crime statistics at WOLA's Border Fact Check website: "Is Arizona suffering 'increased crime and drugs' because of the border?" Border Fact Check (Washington: WOLA, August 13, 2012) <http://borderfactcheck.tumblr.com/post/29317170766/is-arizona-suffering-increased-crime-and-drugs>.

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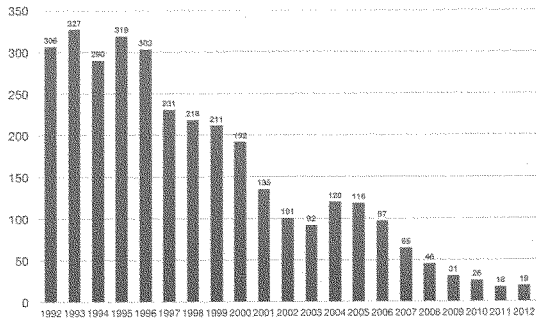
ask that it make the distinction among areas *between* land ports of entry, where coverage is quite thorough, and the ports of entry themselves, where needs are greater.

Recent years have seen a dramatic increase in federal efforts to cover the mostly remote and rural areas between the ports of entry. Border Patrol, the agency primarily responsible for these areas, has experienced a fivefold increase in personnel in the last twenty years. By the end of 2012, there were 18,516 Border Patrol agents along the U.S.-Mexico border, up from 9,891 in 2005 and 3,496 in 1993.[2] Customs and Border Protection's Office of Air and Marine now has over 290 aircraft at its disposal, including seven Predator-B drones patrolling the U.S.-Mexico border and a plan to reach 11 drones by 2016.[3]

Data on apprehensions indicate that undocumented migration across the U.S.-Mexico border has fallen to early-1970s levels.[4] Combine this drop with the increase in Border Patrol personnel, and the number of migrants apprehended per Border Patrol officer (19 in 2012) is now one tenth of what it was in 2000.[5]

Apprehensions per Border Patrol Agent, 1992-2012



[2] U.S. Border Patrol, "Border Patrol Agent Staffing By Fiscal Year" (Washington: Customs and Border Protection, February 2013) <http://www.cbp.gov/linkhandler/cgov/border_security/border_patrol/usbp_statistics/usbp_fy12_stats/staffing_1993_2012.ctt/staffing_1993_2012.pdf>.

[3] U.S. Customs and Border Protection, "Office of Air and Marine Overview" (Washington: Customs and Border Protection, October 5, 2010) <http://www.cbp.gov/xp/cgov/border_security/am/documents/oam_nr/cbp_air_marine_overview.xml>.
Brian Bennett, "Homeland Security adding 3 drone aircraft despite lack of pilots," The Los Angeles Times (Los Angeles: October 27, 2011) <http://articles.latimes.com/2011/oct/27/nation/la-na-us-drone-20111027>.
U.S. Government Accountability Office, Observations on the Costs and Benefits of an Increased Department of Defense Role in Helping to Secure the Southwest Land Border (Washington: GAO, September 12, 2011) <http://www.gao.gov/products/GAO-11-856R>.

[4] U.S. Border Patrol, "U.S. Border Patrol Total Apprehensions by Southwest Border Sectors Fiscal Year 1960-2012" (Washington: Customs and Border Protection, February 2013) <http://www.cbp.gov/linkhandler/cgov/border_security/border_patrol/usbp_statistics/usbp_fy12_stats/appr_swb.ctt/appr_swb.pdf>.

[5] U.S. Border Patrol, "Border Patrol Agent Staffing By Fiscal Year," *op. cit.*

Instead, it is *at the ports of entry* where needs are now greatest and least fulfilled. While Border Patrol's presence doubled at the U.S.-Mexico border since 2005, that of CBP's Office of Field Operations, which interviews and inspects all would-be crossers, grew by only 14 percent, to about 5,500 employees today.[6] As a result, northbound waits at busy border crossings routinely last a commerce-stifling one to two hours, at times even more.

The consequences of underfunding the ports of entry go still further. Our interviews with law enforcement officials coincide in concluding that the majority of most drugs (with the possible exception of marijuana) pass through the ports of entry—not the areas in between—hidden in cargo containers, vehicles, and merchandise. Meanwhile, overwhelmed Field Operations staff can devote little time to southbound inspections that are needed to halt arms trafficking and bulk cash transfers.

