

UNITY BLUEPRINT FOR IMMIGRATION REFORM



INTRODUCTION

On January 19-20, 2007, a meeting was convened in Los Angeles to discuss the outline of a unity blueprint for immigration reform. The conveners include Pablo Alvarado, National Coordinator, National Day Laborers Organizing Network, Rosa Rosales, National President, League of United Latin American Citizens, Angela Sanbrano, Executive Director, Central American Resource Center (Los Angeles) and President of the National Alliance of Latin American and Caribbean Communities, Maria Elena Durazo, Executive Secretary-Treasurer, Los Angeles County Federation of Labor, AFL-CIO, Dolores Huerta, President, Dolores Huerta Foundation & Co-Founder of the United Farmworkers Union, Victor Narro, Project Director, UCLA Downtown Labor Center, Father Richard Estrada, Our Lady Queen of Angels, Antonio Gonzalez, President, William C. Velasquez Institute, Angelica Salas, Executive Director, Coalition for Humane Immigration Reform of Los Angeles, and Peter Schey, President & Ex. Director, Center for Human Rights and Constitutional Law (CHRCL).

In addition to the Conveners, representatives of several organizations involved in immigration reform work attended the meeting, including the Service Employees International Union, the American Federation of Labor (AFL-CIO), the International Brotherhood of Teamsters, the Mexican American Political Association, the Mexican American Legal Education and Defense Fund, the South Asia Network, Hermandad Mexicana Nacional, the Asian Pacific American Legal Center, the National Korean American Service & Education Consortium, the Bay Area Immigrants Rights Coalition, and other networks and community-based organizations.

The draft blueprint developed at the initial meeting was further considered and improved upon following discussion at the National Latino Leadership Summit on Immigration Policy held in Phoenix on February 3, 2007.

That meeting was jointly convened by the Center for Human Rights and Constitutional Law (CHRCL), the Mexican American Legal Defense and Education Fund (MALDEF), the League of United Latin American Citizens (LULAC), the William Velasquez Institute (WCVI), the Mexican American Political Association (MAPA), the National Alliance of Latin American and Caribbean Communities (NALACC), and the Labor Council for Latin American Advancement (LCLAA). The summit meeting was attended by approximately fifty organizations from around the country involved in immigration reform work.

The draft blueprint was next considered and improved upon following discussion at a meeting of the Border Human Rights Working Group in San Antonio, Texas, on February 12-13, 2007. The Border Human Rights Working Group is a collaborative project of over fifty NGOs, CBOs, legal services providers, and faith-based organizations working along the border in California, Arizona, New Mexico, and Texas.

The Unity Immigration Reform supporters believe that the interests of the nation, and its children, workers, businesses, and immigrants communities will be served through the adoption of rational, effective, and humane immigration reform proposals. They believe that the nation's interests are best served by reducing to the maximum extent possible the size of the undocumented migrant population, preserving family unity and reducing the backlog in family-based immigration, ensuring that legal permanent residents have the same due process and civil liberty protections as citizens, defending the rights of innocent children, fully protecting and enhancing the rights of U.S. and immigrant workers, and realistically addressing future flows of immigrants so that the undocumented population does not again mushroom over the next ten to twenty years.

We believe that immigrant families contribute to our society and culture and help meet our labor force needs. We also believe that a revised employment-based immigration system should strive to use objective economic factors to determine labor market needs and will produce immigrant visa numbers in proportion to labor shortages. We oppose the present labor certification process which often results in immigrant workers being placed in jobs many years after the labor market was tested to determine the availability of U.S. workers, both because it fails to unite labor needs with the timely issuance of visas and also often forces intending immigrant workers to wait for many years for their visas. A rational visa issuance process would result in immigration waiting lines being relatively current and affected only by processing time.

We do not believe that militarization of the borders, employer sanctions, and large-scale domestic enforcement are productive in reducing or controlling undocumented migration. Such measures have not in the past stopped migration or forced undocumented migrants to leave the United States. Instead, they simply drive immigrants underground, encourage a black market in immigrant labor, and cause the separation of families. Nor do such enforcement approaches in any way address the underlying root causes that drive migration to the United States, including massive inequality in wealth distribution, economic dislocation

in major sending communities, the U.S. demand for labor, and free trade agreements that have caused workers to loose their jobs in migrant sending communities.

While we are making specific proposals to vastly improve the rationality of U.S. policy, we also recognize that immigration policies should not be imposed unilaterally but developed cooperatively through multilateral agreements similar to those used to govern international flows of capital, goods, commodities, and information. The unity blueprint supporters believe that nations have responsibilities beyond their borders, and unilateral actions taken by the United States can have serious negative repercussions for other countries linked to it in the global system. We therefore recommend that the United States engage in bi-national and multilateral discussions with major migrant sending countries to arrive at a coherent and long-term set of migration policies.

The unity blueprint collaborators intend to advocate for, draft, and support proposed legislation including statutory language consistent with the summary outlined below.

We hope that the unity initiative for immigration reform will be considered by a wide range of organizations, improved upon, used to provide guidance in public education and legislative advocacy work, and offer options for members of the House and Senate to introduce as proposed legislation in the 110th Congress convened on January 4, 2007.

