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# Testimony

# of

# Most Rev. Gerald Barnes

# Chairman

# United States Conference of Catholic Bishops'

# Committee on Migration

# Before

# The Senate Judiciary Committee

July 26, 2005

I am Bishop Gerald Barnes, bishop of San Bernardino, California, and chairman, United States Conference of Catholic Bishops' Committee on Migration. I am pleased to testify on the position of the U.S. Catholic bishops on comprehensive immigration reform.

I would like to thank Chairman Arlen Specter and Ranking Member Patrick Leahy for holding this important hearing. I would also like to thank Senator John Cornyn, chairman of the Senate Subcommittee on Immigration, and Senator Edward M. Kennedy, ranking member of that subcommittee, for their leadership on this issue.

As we are all well aware, the tragic events of September 11, 2001, have changed the landscape and political environment for achieving comprehensive immigration reform. In the aftermath of the attacks, our nation understandably turned its attention even more diligently to national security concerns.

On January 7, 2004, however, President Bush announced principles for reforming the U.S. immigration system. Since that time, immigration reform has received national attention and more serious consideration by members of Congress. Several bills addressing immigration reform were introduced during the 108th Congress and several more have been introduced during the 109th Congress.

During the 109th Congress, the administration and congressional officials have an opportunity to enact comprehensive legislation which would not only address the plight of immigrant workers in the United States, but also make our nation more secure. To accomplish these dual goals, the administration and Congress must work together on a comprehensive package which would provide a path to citizenship for undocumented migrants and their families in the United States; provide legal avenues for migrants to enter our nation to work and support their families; reform the family-based immigration system so that families may be reunited in a more timely manner; restore basic due process protections for immigrants; and address the root causes of migration.

Mr. Chairman, in January 2003, the U.S. and Mexican Catholic bishops issued a joint pastoral letter on the issue of migration. Among its many recommendations, it outlines elements which we believe are necessary to reform the U.S. immigration system in a just manner. My testimony today reflects policy recommendations included in the pastoral letter.

Specifically, my testimony today recommends that Congress---

- Enact the Secure America and Orderly Immigration Act of 2005 (S. 1033), introduced by Senator John McCain (R-Az.) and Senator Edward M. Kennedy (D-Mass.), legislation which makes important changes to our legal immigration system consistent with principles articulated by the U.S. Catholic bishops;

- Examine U.S. economic and trade policies and their impact on low-skilled workers in Mexico and Central America and devise an economic package which encourages the creation of jobs for these workers in their home communities;

- Enact the Agricultural Job Opportunity, Benefits, and Security Act of 2005 and the Development, Relief, and Education for Alien Minors Act (DREAM);

- Reexamine immigration enforcement policy along the U.S.-Mexico border to help mitigate migrant deaths; and

- Include the necessary elements in any legislation to ensure efficient implementation of an new immigration program, including taking actions to eliminate the enormous backlogs in the adjudication of immigrant benefit petitions and applications.

## I. Catholic Social Teaching and Migration

The Catholic Church in this country is an immigrant church. Catholics from every corner of the globe have made the United States their new home and the Church has responsibility to assist these newcomers in their transition.

The Church's work in assisting migrants stems from the belief that every person is created in God's image. In the Old Testament, God calls upon his people to care for the alien because of their own alien experience: "So, you, too, must befriend the alien, for you were once aliens yourselves in the land of Egypt" (Deut. 10:17-19). In the New Testament, the image of the migrant is grounded in the life and teachings of Jesus Christ. In his own life and work, Jesus identified himself with newcomers and with other marginalized persons in a special way: "I was a stranger and you welcomed me." (Mt. 25:35) Jesus himself was an itinerant preacher without a home of his own as well as a refugee fleeing the terror of Herod. (Mt. 2:15)

In modern times, popes over the last 100 years have developed the Church's teaching on migration. Pope Pius XII reaffirmed the Church's commitment to caring for pilgrims, aliens, exiles, and migrants of every kind, affirming that all peoples have the right to conditions worthy of human life and, if these conditions are not present, the right to migrate.[1] Pope John Paul II 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."[2] In his pastoral statement, *Ecclesia in America*, John Paul II reaffirmed the rights of migrants and their families and the need for respecting human dignity, "even in cases of non-legal immigration."[3]

In an address to the faithful on June 5, 2005, His Holiness Pope Benedict XVI referenced migration and migrant families: "…my thoughts go to those who are far from their homeland and often also from their families; I hope that they will always meet receptive friends and hearts on their path who are capable of supporting them in the difficulties of the day."