To address border security challenges effectively, and to make better use of U.S. financial resources, any additional investment should go to the agents at the ports of entry.

2. Increase coordination among federal, state and local agencies by developing a comprehensive southwest border security strategy coordinated by the White House.

After the buildup of the last several years, the U.S. government now has a multi-layered, overlapping, often confusing, and expensive set of agencies with border security responsibilities.[7]

These include components of the Departments of Homeland Security (CBP, Border Patrol, Immigration and Customs Enforcement (ICE), Justice (Drug Enforcement Administration (DEA), Federal Bureau of Investigation (FBI), Defense (Northern Command, National Guard deployments), states, localities, and others. Some are civilian, some are military, and nearly all have their own separate intelligence capabilities. Their growth has been accompanied by numerous ad hoc efforts to get employees of different agencies to work together, share intelligence, and carry out joint operations through a series of task forces, fusion centers, and other coordination bodies. Even when they are part of the same cabinet department, however, agencies have different goals, cultures, authorities, and ways of measuring success, and may at times compete for resources—and thus for credit.

This lack of clarity not only risks wasting resources. It can cause threats to be misread or missed. And it can cause consequences, like the humanitarian crisis facing the migrant population discussed below, to be overlooked, ignored, or even aggravated.

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[6] United States Congress, "Testimony of Congressman Silvestre Reyes (TX-16) Before the Committee on Appropriations, Subcommittee Homeland Security" (Washington: U.S. House of Representatives, April 14, 2011) <http://web.archive.org/web/20121212125201/http://reyes.house.gov/news/documentsingle.aspx?DocumentID=249470 >. U.S. Government Accountability Office, Additional Actions Needed to Strengthen CBP Efforts to Mitigate Risk of Employee Corruption and Misconduct (Washington: GAO, December 4, 2012) <http://www.gao.gov/products/GAO-13-59>.

[7] See the discussion of agencies' responsibilities on pages 17-28 of WOLA's recent report Beyond the Border Buildup (Washington: WOLA, April 2012) <http://www.wola.org/files/Beyond_the_Border_Buildup_FINAL.pdf>.

As is the case with the National Drug Control Strategy and Southwest Border *Counternarcotics* Strategy, the development of a national *border security* strategy should be the responsibility of the White House, since so many cabinet departments have a stake in border security. The strategy must also take into account cooperation—including sharing resources and intelligence and carrying out joint operations—with agencies over which the White House has no jurisdiction, such as states, localities, and especially the Mexican government.

3. Increase efforts to protect migrants.

3a. Abandon deportation practices that risk endangering people.

The U.S. government's repatriation practices have prioritized dissuading migrants from reentry over preventing families from being separated and respecting deportees' human rights. Mexican migration officials, migrant shelters, and U.S. border groups repeatedly report violations of the 2004 Memorandum of Understanding on the Safe, Orderly, Dignified and Human Repatriation of Mexican Nationals and local agreements between governments on repatriation practices, particularly provisions regarding the time of day when—and ports of entry where—women and children can be repatriated.

Although current agreements permit repatriation of able-bodied men 24 hours a day, returning any migrant in the post-midnight hours—as happens frequently—leaves deportees lacking shelter, bus services, and wire transfer services. At times, they may even be in danger: Mexico's six border states are all included in the State Department's November 2012 travel warning for Mexico.[8] Migrants in these states' cities are often victims of kidnapping, abuse, and extortion by criminal organizations and, at times, by Mexican officials.

Between 2009 and 2012 we noted a disturbing trend: the United States increased repatriations to Mexican border cities in Coahuila and Tamaulipas states, where homicides at the time were rising—a key indicator of increasing danger. Where homicides were dropping, as in Sonora and Baja California states, U.S. authorities chose to repatriate fewer migrants.[9] While the security crisis in Mexico's border zones continues, determinations of sites for repatriation must take into account security conditions, assessed on current data about risks.

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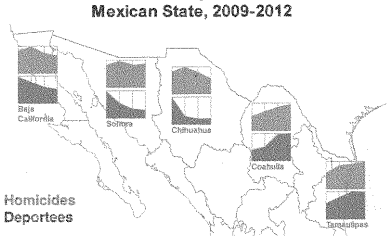
[8] U.S. Department of State, Bureau of Consular Affairs, "Travel Warning" (Washington: November 20, 2012) <http://travel.state.gov/travel/cis_pa_tw/tw/tw_5815.html>.