We also welcome endorsements of the unity immigration reform proposal. Comments and endorsements should be forwarded to Peter Schey pschey@centerforhumanrights.org, who facilitated the drafting of the unity blueprint.

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UNITY BLUEPRINT FOR IMMIGRATION REFORM

PREAMBLE

The United States of America urgently requires a workable, just and fair immigration reform that addresses the millions of people who give their labor, talents and investments to this country without the benefit of protections and rights extended to its citizenry. Such a reform must also take into account the needs of its U.S. citizens, its domestic workforce, and national economy.

Like other industrialized countries in the world, the U.S is experiencing dramatic simultaneous demographic changes due to shifts in mortality, fertility, and immigration. Our native population is aging while bearing many fewer children. Immigrant labor is required to ensure a plentiful and vibrant workforce upon which our elderly and children depend.

Migration without full rights for migrants has resulted in the unsupportable exploitation and trafficking of workers. Authorizing far less visas than the known demand has resulted in the separation of millions of families for years and sometimes decades. Non-comprehensive and non-humane immigration policies also negatively affect the lives of U.S. citizens. No one benefits from the presence of a large undocumented population of immigrants, other perhaps than a small group of unscrupulous employers who seek to exploit this population. Short-sighted responses that seek to severely penalize undocumented migrants by blocking their path to legalization only exacerbate these circumstances.

Since its founding, the United States has benefited richly from immigrants drawn from around the world and from citizens' dogged pursuit of extending protections and rights to all. We believe in the human rights of all people, including migrants, and that the principles of human dignity and equality, aimed at promoting social and economic justice, should be at the forefront of all domestic and foreign policies.

1. PROTECTING THE WELL-BEING AND SAFETY OF INNOCENT IMMIGRANT AND U.S. CITIZEN CHILDREN.

The rights of U.S. citizen and immigrant children are of major concern and must be properly addressed. Separation of children from their family creates extreme hardships and detrimentally impacts the well-being, safety, and security of thousands of innocent children each year.

A. Amend the INA to permit the parents of U.S. citizens to petition through their US citizen children under 21 years of age

Certain provisions of the Immigration and Nationality Act (INA) currently bar immigration petitions by parents of United States citizen children until such children turn 21 years of age. This bar is a relatively recent amendment to the INA. Repealing this bar and permitting the parents of U.S. citizen children to petition to

legalize their status would decrease the undocumented population while promoting family values and the well-being of innocent children.

B. *Support enactment of the DREAM Act*

Thousands of undocumented immigrant youth enter the United States every year. The Development, Relief, and Education for Alien Minors Act (DREAM Act) has the potential to allow these immigrant children every opportunity to succeed and benefit our society. The DREAM Act will facilitate the education of immigrant youth and legalize a population that is otherwise almost certain to remain permanently residing in the United States in underground and unlawful status. In fact, this country has already invested substantially in the education of many of these children, making support of a program to legalize their status all the more desirable.

C. *Support enactment of the Child Citizen Protection Act*

Support enactment of the CHILD CITIZEN PROTECTION ACT (H.R. 213), introduced by Congressman Jose Serrano (D-NY). The bill would allow an immigration judge to consider the well being of US citizen children before deporting an immigrant parent.

D. *Amend the INA to require that apprehended immigrant children are informed about rights they possess to legalize their status under existing laws enacted by Congress and are afforded the assistance of counsel*

Enact legislation requiring that all apprehended unaccompanied immigrant children should be questioned about their possible eligibility for benefits under the Immigration Act including Special Immigrant Juvenile status, informed of their right to apply for such benefits, and provided with representation at Government expense or referrals to free legal assistance so that they may exercise the rights extended to them by Congress rather than being deported in derogation of such rights.

2. ACHIEVING MAXIMUM COMPLIANCE WITH AND FAITHFUL ENFORCEMENT OF IMMIGRATION LAWS BY REINSTATING THE JURISDICTION OF THE FEDERAL COURTS TO REVIEW AGENCY DECISIONS INVOLVING IMMIGRANTS

Legislation over the past ten years has severely limited judicial review of immigration cases. The judicial system must be available to provide an effective and meaningful check on the actions of federal agencies implementing the nation's immigration laws. Without the opportunity for judicial review of decisions in individual case and policies and procedures, federal agencies implementing the INA may deport immigrants and deny visas in violation of the laws enacted by Congress, and without accountability implement broad policies that are inconsistent with laws enacted by Congress.

A. *Repeal jurisdiction-stripping provisions enacted in the Anti-Terrorism and Effective Death Penalty Act of 1996*

Provisions in the Anti-Terrorism and Effective Death Penalty Act of 1996 (AEDPA) in which Congress stripped judicial review from non-citizens with final orders of removal by reasons of having committed certain criminal offenses should be repealed so that the federal courts may address the correctness of agency decisions in such cases.

B. *Repeal jurisdiction-stripping provisions enacted in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996*

Provisions of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRAIRA) and subsequent laws which stripped the federal courts of jurisdiction to review discretionary decisions in cases involving cancellation of removal, certain waivers of inadmissibility, voluntary departure, or adjustment of status as well as removal orders based on certain criminal offenses, and restricted the federal court's ability to hear class action challenges brought on behalf of groups of similarly situated immigrants injured by the same policy or practice, should be repealed so that federal courts may quickly and efficiently remedy abuses of discretion and erroneous interpretations of federal laws.

