

Immigration Reform: Comprehensive Solutions for Complex Problems

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I. OVERVIEW

In January 2004, after more than two years of silence, President Bush reignited the national immigration debate when he proposed a new guestworker program. Members of Congress of both political parties, in both the House and Senate, have entered the debate by introducing proposals of their own. While the content of immigration

reform proposals varies – sometimes dramatically – nearly everyone from all sides of the immigration debate agrees that the current system is not functioning well, is not in the best interests of the U.S., and needs to be reformed. This debate is likely to continue for several years; immigration reform has always been a contentious and emotional issue in this nation of immigrants. This Issue Brief outlines the current

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immigration system, explains why the current system is inadequate and needs to be overhauled, and lays out NCLR’s principles for comprehensive immigration reform.

II. THE CURRENT LEGAL IMMIGRATION SYSTEM

To understand why the current immigration system is broken and requires reasonable and comprehensive reforms, it is first necessary to have a basic understanding of the existing regulations and procedures. Unfortunately, many Americans do not understand how the current system works and often assume that U.S. immigration is overly generous and out of control while, in fact, it is highly regulated and selective.

The Immigration and Nationality Act (INA), the main body of law governing U.S. immigration policy, provides for a permanent annual worldwide level of 675,000 legal permanent visas each year. A separate number of visas for refugees is determined through a consultation process between Congress and the Executive Branch. While the principles on which U.S. immigration is based have evolved throughout the nation’s history, since the mid-20th century U.S. permanent

immigration policy has been based on three general ideas: family-based immigration and humanitarian relief employment-based immigration. In addition, a small

number of visas are allocated for the purpose of maintaining diversity in U.S. immigrant communities.

FAMILY-BASED IMMIGRATION

Traditionally, family reunification has been a cornerstone of U.S. immigration policy. The current family-based immigration system is an orderly and tightly regulated system that allows close relatives of U.S. citizens (USCs) and legal permanent residents (LPRs) to rejoin their family members in the U.S. There are 480,000 visas available each year for family-based immigration, which are allocated based on complicated calculations.¹ Family-based immigrants are admitted to the U.S. either as **immediate relatives** of U.S. citizens or through the **family preference system**.

There is no cap on the number of visas available each year for immediate relatives. **Immediate relatives are:**

- Spouses of U.S. citizens
- Unmarried minor children of U.S. citizens (under 21 years old)
- Parents of U.S. citizens

Family-Based Immigration System			
Preference #	U.S. Sponsor	Relationship	Visas Allocated
N/A	U.S. citizen	Spouses, unmarried minor children, and parents of adult U.S. citizens	unlimited
1	U.S. citizen	Unmarried adult children	23,400/year*
2A	LPR	Spouses and minor children	87,900/year
2B	LPR	Unmarried adult children	26,300/year
3	U.S. citizen	Married adult children	23,400/year**
4	U.S. citizen	Brothers and sisters	65,000/year***

*Plus any visas left over from the 4th preference
 **Plus any visas left over from the 1st and 2nd preference
 ***Plus any visas left over from the previous preferences

There are a limited number of visas available every year under the family preference system. The family preference system is for:

- ▶ Adult children (married and unmarried) and brothers and sisters of U.S. citizens
- ▶ Spouses and unmarried children (minor and adult) of LPRs.

EMPLOYMENT-BASED IMMIGRATION

Current U.S. immigration law allows people who have skills and talents needed in the U.S. to be admitted to work on a temporary or permanent basis.

There are more than 20 types of temporary (nonimmigrant) visas for foreign workers to enter the U.S. for temporary, specifically-defined periods of time. These visas include A visas (diplomatic employees), D visas (air and

sea crewmembers), E visas (treaty-investors or treaty-traders), N visas (NATO employees), P visas (internationally-recognized athletes and entertainers), and many more. Most temporary work visas are for highly-skilled workers, and most nonimmigrants who come to the U.S. on temporary work visas are sponsored by a U.S. employer for a specific job offer and must work only for that employer. Most temporary work categories have annual numerical limitations.

There are five basic types of permanent business immigrant visas. These categories are created by Congress and have annual limits; a total of 140,000 permanent employment-based visas are available each year. These immigrants become permanent residents and receive green cards. Employment-based immigrants are usually sponsored by U.S. employers who demonstrate a need for a foreign worker. The preference system is as follows:

Employment-Based Preference System		
Preference #	Workers Admitted	Visas Allocated
1	Priority workers: persons of extraordinary ability in the arts, science, education, business, or athletics; outstanding professors and researchers; and certain categories of multinational executives and managers.	40,000*
2	Members of the professions holding advanced degrees or persons of exceptional abilities in the arts, sciences, or business.	40,000**
3	Skilled shortage workers with at least two years of training or experience, professionals with college degrees, and "other workers" who are those "capable of performing unskilled labor," and who are not temporary or seasonal. "Other workers" are limited to 5,000 visas per year.	40,000***
4	Certain special immigrants, including ministers, religious workers, former U.S. government employees, and others.	10,000
5	Persons who invest \$500,000 to \$3 million in a job-creating enterprise in the U.S. and employ at least ten U.S. workers.	10,000

* Plus any unused visas from the 4th and 5th preferences.
 ** Plus any visas left over from the 1st preference.
 *** Plus any visas left over from the 1st and 2nd preferences

HUMANITARIAN RELIEF

Each year the U.S. provides protection within U.S. borders to a certain number of persons who are fleeing persecution in their homeland. A **refugee** applies for protection while still outside the U.S., while an **asylee** first comes to the U.S. and applies for protection here. Refugees and asylees must prove that they have a "well-founded fear of persecution" based on their race, religion, membership in a social group, political opinion, or national origin. In addition, refugees must fit into one of a set of priority categories, based on the degree of risk to the refugee's life, membership in certain groups of special concern to the U.S., and the existence of family members in the U.S.

