

Statement of

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Before

The House Subcommittee on Immigration and Border Security

On

Interior Immigration Enforcement Legislation



February 11, 2015

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I am Bishop Gerald F. Kicanas, bishop of Tucson, Arizona. I am pleased to have the opportunity to testify today on behalf of the USCCB Committee of Migration, of which I am a consultant, on the Catholic Church's perspective on interior immigration enforcement legislation.

I would like to thank you, Mr. Chairman, and Representative Zoe Lofgren (D-CA), ranking member of the subcommittee, for holding this hearing on such a vital issue to our nation. I would also like to recognize Representative Bob Goodlatte, chairman of the full House Judiciary Committee, and Representative John Conyers (R-MI), ranking member of the full committee, for their participation in this hearing.

I testify today in opposition to the three bills from the 113<sup>th</sup> Congress that are the specific focus of today's hearing:

- The *Strengthen and Fortify Enforcement (SAFE) Act* (HR 2280), which we believe would criminalize undocumented immigrants and those who offer them basic needs assistance;
- The *Protection of Children Act* (H.R. 5143), which we believe would repeal due process protections for unaccompanied children fleeing persecution in Central America; and
- The *Asylum Reform and Border Protection Act* (H.R. 5137), which would weaken asylum protections below international standards for children and other vulnerable refugees and asylum-seekers.

We were hopeful, Mr. Chairman, that at the beginning of this Congress, this Subcommittee's initial activities would mark the beginning of a process that would result in the passage of the type of comprehensive immigration reforms that our nation so sorely needs. We are disappointed, therefore, that the first actions in this Subcommittee, of the full Committee, and indeed, of the full House of Representatives have moved the debate in the opposite direction. Our nation cannot wait to repair a broken immigration system that does not accommodate the migration realities we face in our nation today, does not serve our national interests, and does not respect the basic human rights of migrants who come to this nation fleeing persecution or in search of employment for themselves and better living conditions for their children.

In order to achieve real reform, the Administration and Congress must work together on a comprehensive package that 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.

The three bills that are the subject of today's hearing fail to meet any of those goals.

Mr. Chairman, in January 2003, the U.S. and Mexican Catholic bishops issued a historic joint pastoral letter on the issue of migration entitled *Strangers No Longer: Together on the Journey of Hope*. Among its many recommendations, it outlines the elements which the bishops of both nations believe are necessary to reform U.S. and Mexican immigration policy in a comprehensive and just manner. With your permission, Mr. Chairman, I ask that the chapter of the pastoral letter addressing policy recommendations be included in the hearing record.

My testimony today recommends that Congress—

- Enact comprehensive immigration reform legislation which provides a legalization program (path to citizenship) for undocumented workers in our nation; reforms the employment-based immigration system so that low-skilled workers can enter and work in a safe, legal, orderly, and humane manner; and reduces 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 (AgJOBS) and the Development, Relief, and Education for Alien Minors Act (DREAM Act);
- Adopt humane immigration enforcement policies that ensure the integrity of our nation’s borders but ensure that human rights and human life are protected; and
- Reject overly harsh enforcement-only schemes that fail to protect the civil and human rights of both persons who entered or remain in the United States without authorization, as well as citizens, permanent residents, and others whose stay in the United States is authorized.

## **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>

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>

Pope Francis, who will visit the United States and address a joint meeting of Congress in September, has also defended the rights of migrants, decrying the “globalization of indifference” toward their plight. He also has called for the care and protection of unaccompanied children fleeing strife in their home countries and seeking protection in the United States.

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>

For these reasons, the Catholic Church holds a strong interest in the welfare of immigrants and how our nation welcomes newcomers from all lands. The current immigration system, which can lead to family separation, suffering, and even death, is morally unacceptable and must be reformed.

## **II. The Immigration Debate**

We were heartened by the progress made in the 113<sup>th</sup> Congress by the passage of immigration reform legislation in the U.S. Senate, but were discouraged not only when the House of Representatives failed to take up the Senate bill or put forth its own version of legislation, but when it passed a series of measures late in the 113<sup>th</sup> Congress that would have taken the country in the opposite direction. It is our hope that the 114<sup>th</sup> Congress will finish the job on immigration reform legislation.