C. *Repeal jurisdiction-stripping provisions enacted in the 2005 Real ID Act*

Provisions of the 2005 Real ID Act that seek to eliminate habeas corpus review over orders of removal must be repealed so that federal courts have the opportunity to block unlawful deportations.

3. ACHIEVING MAXIMUM PROTECTION OF THE LABOR RIGHTS AND WORKING CONDITIONS OF U.S. AND IMMIGRANT WORKERS

In order to fully protect U.S. workers, reduce to the maximum extent possible the unlawful exploitation of immigrant workers, and the incentive of some employers to hire undocumented workers rather than US workers, all workers, including undocumented immigrants, must have full and complete access to protective labor, health and safety laws. This is the most rational and possibly the only realistic approach to protect the interests of US workers while at the same time protecting immigrant workers from exploitation in the labor market.

A. *Repeal Employer Sanctions Laws*

Current employer sanctions laws have undermined labor rights, caused racial and national origin discrimination, and have been largely ineffective in reducing the employment of undocumented workers as employers simply pass on

the costs of sanctions to immigrant workers and consumers. Employer sanctions should be repealed. To best protect the rights and working conditions of US workers, the focus of workplace enforcement should be on requiring employers to maintain legal standards in wages, working conditions, and the unionizing rights of workers.

B. *Bring Antidiscrimination Protections in the Immigration and Nationality Act into Line with Those in Other Civil Rights Laws*

In the event that employer sanctions are not repealed, the anti-discrimination protections in section 274B of the Immigration and Nationality Act (INA), which were added by the Immigration Reform and Control Act of 1986, were enacted to address discrimination that was expected to result— and, in fact, *has resulted*—from the implementation of employer sanctions. While the INA’s antidiscrimination protections have been critical in protecting thousands of workers from discrimination, tens of thousands more workers are excluded from its protections and remedies because of the law’s limitations. The following provisions would bring INA section 274B into line with other civil rights laws — such as Title VII of the Civil Rights Act — that prohibit discrimination based upon race, color, national origin, religion, and gender.

1. Amend section 274B(a)(1) to prohibit discrimination in the terms and conditions of employment so that it covers unlawful conduct during the employment relationship.
2. Amend the definition of “protected individual” in section 274B(a)(3) to allow all workers to file a citizenship or national origin discrimination claim, and remove the requirement that lawful permanent residents (LPRs) must prove they intend to become citizens to be protected from discrimination so that long-term LPRs are covered.¹
3. Amend section 274B(d) to extend the time that the Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC) has in which to file a complaint with an administrative law judge based on an independent investigation from 180 days after the unfair immigration-related labor practice to 2 years.
4. Amend section 274B(g)(2)(B) so that back pay is available as a remedy for an unfair immigration-related employment practice and to give administrative law judges the discretion to award any other remedies, such as punitive damages, they believe are appropriate based on the facts of the case.

¹ The Comprehensive Immigration Reform Act of 2006 (S. 2611) contains a provision that would expand the definition of “protected individual” to include all lawful permanent residents, immigrants granted temporary protected status, immigrants granted parole, and nonimmigrants admitted under temporary guest worker programs. S. 1033 would have expanded the definition to include all lawful permanent residents and nonimmigrants admitted under temporary guest worker programs. The present proposal would cover all workers, regardless of immigration status.

5. Amend section 274B(a)(6) by restoring a former provision of the INA, which did not require workers to prove that the employer “intended” to discriminate against them.
6. Increase fines in section 274B(g)(2) for employers who are found to violate the law.²

C. *Ensure that Immigration Enforcement Complements Rather Than Undermines the Enforcement of Labor and Employment Laws*

The threat that their employer will use their immigration status against them is one of the most significant barriers facing workers who seek to assert their labor rights.³ Current law deters immigrant workers from reporting unfair immigration-related employment practices because it does not penalize employers for reporting workers to the immigration authorities in retaliation for the workers’ endeavoring to improve their working conditions. The following provisions would make it harder for unscrupulous employers to abuse our immigration laws by using the Department of Homeland Security (DHS) to inhibit union organizing or retaliate against workers who file labor complaints.

1. Amend INA section 237(a) to clarify that, in the event of an administrative or legal proceeding, neither back pay nor any other monetary damages shall be denied as a result of the complainant or plaintiff’s immigration status.
2. Amend INA section 274A to provide rules of conduct for worksite raids during a labor dispute by codifying the DHS’s current policy that requires U.S. Immigration and Customs Enforcement (ICE) officials to follow certain procedures when investigating workplaces that have ongoing labor disputes.⁴
3. Amend INA section 274A(e) to ensure that immigration enforcement does not undermine laws and policies intended to protect the safety of the community, by prohibiting ICE agents from masquerading as personnel from an agency or organization that provides domestic violence services, enforces health and safety law or other labor laws, provides health care services, or any other services intended to protect life and safety.
4. Amend INA section 274A(e) to require that when ICE conducts an I-9 audit or engages in other worksite enforcement actions, any labor violations discovered are reported to the appropriate government labor or employment rights agency and that detained workers are

² The Secure America and Orderly Immigration Act of 2005 (S. 1033/H.R. 2330) and S. 2611 would have increased fines for unfair immigration-related employment practices.