The number of refugees accepted each year is determined by the President in consultation with Congress. In fiscal year 2004, up to 70,000 refugees will be permitted to enter the U.S. These numerical limits are ceilings, meaning that fewer refugees may actually be admitted in any particular year. These refugee numbers are allocated among five regions of the world; for FY 2004 the regional allocations are:

Africa: 25,000

Eastern Europe and Former Soviet Union: 13,000

East Asia: 6,500

Near East/South Asia: 2,000

Latin America and the Caribbean: 3,500

Unallocated reserve: 20,000

Total: 70,000

Refugees and asylees are eligible to become LPRs after they have been in the U.S. for one year. There is no limit to the number of refugees who may become LPRs each year. However, there is a limit of 10,000 green cards available each year for asylees who apply for permanent residence. Because of this numerical limitation, there is a long backlog of applications for permanent residence.

Persons are admitted for humanitarian reasons through other channels as well. **Temporary Protected Status (TPS)** may be granted to persons who are currently in the U.S. and who would face "ongoing armed conflict," "natural disaster," or "extraordinary temporary conditions" if they were to be returned to their home country. A country's TPS designation may last for six, 12, or 18 months, and may be extended if the Attorney General determines that unsafe conditions in the country persist. **Deferred Enforced Departure (DED)** is similar to TPS and delays the deportation of groups of individuals who would face danger if they were to be deported to countries experiencing instability. **Parole** is the term used when an individual is allowed to enter the U.S. even though he or she may not meet the conditions to enter through regular immigration or refugee channels. Parolees may be admitted temporarily for urgent humanitarian reasons or significant public benefit. TPS, DED, and parole are extremely rare.

DIVERSITY VISA LOTTERY

In addition, there are 55,000 visas available each year for diversity lottery immigrants. These are immigrants from countries with low admissions levels. Diversity visa immigrants must have a high school education or its equivalent or a minimum of two years experience working in a profession requiring two years of training or experience.

III. PROBLEMS WITH THE CURRENT IMMIGRATION SYSTEM

While the current immigration system appears generous and reasonable on paper, it is not in tune with current economic or social realities. Immigrants with work or family needs feel pressure to enter the U.S. without visas for

several reasons; there are few legal channels for needed workers who do not fit into the employment-based immigration preference system, the system separates close family members for long periods of time, and employers are willing to hire undocumented labor. In particular, NCLR's significant experience on this issue suggests:

- ▶ **The current legal immigration system is broken.** One common question is, "Why don't immigrants just come legally?" The answer is that most immigrants who come to the United States each year do come legally. However, the law's employment-based and family-based visas are limited to individuals with particular skills or family relationships. People who wish to come on an employment-based visa and who fit into one of the categories must have a job offer in the U.S. and an employer willing to sponsor him/her – a process that can be very expensive and take a long time. While there are many sectors of the economy which rely on the hard work of immigrants who do not qualify for the "highly-skilled" visa categories, the law provides only 5,000 permanent visas each year for "unskilled" workers. This means that employers in restaurants, hotels, and other service-sector jobs who want to petition for immigrant workers because the local labor pool does not meet their demand face visa backlogs reaching ten years. Temporary work visas are also difficult to obtain, and not as desirable for workers who wish to immigrate permanently. As a result, the system

provides no legal avenue for those who wish to come to the United States to work in industries that need them. Family-based immigration is also restricted in that only close family members of persons who are U.S. citizens and LPRs can immigrate to the U.S. The product of this imbalance is a significant population of undocumented immigrants who live and work in the United States and who have no way to obtain a legal visa.

- ▶ **Millions of undocumented immigrants are contributing to the U.S. economy.** While estimates vary, researchers calculate that there are approximately nine million undocumented immigrants living in the U.S.² "Unauthorized urban workers," a subset of the total undocumented population, number approximately six million, or 5% of all U.S. workers.³ Nearly all undocumented men are in the labor force (96%) – exceeding by more than 15 points the labor force participation rate of legal immigrants or U.S. citizens.⁴ While updated figures of the number of undocumented immigrants are not available, in 2001 an estimated 620,000 undocumented workers were employed in the construction industry, 1.2 million worked in manufacturing, 1.4 million worked in wholesale and retail trades, and another 1.3 million worked in the service industry.⁵ These immigrant workers are already filling important gaps in the labor market; legalizing their status would bring them into the formal economy, increase tax

revenues, and improve wages and working conditions for all workers.

- ▶ **Undocumented immigrants pay taxes.** Many Americans believe that undocumented immigrants do not pay taxes. However, there is strong evidence that they do pay far more in taxes than they receive in benefits. Immigrants who use false Social Security Numbers (SSNs) have taxes withheld from their paychecks, but never receive credit for those taxes paid. The greatest evidence is the existence of the Social Security Administration's (SSA) Earnings Suspense Fund (ESF), a fund with more than \$420 billion of cumulative earnings paid by employees who never claim benefits.⁶ Much of this money comes from the taxes paid by undocumented immigrants using false SSNs. Furthermore, many undocumented immigrants file tax returns using Individual Taxpayer Identification Numbers (ITINs). More than one million taxpayers reported wages of almost \$7 billion and paid more than \$305 million to the IRS in 2001 using ITINs. More importantly, three-quarters of all ITINs issued were reflected in tax returns, prompting Nina Olson, the Taxpayer Advocate, to refer to the ITIN population as a "very compliant sector of the U.S. taxpayer population."⁷
- ▶ **Family reunification backlogs have increased.** Even those immigrants who are eligible to apply for family-based visas have difficulty receiving their green cards. Millions of close family members remain in visa backlogs for years, waiting to be

reunited with their families. These backlogs are threefold. First, each year the U.S. Citizenship and Immigration Service (USCIS, the agency within the Department of Homeland Security responsible for processing immigration benefits) receives more applications than there are visas available. Thus, there is a backlog of valid applications waiting for visas to become available. Second, even when family-based applications are approved and visas are available, the USCIS takes an excessively long time processing applications, adding additional years to the long waiting times. Third, a 1976 immigration law created equal per-country caps for all countries in the world, meaning that Mexico (which was previously excluded from all numerical quotas) is assigned the same annual quota as every other country, regardless of size and demand, thereby severely limiting the number of visas available each year for Mexicans and creating a backlog for Mexican applicants, which is already larger due to Mexico's proximity to the U.S., its struggling economy, and the size of the Mexican origin immigrant population. The convergence of these three backlogs means that more and more family members are waiting an extremely long time to receive their visas. U.S. citizens who petition for unmarried children over 21 years old from Mexico must wait as long as nine years to be reunited. Legal permanent residents from Mexico who petition for their immediate family members (spouses and minor unmarried children) may wait as long as seven years. Many spouses and

children do not qualify for tourist visas to the U.S. because of the strict laws regarding issuance of temporary visas, and because immigration officials fear they will overstay the visa and remain in the U.S. Rather than endure long waiting periods, some family members choose to risk their lives and come to the U.S. without a visa to be reunited with loved ones, thereby adding to the undocumented population. The current allocation of visas in the family preference system is clearly inadequate to account for the millions of immigrants attempting to play by the rules and enter the U.S. legally.