[9] Government of Mexico, Secretaría de Gobernación, Sistema Nacional de Seguridad Pública, "Incidencia Delictiva Nacional, Fuero Común" (Mexico: SNSP, 2013) <http://www.secretariadoejecutivosnsp.gob.mx/es/SecretariadoEjecutivo/Incidencia_Delictiva_Nacional_fuero_comun>. Government of Mexico, Secretaría de Gobernación, Instituto Nacional de Migración, "Boletines Estadísticos" (Mexico: Centro de Estudios Migratorios, 2013) <http://www.inm.gob.mx/index.php/page/Boletines_Estadisticos>.

Homicide and U.S. Deportation Trends, by Mexican State, 2009-2012



Homicide data: Government of Mexico, Sistema Nacional de Seguridad Pública (SNSP)
Deportee data: Government of Mexico, Instituto Nacional de Migración (INM)

The services available to deported migrants should also be a factor. Tijuana, Baja California state, where the United States reduced deportations by one-third between 2009 and 2012, has 12 migrant shelters. In contrast, one only shelter operates in Matamoros, Tamaulipas state, yet the number of migrants deported to this city more than quintupled in this period.[10]

The practice of "lateral repatriation," officially termed the Alien Transfer Exit Program (ATEP), also puts some migrants at risk. The program moves undocumented male migrants from the sector where they were detained to another location, often hundreds of miles away, for removal. The rationale is to disrupt the connection between migrants and the smugglers with whom they originally crossed, thus making it harder to attempt another border crossing.

Concerns about the program include a lack of transparency about its operations and guidelines about who can be laterally repatriated; the effects of repatriating Mexican migrants to cities with which they are unfamiliar, and which may lack safety and social services; and the separation of families. Multiple accounts indicate that migrants, especially those unfamiliar with their cities of arrival, are preyed upon by gangs and organized criminal groups when deported from the United States.[11]

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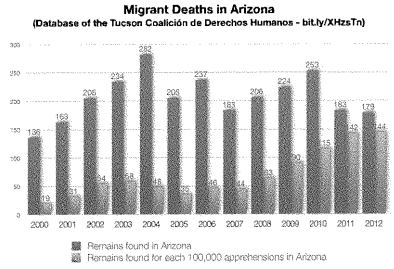
[10] Government of Mexico, Secretaría de Gobernación, Instituto Nacional de Migración, "Boletines Estadísticos," *op. cit.*
Universidad Autónoma de Baja California Campus Mexicali, Instituto de Investigaciones Sociales, Directorio de Organizaciones Sociales que Atienden a Migrantes en la Frontera Norte de México (Mexicali: IIS, 2013) <https://docs.google.com/file/d/0ByHZE7WNNIsfaG9EZmxHdDRrMG8/edit>.

[11] Daniel Hernandez, "Does U.S. deportation program put migrants in harm's way?" The Los Angeles Times (Los Angeles: September 29, 2011) <http://latimesblogs.latimes.com/world_now/2011/09/mexico-zetas-deportation-illegal-immigration-letter-exit-transfer.html>.
Richard Marosi, "Deportees to Mexico's Tamaulipas preyed upon by gangs," The Los Angeles Times (Los Angeles: September 8, 2012) <http://articles.latimes.com/2012/sep/08/local/la-me-deportee-danger-20120909>.

Immigration reform efforts should ensure that deportations of undocumented migrants to Mexico are carried out in a way that does not endanger them. Late-night returns and lateral repatriations should be stopped. In its cooperation with Mexico, the United States government should hold bi-national meetings every six months to assess the security situation and existing government and social services in Mexican border towns to determine which areas are safer and better equipped to receive repatriated migrants. This is particularly the case with migrants whom ICE is deporting from the interior of the United States.

3b. Prevent migrant deaths.

Every day, one or more migrants die on U.S. soil of dehydration, hypothermia, drowning, or similar causes related to the dangers of their journey. In fiscal year 2012, Border Patrol reported finding the remains of 463 migrants, over 100 more than in 2011 and the highest number on record since 2005.[12] Deaths of migrants are increasing at a time when apprehensions of migrants—and thus most likely the total number of migrants—are dropping. This means that their passage is getting deadlier.



