

Statement of

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Before

The House Subcommittee on Immigration, Citizenship, Refugees, Border  
Security, and International Law

on

The Ethical Imperative for Reform of Our Immigration System



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I am Bishop Gerald F. Kicanas, bishop of Tucson, Arizona, and Vice-President of the U.S. Conference of Catholic Bishops (USCCB). I testify today on behalf of the USCCB and its Committee of Migration, of which I am a consultant, on the Catholic Church's perspective on comprehensive immigration reform.

Madam Chairman, I am pleased to have the opportunity to testify today on this important topic. I would like to thank you, Madam Chairman, and Representative Steve King (R-IA), ranking member of the subcommittee, for holding this hearing on such a vital issue to our nation. I would also like to recognize Representative John Conyers, chairman of the House Judiciary Committee, and Representative Lamar Smith (R-TX), ranking member of the committee, for their support of this hearing.

We are hopeful that today's hearing marks part of a process which will result in the passage of comprehensive immigration reform in the near future. Our nation cannot wait to repair our broken immigration system, which does not accommodate the migration realities we face in our nation today, serve our national interests, or respect the basic human rights of migrants who come to this nation in search of employment for themselves and better living conditions for their children.

In order to achieve real reform, the Obama Administration and Congress must work together on a comprehensive package which would legalize 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 be reunited 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 remain in their homelands and live in dignity.

Madam 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. With your permission, Madam Chairman, I ask that the chapter of the pastoral letter addressing policy recommendations be included in the hearing record.

My testimony today will focus on many of the recommendations contained in the U.S.-Mexican bishops' joint letter, including 1) the need to address the root causes of migration so that migrants can remain home to support themselves and their families; 2) the need to reform U.S. immigration policy so that migrants can enter in a safe, legal, orderly, and humane manner; 3) the need to reevaluate our immigration enforcement policies so that the abuse, exploitation, and death of migrants are eliminated at the same time legitimate national security concerns are addressed; and 4) the need to restore due process protections for immigrants and their families.

Specifically, my testimony recommends that Congress—

- Enact comprehensive immigration reform legislation which provides a legalization program (path to permanent residency) 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 waiting times in the family preference system for families to be reunited.

- Examine the “push” factors of migration such as international economic policies and enact policies which encourage sustainable economic development, especially in sending communities;
- Enact in reform legislation the Agricultural Job Opportunity, Benefits, and Security Act of 2009 and the Development, Relief, and Education for Alien Minors Act (DREAM);
- Adopt immigration enforcement policies that ensures our nation’s borders are secure at the same time that the abuse and deaths of migrants are prevented and their basic human rights and dignity are protected;
- 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 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 USCCB was a national coordinating agency for the implementation of IRCA’s legalization program. 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. There are currently 158 Catholic immigration programs throughout the country under the auspices of the U.S. bishops.

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 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.<sup>1</sup> Pope John Paul II stated 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."<sup>2</sup> 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."<sup>3</sup>

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."<sup>4</sup>

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."<sup>5</sup>

The U.S. and Mexican bishops also point out why they 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.

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<sup>1</sup> Pope Pius XII, *Exsul Familia (On the Spiritual Care of Migrants)*, September, 1952.

<sup>2</sup> Pope John Paul II, *Sollicitudo Rei Socialis*, (On Social Concern) No. 39.

<sup>3</sup> Pope John Paul II, *Ecclesia in America (The Church in America)*, January 22, 1999, no. 65.

<sup>4</sup> Interview with His Holiness, Pope Benedict XVI, during his flight to America, April 15, 2008.

<sup>5</sup> *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.

## **II. The Immigration Debate**

We are heartened by a recent address delivered by President Obama on immigration reform, reaffirming that it is a priority for his Administration, and that he is committed to supporting legislation and working for its enactment in the near future.

In order to achieve this goal, however, Congress and the president must work in tandem throughout the legislative process, and efforts must be taken to minimize the harsh rhetoric which has characterized much of the past and present debate.

I must say upfront that the U.S. bishops are very concerned with the tone on Capitol Hill toward immigrants. We do not agree with terms that characterize immigrants as less than human, since no person is "illegal" in the eyes of God. Such harsh rhetoric has been encouraged by talk radio and cable TV, for sure, but also has been used by public officials, including members of Congress.

We are hopeful that the national debate on immigration will begin to focus upon the many contributions that immigrants, both documented and undocumented, make to our country and not scapegoat newcomers for unrelated economic or social challenges we face as a nation. 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.