I have already mentioned the joint pastoral letter issued by the bishops of the United States and Mexico in 2003. In our letter, *Strangers No Longer: Together on the Journey of Hope*, we further define Church teaching on migration, calling for nations to work toward a "globalization of solidarity." "It is now time

[1] Pope Pius XII, *Exsul Familia (On the Spiritual Care of Migrants)*, September, 1952.
[2] Pope John Paul II, *Sollicitudo Rel Socialis*, (On Social Concern) No. 39.
[3] Pope John Paul II, *Ecclesia in America (The Church in America)*, January 22, 1999, no. 65.

to harmonize policies on the movement of people, particularly in a way that respects the human dignity of the migrant and recognizes the social consequences of globalization."[4]

The U.S. and Mexican bishops also point out why we speak on the migration issue: "As pastors, we witness the consequences of a failed immigration system every day in the eyes of migrants who come to our parish doors in search for assistance. We are shepherds to communities, both along the border and in the interior of the nation, which are impacted by immigration. Most tragically, we witness the loss of life at points along our southern border when migrants, desperate to find employment to support themselves and their families, perish in the desert."

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

## II. Policy Recommendations

### A. Addressing the Root Causes of Migration

In their 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.*"[5]

It is critical that the Congress and the administration look at the immigration issue with Mexico 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 that examines why people migrate, the U.S. and Mexican governments will not be able to address the underlying causes of migration. It is clear that Mexican workers continue to come to this nation regardless of enforcement strategies pursued by both governments. What attracts many are the employment opportunities here. Many cannot find work in their home countries or can find better opportunities here, because of underemployment in Mexico and inadequate compensation there.

Increased economic integration between the United States and Mexico in the past twenty-five years has not led to improved living standards for the majority of the Mexican population. The competition of subsidized U.S. corn imports against Mexican corn under the North American Free Trade Agreement (NAFTA), for example, has harmed Mexican farmers and their families. Since NAFTA has come into effect, in fact, the purchasing power and real wages for the average worker in Mexico has declined by almost 21 percent.

In addition, Mexico's economic growth rate in the past decade has not been sufficient to keep pace with the growth of the labor force. Each year, the gap between the number of new jobs created and the number of new entrants in the labor market has widened, leading to increasing outflows of migrants

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[4] *Strangers No Longer: Together on the Journey of Hope. A Pastoral Letter Concerning Migration from the Catholic Bishops of Mexico and the United States,"* January 23, 2003, n. 57.
[5] *Strangers No Longer, n. 56.*

northward. Those who remain in Mexico are largely underemployed or employed in precarious work situations. Between 1991 and 2002, the percentage of the Mexican labor force working in the informal economy (receiving no regular paychecks or benefits) increased from 33.7 percent to 42.8 percent.[6]

Specifically, Congress should consider the development of an economic package which targets sectors of the Mexican economy which employ low-skilled workers, particularly agriculture. In addition, Congress should examine the impact of NAFTA on low-skilled labor and migration and consider ways to mitigate any adverse effects on economic sectors which are labor-intensive. Finally, the U.S. and Mexican governments should resume bilateral migration negotiations so that all issues which impact migration to the United States are addressed.

