

Statement by Janet Murguía
President and CEO
National Council of La Raza

To the House Committee on the Judiciary
Subcommittee on Immigration, Citizenship, Refugees, Border Security,
and International Law
Hearing on Comprehensive Immigration Reform
Tuesday, May 22, 2007

Introduction

Madam Chairwoman and subcommittee members, thank you for this opportunity to testify before you today about the importance of comprehensive immigration reform for the Latino community.

The National Council of La Raza (NCLR) – the largest national Hispanic civil rights and advocacy organization in the United States – is a private, nonprofit, nonpartisan, tax-exempt organization established in 1968 to reduce poverty and discrimination and improve opportunities for Hispanic Americans.

You will not be surprised to hear that immigration is a critical issue for the Latino community, though the reasons for this go well beyond what most Americans understand. The majority of Hispanic Americans are not immigrants; 60% of our community are natives of the United States. Immigration policy obviously has a deep impact on those of us who are foreign born, but it also affects the rest of us in multiple ways. It directly affects those of us with immigrant family members and those who wish to reunite with their closest family members abroad. It also has an enormous impact on public perceptions of Latinos as Americans. NCLR receives an awful lot of mail from people telling us to go back to where we came from. In my case, that would be Kansas, and I'm guessing that would come as a surprise to the people who write to me. In more extreme cases, which are taking place alarmingly frequently across the country, the debate on immigration is inspiring local laws and ordinances which are aimed at restricting immigrants' ability to rent homes, seek jobs, and even use public parks. Implementing these ordinances inevitably leads to discrimination against anyone mistaken for an immigrant; this tends to affect all of us, whether we were born in this country or not. For us, immigration policy is a civil rights issue, and that is why our community engages so deeply in this policy debate.

We very much appreciate the opportunity to be part of this hearing on comprehensive immigration reform and hope that a reasonable, respectful dialogue on immigration policy will move forward in the House very soon.

The current immigration system is badly broken.

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: employers continue to hire undocumented labor, there are few legal channels for needed workers who do not fit into the employment-based immigration preference system to come to the U.S., and the system separates close family members for long periods of time. As a result, there are approximately 12 million undocumented immigrants living in the U.S. today. Despite years of increased immigration enforcement both at the border and in the interior of the country, immigrants are paying large sums to smugglers and risking their lives to work and be reunited with their families in the U.S. 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 more than one death per day.

Those lucky enough to make it to the U.S. are living and working in the U.S., filling essential gaps in the labor market while enduring low wages and poor working conditions. These workers are particularly vulnerable to abuse in the workplace, and are less likely to be able to address dangerous, unhealthy, or exploitive job conditions because of the fear that employers will retaliate by contacting immigration authorities. This results in some alarming trends. In the mid-1990s, Mexican workers in the U.S. were about 30% more likely to die on the job than native-born workers; now they are about 80% more likely.¹ 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.²

The broken immigration system also has negative ramifications on the security of our neighborhoods and nation. Undocumented workers live in the shadows of society, often using false identification documents, and fearful of reporting crimes to the police. In the post-9/11 world, the public is understandably concerned about national security, yet as a result of the broken immigration system, there are 12 million people in the U.S. who cannot obtain valid government-issued identification documents and rely upon 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.

As for the legal immigration system, millions of close family members remain in visa backlogs for years, waiting to be reunited with their families. 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. Because of the strict laws regarding issuance of temporary visas, many spouses and children do not qualify for tourist visas to the U.S. 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 to enter the U.S. legally.

Effective and workable comprehensive immigration reform is urgently needed.

NCLR is deeply aware of the continuing impact of the broken immigration system. Each day that passes another person dies on the U.S.-Mexico border, another American child is separated from her immigrant parents due to workplace raids, another worker is exploited in the workplace, and another Hispanic American encounters hostility or worse as a result of tension over this

¹ Pritchard, Justin, "Mexican-Born Workers More Likely to Die on Job," *Associated Press*, March 14, 2004.

² *Ibid.*

issue. We have 12 million undocumented immigrants living and working in the United States – this number will only increase unless Congress acts. An effective solution is urgently needed.

For this reason, we have been working for nearly a decade on formulating a policy that can effectively bring order and fairness to our nation's immigration laws. We understand that such a formulation must include enforcement at the border and in the interior, but we will insist that such enforcement be conducted in a way which respects human and civil rights. We believe that for an enforcement regime to be workable, it must be accompanied with a policy that provides a path to citizenship for the 12 million undocumented immigrants now living and working in the United States. In addition, over many years, we reached the conclusion that in order for our immigration system to work it should include a new pathway for migrants who come in the future.