³ For example, in an analysis of 184 worksite raids conducted over a 30-month period in New York, 122 of the businesses had a labor investigation pending. See Michael J. Wishnie, *Colloquium: Introduction: The Border Crossed Us: Current Issues In Immigrant Labor* (New York University School of Law, Review of Law & Social Change, Volume 28, 2004).

⁴ See *Questioning Persons During Labor Disputes*, section 33.14(h) of the Special Agent Field Manual (formerly cited as INS Operations Instruction 287.3a).

not removed from the country until after that agency has had the opportunity to interview them to determine whether it would be appropriate to begin legal proceedings against the violating employer.⁵

5. Amend INA section 101(a)(15)(U)(i) to grant temporary visas and work authorization to immigrant workers who are detained in the course of a labor dispute because their employer has retaliated against them. Creating such a temporary visa will ensure that workers can (1) provide information to the government as it investigates employers that violate the law and also (2) seek redress for the labor violation.
6. In order to prevent government agencies from taking any action that would compromise their mission of enforcing the fundamental protections in labor, employment, and antidiscrimination laws, require the U.S. Department of Labor (DOL) and all its subagencies, the National Labor Relations Board, and the Equal Opportunity Employment Commission to keep confidential any information about workers' immigration status discovered in the course of their investigations.⁶

D. Review international trade agreements that contribute to undocumented migration

In order to alleviate future labor migration and involuntary displacements, trade agreements such as NAFTA, which are a significant cause of undocumented migration to the U.S., must be reinterpreted or renegotiated to reduce rather than increase the underlying causes of undocumented migration.

E. Prohibit States from considering immigration status in determining worker benefits

Federal legislation should prohibit states from enacting local employer sanctions laws or considering immigration status in determining workers compensation, disability and unemployment benefits. In all other respects, states will continue to regulate in this area.

⁵ See *Questioning Persons During Labor Disputes*, section 33.14(h) of the Special Agent Field Manual (formerly cited as INS Operations Instruction 287.3a). Agents must “ensure to the extent possible that any arrested or detained aliens necessary for the prosecution of any violations are not removed from the country without notifying the appropriate law enforcement agency which has jurisdiction over these violations.”

⁶ Under a 1998 Memorandum of Understanding between the former Immigration and Naturalization Service and DOL, when the worker files a complaint with DOL, DOL will not inquire about the worker's immigration status, nor will it share such information it learns about a workers' status with DHS. See *Memorandum of Understanding Between the Immigration and Naturalization Service* (Department of Justice, and the Employment Standards Division, Department of Labor, November 23, 1998).

F. Increase budgets for the Wage and Hour Division of the Department of Labor and the Occupational Safety and Health Administration

In order to further protect U.S. workers, the budgets for the Wage and Hour Division of the Department of Labor and the Occupational Safety and Health Administration should be substantially increased, including funding special programs for labor law enforcement in industries in which immigrants are concentrated.

G. Extend free legal services assistance to all immigrant workers

Enact legislation to extend the delivery of free legal services available through Legal Services Corporation funding to provide access to legal services to all low income workers, regardless of immigration status. Section 504(a)(11) of Public Law 104-134 (110 Stat. 1321-53 et seq.) shall not be construed to prevent a recipient of funds under the Legal Services Corporation Act (42 U.S.C. 2996 et seq.) from providing legal assistance to low-income workers in matters relating to labor law violations regardless of the worker's immigration status.

4. ACHIEVING MAXIMUM REDUCTION IN THE SIZE OF THE UNDOCUMENTED POPULATION

We believe that the national interests are best served by reducing to the maximum extent possible the size of the undocumented population residing in the United States. Undocumented immigrants are preferred by unscrupulous employers over US workers, they are often afraid to report crimes, they are less likely to pay taxes than documented workers, and they form an underground community that is entirely outside of the country's national security monitoring framework. A massive nation-wide deportation program involving millions of people is unlikely to ever be adopted or succeed if adopted. The nation's interests, the interests of US workers, and the interests of local communities would be better served by legalizing all immigrants who are residing permanently in the United States.

A. Enact a single-tier and truly comprehensive legalization program

Congress should enact a single-tier legalization program that grants lawful resident status for undocumented immigrants who do not pose a danger to the community, and are residing in the United States on the date of enactment or date the law was first introduced in Congress. A legalization program should require that immigrants perform a reasonable number of hours in community service rather than imposing high penalty fees, which many hard working immigrants with families to support are unable to afford. Because a legalization program is in the national interest, the cost of the program should be shared by the Government and the applicants. A legalization program should include clear standards, provide stays of deportation and temporary employment authorization for applicants who establish prima facie eligibility at the time of application, offer judicial review of administrative decisions that violate the law, guarantee that applications will be confidential and only used to determine legalization eligibility,

be accompanied by a significant outreach and publicity program, and provide funds for community-based non-profit organizations to assist applications to obtain program benefits. Legalization applications should be processed within two years of the date of application. We see no rational reason for requiring that legalization applicants first be required to apply for a temporary status before being granted permanent resident status. Persons granted lawful permanent resident status should be eligible to apply to become citizens of the United States within five years after being granted permanent resident status.