### *A. Legalization (permanent residency) of the Undocumented*[7]

A main feature of any comprehensive immigration reform measure should be a legalization program that allows undocumented immigrants of all nationalities in the United States the opportunity to obtain permanent residency, either because of contributions already made or through a prospective work requirement. Such a feature would provide benefits to both the U.S. and the "sending" countries and would help migrants and their families to "come out of the shadows" and become fuller members of the community. Let me be clear, the legalization program we espouse is not "amnesty, " but rather an opportunity to earn the right to remain in this country legally should those who qualify choose to do so and are otherwise eligible. Such a legalization program would provide many benefits, as follows:

- **Legalization would keep families together and improve the well-being of U.S.-citizen children.** Legalization would help stabilize immigrant families and would protect U.S.-citizen children in "mixed" status families. A 1999 study by the Urban Institute found that 85 percent of immigrant families were of "mixed" status, that is, families in which "one or more of the parents is a non-citizen and one or more children is a citizen." Looked at from a different angle, 9 percent of U.S. families with children nationwide were of mixed status. The figure rises to 14 percent in New York and over 25 percent in California.[8]

- **Legalization would recognize and maintain the economic contributions of the undocumented.** Undocumented workers are an integral part of many industries across the country, including agriculture, service, construction, meatpacking, and poultry processing. For example, undocumented workers make up more than 50 percent of the labor force in agriculture. Of the roughly five to six million undocumented workers in the U.S. labor force, the Pew Hispanic Center estimates that more than 1 million are in manufacturing, 600,000 in construction, 700,000 in restaurants, and 1 million to 1.4 million in agriculture.[9] In addition, undocumented workers contribute billions to the tax and Social Security systems. According to a 1997 study by the National Research Council, immigration delivers a "significant positive gain" of $1 billion to $10 billion a year to native-born Americans.[10]

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[6] Catholic Relief Services, background paper, 2005.
[7] In the context of this testimony, "legalization" means obtaining permanent residency.
[8] Micheal Fix and Wendy Zimmerman, *All under one Roof: Mixed-Status Families in an Era of Reform.* Washington, D.C.: Urban Institute, June 1999.
[9] Pew Hispanic Center, *How many undocumented: the numbers behind the U.S.-Mexico migration talks,* March 21, 2002.
[10] James P. Smith and Barry Edmondson, editors, *The New Americans: Economic, Demographic, and Fiscal Effects of Immigration,* National Research Council (Washington: National Academy Press, 1997).

- **Legalization would improve wages and working conditions for all workers.** By legalizing the labor force in a way which allows immigrants to become permanent residents, wages and working conditions would improve for all workers. According to a North American Integration and Development Center study, a new legalization program would increase the wages of immigrant workers by 15 percent, similar to the effect after passage of the 1986 Immigration Reform and Control Act.[11] Legalization also would allow workers to organize and assert their rights, leading to better working conditions and wages for all workers.

- **Legalization would promote development and stability in Mexico and Central America.** Legalization would ensure that immigrants in the United States, many of whom have lived here for years and do not intend to return to their homeland, are not deported and add to the instability in sending nations. It also would ensure that remittances, which now amount to $10 billion a year in Mexico, continue to assist sending communities.

- **Legalization would help bring U.S. immigration policy in line with U.S. economic policy.** The United States and Mexico are more integrated than ever. U.S. immigration policy has yet to adjust to the fact that U.S. economic policies such as NAFTA have facilitated rapid interdependence between Mexico and the United States. As economic policies are integrated, so, too, must bilateral migration policies. While Mexican workers search for employment, the U.S. labor market in the years ahead will experience a shortage of low-skilled workers. According to the Labor Department, the largest growth in absolute numbers of jobs during the next decade will be in several categories which require short-term, on-the-job training of one month or less.[12]

Despite the dire warnings of opponents of a legalization path for undocumented workers, evidence suggests that legalization would yield benefits at many levels by preserving family unity, securing the economic contributions of migrants, and raising the wages and working conditions of all workers. It would also ensure the participation of all undocumented workers because of the opportunity for residency.

Any legalization program which leads to permanent residency through prospective work requirements must be achievable and independently verifiable. To be achievable, a worker must be able realistically to work the number of days per year necessary and must be able to "earn" residency over a reasonable amount of years. To be independently verifiable, the program must include provisions that allow qualified non-profit organizations that can independently attest that the worker has completed the necessary requirements.

### *B. Employment-Based Immigration*

Perhaps the most problematic aspect of immigration policy reform is the creation of a worker program which 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.