I ask the subcommittee today to take the lead in ensuring that the upcoming debate is a civil one and refrains from labeling and dehumanizing our brothers and sisters. While we may disagree on the substance or merit of a position, we should never disagree that the conversation should remain civil and respectful.

As you know, Madam Chairman, my state of Arizona recently passed SB 1070 (as amended by H.B. 2162), a state law that has generated much controversy, both in Arizona and around the nation. It has highlighted the divisions in this country on the immigration issue.

Madam Chairman, the frustration of the country with federal inaction on immigration reform is at an all-time high. Arizona has taken matters into its own hands, with the possibility of many states following, to the detriment of local communities and the nation. We are concerned that passage and implementation of these laws take away time and resources from local and federal law enforcement, making it more difficult for them to focus on dangerous criminals. These laws also could put U.S. citizens and legal residents at risk of arrest and detention.

While the Arizona bishops and the USCCB opposed SB 1070, its passage does represent an opportunity for the U.S. Congress to reassert federal control over immigration policy by enacting comprehensive immigration reform. A patchwork of immigration laws across the nation will not solve the underlying problems besetting our federal immigration system. We are hopeful that this hearing today will mark the beginning of a process to achieve comprehensive immigration reform in 2010.

### III. Policy Recommendations

Madam Chairman, the U.S. Catholic bishops believe that any comprehensive immigration reform bill should contain the following elements:

- a legalization program (“path to citizenship”) that gives migrant workers and their families an opportunity to earn legal permanent residency and eventual citizenship;
- a new worker visa program that protects the labor rights of both U.S. and foreign workers and gives participants the option to earn permanent residency ;
- reform of our family-based immigration system to reduce waiting times for family reunification;
- restoration of due process protections for immigrants, including asylum-seekers; and
- policies that address the root causes of migration, such as the lack of sustainable development in sending nations.

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 USCCB would oppose in any immigration reform bill.

#### A. *Legalization for the Undocumented*

With regard to immigration policy reform, it is vital that Congress and the administration address a legalization program with a path to permanent residency 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 this “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 legalization program which allows undocumented immigrants of all nationalities in the United States the opportunity to earn permanent residency. 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 members of the community.

It is vital, however, that any earned legalization program is both **workable** and **achievable**. In other words, the program cannot 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 are concerned, for example, with proposals which would require the undocumented population to return home in order to qualify for legal status or permanent residency. We believe that such a proposal could “chill” members of the immigrant community from participating in the program, fearing that they would be unable to return to their families. We also believe that such a proposal may be unworkable and overly cumbersome.

We also would support a shorter waiting time for applicants for the legalization program to “earn” 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 the legalization program, including generous evidentiary standards and achievable benchmarks toward permanent residency. This also would include a recent arrival date. The payment of fines should be achievable and English competency, not fluency, should be required, with a demonstration that an applicant is working toward fluency.

It is important that any legalization 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.

Finally, the U.S. bishops would oppose any proposals that only grant temporary legal residence to the undocumented and withhold any opportunity for permanent residency and citizenship. Creating a permanent underclass in our society, without full rights in our communities, cuts against American tradition and values.

In our view, an earned legalization and a path to permanent residency would provide many benefits, as follows:

- **Legalization 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. A 2009 study by the Pew Hispanic Center found that 47 percent of unauthorized immigrant households were couples with children. 3.1 million U.S.-citizen children live with one or more undocumented parents. Undocumented immigrants are more likely than either U.S. born residents or legal immigrants to live in a household with children, a growing share of whom—73 percent—are U.S. born citizens.<sup>6</sup>
- **Legalization 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 13 percent of the labor force in agriculture, and 25 percent of the labor force in farming. Of the roughly 8.3 million undocumented workers in the U.S. labor force, the Pew Hispanic Center estimates that more than 1 million are in manufacturing, 1.7 million in construction, 1.4 million in the leisure and hospitality industries, and over 300,000 in agriculture.<sup>7</sup> In addition, undocumented workers

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<sup>6</sup> Jeffrey Passel and D’Vera Cohn, *A Portrait of Unauthorized Immigrants in the United States*, Pew Hispanic Center, April 14, 2009.