- Refugee admissions have declined precipitously.** While the U.S. is by far the largest "traditional resettlement" country in the world in that it accepts more refugees for resettlement than all other countries combined,⁸ refugee admissions have steadily declined over the last decade and have dropped significantly since September 11, 2001. The refugee

ceiling for FY 2003 was 50,000. However, only 28,422 refugees were actually admitted in that year. The FY 2004 admissions ceiling is 70,000, but it is likely that FY 2004 admissions will be significantly below the ceiling as well. As a result, many persons fleeing persecution have not been able to begin a new life in the U.S. and may have nowhere else to go.

- Increased border enforcement has not slowed the tide of unauthorized migration.** Enforcement of immigration laws is ineffective, yet the Border Patrol continues to increase its budget. In 1986 the Border Patrol was a relatively small agency with an annual budget of \$151 million. Since the mid-1990s, the number of agents has tripled and the Border Patrol's budget has more than quintupled from \$740 million in 1993 to \$3.8 billion in 2004. The Border Patrol has also increased technological resources, such as sensors, fences, cameras, and aircraft. However, the number of undocumented

Total Number of Refugees Admitted Compared to Total Ceilings with Accumulated Shortfall, 1994-2004

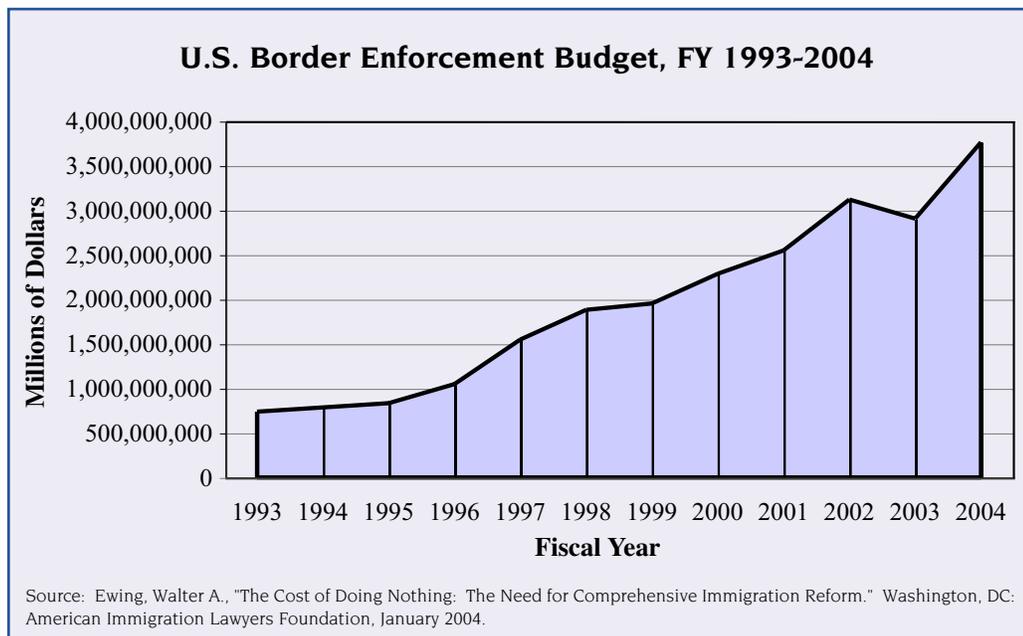
	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004
Total admitted	112,682	99,490	75,693	70,085	76,554	85,006	72,515	68,426	27,110	28,422	unknown
Total ceiling	121,000	112,000	90,000	78,000	83,000	91,000	90,000	80,000	70,000	70,000	70,000
Shortfall	8,318	12,510	14,307	7,915	6,446	5,994	17,485	11,574	42,890	41,578	unknown
Shortfall (cumulative)	8,318	20,828	35,135	43,050	49,496	55,490	72,975	84,549	127,439	169,017	unknown

Source: Patrick, Erin, "The U.S. Refugee Resettlement Program," Washington, DC: Migration Policy Institute, September 1, 2002 and DOS/DHS/DHHS Report to the Congress on Proposed Refugee Admissions 2004, state.gov/g/prm/asst/rl/rpts/25691pf.htm.

immigrants attempting to enter the U.S. has not decreased, remaining at roughly 500,000 per year, and migrants' length of stay in the U.S. has increased. Researchers have demonstrated the inefficiency of increased Border Patrol funding by examining the number of apprehensions per linewatch-hour. In 1986 for every 1,000 hours spent patrolling the border there were 700 arrests made; in 1998 the number dropped to 340. By 1998 the number of arrests dropped to 240 per 1,000 linewatch-hours. Thus, despite a 176% increase in linewatch-hours from 1986 to 1998 and a 130% increase in the number of Border Patrol officers, the number of apprehended undocumented immigrants fell dramatically.¹¹ Looking at it another way, the amount of taxpayer money spent per undocumented entry has

increased dramatically in the last two decades. U.S. taxpayers now spend billions of dollars annually to fund border enforcement that has not slowed the rate of unauthorized border crossings.