Many more of these lives could be saved with a few inexpensive adjustments in water availability, rescue beacons, and search-and-rescue capability. **Additional funds should be appropriated to DHS to expand Border Patrol Search, Trauma, and Rescue Unit**

Nick Miroff, "Lateral deportation: Migrants crossing the Mexican border fear a trip sideways," The Washington Post (Washington: February 12, 2013) <http://www.washingtonpost.com/blogs/worldviews/wp/2013/02/12/lateral-deportation-migrants-crossing-the-mexican-border-fear-a-trip-sideways/>.

[12] U.S. Border Patrol, "U.S. Border Patrol Sector Profile" (Washington: Customs and Border Protection, February 2013) <http://www.cbp.gov/linkhandler/cgov/border_security/border_patrol/usbp_statistics/usbp_fy12_stats/usbp_sector_profile.ctt/usbp_sector_profile.pdf>.

U.S. Border Patrol, "U.S. Border Patrol Sector Profile" (Washington: Customs and Border Protection, April 2012) < http://www.cbp.gov/linkhandler/cgov/border_security/border_patrol/usbp_statistics/usbp_fy11_stats/fy_profile_2011.ctt/fy_profile_2011.pdf>.

Marc R. Rosenblum, Border Security: Immigration Enforcement Between Ports of Entry (Washington: Congressional Research Service, January 6, 2012): 33 <http://fpc.state.gov/documents/organization/180681.pdf>.

teams (BORSTAR), particularly in southwest border sectors with high numbers of migrant deaths. Studies have shown that the probability of death decreases significantly if BORSTAR agents, as opposed to non-BORSTAR Border Patrol agents, respond to a migrant in distress.[13]

Since they enable agents to locate migrants in distress, Border Patrol has also affirmed that rescue beacons help them save migrants' lives.[14] Access to water, too, can also be a question of life and death. Humanitarian organizations routinely place water jugs and drums in the borderlands, but their capacity is limited and state and federal agents at times obstruct their efforts. **Directing Border Patrol to establish water drums, particularly alongside rescue beacons, would be an important step to avoid preventable deaths on U.S. soil.**

Preventing migrant deaths would also ease the financial burden on state and local authorities with meager resources to deal with migrant remains. Local officials in Brooks County, Texas, which saw migrant deaths nearly double in 2012, estimate that the costs of dealing with the unidentified dead, including mortician fees and autopsies, amount to hundreds of thousands of dollars each year.[15]

4. Identify migrant remains.

Many of these recovered remains, which now number in the thousands, are unidentified. No unified procedure exists to process remains and DNA samples of bodies found in the border region. Many remains have not had their DNA sampled, and there has been no consolidated effort to match the DNA of unidentified remains with family members searching for missing loved ones.

An immigration reform effort could make it possible to identify the dead, and find the missing, by including the following modest measures.

- Provide federal funding to counties and tribal governments for the handling and DNA analysis of remains found in U.S. territory within 200 miles of the border with Mexico.
- Mandate and fund the creation of a Missing Migrants program within the National Missing and Unidentified Persons System (NamUs). This would include uploading all missing migrant cases into NamUS and directing all forensic institutions processing migrant remains to do the same.
- Clearly authorize and encourage NamUs to respond to international requests and facilitate information sharing.

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[13] U.S. Government Accountability Office, Border-Crossing Deaths Have Doubled Since 1995 (Washington, August 2006): <http://www.gao.gov/assets/260/251173.pdf>

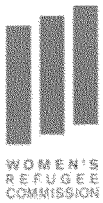
[14] U.S. Customs and Border Protection, "Rescue Beacon Helps Border Patrol Agents Save Lives of Two People" (Falfurrias, Texas: CBP, April 27, 2012) <http://www.cbp.gov/xp/cgov/newsroom/news_releases/local/2012_news_releases/april_2012/04272012_5.xml>.

[15] "Death toll of illegal immigrants soars in South Texas," The Fort Worth Star-Telegram (Fort Worth, TX: January 1, 2013).

- Authorize and fund large-scale DNA comparisons between unidentified remains found in the U.S. and that of relatives of missing nationals provided by foreign consulates.