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 continue to be 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.

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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.

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.

Mr. Chairman, the U.S. Conference of Catholic Bishops (USCCB) supported the President's executive action on immigration because it would help as many as 4 million persons and keep an untold number of families together. Rather than attempt to rescind the decision, it should provide an incentive for the House of Representatives and Congress to *supersede* it through the passage of immigration reform legislation. We encourage this response, provided it addresses all aspects of the system.

With regard to enforcement, Mr. Chairman, we believe that the best way to secure our borders and to ensure that our immigration laws are just and humane is to enact comprehensive immigration reform legislation that prioritizes family unity while targeting limited resources on those who endanger our society and are a threat to public safety.

Others maintain that the United States must first "secure its border" or enact harsh interior enforcement policies before considering broader immigration reforms.

We believe that enforcement is part of an 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 nearly thirty years, yielding too many costs and too few results. The costs have indeed run high. Since 2000, Congress has appropriated and the federal government has spent about \$200 billion on immigration enforcement, multiplying the number of Border Patrol agents by a factor of five (over 20,000 agents)<sup>6</sup> and introducing technology and fencing along the border.<sup>7</sup> Border Patrol in particular has seen a nine-fold budget increase since 1992.<sup>8</sup>

In addition, the Obama Administration has deported persons and divided families at record rates, having deported over 2 million persons since 2009. Tragically, between 1998 and 2010 nearly 7,000 migrants have perished in the desert trying to enter the United States.<sup>9</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

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<sup>6</sup> Testimony of Marc Rosenblum, Migration Policy Institute, House Judiciary Committee, February 3, 2015.

<sup>7</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>8</sup> See IPC at fn. 2.

<sup>9</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).

that have rescued thousands of desert-crossers.<sup>10</sup> Judging by these measures, enforcement first has largely failed to end illegal immigration on its own.

Despite record spending and deportations, the “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>11</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 attempt to 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 and an inability for migrants to reunite with family members. We are hopeful that comprehensive immigration policy reform, which emphasizes legal avenues for migration, will mitigate the perceived need for harsh enforcement proposals and laws. 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 employment verification systems, biometric visas and passports, and exit-entry systems which would help better identify those who are here to contribute between those who may come to harm us.

### III. Overly Harsh Enforcement-only legislation

Mr. Chairman, I would like to offer the position of the U.S. Conference of Catholic Bishops on legislation being considered by the subcommittee:

**The SAFE Act (H.R. 2278, as introduced in 113<sup>th</sup> Congress).** The USCCB acknowledges and accepts the role of the government in ensuring the integrity of our border. However, the “SAFE” Act would grant unprecedented immigration enforcement powers to states and localities, ultimately leading to civil rights violations, racial profiling, and abuses of basic human rights. The legislation also could inadvertently increase crime in some communities, as some residents would be fearful to report incidents to local authorities and local enforcement would be required to police for immigration violations -- thus diverting limited law enforcement resources away from serious criminals.

USCCB opposes the SAFE Act for the following reasons:

- **The SAFE Act would grant extensive immigration enforcement powers to states and localities and eradicate effective federal government oversight.** The SAFE Act would allow states and political subdivisions of states to “investigate, identify, apprehend, arrest, detain or transfer to federal custody” individuals in order to enforce any federal immigration violation -- civil, criminal or state immigration penalty allowed under the act. It would permit state and local law enforcement officers, untrained in federal immigration law, to issue an immigration hold and detain an individual indefinitely. We fear that such a regime would result in prolonged detention for U.S. citizens and lawfully residing residents. Such an unprecedented transfer of authority could lead to civil rights abuses and discrimination against immigrants and legal permanent residents and U.S. citizens.

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<sup>10</sup> See Hsu, at fn. 11.

<sup>11</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.