- Immigrants are dying on the U.S.-Mexico border every day.** Immigrants continue to risk their lives to work in the U.S. and reunite with their families. Operation Blockade and Operation Gatekeeper, initiated in 1993 and 1994, respectively, and other enhanced border enforcement measures have succeeded in closing off the traditional ports of entry and have diverted migrants into more dangerous crossing areas. Because the number of immigrants attempting to enter the U.S. has not decreased, the probability of death or injury as the result of drowning, heat exhaustion, suffocation, and

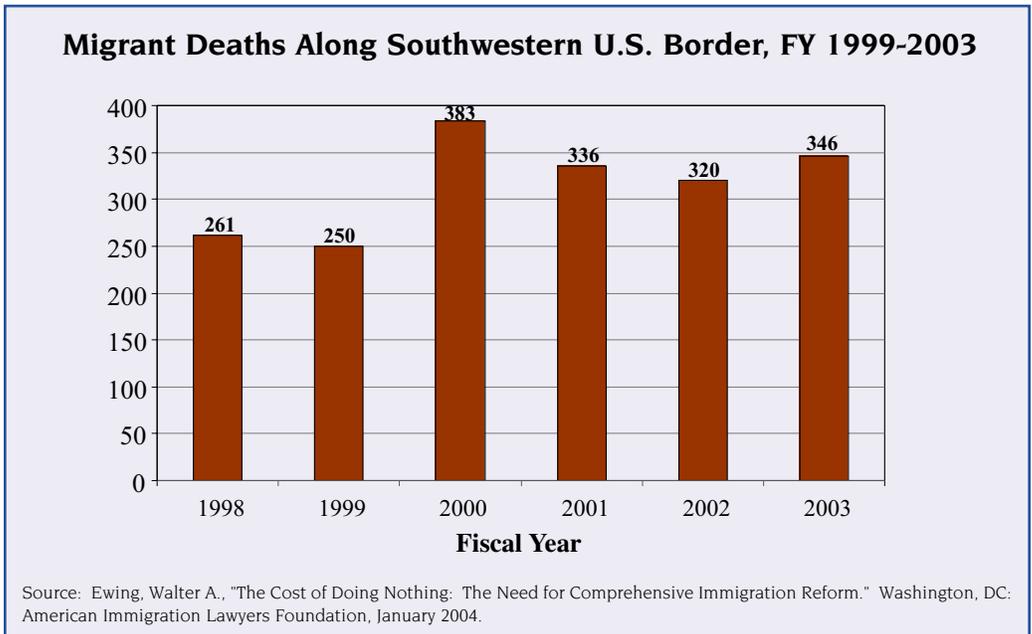


exposure has increased. Data show that the number of border deaths has increased dramatically in recent years, now reaching an average of nearly one death per day. In the first seven months of 2003, Mexico's Secretariat of Exterior Relations reported that 282 Mexicans died while attempting to enter the U.S., which is a 20% increase in the number of deaths when compared to the same period in 2002. In May 2004, the U.S. Border Patrol, which reports only those deaths that it processes, reported 43 deaths near the Arizona border alone since October 1, 2003, more than any other year in the same period.¹² Border deaths typically increase during the hot summer months. The Border Working Group reported 33 deaths in June 2004 and 67 deaths in July 2004.¹³ Since the beginning of the border enforcement buildup in 1993 there have been over 2,640 border

crossing-related deaths, which amounts to ten times more lives than the Berlin Wall claimed during its 28-year existence.¹⁴

► **Smugglers are profiting from increased border enforcement.**

Because of the government's policy of increased enforcement along the U.S.-Mexico border and the associated risks of crossing the border, many unauthorized immigrants cannot survive the trip alone and rely on professional smugglers. Since the increased border control of the 1990s, migrants are now paying tremendous sums to smugglers (*coyotes*) to assist them and their family members cross the border. *Coyotes* charge between \$100 and \$500 to take people across the U.S.-Mexico border. A move from the interior of Mexico into the U.S. costs up to \$5,000. Often, migrants are indebted to these *coyotes* for



years after they arrive in the U.S., sometimes working as indentured servants until the fees are paid.¹⁵ The Border Patrol approximates that at least 20 networks of *coyotes* are active in the Ciudad Juárez region alone.¹⁶ Moreover, there have been increased reports of violence associated with rivalries between smuggling networks, affecting both immigrants and border communities.

- ▶ **The length of stay in the U.S. has increased.** Prior to the buildup of border enforcement in the mid-1990s, a portion of undocumented immigration to the U.S. tended to be circular, meaning that immigrants came to the U.S. to work for a short period of time and earn money, and then returned to their home countries, often repeating the cycle several times. This phenomenon has changed in recent years as migrants who intend to return to their home countries find themselves "stuck" in the U.S. Research has found that increased border enforcement has not succeeded in deterring people from entering the U.S., but it has discouraged those undocumented immigrants already in the U.S. from returning to their home countries. Because of increased border enforcement and the increased risks and costs of crossing the border associated with increased enforcement, the length of time undocumented immigrants remain in the U.S. has increased. According to Massey, Durand, and Malone, "the end result of a border buildup is typically longer trip durations, lower probabilities of return migration, and a shift toward permanent

settlement."¹⁷ In the early 1980s, the average stay of an undocumented immigrant was approximately two to three years; by 1990 it was nine years, and the probability that any one undocumented immigrant would return home had decreased.¹⁸ What had been a circular flow of temporary migrants has transformed into permanent settlement.