<sup>7</sup> *A Portrait of Unauthorized Immigrants in the United States*, Pew Hispanic Center, April 14, 2009.

contribute billions to the tax and Social Security systems, paying \$520 billion into the Social Security system since 1975.<sup>8</sup>

- **Legalization 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.<sup>9</sup> Legalization also would allow workers to organize and assert their rights, leading to better working conditions and wages for all workers.
- **Legalization would help create new job opportunities for Americans.** Increased legal and illegal immigration in the past fifteen years has not increased the number of people living in poverty in the United States. In fact, the number of people living in poverty decreased during this period as U.S. economic growth expanded, and native-born Americans attained higher levels of education and new job skills. Legalization combined with a new worker program would likely continue this trend, creating additional middle-class job opportunities for native-born workers.<sup>10</sup>
- **Legalization would help bring U.S. immigration policy in line with U.S. economic policy.** The United States, Mexico, and Central America 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. We live in a globalized region and world, and the movement of labor must be regularized to protect basic rights.
- **Legalization would make us more secure.** By legalizing the 11 million undocumented and requiring that they register with the U.S. government, law enforcement will be able to focus on others who are in the United States to harm us, not those who are here to work and contribute to their communities.

Despite the dire warnings of opponents of legalization for undocumented workers, evidence suggests that legalization 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. It would also ensure the participation of all undocumented workers because of the opportunity for permanent residency and eventual citizenship.

## **B. *Employment-Based Immigration***

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<sup>8</sup> Testimony of Patrick P. O'Carroll, Jr., Inspector General of the Social Security Administration, before the U.S. Senate, Committee on Finance, regarding "Administrative Challenges Facing the Social Security Administration," March 14, 2006.

<sup>9</sup> 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.

<sup>10</sup> Daniel T. Griswold, "As Immigrants Move In, Americans Move Up," The CATO Institute, July 21, 2009.

Perhaps the most problematic 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. and Mexican bishops have proposed a new model for a worker program which 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 must feature wage levels and benefits given 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 should enjoy the same protections of U.S. labor law as U.S. workers, regardless of industry, including 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 spouse and children in the United States during the length of the worker’s visa. Either spouse should be eligible for work authorization, regardless of whether they work in the program. Spouse 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 Residency.** 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 avoid the abuses of past such programs and to ensure that worker's rights are protected. In addition, it 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 will 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.** Last year, the AFL-CIO and Change to Win labor coalition announced an agreement on the establishment of a standing commission to oversee employment-based immigration. We welcome this agreement and applaud all parties for their hard work in reaching it.

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 the commission's purview. We also believe that niche programs, such as the Religious Worker Visa Program, should be excluded, 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, with the commission examining environmental factors and making an annual recommendation 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 the past 40 years, must 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 up to seven years for Mexican permanent residents—for spouses to reunite with each other and for parents to reunite with minor children. The waiting times for adult siblings to reunite can be twenty years or longer.<sup>11</sup>

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.

The U.S. Conference of Catholic Bishops strongly supports the inclusion of S.1085, the Reuniting Families Act, introduced by Senator Robert Menendez (D-NJ), Senator Kirsten Gillibrand (D-NY), and Senator Charles Schumer (D-NY), in any comprehensive immigration reform legislation. This legislation would, among other provisions, permit the use of unused family-based and employment-based visas previously allocated by Congress but which remain unused; classify the spouses and children of permanent residents as “immediate relatives,” thus permitting them to reunite immediately with family members; and increase the per-country limit on family and employment-based visas.

We believe that the inclusion of S. 1085 would help solve the long waiting times for family reunification under the current family reunification system.

In addition, we must revise stringent income requirements (“public charge”) which prevent family members from joining their families and we must repeal bars to admissibility for unlawful presence, which can separate families for up to ten years.

**Opposition to a “point” system to replace family-based immigration.** Madam 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 allocate visas to applicants based on the number of points they scored on different criteria. This idea is based on the Canadian model, which currently employs that system.

We oppose the imposition of a point system, in that it 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.

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 represents the core of our society and culture.

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<sup>11</sup> *U.S. Department of State, Visa Bulletin October 2009.*

**Opposition to S. 424/H.R. 1024 , the Uniting American Families Act.** Madam Chairman, we are opposed to the inclusion of H.R. 1024, the Uniting American Families Act (UAFAs), in comprehensive immigration reform legislation. The legislation would permit same-sex partners to enjoy the same immigration benefits as married couples in our immigration system. While our tradition and teaching values all persons as children of God, we believe that the enactment of UAFAs would erode the institution of marriage and family by according marriage-like immigration benefits to same sex relationships, a position that is contrary to the very nature of marriage, which pre-dates the Church and the state. We also believe its inclusion into comprehensive immigration reform would add another controversial issue to an already polarized and divisive debate.