- **The SAFE Act would criminalize those in undocumented status and those who assist them, including religious and faith-based organizations.** As originally introduced, H.R. 2278 would make undocumented presence a crime. Migrants who enter our nation are not criminals, in our view, as they are in many cases trying to survive and support their families. Criminalizing them would subject them to further incarceration and increase detention and court costs. The legislation also would criminalize those who transport or provide assistance to undocumented persons, including religious (nuns), priests, and other faith-based actors. This would include transporting to a hospital or to church services or Mass. This is very troubling, as it impacts the ministry of the church to care for those in need.
- **The SAFE Act would repeal the Deferred Action for Childhood Arrivals (DACA) program.** As introduced, H.R. 2278 would repeal the DACA program, which protects over 600,000 young people who entered the country as children, many with or under the direction of their parents. Many of these young people, who know no other country, would be subject to deportation back to a country they do not know. It would also deprive our nation of their talents and contributions to our nation.
- **The SAFE Act would harm bona fide refugees and asylum-seekers fleeing persecution.** The bill would bar from naturalization, including those who have resided in the United States for years, any person who cannot meet a definition of good moral character because he or she may have provided food or money under duress, such as the threat of death, to barred organizations. This provision could apply to legal permanent residents who have lawfully resided in the United States for years.
- **The SAFE ACT would create a disjointed national immigration policy that could employ 50 different State immigration policies.** The SAFE Act would allow states or political subdivisions of states to create their own criminal and civil penalties for federal immigration violations. This element of the SAFE ACT is directly in contradiction to the recent Supreme Court decision *Arizona v. United States*, 132 S. Ct. 2492 (2012) which held that states cannot enact their own criminal alien registration penalties in addition to the federal legal penalties/scheme.
- **The SAFE Act would be cost prohibitive to implement.** The costs to effectively implement this piece of legislation would be financially burdensome in a time of fiscal austerity. For example, the detention policy proposed in the SAFE Act calls for an increase in the number of detention facilities, an increase in the population to be detained (including all individuals awaiting a decision for removal), and an increase in funding for state and local governments to detain individuals in local jails. According to the Congressional Budget Office, the SAFE Act would cost \$22.9 billion over the first 5 years.<sup>12</sup>

**The Asylum Reform and Border Protection Act (H.R. 5137, as introduced in 113<sup>TH</sup> Congress).** Mr. Chairman, USCCB believes that our nation should honor our heritage as a safe haven for the persecuted, consistent with our international obligations and as a leader on human rights in the world. However, H.R. 5137 would take our nation in the opposite direction. We oppose H.R. 5137 for the following reasons:

- **H.R. 5137 would unjustly raise the credible fear standard, denying protection to bona fide refugees.** Under the legislation, an asylum-seeker would have to prove that it is *more likely than not* that his or her statements are true. This is problematic, as credible fear interviews can be conducted over the phone, with background noise, and with applicants who are traumatized and are communicating through interpreters of variable quality. Moreover, adults are often before

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<sup>12</sup> Congressional Budget Office, Cost Estimate, H.R. 2278 (Dec 5, 2013).

enforcement authorities or in detention facilities during the credible fear interview, making it more difficult for them to articulate their fears. It is also important to note that an applicant's credibility is relevant to whether the person is actually at risk of harm, not how they communicate it. H.R. 5137 also would apply this high standard to unaccompanied children, as it would expose them to expedited removal.