- ▶ **Undocumented immigrants often receive poor wages and endure dangerous working conditions.**

Their lack of legal immigration status makes undocumented workers extremely vulnerable. Because they have few labor protections and are often afraid to assert their rights, join an organizing campaign, or complain about workplace conditions, undocumented workers endure low wages and poor working conditions. A recent study by the Associated Press (AP) found that death rates of Mexican workers are rising even as the U.S. workplace grows safer overall. In the mid-1990s, Mexicans were about 30% more likely to die on the job than native-born workers; now they are about 80% more likely.¹⁹ The annual death rate for Mexicans in the workforce is now one in 16,000 workers, while the rate for the average U.S.-born worker is one in 28,000. While Mexicans represent one in 24 workers in the U.S., they constitute one in 14 workplace deaths. Furthermore, Mexicans are nearly twice as likely as the rest of the immigrant population to die at work.²⁰ Construction and agriculture are the most dangerous occupations for Mexicans. The AP found that, while their

odds of dying in the Southeast and parts of the West are far greater than in other areas of the U.S., fatalities occur throughout the country: Mexicans die cutting North Carolina tobacco, processing Nebraska beef, felling trees in Colorado, welding a balcony in Florida, trimming grass at a Las Vegas golf course, and falling from scaffolding in Georgia.²¹

- ▶ **The Supreme Court has curtailed immigrants' rights and, as a result, wages and labor conditions have suffered even more.** When one sector of workers accepts low wages and poor working conditions and is fearful to report safety hazards and labor law violations, or to participate in labor organizing campaigns, all workers suffer. This situation was made worse by a Supreme Court decision in March 2002 which overturned the long-standing precedent that all workers are covered equally by labor laws, regardless of their immigration status. In the *Hoffman Plastic Compounds v. National Labor Relations Board (NLRB)* decision, the Court decided that employees working in the United States with false documents are not entitled to back pay from employers, even if they are fired illegally.²² By denying a remedy to one group of workers, the Hoffman decision undermines the status of all workers. It strengthens employers' incentive to hire unauthorized workers because they can fire these employees when they engage in any activity deemed unfit without suffering legal ramifications, and it hurts all American workers because it lowers wages,

encourages poor working conditions, discourages organizing, and harms law-abiding employers who receive unfair competition from unscrupulous employers who take advantage of undocumented labor.

- ▶ **Undocumented immigrants live in the shadows of society, fearful of contact with the authorities and vulnerable to crime.** Undocumented immigrants are often more vulnerable to crime because they are more likely to have a lot of cash on hand. Since many cannot open bank accounts due to a lack of proper documentation, undocumented immigrants use check-cashing outlets and, therefore, must often carry large sums of cash making them easier targets for crime – especially theft or robbery. These immigrants are often reluctant to report to the police crimes that they have witnessed or been a victim of because they fear that they may be reported to the immigration authorities. For example, Mexican national Petra Martinez, 31, was murdered along with her son, Urel Martin, age 2, on July 19, 2003, in their home in a predominantly immigrant neighborhood in Clearwater, Florida. The local police department believes that some members of the community have information on the case, but are declining to come forward for fear of immigration-related repercussions.²³ In some areas of the country, criminals have exploited this fear and have targeted immigrants for crime. In Durham, North Carolina, in 1997, thieves told their victims that if they called the police they would be

deported. Local police officers have found that people are being robbed multiple times and are not reporting the crimes because of such fear instilled by thieves and police.²⁴ Undocumented immigrants are vulnerable to crimes other than robbery; domestic violence victims often fail to report their abusers because their immigration status is used to threaten them. In 1998, a New Jersey woman was found murdered in the basement of her apartment. Friends of the woman reported that the suspected murderer, her former boyfriend, threatened to report her to the immigration authorities if she did not do what she was told.²⁵

- ▶ **The USCIS is unable to handle its workload, leaving more immigrants vulnerable.** Since the Immigration and Naturalization Service (INS) was abolished and immigration services were moved into the Department of Homeland Security, the USCIS has not decreased the backlogs and waiting times for applications for naturalization, green cards, travel documents, work authorization documents, and other immigration transactions.²⁶ A January 2004 General Accounting Office report claims that 6.2 million applications for immigration benefits were pending as of September 2003 – a 59% increase from the previous two years.²⁷ In fact, despite the Bush Administration’s vow to cut backlogs and \$160 million earmarked for such backlog reductions, the average processing times have increased dramatically; the wait to replace a lost green card has grown from four months to

19.²⁸ Some people who already have been awarded permanent legal status in immigration court have waited six months or more to receive the paperwork that proves it.²⁹ Immigrant workers and students have trouble closing gaps in their legal status due to USCIS bureaucracy and backlogs. As a result, an increasing number of immigrants find themselves out of status, unable to travel, unable to work, and vulnerable to immigration violations.

- ▶ **Immigration law prohibits some people from gaining legal status and forces them to remain undocumented.** The 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA) created three-year, ten-year, and permanent bars on admission to the U.S. for individuals who have been unlawfully present in the U.S. for a specified period of time. Individuals who have been unlawfully present for more than 180 days but less than one year and who voluntarily depart may not reenter the U.S. for three years. People unlawfully present in the U.S. for an aggregate period of one year or more who voluntarily depart are subject to a ten-year bar.³⁰ The permanent bar applies to anyone who is ever ordered removed, leaves the U.S., and then returns or attempts to return unlawfully.³¹ Because of these bars, individuals who are eligible for employment-based or family-based visas are unable to adjust their status in the U.S. (because Section 245(i) of the INA has expired³²) and, if they leave the U.S., they are unable to receive a green card at a U.S.

consulate abroad until the three- or ten-year period has passed. As a result of these harsh penalties, undocumented immigrants who would be eligible for visas are encouraged to stay in the U.S. undocumented rather than be separated from family members for up to ten years or even permanently. An example of the result of this policy is the tragic death of Juan José Morales who, as the husband of a U.S. citizen, was eligible for a family visa. However, because he had been undocumented for a period of time, he was subject to the bars of admissibility. This essentially forced him to remain undocumented; processing his visa would have required him to leave the United States, without the ability to enter again for many years. Rather than separate from his family, he chose to remain undocumented. However, he returned to Mexico secretly to visit his mother for Mother's Day in 2003, then used a smuggler to return to his home and his wife; he was one of 19 who suffocated in a trailer trying to reenter the United States.³³ It is widely believed that a substantial portion of the undocumented population is composed of immigrants who are eligible for family visas but cannot use them without separating from their families.

► **The current immigration system impedes our national security goals.**

In the post-9/11 world, the public is understandably concerned about national security. Like all Americans, Latinos want to be safe and prevent future terrorist

attacks. While immigrants and terrorists cannot and should not be equated, it is important to look at immigration policy and its relationship to security.