#### **D. Enforcement Policies**

Madam 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.

Others maintain that the United States must first “secure its border” and only then consider broader immigration reforms.

We believe that enforcement is part of a immigration reform package, but must be complemented with reforms in the legal immigration system. “Enforcement First” has been the de facto U.S. strategy for over twenty years, yielding too many costs and too few results. The costs have indeed run high. Since 1993, Congress has appropriated and the federal government has spent about \$50 billion on border enforcement, multiplying the number of Border Patrol agents by a factor of five (over 20,000 agents)<sup>12</sup> and introducing technology and fencing along the border.<sup>13</sup> Border Patrol in particular has seen a nine-fold budget increase since 1992.<sup>14</sup> Border fencing and other physical barriers have cost \$2.6 billion since fiscal year 2005.<sup>15</sup>

In addition, the Obama Administration has continued enforcement initiatives, increasing the number of detention beds, committing National Guard troops to the border, and pledging an additional \$500 million in border enforcement funding.

Proponents of an enforcement first strategy counter that enforcement is worth the investment. They point to border apprehensions between ports of entry which have dropped from 1.7 million in FY 2005

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<sup>12</sup> C. Stewart Verdery, “Brick by Brick: A Half-Decade of Immigration Enforcement and the Need for Immigration Reform”, Center for American Progress, p. 10, *available at* [www.americanprogress.org/issues/2010/06/pdf/dhs\\_enforcement.pdf](http://www.americanprogress.org/issues/2010/06/pdf/dhs_enforcement.pdf) (accessed 07/07/10).

<sup>13</sup> Immigration Policy Center, “Throwing Good Money After Bad: Immigration Enforcement without Immigration Reform Doesn’t Work”, May 26, 2010, p. 1, *available at* [immigrationpolicy.org/just-facts/throwing-good-money-after-bad](http://immigrationpolicy.org/just-facts/throwing-good-money-after-bad) (accessed 07/07/10); *see also* Douglas Massey, “Backfire at the Border: Why Enforcement without Legalization Cannot Stop Illegal Immigration,” CATO Institute, Center for Trade Policy Studies, June 13, 2005, *available at* [www.freetrade.org/pubs/pas/tpa-029.pdf](http://www.freetrade.org/pubs/pas/tpa-029.pdf) (accessed 07/07/10).

<sup>14</sup> See IPC at fn. 2.

<sup>15</sup> See Verdery at fn. 1, citing Richard M. Stana, “Secure Border Initiative: Technology Deployment Delays Persist and the Impact of Border Fencing Has Not Been Assessed,” Statement, *available at* <http://www.gao.gov/new.items/d10651t.pdf>.

to 556,000 in FY 2009.<sup>16</sup> While the economic recession explains part of this trend, many argue that border enforcement efforts should be credited as well.

The problem is that apprehensions are only part of the story; unauthorized migrants continue to enter the country in significant numbers. Over 500,000 unauthorized migrants entered through the southern border annually between 2005-2008.<sup>17</sup> Tragically, since 1998 nearly 5,000 migrants have perished in the desert trying to enter the United States.<sup>18</sup> This trend shown no signs of decreasing -- border deaths in 2009 reached their highest level in three years, despite the efforts of Border Patrol teams that have rescued thousands of desert-crossers.<sup>19</sup> Judging by these measures, enforcement first has largely failed to end illegal immigration on its own.

This “enforcement first” strategy has failed partly because of its unintended effects. For instance, by tightening border checkpoints, it has spawned a booming human smuggling industry. In fact, these “coyotes” have become very good at evading detection, helping migrants gain a nearly 100% success rate at eventually entering the United States.<sup>20</sup> Border security build-up has also disrupted “circular migration” – preventing some immigrants from returning home to Mexico and Central America after a few years of work in the United States. Instead, these workers bring their families to settle in the United States.

At root, “enforcement first” has failed because it has not addressed the underlying cause of illegal immigration: an outdated immigration system that does not meet the economy’s demand for workers. We are hopeful that comprehensive immigration policy reform which emphasizes legal avenues for migration will mitigate the perceived need for continuing to increase the number of border patrol agents 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 will help better identify those who come to harm us.