Recent border security and migration resources from WOLA:

- BorderFactCheck.org website
- "Beyond the Border Buildup," an April 2012 report: www.bit.ly/MBzJzz
- "Border Security and Migration: A Report from South Texas," January 2013: www.bit.ly/14pPofX
- "Five Misconceptions about Border Security," February 2013: www.bit.ly/X3Mk4X
- "An Uneasy Coexistence: Security and Migration Along the El Paso-Ciudad Juárez Border," December 2011: www.bit.ly/x0H69n



Women's Refugee Commission
Statement on Comprehensive Immigration Reform

Hearing before the Senate Judiciary Committee

February 13, 2013

The Women's Refugee Commission welcomes the Senate Judiciary Committee's hearing on Comprehensive Immigration Reform. As the Committee considers a commonsense approach to immigration reform, it is imperative that women and children be afforded opportunities, protections and pathways equal to those of men. Reform cannot be comprehensive unless it addresses the lived realities of all migrants in the United States.

Migrant women and children are too often omitted from public discourse around immigration reform, even though they comprise a significant proportion of the total immigrant population. They come to the United States in search of opportunity, freedom, family unity and safety from violence in their home country. However, they have unique vulnerabilities that our immigration laws do not sufficiently address. Women and children are more likely to face exploitation and danger both at the border and in the interior. In addition, because women often lack access to higher education, they may not be able to avail themselves of the same opportunities for employment-based migration and suffer disproportionally from the backlogs in our family-based system. Families are too often separated by immigration enforcement practices that threaten women's custody of their children. And migrant children, many of them unaccompanied, have no access to legal pathways through employment-based migration and limited access to counsel and critical social services. Furthermore, they experience emotional trauma and instability as a result of limited discretion and due process in our immigration laws.

While we recognize the need to address inadequacies in the employment-based system and to ensure security at the border, such reforms cannot be made at the expense of family unity, civil and human rights, and due process. The Women's Refugee Commission urges the Committee to commit to a solution that is fully inclusive of all immigrants — including women and children — and that protects core American concepts, including family unity and equal rights.

In order to accomplish immigration reform that is truly inclusive and comprehensive, the Women's Refugee Commission highlights four key issues that the Committee must include in any piece of legislation:

- A pathway to citizenship that includes women and children
- Mechanisms for ensuring family unity
- Smart border enforcement
- Due process protections

A Pathway to Citizenship That Includes Women and Children

As noted in the "Statement on Principles on Women and Immigration Reform," endorsed by over 200 local, state and national organizations (*see attached*), the face of the migrant in the United States is increasingly that of a woman. Fifty-one percent of the immigrant population is made up of women.[1] One hundred immigrant women arrive in the United States for every 96 men.[2] Approximately 5 million undocumented women[3] and 1 million undocumented children[4] currently live in the United States. Yet our immigration laws and policies have historically been — and continue to be — unfair to both groups. Pathways to citizenship that rely on traditional standards for employment verification disadvantage immigrant women workers, who are more likely than men to work in the informal economy or as homemakers, and children, who cannot legally work below a certain age. Thousands of women and children who enter lawfully as beneficiaries of an employment-based visa application have no work authorization. They are wholly dependent on the principal visa holder and thus are highly vulnerable to exploitation and abuse. Decades-long backlogs in the family-based immigration system — more often utilized by women — mean that women have fewer opportunities than men to lawfully join family in the United States and greater incentives to cross the border through unlawful channels. In addition, the children of immigrants represent the fastest growing segment of the child population, as stated in the "Principles for Children in Immigration Reform," also endorsed by over 200 local, state and national organizations (*see attached*). They currently comprise 1 in 4 of all children in the United States.[5] Immigration policies that fail to meet the needs and realities of their parents fail them as well.

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[1]United States Census Bureau. *2011 American Community Survey 1-Year Estimates. Selected Characteristics of the Native and Foreign-Born Populations*. Available at http://factfinder2.census.gov/faces/nav/jsf/pages/searchresults.xhtml?refresh=t. Accessed on February 11, 2013.

[2]Migration Policy Institute. *MPI Data Hub: Foreign-Born Males per 100 Foreign-Born Females, for the United States: 1870 to 2011*. Available at http://www.migrationinformation.org/datahub/charts/final.malesfemales.shtml. Accessed on February 11, 2013.