Unfortunately, the current immigration system does not enhance national security. There are nearly ten million people in the U.S. living in the shadows and fearful of reporting suspicious activity to the police. Since they cannot obtain valid government-issued identification documents, many immigrants buy fraudulent documents on the black market or misuse the documents of others. Americans cannot be secure under a system in which smugglers and traffickers, rather than the U.S. government, decide who enters the country. Immigration reforms that bring people out from the shadows, correctly identify all people, and encourage immigration to occur through legal channels would benefit U.S. security efforts.

In summary, while the current U.S. immigration system appears fair, reasonable, and highly regulated on paper, the facts illustrate that the current system is broken and in vast need of reform. Under the existing system people are dying at the border, families endure long separations, people are forced to live an underground existence in the shadows of society, and U.S. government resources are spent tracking people who would prefer to comply with the law rather than focusing on those who wish to do us harm. Because of these problems, the current immigration system hurts U.S. businesses, U.S. families, and U.S. security while it benefits unscrupulous

employers, traffickers, and smugglers, who profit from the broken system. The status quo is unacceptable, and the problem will continue to worsen unless comprehensive reforms are initiated immediately.

IV. CONCLUSION: THE NEED FOR COMPREHENSIVE IMMIGRATION REFORM

Because the problems with the current immigration system are so complex, truly comprehensive reforms are needed to get to the root causes of undocumented immigration and fix the system so that it can benefit the U.S. economy, American families, and national security more effectively. Rather than maintaining the existing chaotic, poorly functioning, unfair system, it is critical to create a reformed immigration system that is safe, orderly, and fair. Perhaps most importantly, the U.S. immigration system should be one that encourage and allow for immigration to be legal. Immigrants currently living undocumented in the U.S. should be allowed to earn their legal status; future flows of immigrants should have channels to migrate legally; and those families who are playing by the rules and attempting to enter lawfully must be allowed to do so in a reasonable time frame.

Toward these ends, NCLR has developed principles for a three-pillared comprehensive immigration reform package:

1. Legalization/earned adjustment of status. The first step in any comprehensive immigration reform is to legalize the status of

undocumented immigrants currently in the U.S. This is not an amnesty. Immigrants who can prove that they have been living and working in the U.S. for a specified period of time, have paid their taxes, have otherwise obeyed the law, and who undergo background checks and are proven not to be threats to the U.S. would be eligible to apply for earned legalization. Furthermore, applicants would be required to pay an application fee and a fine in order to qualify for the program. An added benefit, therefore, is that the revenue generated from this program could cover the costs of administering a legalization program.

Legalizing current undocumented immigrants would bring them out from the shadows, allow them to work in the formal economy thereby generating more annual tax revenues, allow these workers to obtain lawful and valid identification documents, and allow them to travel to and from their home countries. In addition, legalization would greatly diminish the "haystack" of suspicious individuals, meaning that the DHS could focus its enforcement resources and concentrate on finding the dangerous "needles," including terrorists, smugglers, traffickers, and unscrupulous employers.

2. Temporary worker program. NCLR recognizes that legalizing all of the undocumented immigrants already in the U.S. would not stop future migrants from entering the country without visas. The root causes of undocumented immigration must be addressed in order to control the future flows of migration and deter undocumented immigrants. Since the overwhelming majority of undocumented immigrants come to the U.S. to work, creating legal channels for needed workers is an important pillar of

comprehensive immigration reform. However, the Latino population has a long history with temporary worker programs like the *Bracero* program and has suffered abuse and exploitation as a result. Any new temporary worker program must be markedly different than past or present programs, must protect both U.S. and immigrant workers, and must provide a path to permanent residency for those who desire it. The following principles are critical to the success of any new temporary worker program:

- ▶ **Wages and benefits.** There must be some method for determining the minimum wages to be paid to temporary foreign workers, which are comparable to U.S. workers' wages. It would be insufficient and, indeed, catastrophic for U.S. workers (including immigrants with permanent visas) if the only requirement is that employers observe all federal, state, and local laws regarding minimum wage. Should a temporary worker program be enacted without a more stringent wage requirement, foreign workers will be left vulnerable, and wages and benefits of U.S. workers will be reduced as foreign workers who come to the U.S. may be willing to work long hours at minimum wage and without benefits, even in the most dangerous industries.
- ▶ **Job portability.** Foreign workers must not be tied to a particular employer for the entire length of the program. Past experience has shown that tying workers to a particular employer allows unscrupulous employers to exploit those workers who have no alternative but to accept poor working conditions and low wages or leave the program and return to their home country. Such a situation is bad for both immigrant and U.S. workers.
- ▶ **Labor protections including the right to organize.** All workers must be granted the same workplace conditions and protections. To the extent that foreign workers have different and fewer rights in the workplace than U.S. workers, unscrupulous, and even honest, employers will seek to lower their employee costs by relying on foreign workers rather than U.S. domestic workers. Unscrupulous employers cannot be allowed to hire vulnerable foreign workers with few rights at the expense of U.S. workers. Labor protections must go beyond minimum wage and must include protection from sexual harassment and discrimination of any kind, workers' compensation, health and safety laws, a mechanism for these workers to accrue benefits under Social Security for work performed during their participation in the program, and the right to organize. It is also absolutely necessary that protections afforded to foreign workers be enforceable.
- ▶ **Path to legal permanent residency and citizenship.** Without a path to citizenship, temporary foreign workers will forever remain vulnerable, second-tier workers without the ability to attain the full rights of U.S. citizenship and full participation in U.S. society. Guestworker programs in Europe and even here in the United States have shown that this is not desirable. Foreign workers must have the

option after a reasonable and specific time period to choose to become lawful permanent residents of this country. Some will choose not to, preferring to work in this country for a period of time and ultimately return to their country of origin, while others will choose to become U.S. citizens. They must have that choice.

- ▶ **Family unity.** Any foreign worker program that contemplates bringing in workers for more than just a few months must also allow such workers to bring their spouse and minor children with them for the duration of the program. Not only is it inhumane to separate nuclear families for long periods of time, but the lack of family unity provisions may inadvertently lead to more unauthorized entries of family members who do not wish to remain separated.