Mr. Chairman, I would like to offer the position of the USCCB on several enforcement issues you may consider during consideration of comprehensive immigration reform:

**National Employer Electronic Verification System.** Madam Chairman, we know that there has been significant discussion and debate, including legislative proposals, to enforce the workplace by imposing

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<sup>16</sup> Department of Homeland Security, “Budget-in-Brief Fiscal Year 2011,” *available at* [www.dhs.gov/xlibrary/assets/budget\\_bib\\_fy2011.pdf](http://www.dhs.gov/xlibrary/assets/budget_bib_fy2011.pdf) (accessed 07/07/10).

<sup>17</sup> Jeffrey Passel and D’Vera Cohn, *Trends in Unauthorized Immigration: Undocumented Inflow Now Trails Legal Inflow*, Pew Hispanic Center, October 2, 2008.

<sup>18</sup> Stuart Anderson, “NFAP Policy Brief”, National Foundation for American Policy, May 2010, p.1 (citing border patrol statistics), *available at* [www.nfap.com/pdf/0505brief-death-at-border.pdf](http://www.nfap.com/pdf/0505brief-death-at-border.pdf) (accessed 07/07/10); *see also* Spencer Hsu, “Border Deaths Are Increasing,” *The Washington Post*, September 30, 2009, *available at* <http://www.washingtonpost.com/wp-dyn/content/article/2009/09/29/AR2009092903212.html?hpid=topnews> (accessed 07/07/10).

<sup>19</sup> See Hsu, at fn. 11.

<sup>20</sup> Even if the migrant is apprehended on his first attempted entry, he has a nearly 100% success rate on subsequent attempts especially if he uses a coyote. Wayne Cornelius, et al., *Controlling Unauthorized Immigration from Mexico: The Failure of “Prevention through Deterrence” and the Need for Comprehensive Reform*, Washington, DC: Immigration Policy Center, American Immigration Law Foundation, June 10, 2008, p. 34.

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 must be taken to ensure that any system is applied uniformly and accurately.

We would not oppose the adoption of a mandatory employer verification system provided that 1) it 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) the system is phased in at a reasonable rate with objective benchmarks so implementation is feasible for both employers and the government; 3) inaccuracies in the government databases used to cross-check identification and eligibility are corrected so that employees are not wrongfully dismissed; 3) protections are put in place so that employers do not use the system to wrongfully discharge certain employees; and 4) employees who have a false positive are given the opportunity to correct any misinformation that lead to the false positive.

**Reform of Detention Standards and Practices.** Madam Chairman, we are deeply concerned with the status quo when it comes to the detention of immigrants, especially vulnerable immigrants such as children and families. We applaud Secretary Napolitano for her initiative to reform the detention system, but believe that statutory change is necessary. We support the inclusion of the S. 1594, the Secure and Safe Detention Reform Act, introduced by Senator Joseph Lieberman, in any immigration reform bill, provided that it does not include the provision of abortion services in any health-care plan offered in the detention system.

S. 1594 would require that asylum seekers and others have their detention promptly reviewed by an immigration judge, and to be considered for release if they pose no risk to public safety; create nationwide alternatives to detention programs; improve standards for detention conditions, 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. We urge the inclusion of S. 1594 in any reform legislation.

**Asylum-seekers and refugees should be afforded protection and provided exception to some enforcement laws.** 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 re-examine 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.

Madam Chairman, we urge you to include S. 3113, the Refugee Protection Act, in any comprehensive immigration reform legislation. This proposal would help address many of the issues adversely impacting refugees and asylum-seekers in this country.

Madam Chairman, the U.S. Catholic bishops reaffirm the right of our nation to secure our borders and enforce our immigration laws. This should be done, however, in a manner that protects the basic human rights and dignity of the person.

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 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.

***E. Passage of the Agricultural Job Opportunity, Benefits, and Security Act of 2009 and the Development, Relief, and Education for Alien Minors Act of 2009***

While we urge the committee and Congress to place comprehensive immigration reform as a top priority, there are two measures which enjoy bipartisan support which can be enacted in the near future.

The Agricultural Job Opportunity, Benefits, and Security Act of 2009, “AgJobs”, represents a bipartisan initiative which would help protect both a vital industry and a labor force which is vulnerable to exploitation. Introduced by Senator Dianne Feinstein (D-Ca.), the measure, which represents a negotiated agreement between the agricultural employers and the United Farm Workers, would both stabilize the labor force in this important industry and ensure that employers have access to a work-authorized supply of labor, if necessary.