B. Provide an expedited legalization program for long-time resident Central American and other refugees

Legislation should also address and support immediate adjustment of status for thousands of Central American, Haitian, and other refugees who many years ago came to the United States, many fleeing political and economic conditions encouraged by the United States, and who were at any time granted temporary status under the Nicaraguan Adjustment and Central American Relief Act, Temporary Protected Status, the American Baptist Church settlement, the Haitian Refugee Immigration Fairness Act (HRIFA) of 1998, and similar laws that have permitted certain immigrants to reside in the United States under color of law. Such applications should be processed in one year. Because most immigrants beneficiaries of the program have been living in the United States under color of law for as long as twenty-five years, we propose that approved applicants be permitted to apply for citizenship three years after being granted lawful permanent resident status.

C. Make legalization applicants eligible to receive free legal services if they are too indigent to afford retained counsel

Eligibility for Legal Services.-Section 504(a)(11) of Public Law 104-134 (110 Stat. 1321-53 et seq.) shall not be construed to prevent a recipient of funds under the Legal Services Corporation Act (42 U.S.C. 2996 et seq.) from providing legal assistance directly related to an application for legalization.

5. ACHIEVING A REALISTIC LEGAL FRAMEWORK FOR FUTURE MIGRATION

The US Government contributes to the size of the undocumented population by seriously undersupplying the number of visas available annually. The number of currently available visas does not satisfying or realistically address the actual need for visas based on family reunification, the U.S. demand for labor, and the local conditions that push migrants to leave their communities. US immigration policy has historically encouraged migration principally through permanent visa categories. However, the permanent resident visa system is based on an antiquated framework that caps the number of visas available each year, both for families and for workers, arbitrarily without regard to the needs of family reunification or the U.S. economy. The direct and obvious result of this policy is

an ongoing and substantial increase in the size of the undocumented population as many immigrants refuse to be separated from their families for many years, or to wait for as long as ten years to join a job opening for which they have been approved by the Department of Labor . The current framework serves no substantial national interest. In fact, the current policy is a major reason for the size of the undocumented population.

In order to alleviate future flows of undocumented immigrants into the United States, and avoid a new population of undocumented immigrants expanding in future years, the current visa allocation system in 8 U.S.C.A §1151, INA §201, must be restructured to satisfy the realistic need for visas. Section 201 sets an annual limit on family-sponsored and employment-based visas. Section 202 sets a “per-country” limit for preference immigrants set at 7% of the total annual family-sponsored and employment-based preference limits, i.e., 25,620. As a result, there are massive backlogs for the processing of visas especially of applications filed on behalf of immigrants from Mexico, India, Philippines and China. Currently visas for the most favorable family preference category are being allocated to Mexican applicants who applied twelve (12) years ago, and applicants from the Philippines who applied twenty (20) years ago.

A. Repeal the 3 and 10-year and permanent bars that prevent immigrants from legalizing their status

Each year, thousands of immigrants with an existing path to legalize their status through family or employment-based visas are prevented from moving from illegal to legal status if they have lived in the US without authorization for more than 6 months (3-year bar) or 12 months (10-year bar). An immigrant subject to these bars who briefly departs the country, for example for the funeral of a parent, faces a permanent life-time bar to legalization of status upon his or her undocumented return to the United States. The vast majority of immigrants with a path to legalization do not leave the country when faced with the 3- and 10-year or permanent bars, but instead remain here with their families in undocumented status. The 3 and 10-year and permanent bars enacted for the first time in 1996 must be repealed to allow immigrants with existing avenues to legalize their status to do so without having to return to their home countries for 3 or 10 years, or permanently.

B. Restore the ability of immigrants to legalize their status in the United States despite overstaying their visas or entering without inspection

Enact legislation to amend INA 245 so that tens of thousands of immigrants with an existing avenue to adjust their status through family members or jobs approved by the Department of Labor (for which no U.S. workers are available) may adjust their status even though they initially entered the country without inspection or overstayed their non-immigrant visas, rather than remaining in the U.S. in illegal status.

C. Restructure the immigration quota system

Providing countries with little demand for migration to the U.S. the same annual number of family and employment-based preference visas as countries with high demand for visas is an irrational policy that significantly adds to the size of the undocumented population and in many cases needlessly causes prolonged family separation. Also, the number of visas currently available on an annual basis is far below the demand to unify families and fill jobs for which no US workers are available that immigrants are forced to wait for up to twenty (20) years to immigrate after their visas have been approved. This encourages either undocumented migration or prolonged family separation. Visas should be processed under a new regime taking into account global and individual country demands and that takes into account the real demand for visas.