- **H.R. 5137 would subject all unaccompanied children to expedited removal, even those from noncontiguous countries in Central America fleeing well-documented persecution and harm.** This provision would repeal protections for children entering from Central America, where they are threatened with their lives by organized crime. We fear that under this measure, they would be given cursory screenings by a border patrol officer and, in many cases, summarily returned to their persecutors, at great risk to their health or their lives. Should a child achieve credible fear, the bill would subject them to the one-year filing deadline and bar them from receiving government-funded counsel, giving many of them little chance of navigating the complex immigration system. The bill would remove all protections for child trafficking victims, which was a hallmark of the Trafficking Victims Protection Reauthorization Act of 2008.
- **H.R. 5137 would amend the parole statute in immigration law to eliminate the statutory basis for arriving asylum seekers to be released from detention while awaiting their adjudication.** This would submit already traumatized asylum-seekers to lengthy detention when there are humane alternatives available to them. Asylum-seekers who pass credible fear can be placed in a wide range of alternative forms of detention, including community-based case management, operated at far below cost of a detention bed.
- **H.R. 5137 would re-define unaccompanied alien children, resulting in mass incarceration of these children.** By requiring that the presence of other legal guardians or family members in the United States disqualifies a child from being "unaccompanied," H.R. 5137 would subject many children to detention and possible expedited removal. This would be in violation of the "Flores Settlement" in which the then-Immigration and Naturalization Service (INS) agreed that children should be placed in the least restrictive setting possible and should not be housed with adult detainees. In every other area of law, we recognize that children should be treated differently and given additional protection. Immigration law should be no different. We should not abandon our principles of child protection so easily.

**The Protection of Children Act (H.R. 5143 as introduced in 113<sup>th</sup> Congress.)** The U.S. Conference of Catholic Bishops opposes H.R. 5143 because it would repeal protections from unaccompanied children from non-contiguous countries and would make the screening of all children much worse by removing protections for tender aged children and those with intellectual disabilities. We also oppose the measure because it would subject children to 30 days incarceration, violating standards found in *Flores v. Reno*, and it would manipulate reunification as a means to identify undocumented individuals and initiate removal proceedings against family members of children, thus resulting in additional foster care placements for children.

- **H.R. 5143 would repeal protections for unaccompanied children from non-contiguous countries found in the William Wilberforce Trafficking Reauthorization Act of 2008.** The USCCB opposes this provision because it would deny a hearing before an asylum judge for children fleeing violence in Central America. According to the United Nations High Commissioner for Refugees

(UNHCR), as many as 6 out of 10 children fleeing the region have valid protection claims.<sup>13</sup> Adopting this provision would have the effect of sending them back to harm or possible death.

- **H.R. 5143 would make the screening of ALL children much worse and would remove essential protections for young (tender aged children) and those who lack the capacity to make an independent decision.** We have long held that children deserve additional protections in our society because they are the most vulnerable. Within this group, very young children and children with intellectual disabilities are even more vulnerable to abuse. We oppose this provision because it would remove the current requirement that DHS consider whether a child is able to voluntarily withdraw their application for admission. DHS's current policy is to refer these children to HHS custody for further review and an immigration court proceeding. While we are troubled by the fact that DHS does not always follow this policy or provision of the TVPRA to the fullest extent possible, we believe that the solution is not to take away these important rights, but rather to strengthen them to ensure that the most vulnerable children are protected under the law.
- **H.R. 5143 would subject children who meet the credible fear standard to incarceration for as long as 30 days in substandard and restrictive settings, violating the standards established in *Flores v. Reno*.** Mr. Chairman, Americans witnessed the pictures of children being detained in overcrowded Border Patrol stations, without beds and with limited access to recreation and basic medical and nutritional support. This provision would eliminate the requirement that DHS transfer these children to HHS custody within 72 hours so they can be placed in a less restrictive setting. These children can be emotionally and psychologically harmed by lengthy detention in restrictive settings.
- **H. R. 5143 would use these children to deport their family members, many of whom would qualify for legalization under comprehensive immigration reform.** Instead of reunifying these children with family members until their immigration proceedings, this provision would discourage such family reunification by requiring that parents submit documentation and would require DHS to initiate removal proceedings if they are not legally in the country. This would restrict family reunification and ensure that children are kept in some form of detention.

Mr. Chairman, instead of passing these restrictive bills, we urge you to consider passage of comprehensive immigration reform, which we believe would help fix our system in a humane and just manner.

#### **IV. Policy Recommendations for Immigration Enforcement**

Mr. Chairman, instead of these bills, we offer the following policy recommendations for the creation of an immigration enforcement system which is humane.