[3] Hoefer M, Rytina N and Baker B. U.S. Department of Homeland Security. *Estimates of the Unauthorized Immigrant Population Residing in the United States: January 2011*. March 2012. Available at http://www.dhs.gov/xlibrary/assets/statistics/publications/ois_ill_pe_2011.pdf. Accessed on January 15, 2013.

[4] Urban Institute, http://www.urban.org/publications/412203.html.

[5]Foundation for Child Development. *Children in Immigrant Families: Essential to America's Future, 3* (June 2012). Available at http://fcd-us.org/resources/children-immigrant-families-essential-americas-future. Accessed on February 11, 2013.

If it is to be effective in the long term, solutions to our broken immigration system must broaden the opportunities for women and children to migrate lawfully and to become full contributors to the economic and social fabric of our society. Any pathway to citizenship must be open, affordable, safe and accessible to all women and children in need of status. For women, the pathway must include those whose work is in the home and those who are employed in the informal economy. For children, it must include beneficiaries of Deferred Action for Childhood Arrivals (DACA), undocumented children under the age of 21 and unaccompanied immigrant children. Furthermore, any avenue for self-petition for legal status for persons vulnerable to abuse by principal applicants must also be preserved. Lastly, reform must reduce backlogs in the family-based system, provide protections for those who migrate through the employment-based system and avoid the temptation to sacrifice family-based visas to the demand for high-skilled workers.

Mechanisms for Ensuring Family Unity

The story of a mother and son whom the Women's Refugee Commission met at the Berks Family Residential Center in Leesport, Pennsylvania, illustrates the urgent need to ensure that immigration enforcement does not undermine children's safety and tear families apart. Luz was detained in rural Pennsylvania and ordered deported. She left her one-year-old son, a U.S. citizen child, with a neighbor, expecting to return in a few days. However, Border Patrol apprehended Luz and her son shortly after she picked the boy up from a facility for unaccompanied alien children in Arizona. They were taken into custody and transferred to a family detention facility across the country. Because Luz was in detention, it was impossible for her to make long-term care arrangements for her infant or to arrange to take the child with her to her home country. She called her neighbor, her consulate and her deportation officer for help — all to no avail. Luz was deported without her baby and is unlikely to be able to reunify with him in the future.[6]

Luz's story is a frightening reality for many parents. Some 5.5 million children in the United States live in fear of being separated from a parent because their family is of mixed legal status.[7] Current immigration policies tear hundreds of thousands of these families apart every year. Over 200,000 parents of U.S. citizen children were deported between July 2010 and September 2012, according to the Department of Homeland Security.[8] Many parents apprehended during immigration enforcement operations have no opportunity to make care arrangements for their children, and children are needlessly placed in the child welfare system. Over 5,000 children are currently in the child welfare system as a result of a parent's detention or deportation,[9] and the complications that arise at the intersection of immigration and child welfare law mean that family reunification will be all but impossible in many of these cases.

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[6]Women's Refugee Commission. *Torn Apart by Immigration Enforcement: Parental Rights and Immigration Detention*, 12 (December 2010). Available at http://womensrefugeecommission.org/programs/detention/parental-rights. Accessed on February 11, 2013.

[7] Id.

[8]Immigration Policy Center. *Falling Through the Cracks*. Available at http://www.immigrationpolicy.org/just-facts/falling-through-cracks. Accessed on February 11, 2013.

[9] Id.

The family unit is an integral building block of thriving and successful communities. Children cannot achieve their full potential when they grow up without their parents and parents cannot raise strong, capable and successful children when they live in constant fear of detection and removal. It is essential that reform place family unity back at the center of our immigration policy. Undocumented family members must have a mechanism to come out of the shadows and access full citizenship. Detained and deported parents must have a meaningful opportunity to protect their parental rights. The immigration system must also speedily resolve the current visa backlogs and provide adequate channels for family-based immigration that minimize prolonged family separation and remove incentives to migrate unlawfully.