3. Reduction of family backlogs. NCLR recognizes that the current backlogs in the family-based immigration system either separate close family members for long periods of time or encourage family members to enter the U.S. before their paperwork is completed, adding to the total undocumented population. In order to be truly comprehensive, immigration reforms must address the family backlogs and ensure that those who have waited to immigrate to the U.S. legally are first in line to receive their green cards.

In addition to these three basic pillars of comprehensive immigration reform, there are two other areas that must be taken into account: immigration enforcement and international economic development.

- ▶ **Immigration enforcement must be conducted strategically.** A successful comprehensive immigration reform that includes a temporary worker structure would not entirely eliminate the need to conduct immigration enforcement at U.S. borders and within the interior. But this enforcement must be conducted strategically, aimed at large-scale smugglers and employer networks that deliberately import workers from other countries in order to skirt U.S. wage and other laws that aim to protect workers. Enforcement at the border and within the interior must also be conducted according to a strict set of standards to protect the civil and human rights of those who come into contact with enforcement personnel. In addition, the ineffective and discriminatory employer sanctions regime should be replaced by a new system that emphasizes labor law enforcement and eliminates the economic incentive for unscrupulous employers to hire unauthorized workers.

- ▶ **Economic development efforts must be targeted to create opportunity in areas where migrants originate.** If the experience of the 15-plus years since the Immigration Reform and Control Act of 1986 (IRCA) was enacted has taught us anything, it is that even the toughest laws, vigorously enforced, are no match for the global social and economic forces that drive migration. As the U.S. properly revises the laws that affect what happens within its borders, it must also look closely at the so-called "push" factors that drive migration.

Migration is clearly a global phenomenon, and U.S. domestic policy can go only so far in stemming the conditions that produce immigration to the U.S. In the long term, if we wish to alter the migrant stream that originates in Mexico and other countries, we must include economic development in those communities as part of our overall migration strategy.

Taken together, this discussion clearly shows that the current U.S. immigration system is not meeting the nation's economic, social, or security needs. Creating a safe, orderly, and

fair immigration system that makes legal immigration the norm is possible and highly desirable. While most people agree that reform is necessary, the debate over how the immigration system will be reformed is likely to continue for several years. NCLR will continue to work closely with ethnic organizations, business groups, labor organizations, and other interested persons, as well as with both political parties, to craft comprehensive immigration reforms that benefit U.S. families, U.S. communities, and the U.S. economy.

ENDNOTES

1. The annual level of family-sponsored preference immigrants is determined by subtracting the number of immediate relative visas issued in the previous year and the number of aliens paroled into the U.S. for at least a year from 480,000. Then the unused employment preference immigrant numbers are added, if available. By law, the family-sponsored preference level may not fall below 226,000. In recent years, the 480,000 level has been exceeded to maintain the 226,000 floor on family-sponsored preference visas. The INA also establishes per-country levels at 7% of the worldwide level, meaning that no country can receive more than 7% of the overall number of visas. For a complete explanation of worldwide limits, see Wasem, Ruth Ellen, "U.S. Immigration Policy on Permanent Admissions." Washington, DC: Congressional Research Service, February 18, 2004.
2. Passell, Jeffrey S., Randolph Capps, and Michael E. Fix, *Undocumented Immigrants: Facts and Figures*. Washington, DC: The Urban Institute, January 12, 2004.
3. *Ibid.*
4. *Ibid.*
5. Lowell, B. Lindsay and Roberto Suro, "How Many Undocumented: The Numbers behind the U.S. - Mexico Migration Talks." Washington, DC: The Pew Hispanic Center, March 21, 2002.
6. *Testimony on the "ITIN" and Social Security Number Misuse*, presented by Patrick P. O'Carroll, Jr., Social Security Administration, Office of the Inspector General, to the House Committee on Ways and Means, Subcommittee on Oversight, Subcommittee on Social Security, U.S. House of Representatives, Washington, DC, March 24, 2004, www.ssa.gov/oig/communications/testimony_speeches/03102004testimony.htm.
7. *Testimony on Social Security Number and Individual Taxpayer Identification Number (ITIN) Mismatch and Misuse*, presented by Raul Yzaguirre, National Council of La Raza, to the House Committee on Ways and Means, Subcommittee on Oversight, Subcommittee on Social Security, U.S. House of Representatives, Washington, DC, March 24, 2004.
8. There are ten traditional countries of resettlement: Australia, Canada, Denmark, Finland, The Netherlands, New Zealand, Norway, Sweden, Switzerland, and the U.S. The U.S. routinely accepts more refugees than all the others combined. See Patrick, Erin, "The U.S. Refugee Resettlement Program." Washington, DC: Migration Policy Institute, September 1, 2002.