- **National Employer Electronic Verification System.** Mr. Chairman, we know that there has been significant discussion and debate, including legislative proposals, to enforce laws against hiring and employing unauthorized workers in the workplace by imposing a mandatory electronic verification system on employers nationwide, so as to ensure 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.

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<sup>13</sup> United Nations High Commissioner for Refugees, "Children on the Run," March, 2014.

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) it is not implemented until inaccuracies in the government databases used to cross-check identification and eligibility are corrected so that employees are not wrongfully dismissed or wrongfully denied employment opportunities;
  - 4) protections are put in place so that employers do not use the system to wrongfully discharge certain employees; and
  - 5) employees who are the victims of false positive assessments about their status are given the opportunity to correct any misinformation that led to the false positive assessment.
- **Reform of Detention Standards and Practices.** Mr. 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 believe that detention should be used to protect the community from threats, not to incarcerate for purposes of deterrence or penalty. There are alternatives to detention which are more humane and would ensure that immigrants appear at their immigration proceedings, including case management and community based alternatives to detention. Asylum-seekers, especially women and children, should, at a minimum, be placed in these alternative settings. We oppose the expenditure of funds for the detention of families, including the close to 3000 beds included in the 2015 DHS budget.

We support adoption of reforms to detention standards and practices that would –

- 1) end mandatory detention and the nationwide bed mandate to restore discretion to immigration officials and judges to release individuals who are not a flight risk and do not pose a risk to public safety, particularly asylum-seekers;
- 2) establish and fund nationwide, community-based alternatives to detention programs;
- 3) improve standards for detention conditions, by promulgating regulations that apply to all facilities used for U.S. immigration detention, making the detention system truly civil in nature and including prompt medical care in compliance with accreditation requirements, and appropriate standards through regulations for families, children, and victims of persecution, torture, and trafficking;
- 4) provide access to legal counsel for those in asylum and immigration proceedings;
- 5) provide funding and authorizations for legal orientation programs nationwide by the DOJ/EOIR to facilitate more just and efficient proceedings;
- 6) increase funding for adjudication by DHS/CIS and by DOJ/EOIR so that backlogged cases are adjudicated and there are sufficient resources to adjudicate ongoing cases in a timely manner; and
- 7) establish a new Office of Detention Oversight at the Department of Homeland Security.

- **Protect Asylum-Seekers and Refugees.** Mr. Chairman, we understand the desire of you and your colleagues to ensure that the U.S. asylum system provides protection to bona fide asylum-seekers and not those who are trying to take unfair advantage of the system. We share that goal. We believe that the United States currently has the tools to identify and prevent fraud. The U.S. government can protect the American public by using the many tools available to them.

Over the years, Congress has built many fraud precautions into the U.S. asylum process. These precautions include an in-depth examination of each person's case, an in-person interview or hearing, and rigorous examination of evidence to make sure the applicant meets the strict refugee definition and is not otherwise barred. The asylum seeker signs the application under penalty of perjury, fraudulent applicants are permanently barred, and fraudulent filers, preparers and attorneys can be prosecuted.

In addition, there are numerous bars that prohibit asylum for anyone who has persecuted someone else, committed a particularly serious crime, an aggravated felony, a serious nonpolitical crime abroad, terrorist activity, material support of terrorist activity, or who reasonably presents a danger to the security of the United States. (INA sec. 208(b)(2)(ii-v).

Moreover, federal law requires extensive background and security checks that are tools to identify fraud and safeguard security. (INA sec. 208(d)(5)(A)(i).) The databases, among others, include the Central Index System (CIS), Deportable Alien Control System (DACs), Automated Nationwide System for Immigration Review (ANSIR), the Interagency Border Inspection System (IBIS) that has incorporated the National Automated Immigration Lookout System (NAILS), and IDENT database checks (See Office of International Affairs Asylum Division, *Affirmative Asylum Procedures Manual (Asylum Manual)*, 2007, updated 2010, pp. 2-6). The FBI also checks names, birthdates, and fingerprints against their databases, and all asylum applicants are also sent to the CIA to be checked against their databases.