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[11] Raul Hinojosa Ojeda, *Comprehensive Migration Policy Reform in North America: The Key to Sustainable and Equitable Economic Integration.* Los Angeles, California: North American Integration and Development Center, School of Policy and Social Research, UCLA, August, 2000.

[12] Daniel Hecker, "Occupation Employment Projections to 2012," U.S. Department of Labor, *Monthly Labor Review*, February 2004.

experiment with temporary laborers from abroad, ended abruptly in 1964 because of abuses in the program.

A new model for a worker program which avoids the mistakes of the past should include several elements. Each of these elements, properly implemented, would, in our view, help protect the rights of foreign and U.S. workers and ensure that legal avenues are provided for future migrants so that they can enter the country in a safe, legal, and humane manner.

- **Wage and Benefit Levels.** Any worker program must feature wage levels and benefits given domestic workers in an industry. Overtime pay should be available. Benefits such as worker's compensation, social security, housing, and health-care should be made available.

- **Worker Protections and Job Portability.** Workers should enjoy the same protections of U.S. labor law as U.S. workers, regardless of industry, including a right to redress grievances in federal court and a transparent arbitration system; safe and sanitary working conditions; and expressed terms of employment. Workers should be able to move to other employment within an industry and not be tied to one employer. Work accrued toward permanent residency should not be affected by changing jobs or employers.

- **Family Unity.** Workers should be able to be joined by spouse and children in the United States during the length of the worker's visa. Either spouse should be eligible for work authorization, regardless of whether they work in the program. Spouse and children should be able to become eligible for permanent residency at the same time as the worker in the program.

- **Labor-Market Test.** A mechanism should be included to ascertain whether U.S. workers within an area are adversely impacted by the hiring of workers from abroad. Employers should be required to advertise job openings to the maximum extent practicable and make good-faith efforts to recruit U.S. workers for a sufficient amount of time.

- **Mobility.** Workers and their families should be able to travel throughout the United States, travel back and forth from the United States to their country of origin, as well as travel from work site to work site, regardless of location, for the duration of their visa. Visas should be renewable as long as workers meet the requirements of the program, and applicable waivers to bars to admission should apply.

- **Enforcement Mechanisms.** Resources should be appropriated to ensure proper enforcement of worker protections in the program. Workers should be given the right to sue in federal court for violation of rights.

- **Path to Residency.** Workers should have the option of working to earn permanent residency over time, similar to an earned legalization program, as outlined in my testimony.

Any new temporary worker program should 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 which creates legal avenues for migration will mitigate the

amount and effects of undocumented migration; which can lead to the abuse, exploitation, or even death of migrants.

### *C. Family-Based Immigration*

Family reunification, upon which much of the U.S. immigration system has been based for the past 40 years, must remain the cornerstone of U.S. immigration policy. Immigrant families contribute to our nation and help form new generations of Americans. Even while many migrants come to the United States to find employment, many come as families or to join family members already here.

The current visa quota system, last revised by Congress in 1990, established statutory ceilings for family immigration that are now inadequate to meet the needs of immigrant families wishing to reunite in a timely manner. The result has been waiting times of five years or more—and more than eight years for Mexican permanent residents—for 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. [13]

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.

U.S. citizens and lawful permanent residents file petitions on behalf of certain close family members to immigrate to the United States. The spouses and unmarried children under age 21 of U.S. citizens are considered "immediate relatives" under immigration law. Likewise, the parents of U.S. citizens who are at least 21 years of age are considered "immediate relatives" as well as certain widows or widowers of U.S. citizens. Immediate relatives are exempt from numerical and per-country limitations on immigrating to the United States. This means that if a foreign national falls within the definition of "immediate relative" under the immigration law, then the only waiting line s/he will encounter in immigrating to the United States is the processing time of the relative petition and the application for the immigrant visa.