We did not come to this conclusion lightly; much has been made of the possibility of creating a guestworker program to meet this particular need. NCLR opposes guestworker programs because of their long history of abuse and exploitation against vulnerable workers. We are, however, willing to consider creating a new kind of temporary worker program to replace the undocumented stream with an equivalent number of workers who would be able to enter legally, have full job portability once they get here, be fully covered under labor laws including prevailing wage protections, and have the ability to earn their way to permanent residence and citizenship over time. These conditions are extremely important; while we acknowledge that such a program might be a successful alternative to undocumented migration, we will not consent to a program which legislates exploitation for workers, particularly one which forbids them the ability to put down roots and become Americans if they choose.

We have been as clear as possible with policy-makers: our desire for immigration reform does not mean that our community will accept any legislation. Last year, the House of Representatives passed an enforcement-focused piece of legislation that was so harsh it inspired the largest peaceful demonstrations in our country's history. Enforcement only is not a solution. A bad guestworker program that results in the displacement of American workers and creates a vulnerable, exploitable class of workers is not a solution. A legalization program structured in a way that discourages undocumented immigrants to participate is not a solution. A realistic and effective solution must be comprehensive and must get at the root causes of undocumented immigration and must replace our current system with an immigration system that is safe, legal, and workable. NCLR supports comprehensive immigration reform that includes the following principles: 1) a reduction of family immigration backlogs; 2) a path to citizenship for the current undocumented population; and 3) the creation of new legal channels for future immigrant workers. By legalizing immigrants who live, work, and contribute to life in the U.S., the U.S. could deal fairly with hardworking people who have responded to an economic reality ignored by the law. At the same time, the U.S. can become more secure by enforcing the new law and by allowing undocumented immigrants to come out of the shadows and participate fully in their communities.

Elements of comprehensive immigration reform:

1. Reduce family backlogs. We recognize 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. 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. However, reducing the backlogs must not be done by simply nullifying the petitions of any group of people. Every person that has filed a petition, paid an application fee, and structured his life to prepare for the arrival of a family member must have his petition honored.

2. Pathway to citizenship for undocumented workers. The first step in any comprehensive immigration reform is to create a realistic pathway for undocumented immigrants currently in the U.S. to earn their way to permanent residence and ultimately U.S. citizenship. 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 have to pay an application fee and a fine to qualify for the 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 Department of Homeland Security (DHS) could focus its enforcement resources and concentrate on finding the dangerous “needles,” including terrorists, smugglers, traffickers, and unscrupulous employers.

It is crucial that an earned legalization program be workable and encourage participation. The tensions surrounding the presence of a sizeable undocumented workforce will not be alleviated if Congress creates a program that leaves millions unwilling or unable to participate. Any new system that discourages undocumented immigrants from coming forward because of extremely high fees, fear of immigration enforcement, lack of guaranteed legal status, or need to leave the country for lengthy periods of time is unlikely to be workable. Moreover, sufficient resources must be made available to the DHS and any other agency involved in the process so that the legalization program may be fully implemented.

3. Worker visa 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. 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 worker visa 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.* It would be insufficient and, indeed, catastrophic for U.S. workers (including immigrants with permanent visas) if the only requirement was 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 may come to the U.S. willing to work long hours at minimum wage and without benefits, even in the most dangerous industries. We support a prevailing wage provision to ensure that foreign workers who come to a particular industry be paid the prevailing wage in that industry; this prevents the erosion of wages for U.S. workers in that industry who may be making more than minimum wage.
- *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 bad working conditions and 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 – not doing so is harmful to vulnerable foreign workers and to their U.S. coworkers. 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 become permanent residents, preferring to work in this country for a period of time and ultimately choosing to return to their country of origin, but others will eventually like 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 in their spouses and minor children during the period 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.

We believe that the “Security Through Regularized Immigration and a Vibrant Economy Act of 2007” (“STRIVE Act,” H.R. 1645) includes the key elements necessary to fix the broken immigration system: a path to citizenship for undocumented immigrants, a new worker visa program so that future immigrants can arrive legally, a reduction in family immigration backlogs which allows American families to unite in a reasonable time period, and smart enforcement mechanisms to ensure that the new system remains viable. We urge the House to consider the “STRIVE Act” as you move forward this year’s debate over comprehensive immigration reform.

Other issues.

In addition to these three basic pillars of comprehensive immigration reform, there are several elements to the debate which have begun to take place in the Senate which are important for the House to consider.

Decreases to the family immigration system. NCLR was alarmed to find that the Senate negotiations which concluded last week made dramatic changes to the family and employment-sponsored immigration systems. These changes, which would eliminate most of the categories under the preference system, would favor a merit-based point system that privileges individuals with high levels of education and English language ability. We object to these changes for multiple reasons, not the least of which is our objection to the argument that the proposal preserves reunification of “nuclear” families at the expense of “extended” family. By eliminating the categories under which U.S. citizens reunite with their adult sons and daughters, and severely restricting the category under which citizens reunite with their parents, this proposal directly attacks the ability of Americans to reunite with their nuclear families. There has been a great deal of commentary about ethnic communities’ expansive definitions of family in describing our response to this proposal, though I have yet to encounter an American who believes that children become “extended” family when they turn 21.