Currently, more than fifty percent of the agricultural labor force is undocumented and is subject to abuse and exploitation. AgJobs would provide a path to permanent residency for many of these undocumented farm workers in the United States. This would allow these workers to earn permanent status, thus stabilizing their families and allowing them to “come out of the shadows.” It also would allow employers to hire such workers without fear of penalty, thus providing them with a legal and stable supply of workers. In addition, it would codify in statute many worker protections for farm workers, including a three-fourth work guarantee (ensuring work during three-fourth of a season) and expressed terms of employment.

The Development, Relief, and Education for Alien Minors Act (DREAM) represents a bipartisan initiative which would allow some undocumented students to be eligible for in-state tuition and give them an opportunity to become permanent legal residents. Having entered the United States as very

young children, often through no fault of their own, these students have otherwise contributed to their schools and communities. Many have lived in the United States for years.

We urge Congress to enact both of these important pieces of legislation before the end of the 111<sup>th</sup> Congress by including them in a comprehensive immigration reform measure.

#### ***F. Addressing the Root Causes of Migration***

In our pastoral letter, the U.S. and Mexican Catholic bishops write that “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*.”<sup>21</sup>

It is critical that the Congress and the administration look at the immigration issue with Mexico and other governments as part and parcel of the entire bilateral relationship, including trade and economic considerations. Addressing the immigration systems of both nations, for example, will not control the forces which compel migrants to come to the United States.

Without a systematic approach which examines why people migrate, the U.S. and Mexican governments will not be able to address the underlying causes of migration. It is clear that Mexican and other nationalities continue to come to this nation regardless of enforcement strategies pursued by both governments. What attracts them is employment which either cannot be found in their own communities or better opportunities because of underemployment in sending nations, in which jobs do not pay enough or are not full time.

In an ideal world for which we must all strive, migrants should have the opportunity to remain in their homelands and support themselves and their families. In this regard, we renew our call to both the U.S. and Mexican governments to resume bilateral migration negotiations so that all issues which impact migration to the United States are addressed.

#### **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 to implement and execute any earned adjustment program. As passed by the Senate, for example, the Comprehensive Immigration Reform Act (CIRA) of 2006, adopted by this body in 2006, anticipates this by establishing fees that will generate approximately 66 billion dollars of revenue dedicated to processing applications for earned adjustment.

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<sup>21</sup> *Strangers No Longer*, n. 56.

The fee-generated funds, alone, will not be adequate, however. Congress will also need to directly appropriate funds to get the 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 12 million aliens who are in the United States illegally? The cost of properly implementing an earned adjustment 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 imposed, however, which 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 both the legalization and temporary worker program 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.
- **Qualified Designated Entities.** Board of Immigration Appeals (BIA)-accredited Qualified designated entities (QDEs) should be created to assist in implementation of both programs.
- **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.
- **Creation of a Separate Entity.** A separate entity, similar to the asylum corps, should be created within the U.S. Bureau of Citizenship and Immigration Services (USCIS) to implement the legislation; such an entity should be adequately funded through appropriations.
- **Derivative Benefits.** Immediate family members should receive the same immigration benefits under legalization/temporary worker program as the worker.
- **Generous Evidentiary Standards.** For purposes of verifying an alien's eligibility for legalization, evidentiary standards should be based upon "preponderance of the evidence" and should include a wide range of proof, including attestation.
- **One-Step Legalization.** A one-step legalization program would verify eligibility and security and background checks in one process up front and not in a two-step process, i.e. upon conditional status and then permanent status.

- **Operational Terms should be 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 for legalized aliens, such as unlawful presence, fraud, or other minor offenses, should be included in the legislation.

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 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.<sup>22</sup> 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 USCIS and provide more directly appropriated funding for infrastructure and backlog reduction. Without more efficiency in the system, a new comprehensive reform program of any type may be unworkable, absent the creation of a new entity to implement it.

## VI. Conclusion

Madam Chairman, we appreciate the opportunity to testify today on the issue of comprehensive immigration reform. 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 immigrants, regardless of their legal status, are not made scapegoats for the challenges we face as a nation. Rhetoric which 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.

Madam Chairman, the U.S. Catholic bishops strongly believe that comprehensive immigration reform should be a top priority for Congress and the Administration. We look forward to working with you and the administration in the days and months ahead to fashion an immigration system which upholds the valuable contributions of immigrants and reaffirms the United States as a nation of immigrants.

Thank you for your consideration.

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<sup>22</sup> 69 Federal Register 5088 (February 2, 2007)