For other family relationships, however, Congress created a "preference" category system. As with the immediate relative system, U.S. citizens and lawful permanent residents file petitions on behalf of certain relatives, who do not qualify as immediate relatives. There are four family preference categories under immigration law. The first preference category is for the unmarried sons and daughters of U.S. citizens. The second preference category has two subcategories: (A) the spouse and unmarried children of lawful permanent residents, and (B) the unmarried sons and daughters of lawful permanent residents. The third preference category is for the married sons and daughters of U.S. citizens. The fourth preference category is for the siblings of adult U.S. citizens.

The immigration law limits the number of people who can immigrate to the United States each year through each of these family preference categories. In other words, people who immigrate to the United States through the preference category system, as opposed to immigrating as immediate relatives, are subject to numerical and per-country caps each fiscal year. This current visa quota system, last revised by Congress in 1990, is now inadequate to meet the needs of immigrant families wishing to reunite in a

[13] *U.S. Citizenship and Immigration Service Fact Sheet*, January, 2004.

timely manner.[14] Because there are many more people who apply each year to immigrate through the preference category system than there are visas available due to the caps, huge lines have formed for people in each of the preference categories. This has resulted in people waiting many years to immigrate lawfully to the United States.

For example, the beneficiary of a second preference petition – i.e., the spouse or child of a lawful permanent resident – who receives his or her visa in November 2004 had to wait almost four-and-a-half years to get that visa. Because demand for immigrant visas are so high, if a lawful permanent resident were to file a petition today on behalf of his or her spouse or child, then the spouse or child would most likely have to wait much longer than four-and-a-half years because the demand would far surpass the cap on the number of visas which can be issued each year.

As another example, if the spouse or child beneficiary of a second preference petition were from Mexico and he or she received the immigrant visa in November 2004, then that spouse or child would have waited approximately seven years to have obtained that immigrant visa. Again, if the petition were filed today on behalf of that Mexican spouse or child, then the beneficiary would most likely have to wait much longer than seven years from today to obtain that immigrant visa. The waiting times for adult siblings to reunite can be twenty years or longer. [15]

In addition, we must revise stringent income requirements ("public charge") which prevent family members from joining their families. In order for a U.S. citizen or a lawful permanent resident to petition on behalf of family members to immigrate to the U.S. or to otherwise obtain lawful permanent residence, the petitioner must demonstrate that s/he is able to support the beneficiary and any family members which will accompany or follow-to-join the beneficiary as well as support the petitioner's own family at 125 percent of the Federal Poverty Guidelines. This is a very difficult standard for working class people to meet. We recommend that this "affidavit of support" requirement be reduced to 100 percent of the Federal Poverty Guidelines.

***D. Due Process: The Unlawful Presence Grounds of Inadmissibility***

In order to preserve families, we must also consider repealing bars to admissibility. The Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996 amended the Immigration and Nationality Act (INA) to bar certain foreign nationals from gaining admission to the United States because of previous immigration violations – regardless of the seriousness of the violation and without consideration of how the refusal to admit the foreign national would impact the U.S. citizen or lawful permanent resident family members of that foreign national.

A section of the INA sets forth the "grounds of inadmissibility" into the United States. The grounds of inadmissibility list ten general classes of foreign nationals who are ineligible to receive immigrant visas to the United States and who are ineligible to gain admission into the United States. Examples of certain grounds of inadmissibility include health-related grounds, such as a person who has a "communicable disease of public health significance" or criminal-related grounds, such as drug trafficking. This section of the law also authorizes the government to grant waivers for certain grounds of inadmissibility.

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[14] The Immigration Act of 1990, Pub. L. No. 101-649 (1990).

[15] *U.S. Citizenship and Immigration Service Fact Sheet*, January, 2004. See also the U.S. Dep't of State, No. 75, Vol. VIII, "Visa Bulletin" (Nov. 2004).

IIRIRA expanded the "grounds of inadmissibility" to include more types of conduct that would prevent a foreign national from gaining an immigrant visa to or admission into the United States. For example, foreign nationals who accrued a certain amount of "unlawful presence" in the United States and then departed the United States would be barred from gaining admission into the United States for a certain period of time.