The family-based visa allocation restructuring should include the following:

- (1) Exempt immediate relatives from the 480,000 worldwide ceiling,
- (2) Include the spouses and minor children of legal permanent residents as immediate relatives,
- (3) Increase the 'per country' limits from 7% to 10% or more of the worldwide ceiling,
- (4) Expand derivative eligibility to include immediate relatives,
- (5) Recapture unused family-based visas in any given year and apply them to future years without per-country limitations.
- (6) Allocate a visa outside the per-country limits and worldwide ceiling to any individual waiting for a family-based preference visa for more than one year or permit such applicants temporary admission pending the processing of their visas.

In addition, we propose the following further amendments to facilitate immigration within a legal framework and discourage irregular migration or the build-up of the undocumented population:

- (1) Reduce the affidavit of support income test required of family-based immigrant sponsors from 125% to 100% of the federal poverty level."
- (2) Currently, thousands of aging Filipino veterans, who served with the United States Armed Forces during WWII and were only in 1990 allowed to become U.S. citizens, are separated from their children and grandchildren and are spending their twilight years without the daily interaction and support of family members. The Filipino veterans family reunification bill

would remedy this situation by giving priority issuance of immigrant visas to the sons and daughters of Filipino World War II veterans who are or were naturalized citizens of the United States.

- (3) As with opposite-sex couples, partners in same-sex relationships seek to build a life and family with each other. U.S. immigration law, however, does not recognize same-sex relationships and binational couples are often forced to separate, or move abroad, or live unlawfully in the United States to stay together. The Uniting American Families Act would provide a mechanism that would allow U.S. citizens and legal permanent residents in binational same-sex relationships to sponsor their foreign born partner for immigration benefits to the U.S.

D. The issuance of permanent and temporary visas should be determined by labor needs

Consistent with long-standing U.S. policy, long term labor shortages should be filled through the permanent employment-based visas; temporary worker programs should be used only to fill short-term labor shortages.

E. The issuance of permanent employment visas should be based upon reliable economic indicators

The system for the issuance of permanent employment-based visas must be reformed through legislation that requires that the number of visas available are based on reliable economic indicators. That number would be set by a government agency based on forecasted long term labor shortages, and would be revised every year or two. In order to fill long term labor shortages, employers must be required to first test the US labor market by offering available jobs locally and nationally at a wage that prevents wage depression (that is, at an “adverse wage rate,” as currently used in the H2A program.) Only employers, not labor recruiters, should be permitted to petition for workers. Workers who come into the U.S. under this system will enter the labor market as lawful permanent residents, and thus will have full rights.

F. Existing temporary worker programs should be reformed

The system for the issuance of temporary employment-based visas must be reformed through legislation including the following elements:

1. The prevailing wage must be set at the adverse wage level by the Department of Labor (DOL) and the appropriate state workforce agency.

2. The DOL must remain as the “gatekeeper” to ensure that employers do not game the system.
3. Employers must seek labor certifications establishing the need for temporary labor and the labor certification process should be strengthened so that certifications are issued only when there is a demonstrated shortage of labor to fill temporary jobs.
4. Adequate whistleblower protections must be built into the system, so that workers who file non-frivolous administrative or judicial complaints can remain in the US while their claims are fully adjudicated.
5. Workers should have portability that guarantees that labor standards are preserved.
6. Temporary workers and their representatives should have the ability to enforce the conditions in labor certification applications, and employers must be subject to meaningful penalties (monetary and debarment) when they violate the conditions of the applications.
7. Enact legislation to permit temporary workers who maintain status, and are not a danger to the community, to apply for adjustment of status to become lawful permanent residents after three years of maintaining temporary resident status without requiring an independent route to adjustment of status (such as a US citizen relative or further permanent Department of Labor-approved job offer).

G. *Free legal services for visa applicants*

In order to facilitate the process of eligible immigrants residing in the United States to obtain visas Congress makes available, Section 504(a)(11) of Public Law 104-134 (110 Stat. 1321-53 et seq.) should be amended so as not to prevent a recipient of funds under the Legal Services Corporation Act (42 U.S.C. 2996 et seq.) from providing legal assistance directly related to an application for a family or employment-based visa or adjustment of status.

6. ACHIEVING RATIONAL AND HUMANE OPERATIONAL CONTROL OF THE BORDERS.

If rational policies are adopted regarding legalization and future flows of immigrants, the need for massive border enforcement will become far less significant as migrants are able to enter the country legally rather than illegally. Militarization of the borders in essence is a concession of the failure of immigration policy, it is costly, largely ineffective in slowing migrant flows, and substantially increases the criminalization and violence along the borders. In conjunction with a broad legalization program and amendment of laws so that future flows of migrants take place under a legal regime rather than outside of any legal framework, existing laws should be amended to substantially and promptly reduce militarization of the U.S.-Mexico border and promote humane and rational border enforcement. Current policies are causing thousands of deaths, assaults,

and related violence endemic along the U.S.-Mexico border, destruction of ecosystems, and routine violations of the rights of U.S. residents and citizens. Existing laws also fail in any significant way to curb the rise of vigilantism and associated violence along the US-Mexico border.