9. Ewing, Walter A., "The Cost of Doing Nothing: The Need for Comprehensive Immigration Reform." Washington, DC: American Immigration Lawyers Foundation, January 2004.
10. See Massey, Douglas, Jorge Durand, and Nolan J. Malone, *Beyond Smoke and Mirrors, Mexican Immigration in an Era of Economic Integration*. New York, NY: Russell Sage Foundation, 2002.
11. *Ibid.*
12. Egan, Timothy, "Border Desert Proves Deadly for Mexicans," *New York Times*, May 23, 2004.
13. Border Working Group Fact Sheet, August 2, 2004.
14. Cornelius, Wayne, "Evaluating Enhanced U.S. Border Enforcement," HispanicVista.com, <http://www.hispanicvista.com/html4/051504gc.htm>.
15. Shirk, David and Alexandra Webber, "Slavery Without Borders: Human Trafficking in the U.S.-Mexican Context," Hemisphere Focus, Volume XII, Issue 5. Washington, DC: Center for Strategic and International Studies, Americas Program, January 23, 2004.
16. Saenz, Cesar Cruz, *El Diario* (Ciudad Juárez, Mexico), September 4, 2003.
17. *Beyond Smoke and Mirrors, op. cit.*
18. *Ibid.*
19. Pritchard, Justin, "Mexican-Born Workers More Likely to Die on Job," Associated Press, March 14, 2004.
20. *Ibid.*
21. *Ibid.*
22. "Used and Abused: The Treatment of Undocumented Victims of Labor Law Violations Since *Hoffman Plastic Compounds v. NLRB*." MALDEF and National Employment Law Project Factsheet, 2003.
23. Gregoire, Natashaia, "Police Appeal For Clues In Slaying Of Mom, Son," *Tampa Tribune*, July 22, 2003.
24. Garrett, Amanda and Deborah Robiglio, "Immigrants Find Abundance of Insecurity," *The News & Observer*, November 12, 1997.
25. Cowen, Richard, "Slain Woman Was 'Vulnerable,'" *The Record*, June 29, 1998.
26. General Accounting Agency, "Immigration Application Fees: Current Fees Are Not Sufficient to Fund U.S. Citizenship and Immigration Services' Operations," GAO-04-309R. Washington, DC: General Accounting Office, January 05, 2004.
27. *Ibid.*
28. Bernstein, Nina, "Wait for U.S. Residency Soars Over 18-Month Span," *New York Times*, April 6, 2004.
29. Peabody, Zanto, "Suit to proceed as class action against Homeland Security: Delays alleged in immigration papers," *Houston Chronicle*, April 1, 2004.
30. INA § 212(a)(9)(B)(i)(I)-(II).
31. INA § 212(a)(9)(C).
32. Section 245(i) of the INA allowed persons for whom there was a visa available to pay a fine and adjust their status to legal permanent resident within the U.S. rather than having to leave the U.S. and obtain the visa at a U.S. consulate. This provision expired in 2001 and has not been extended.
33. Seigny, John, "Husband of U.S. Citizen Among Victims of South Texas Migrant Smuggling Tragedy," *Associated Press*, May 19, 2003.
34. The Immigration Reform and Control Act of 1986 (IRCA) established sanctions against employers who hire undocumented immigrants ("employer sanctions"). Employer sanctions failed to stem undocumented migration and also caused a widespread pattern of employment discrimination. For more information see *Racing Toward "Big Brother" Computer Verification, National ID Cards, and Immigration Control*, Washington, DC: National Council of La Raza, 1995.

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ISSUE BRIEF No. 5

SAFE ROADS, SAFE COMMUNITIES: IMMIGRANTS AND STATE DRIVER'S LICENSE REQUIREMENTS

This brief explores the issues involved in current proposals to restrict immigrant access to driver's licenses, arguments in favor of increased accessibility, and steps that can be taken to ensure that driver's licenses remain authentic and prevent unauthorized drivers from making U.S. roads less safe. **ISSUE BRIEF No. 6**

INCREASING HISPANIC HOMEOWNERSHIP: STRATEGIES FOR PROGRAMS AND PUBLIC POLICY

Reviews the most recent data on homeownership and analyzes the factors associated with the low homeownership rate of Latinos. The brief also proposes specific recommendations and lays out a strategy for the private sector, community-based programs, and public policy to increase the number of Hispanic homeowners by two million over the next two decades. **ISSUE BRIEF No. 7**

THE NO CHILD LEFT BEHIND ACT: IMPLICATIONS FOR LOCAL EDUCATORS AND ADVOCATES FOR LATINO STUDENTS, FAMILIES, AND COMMUNITIES

This issue brief examines how the No Child Left Behind Act may impact Latino students, families, and communities. It paints a broad picture of what state and local educators must consider as they attempt to implement this legislation. Specifically, this paper provides a short, recent history of the standards movement in Congress, discusses challenges in implementing these reforms as they relate to Hispanic students, and provides recommendations for state and local policymakers. **ISSUE BRIEF No. 8**

IMMIGRATION ENFORCEMENT BY LOCAL POLICE: THE IMPACT ON THE CIVIL RIGHTS OF LATINOS

Enforcement of immigration laws has always been the responsibility of the federal government. However, following the September 11, 2001 terrorist attacks, the Department of Justice initiated new counterterrorism policies, one of which has been to enlist state and local law enforcement officers in antiterrorist activities. While the safety and security of the United States is a priority, this document points out how new policies that would allow local police departments to enforce federal immigration law may actually hinder terrorist and other criminal investigations and is likely to have a serious negative impact on Latino communities. The report also documents how involving local police officers in federal immigration enforcement contradicts decades of federal case law and policy, and how delegation of immigration authority is likely to result in racial profiling, police misconduct, and civil rights violations. The publication also points out that such efforts erode trust between local police and the communities they serve and protect. **ISSUE BRIEF No. 9**

COUNTERTERRORISM AND THE LATINO COMMUNITY SINCE SEPTEMBER 11

Immigration and national security have become intermingled in the U.S. in unprecedented ways since the terrorist attacks of September 11, 2001. This Issue Brief documents the impact of counterterrorism measures and policies implemented since September 11 on the Latino population. First, it provides background on the post-September 11 environment. Second, it examines the new anti-terrorist policies that have had harmful consequences for U.S. Latinos. Third, it looks at other new immigration enforcement activities that have had a negative impact on the Latino community. Fourth, it focuses on the need to return to the affirmative immigration reform agenda. Finally, it offers conclusions and recommendations about the future of U.S. immigration policy.

ISSUE BRIEF No. 10

PENSION COVERAGE: A MISSING STEP IN THE WEALTH-BUILDING LADDER FOR LATINOS

Employer-provided pension plans and retirement savings products have emerged as a particularly important means of building financial wealth and security for American workers and families. Yet, Hispanic workers remain the least likely of all Americans to have access to – or participate in – employer-provided pension plans. This issue brief presents data and summarizes research on pension coverage and participation issues for Latino workers, reviews national trends in coverage and the current public policy debate, and highlights promising strategies or measures that could narrow the pension coverage and wealth gaps between Latino and other American workers considerably over the next decade.

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TANF IMPLEMENTATION IN PUERTO RICO: A SUMMARY OF DATA ON LEAVERS

This update summarizes the most recent data regarding TANF implementation in Puerto Rico, reviews data on the economic status of former TANF recipients, and examines new demographic data on former TANF participants. It also provides a description of the current status of TANF and a short analysis of the data, and identifies areas relevant for Puerto Rico for researchers and policymakers to consider within the context of the reauthorization of TANF.

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