Mr. Chairman, we believe these tools, properly used, are sufficient to ensure that the asylum protection system protects those deserving of relief. Increased penalties and detention for asylum-seekers would not necessarily uncover or deter would-be fraudulent applicants, but would harm those seeking protection.

Those who come to our shores in need of protection from persecution should be afforded an opportunity to assert their claim to a qualified adjudicator and should not be detained unnecessarily. The expansion of "expedited removal," a practice that puts *bona fide* refugees and other vulnerable migrants at risk of wrongful deportation, should be halted. At a minimum, strong safeguards, such as those suggested by the U.S. Commission on International Religious Freedom, should be instituted to prevent the return of the persecuted to their persecutors. Moreover, the one-year filing deadline for asylum applications should be repealed, as many asylum-seekers do not have the resources or assistance to meet this deadline. 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 that preserves the 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.

- **Due Process Protections should be restored to the system.** 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 (or waive them under certain circumstances), and revisit the number and types of offenses considered as aggravated felonies as a matter of immigration law.

## **V. Policy Recommendations for Comprehensive Immigration Reforms**

Mr. Chairman, the U.S. Catholic bishops believe that the best way to address our country's broken immigration system is to enact comprehensive immigration reforms and that, in addition to containing reforms to border and interior immigration enforcement system, any comprehensive immigration reform bill should also 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;
- enactment of the Agricultural Job Opportunity, Benefits, and Security Act (AgJOBS) and the Development, Relief, and Education for Alien Minors Act (DREAM Act); and
- implementation of policies that address the root causes of migration, such as the lack of sustainable development in sending nations.

### **1) *Legalization (“Path to Citizenship”) 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 and citizenship. Such a feature would provide benefits to both our nation and to immigrants and their families, who would be able to “come out of the shadows” and become 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 that 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 not support proposals that only grant temporary legal residence to the undocumented and ban any opportunity for them to obtain permanent residency and citizenship. Creating a permanent underclass in our society, without full rights in our communities, cuts against American tradition and values.

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 make us more secure, as immigrants would be able to come forward and register with the government so that we know who they are and why they are here, leaving law enforcement the ability to focus upon criminals in our nation.

## **2) *Employment-Based Immigration***

Perhaps the most problematic aspect of immigration policy reform is the creation of a “future flow” worker program that protects the basic rights of all workers, both foreign and domestic. The history of “guest worker” programs in the United States has not been a proud one. Indeed, the *Bracero* program, the largest U.S. experiment with temporary laborers from abroad, ended abruptly in 1964 because of abuses in the program. The U.S. Catholic bishops have long been skeptical of large-scale “guest worker” programs. Nevertheless, the status quo, which features a large underclass of undocumented workers unprotected by the law, is unacceptable.

In this regard, the U.S. bishops have proposed a new model for a worker program which includes several elements, better labeled a new worker program. Any program should ensure 1) adequate wages and benefits; 2) worker protection and job portability; 3) family unity; 4) a labor-market test to

protect U.S. workers; and 5). the enforcement of labor protections for workers; and 6) an opportunity to apply for permanent residency after some time. 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, controlled and humane manner.

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.

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 death 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.

### 3) *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>14</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. We oppose the elimination of the third (adult married children) and fourth (brothers and sisters) preferences and support the inclusion of spouses and children of LPRs into the immediate relative category.

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<sup>14</sup> U.S. Department of State, *Visa Bulletin October 2014*.

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.

**4) *Passage of the Agricultural Job Opportunity, Benefits, and Security Act and the Development, Relief, and Education for Alien Minors Act***

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, “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.

The Development, Relief, and Education for Alien Minors Act (DREAM) is 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 in the 114th Congress by including them in a comprehensive immigration reform measure.

**5) *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>15</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., Mexican, and Central American 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. We therefore support the \$1 billion in the

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<sup>15</sup> *Strangers No Longer*, n. 56.

President's budget for 2016 which addresses some of these underlying causes in Mexico and Central America.

## **VI. Conclusion**

Mr. Chairman, we appreciate the opportunity to testify today. 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.

Mr. 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.