A. *Require that migrants apprehended entering the country be informed of rights extended to them by Congress before they are deported*

In order to protect the rights of people who qualify for lawful status but are apprehended in the United States in proximity to the borders, and to avoid unjust prompt removal from the country, enact legislation requiring that federal agents provide apprehended migrants with written notice of eligibility for U (victims of violent crimes who cooperate with law enforcement), T (victims of trafficking who may cooperate with law enforcement), and Special Immigrant Juvenile status (abused and abandoned unaccompanied children) visas, and not remove from the country any immigrant who appears to be prima facie eligible to obtain lawful status until the immigrant has had a reasonable opportunity to prepare and tender a complete application and it has been adjudicated.

B. *Prohibit the use of U.S. military forces for border enforcement*

Legislation should prohibit the use of the military along the US borders to assist in the apprehension of migrants.

C. *Make enforcement of laws to prevent vigilantism a priority and monitor vigilante activity*

Enact legislation making it a priority for federal law enforcement to prosecute crimes by border vigilantes, require that federal agencies document and routinely compile data regarding vigilante border activity, and make such data available to members of the public under the Freedom of Information Act on an expedited basis.

D. *Decriminalize humanitarian assistance to migrants injured while attempting to enter the country*

Enact legislation to make clear that providing humanitarian assistance to migrants entering the United States without inspection who are injured or whose health or lives are at risk is not a criminal offense.

E. *Make border enforcement solely a federal function*

Federal law should make clear that border enforcement is strictly a federal function and ad hoc involvement by local law enforcement agencies or Governments should be prohibited.

F. Repeal the Secure Fence Act of 2006

The Secure Fence Act, passed by the House of Representatives on Sept 14, 2006 and by the Senate on Sept 30, 2006 (HR 6061), like the 2005 Sensenbrenner House bill, carves a wide berth for the U.S. government to maximize border militarization and violence with little to no regard for the devastating costs to migrants and border communities. Driven by partisan politics and the lobbying efforts of businesses seeking to privatize border enforcement for corporate gains, the Secure Fence Act is bad public policy. Legislation should be enacted to repeal the Secure Fence Act, and a moratorium placed on further fencing of the border pending an assessment of the cost, effectiveness, and environmental impact of border fencing by an independent commission appointed jointly by the Congress and Executive including Government personnel, migration experts, and representatives of local Governments and civic groups in border areas.

G. End Border Patrol high speed chases and use of deadly force except when required to protect life or serious injury

Enact legislation that requires a thorough assessment and review of appropriate use of deadly force and high-speed chases by agents of the U.S. Border Patrol, and while such assessment is being conducted require that (1) high speed chases and use of spike strips require approval of a supervising officer with adequate training in high speed chases and only in those circumstances in which the driver's conduct (without being chased) places the lives of the vehicle's occupants or innocent bystanders at clear risk, and (2) deadly use of force may be used only when an officer's life or the lives of others are in clear, immediate, and serious danger.

H. Assess the need for additional ports of entry

Enact legislation or take other appropriate steps to evaluate the establishment of new formal ports of entry. New ports of entry should be established to further trade, connect historically linked border communities, and decrease unauthorized crossings by visa holders, lawful residents, and citizens.

I. Repeal recently enacted laws that permit "expedited removal" of certain migrants apprehended within 100 miles of the border

Enact legislation to repeal recently enacted provisions of the Immigration Act that permit "expedited removal" of immigrants apprehended within 100 miles of the border. Return to the long-held principle that immigrants are entitled to a formal deportation hearing if they assert a right to remain lawfully in the country and contest their deportability under existing laws enacted by the Congress.

J. Enact legislation permitting border crossing by indigenous people

Enact legislation to provide freedom of movement without visas across the border for indigenous peoples who are members of tribes with binational contiguous areas on both sides of the border.

K. *Independent Commission to provide oversight, accountability, consultation, and monitoring of federal border policies and practices*

Enact legislation to create an independent Commission, including federal, state, and local Government representatives, and representatives of community-based organizations, to provide oversight, accountability, consultation, review, and monitoring of federal immigration border and interior policies and practices.

7. ACHIEVING RATIONAL AND HUMANE INTERIOR ENFORCEMENT AND DUE PROCESS POLICIES

Congress has established a wide range of rights that certain immigrants possess in the United States, and interior enforcement activities in search of deportable immigrants should not proceed in a manner that tramples on these rights that Congress has extended. Mass and random enforcement activities disrupt families, employers, and communities. Immigrants detained for enforcement purposes should be processed in a manner consistent with U.S. laws and international obligations. While the previous Congress endorsed and enacted massive new detention programs, much of it privatized, there is little reason to believe that substantial outlays for detention nationwide are necessary or helpful. There is no useful gain achieved by recently enacted laws that cause indefinite detention of long-term immigrant residents with family members here, including US citizen family members, when they pose no risk of flight, and are clearly not a risk to the community or national security. These recent laws do only two things: They separate families and allow certain entities in the private sector money to profit at tax-payers' expense.

A. *Repeal recently enacted laws that prevent release on bond for apprehended migrants who are not a flight risk or risk to the community*

Enact legislation requiring that the Secretary of Homeland Security shall (A) make an individualized determination as to whether an apprehended immigrant should be released pending administrative and judicial review, to include a determination of whether the alien poses a danger to the safety of other persons or property and is likely to appear for future scheduled proceedings; and (B) grant the alien release pending administrative and judicial review under reasonable bond or other conditions, including conditional parole, that will reasonably assure the presence of the immigrant at all future proceedings, unless the Secretary of Homeland Security determines under subparagraph (A) that the alien poses a danger to the safety of other persons or property or is unlikely to appear for future proceedings. Such decisions should be promptly reviewed by Immigration Judges, the Board of Immigration Appeals, and the federal courts.