If a foreign national is unlawfully present in the United States for more than 180 days but less than one year and then departs the United States, s/he is barred from gaining admission into the United States for 3 years from the date of departure. This ground of inadmissibility is referred to as the "3-year-bar." If a foreign national is unlawfully present in the United States for at least one year and then departs the United States, s/he is barred from admission into the United States for 10 years from the date of departure. This ground of inadmissibility is referred to as the "10-year-bar."

Both the 3- and 10-year bars have certain limited exceptions as to who *does not* fall within the ground of inadmissibility, such as children under the age of 18, certain battered women and children, and certain asylum seekers. For those foreign nationals who fall within the 3- and 10-year bars, the law permits the government to grant waivers of the bars in limited circumstances. Specifically, the government has the *discretion* to grant a waiver of the 3- and 10-year bars when a foreign national can demonstrate that the refusal to grant admission to the foreign national would cause *extreme hardship* to a lawful permanent resident or U.S. citizen *spouse or parent* (but not child) of the barred foreign national.

A separate ground of inadmissibility, known as the "permanent bar," permanently bars a foreign national who accrued more than one year of unlawful presence in the United States and then departed the United States and re-entered or attempted to re-enter the United States without authorization. After the barred foreign national is outside the United States for at least 10 years, then s/he may apply for admission. Unlike the 3- and 10- year bars, which expire after their designated periods, this bar is permanent unless the barred foreign national re-applies for admission after ten years. Moreover, there is no guarantee that the government will grant the request for admission after the ten-year period passes. Not only is the foreign national separated from his or her family for the ten years, the individual is then subject to the whim of the government officer who is considering the application for re-admission after the ten-year period.

These two examples of expanded grounds of inadmissibility illustrate the harsh nature of the amendments added to the INA by IIRIRA. *Due Process of law* requires that people be treated fairly in legal proceedings. The "unlawful presence" bar and so-called "permanent bar" violate due process because they impose an unduly burdensome punishment on the foreign national for violating these civil grounds of inadmissibility. In our view, the penalty for violating these grounds of inadmissibility is disproportionate to the actual violation committed. They also separate families for indefinite periods.

The "unlawful presence" bars and the so-called "permanent bar" should be eliminated because of their harsh consequences on hard-working foreign nationals. Those impacted by these bars are working to support their families are contributing to the development of the U.S. economy.

### *E. Enforcement*

Mr. Chairman, the Catholic Church recognizes the right of the sovereign to protect its national security and to control its borders. At the same time, we advocate that the human dignity of the individual be upheld and protected in any enforcement action. We have grown increasingly concerned that the U.S.

immigration enforcement regime violates basic human dignity and has placed the lives of migrants at risk.

Since the advent of Operation Gatekeeper in San Diego in 1994, the United States has spent more than $20 billion dollars on Border Patrol agents, reinforced fencing, and technology along the U.S.-Mexico border. This border strategy has failed. According to the Pew Hispanic Center, over roughly the same time period the number of undocumented persons from Mexico who have entered the United States has risen from 300,000 to 500,000 annually. [16] Tragically, because of the blockade of more traditional routes of migration, more than 2,000 migrants have died in remote regions of the American Southwest since 1998.

The border enforcement strategy pursued by our government also has given rise to sophisticated smuggling networks, in which migrants pay exorbitant fees to smugglers to transport them across the border. The much-publicized deaths of 19 migrants in Victoria, Texas, in May 2003, highlight the brutal nature of these networks. It is evident that the basic human need to survive will continue to force migrants to attempt to run the gauntlet of our southern border, despite the money and resources applied by our government to prevent them.

Comprehensive immigration policy reform which emphasizes legal avenues for migration will mitigate the perceived need for a blockade enforcement policy. By providing legal avenues for migrants to enter and work in the United States, such reform would alleviate the pressure on border enforcement by undermining human smuggling operations and reducing the flow of undocumented migrants across the border. It also would help create a more stable atmosphere for the implementation of enforcement reforms, such as biometric visas and passports, which will help better identify those who come to harm us.