Smart Border Enforcement

For immigration reform to be effective, border enforcement must include security of the person and migrants seeking safety should be quickly identified and given the right to seek protection in accordance with international law. In the past two years the use of lethal force against migrants, even children, has escalated and hundreds of stories of physical abuse against migrants have been reported. For example, a 16-year-old girl told the Women's Refugee Commission that when she was apprehended by Border Patrol the agent kicked her hard on the leg. When the agent eventually agreed to take her to a doctor because she couldn't walk on that leg, he threatened her and told her she couldn't tell the doctor who had hurt her leg. The agent sat with the girl while the doctor examined her and she was unable to report the abuse.

Every year, thousands of unaccompanied children come to the United States, many of whom are fleeing persecution and violence in their home country. When these children are apprehended by Border Patrol, they are held in the same inappropriate conditions as adults, in freezing cold border stations without sufficient food, water, clothing or blankets. Although these children have experienced violence and trauma along the way, they have no one to help them understand what is happening to them — or to explain their legal options — during these first days in the country. As a result, many who have asylum claims or are victims of trafficking are a risk of being returned to their country without an opportunity to pursue protection here.

Money allocated to enforcement should be spent wisely — not to already well resourced Border Patrol or deterrence programs that have not been proven to be effective, but to provide adequate training, oversight and accountability mechanisms that ensure migrants are being treated with respect and dignity. When dealing with children, enforcement efforts must take into consideration the best interest of the child. Children should be given the benefit of the doubt during any investigation, inquiry or detention. There must also be appropriate and accountable training policies and protocols for interacting with and screening children and asylum seekers. The use of force should be prohibited, except where there is a demonstrated need, and it is essential that women, children and families be provided a safe environment while they are in the custody of the federal government.

The Women's Refugee Commission acknowledges the importance of ensuring rule of law and protecting against genuine threats; however, it is of utmost importance that the security of our country's borders does not come at the cost of undermining our nation's traditions of due process and at the expense of the human rights of migrants.

Due Process Protections

Soledad arrived at the Eloy detention facility in Arizona in December 2011. As an asylum seeker, she was subject to mandatory detention. She immediately reported she was pregnant and suffering abdominal pains. After days of making complaints that were ignored by medical staff at the facility, Soledad began bleeding. She was finally taken to a doctor who told her she was losing her baby. Soledad was sent back to her cell to deal with the miscarriage by herself and remained in detention as she delivered her fetus. Soledad was eventually released on bail and is fighting her asylum claim based on being a victim of domestic violence.

Due process is the bedrock of the American justice system. It is a basic right that is essential to preserving American values of fairness and equality. However, thousands of immigrants experience mandatory or prolonged detention without any opportunity for a hearing. In 2012 alone, the United States detained almost 400,000 immigrants — at the expense of tax payers.[10] Many of these detainees are women, children and families seeking safety from persecution or other human rights abuses. For example, under Expedited Removal, asylum seekers without proper documentation must be detained without bond hearings while their cases are reviewed. Conditions in immigration detention facilities are too often based on a correctional model. These facilities may be hundreds of miles away from city centers, making it almost impossible for family or counsel to visit. Mandatory detention forces the federal government to spend money on detention beds even though economical and effective alternatives to detention and alternate forms of detention exist.

Immigration reform must respect the due process rights of immigrants. To do so, mandatory detention laws should be eliminated and replaced with individualized determinations of the need to detain. If detention is required, it must consist of the least restrictive means possible, which includes alternative forms of custody such as ankle monitors or house arrest. Alternatives to detention should also be expanded and the costly legislative requirement for a minimum numbers of detention beds must be eliminated. Moreover, the conditions of custody must reflect the civil nature of immigration violations. Detention facilities should be non-penal and minimally restrictive. NGOs should be given access to all Immigration and Customs Enforcement and Customs and Border Protection detention facilities to monitor conditions and provide independent oversight of the Department of Homeland Security's operations. Finally, all children and persons with disabilities in removal proceedings should have access to government paid counsel in their proceedings.

[10] http://www.ice.gov/news/releases/1212/121221washingtondc2.htm.

Conclusion

The Women's Refugee Commission is encouraged by the Senate Judiciary Committee's strong desire to fix a broken immigration system. This is an important moment not just for immigrants but for all who live in the United States. Immigrant women and children have played a critical role in this country's many successes, and their contributions to our society and economy must be acknowledged with a pathway to citizenship, protections for family unity and respect for their basic human rights.

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