B. *Limit the amount of time an immigrant is detained after being ordered released on bond by an Immigration Judge*

Require that an order issued by an Immigration Judge to release an immigrant may be stayed by the Board of Immigration Review, for not more than

30 days, only if the Government demonstrates (1) the likelihood of success on the merits; (2) irreparable harm to the Government if a stay is not granted; (3) that the potential harm to the Government outweighs potential harm to alien; and (4) that the grant of a stay is in the interest of the public.

C. *Grant suspension of deportation to immigrants with five years continuous residence*

Enact legislation to permit the Department of Justice in removal proceedings to withhold deportation orders and grant lawful resident status to immigrants who have resided continuously in the U.S. for five years other than brief, innocent, and casual absences abroad, are not a national security threat, can establish at least five years of good moral character, and are willing to perform 100 hours of community service or pay a fee of \$1,000.

D. *Enact legislation prohibiting mass non-individualized detentions of immigrants*

Prohibit mass and random detentions by federal agents during work site and day labor site enforcement activities; restrict federal agents to only detaining and questioning persons reasonably suspected based upon articulable facts of being immigrants present in the United States in violation of the INA and therefore subject to removal.

E. *Repeal recently enacted federal law that bars states from issuing drivers licenses to undocumented immigrants*

For reasons of public safety, repeal provisions of the REAL ID Act which preclude States from issuing drivers licenses to undocumented immigrants and result in large numbers of immigrants driving on the nation's streets and highways with no training, testing, licenses, or insurance.

F. *Enact legislation making removal proceedings open to the public*

Enact legislation requiring that removal proceedings shall be open to the public except, on a case by case basis, (A) to preserve the confidentiality of applications for asylum, withholding of removal, relief under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Violence Against Women Act of 1994 (Public Law 103-322; 108 Stat. 1902), or the Victims of Trafficking and Violence Prevention Act of 2000 (Public Law 106-386; 114 Stat. 1464), or other applications for relief involving confidential personal information or where portions of the removal hearing involve minors or issues relating to domestic violence, all with the consent of the alien; (B) to prevent the disclosure of classified information that threatens the national security of the United States and the safety of the American people; or (C) to prevent the disclosure of the identity of a confidential informant.

G. Terminate the National Security Entry-Exit Registration System

Enact legislation to terminate the National Security Entry-Exit Registration System (NSEERS) program administered by the Secretary of Homeland Security and provide remedies for immigrants with technical violations of NSEERS that did no articulable harm.

H. Enact legislation making technical violations of registration requirements punishable by civil penalties

Enact legislation to repeal criminal penalties and deportation, and instead establish civil penalties, for an immigrant's technical violation of registration and change of address requirements.

I. Require accuracy in the National Crime Information Center database

Enact legislation to require that data entered into the National Crime Information Center database meets Privacy Act accuracy requirements.

J. Enact legislation to amend the definition of an "aggravated felony"

Under current law a person convicted of a crime defined in the INA as an "aggravated felony" faces extremely harsh immigration consequences including mandatory detention, deportation, and a life-time bar to returning lawfully to the United States. However, recent amendments have broadened the definition of "aggravated felonies" so that they now encompass a wide range of crimes that are neither felonies nor anything close to being an truly "aggravated" felony. The law now includes many misdemeanors and other crimes that do not even warrant jail time but end up causing deportations that separate families with US citizen children who have been living in the United States for many years. The definition of an "aggravated felony" should be amended so that as its name implies, it applies (1) to felony convictions, (2) for violent or particularly serious crimes. Immigrants may still face deportation for lesser crimes, but they should not be subjected to the harsh penalties "aggravated felons" face, including mandatory detention, deportation without a hearing, and a life-time bar to ever return lawfully.

K. Enact legislation to prohibit the retroactive application of immigration laws

Enact legislation to make clear that changes to the immigration laws should not serve to take away benefits already extended to immigrants by earlier laws, just as criminal laws cannot make crimes conduct that took place before the crime was defined and enacted.

L. Enact legislation to grant immigrants full access to financial institutions

Ensuring democratic access to low cost financial services through banks, credit unions and micro-finance institutions will produce an economic boom in

both remittance sending and receiving communities. Allowing immigrants to open financial accounts will allow the movement of migrant income and remittances from a cash economy into the network of local banks, credit unions and microfinance institutions on both sides of the border. As increased immigrant income is channeled into savings accounts of locally oriented financial institutions, this will produce an economic multiplier effect through investments in local productive activities, which in turns produces demand for local labor and local inputs, as well as local consumption, markets and additional investment. Because over 90% of immigrant income and thus savings remains in the U.S., the biggest gross beneficiaries of the policy approach will be U.S. communities. A Comprehensive Immigration Policy Reform Proposal should therefore include the right to access of financial services regardless of immigration status.

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