Any enforcement regime pursued by the U.S. government should be targeted, proportional, and humane:

**Targeted.** U.S. enforcement resources should be focused to ensure that those who are in the country for nefarious purposes are more easily identified. Anti-terrorism policies should not include broad and sweeping changes which unjustly impact all immigrants, and ethnic or racial profiling should be avoided. Improvements in intelligence and information sharing and technological improvements in border security would help ensure that would-be terrorists are apprehended.

**Proportional.** Enforcement of immigration laws should not feature unnecessary penalties or the use of unnecessary force. Immigration control officers and border patrol agents should receive intensive training on cultural awareness, appropriate enforcement tactics, and the appropriate use of force. State and local law enforcement officials should not be authorized to enforce immigration laws. Asylum-seekers should receive appropriate screening by a qualified adjudicator.

**Humane.** In any enforcement action, the human rights and dignity of the individual must be preserved. For example, undocumented immigrants should not be shackled by their hands and feet and detained for lengthy amounts of time in deplorable conditions. Families and children should receive special care and attention.

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[16] B. Lindsay Lowell and Roberto Suro, *How Many Undocumented: The Numbers behind the U.S.-Mexico migration talks,"* Pew Hispanic Center, March 21, 2002.

Mr. Chairman, let me again repeat that the U.S. Conference of Catholic Bishops, and the Catholic Church's teaching, recognize and support the right of a sovereign government to secure its borders and provide security for its citizens. While we support this right, we also advocate that enforcement policies are frequently reviewed and ultimately find an expression which upholds the human dignity of all involved.

## III. Implementation of Immigration Policy Reform

Mr. Chairman, it is important to understand that the manner in which comprehensive immigration reform is implemented is vital to its success. A public-private partnership is necessary so that immigrant communities are aware of the facts of the application process (thus eliminating the involvement of "notarios") and are able to receive assistance in assessing the program. We recommend the inclusion of the following elements in any legislation to ensure that a program is implemented appropriately:

- **Confidentiality.** Applicants for both the new program should be extended confidentiality and not be subject to arrest and deportation if they fail to qualify for the program. This would ensure maximum participation in the program.

- **Use of Non-Profit Legal Agencies.** Non-profit legal agencies should be engaged to assist in implementation of any new program.

- **Adequate Funding.** Adequate funding should be authorized and appropriated to ensure full and complete implementation of the program. Funding for any new program should not be taken from the examination fee account or other DHS budgets.

- **Reasonable Implementation Period.** Sufficient time should be given between enactment of the legislation and implementation so that regulations, procedures, and infrastructure are in place. Deportations of prospective applicants should be suspended between these two dates.

- **Creation of a Separate Entity.** A separate entity should be created within the Department of Homeland Security (DHS) to implement the legislation.

- **Derivative Benefits.** Immediate family members should receive the same immigration benefits under any new program as the worker.

- **Generous Evidentiary Standards.** For purposes of verifying an alien's eligibility for the new program, evidentiary standards should include a wide range of proof, including attestation.

- **One-Step Legalization.** A one-step legalization program would verify eligibility and security and background checks in one process up front and not in a two-step process, i.e. upon conditional status and permanent status.

- **Operational Terms should be defined:** Operational terms in the bill, such as "continuous residence," "brief, casual, and innocent," and "known to the government," should be defined to avoid later confusion.

- **Broad humanitarian waiver.** At a minimum, a broad waiver of bars of admissibility for legalized aliens, such as unlawful presence, fraud, or other minor offenses, should be included in the legislation.

The inclusion of these elements in any legislation would facilitate the implementation of any new program.

In addition, the Congress and the administration should take steps to reduce the immigration adjudication backlogs which now exist so that immigrants receive benefits in a timely way and that the U.S. Citizenship and Immigration Service (USCIS) is able to implement any new program.

Currently, waiting times in many adjudication categories are too long. According to the U.S. Citizenship and Immigration Service, processing for naturalization applications has grown from 10 months in September, 2002, to 13 months in August, 2003, and is significantly longer than 13 months in many districts. The backlog for adjustment of status applications has reached an all-time high of 1.2 million.[17]

Moreover, in 2004 the government increased fee applications by approximately $55 per application, leaving these benefits financially out of reach of many applicants.[18] At the same time, USCIS reduced its funding request for directly appropriated funds by $95 million for FY 2005.[19]

A reduction in the current backlogs in naturalization and adjustment of status applications should be part of our nation's efforts to reform our immigration system. Congress should evaluate the budget of the U.S. Citizenship and Immigration Service (USCIS) and provide more appropriated funding for infrastructure and backlog reduction. Without more efficiency in the system, a new comprehensive reform program of any type may be unworkable, absent the creation of a new entity to implement it.

## IV. The Secure America and Orderly Immigration Act of 2005

Mr. Chairman, the U.S. Conference of Catholic Bishops supports enactment of the Secure America and Orderly Immigration Act of 2005 (S. 1033), introduced by Senator John McCain (R-Az) and Senator Edward M. Kennedy, because it most closely comports with the policy recommendations outlined in my testimony. While it does not contain all of our recommendations, it includes major changes to the U.S. legal immigration system which we believe are necessary to repair the broken U.S. immigration system.

Specifically, we believe the creation of an H-5A temporary worker program and an H-5B program to permit undocumented workers to work legally and earn permanent residency in the legislation are essential. As outlined earlier in my testimony, these programs will ensure that legal pathways are established for future migrant workers to work legally in the United States and for workers already here to regularize their status and continue to contribute to their communities. Moreover, we strongly support changes made by S. 1033 to the family-based immigration system, changes which will reduce waiting times for families to reunite legally.

Mr. Chairman, we oppose the concept of requiring undocumented workers who have established equities in our country to return to their homeland before applying for any new temporary worker

[17] *U.S. Citizenship and Immigration Services Fact Sheet*, January, 2004.
[18] 69 Federal Register 5088 (February 3, 2004)
[19] FY 2005 Budget Submission for the Department of Homeland Security, February, 2004.

program. This concept, which has been proposed in other bills before your committee, is, in our view, unworkable. It is questionable whether these workers, many of whom have resided in our nation for years and have little or no ties to their home countries, would risk return. The formula established in the Secure America and Orderly Immigration Act is more workable and realistic, in that workers in the United States would have an incentive to participate in the program because of the opportunity to earn permanent residency. We also do not believe an earned legalization program is an "amnesty" as traditionally understood, since it requires the payment of fines and a work requirement of six years before a worker can apply for permanent residency.

Two other immigration measures, which enjoy bipartisan support, should be included in any comprehensive reform package or separately enacted.

The Agricultural Job Opportunity, Benefits, and Security Act of 2005 "AgJobs" represents a bipartisan initiative which would help protect both a vital industry and a labor force which is vulnerable to exploitation. The measure, which represents a negotiated agreement between the agricultural employers and the United Farm Workers, would both stabilize the labor force in this important industry and ensure that employers have access to a work-authorized supply of labor, if necessary.

Currently, more than 50 percent of the agricultural labor force is undocumented and is subject to abuse and exploitation. AgJOBS would provide a path to permanent residency for many of these undocumented farm workers in the United States. This would allow these workers to earn permanent status, thus stabilizing their families and allowing them to "come out of the shadows." It also would allow employers to hire such workers without fear of penalty, thus providing them with a legal and stable supply of workers. In addition, it would place in statute many worker protections for farm workers, including a three-fourth work guarantee (ensuring work during three-fourth of a season) and expressed terms of employment.

The Development, Relief, and Education for Alien Minors Act in the U.S. Senate and the Student Adjustment Act in the House of Representatives represent bipartisan initiatives 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.

**V. Conclusion**

Mr. Chairman, we appreciate the opportunity to testify today on the issue of comprehensive immigration reform. We urge you and the committee to consider our recommendations as you consider this important issue.

We are hopeful that, as our public officials debate this issue, that immigrants, regardless of their legal status, are not blamed for the social and economic challenges we face as a nation. Rhetoric which attacks the human dignity of the migrant does not serve the interest of fair deliberation and leads to polarization and division.

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 in

the months ahead to enact legislation which upholds the valuable contributions of immigrants and reaffirms the United States as a nation of immigrants.

Thank you for your consideration.