The family immigration system has recently come under attack again as the fear of “chain migration” encourages restrictions on family unification. But an examination of the evidence reveals that “chain migration” is a myth. This concept purports that immigrants sponsor an uncontrollable number of family members. In reality, only immigrants who have already gained legal permanent residency or U.S. citizenship can sponsor relatives. On average, they only sponsor an average of 1.2 family members.³ Since there are already highly restrictive caps on family reunification visas and because of the lengthy waiting times before a visa becomes available, there is virtually no opportunity for “chain migration” to occur. Only children, spouses, parents, and siblings qualify for such sponsorship – cousins, aunts, uncles, grandparents, and other extended family members cannot come to the United States through the family system.⁴ To prevent dependence on public benefits, to sponsor a family member, a U.S. citizen

³ Lowell, Lindsay and Micah Bump. *Projecting Immigrant Visas: Report on an Experts Meeting*. 2006. < <http://www12.georgetown.edu/sfs/isim/Event%20Summaries&Speeches/Lowell,%20ProjectionsWorkshop.pdf>>.

⁴ *Immigration Through a Family Member*. U.S. Citizenship and Immigration Services. <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=0775667706f7d010VgnVCM10000048f3d6a1RCRD&vgnnextchannel=4f719c7755cb9010VgnVCM10000045f3d6a1RCRD>

or lawful permanent resident (LPR) must already prove they have a stable income and commit to financially support their family members, so they do not rely on social services.

Reuniting close family members of U.S. citizens and LPRs has been a cornerstone of the U.S. immigration system since 1965, and it has served the country very well. In addition to strengthening families, family unification has a positive impact on the economy and on immigrant integration. It is inaccurate to suggest that family immigrants do not serve the economic needs of the country; indeed the bulk of immigrants participating successfully in our economy came here through the family preference system. In addition, by relying on employers and family members to petition for immigrants, the United States has essentially made them the cornerstone of an immigrant integration strategy; family members and employers help immigrants from the moment of their arrival, finding homes, jobs, and other resources that enable them to make a successful transition to life as future Americans. A point system that is aimed at anyone with particular skills or language abilities will likely be swamped with applicants, and provide no mechanism for the integration of these immigrants. To undo decades of sound policy for an experiment like this would be a mistake.

Employment verification system. NCLR has long been concerned about our nation's ability to implement and administer employer sanctions in a way that would be effective without engendering employment discrimination. The results of the 1986 law, from our perspective, represent the worst possible outcome. Employer sanctions have clearly been ineffective; nevertheless, there is abundant documentation that the policy has caused discrimination on the basis of nationality and citizenship status.⁵

A mandatory electronic employment verification system (EEVS) such as the one contemplated in the "STRIVE Act" and the current Senate bill will impact every single person who works in the United States. Because of its broad scope and strong impact – the potential to wrongfully deny employment to authorized workers – a new EEVS must be well designed and implemented. Any mandatory universal verification system must be implemented incrementally, with vigorous performance evaluations taking place prior to any expansion; contain strong antidiscrimination protections; insist upon updated and accurate databases; allow for every work-authorized worker to provide adequate documentation; contain adequate administrative and judicial review in case an error occurs in the system; and contain strong privacy protections

Social Security benefits. We are particularly alarmed that the current version of the Senate bill would deny legalizing immigrants credit for the earnings they have paid into the Social Security System. It is well established that undocumented immigrants have paid hundreds of billions of dollars into the Social Security System; indeed the Social Security Administration's Earnings Suspense File (ESF) has more than \$420 billion of cumulative earnings paid by employees who

⁵ See *Statement of the National Council of La Raza to the House Committee on the Judiciary Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law Hearing on Proposals to Improve the Electronic Employment Verification and Worksite Enforcement System*, Thursday, April 26, 2007.

never claim benefits,⁶ the vast majority of which is likely to be the taxes paid by undocumented immigrants using false social security numbers that they must use in order to work.

The bill being debated in the Senate this week includes provisions to prevent current undocumented immigrants from collecting Social Security benefits for past work performed upon legalizing their status and qualifying for benefits due to retirement or disability. This means that people who are currently working hard and paying taxes into the Social Security system would not be eligible to correct their records and receive the Social Security benefits they earned while undocumented. Since these workers will have legalized their status and received green cards – and many will have naturalized – by the time they are eligible, this provision would deny Social Security benefits to U.S. citizens and legal permanent residents. We strongly believe that legalized immigrants should be able to correct their records and receive full credit for work performed and taxes paid.

These future citizens are part of the fabric of our society, and a vital part of our nation's economic engine. They have been working hard for decades, contributing to our productivity as a nation, and contributing to the Social Security System like all workers in our country. To become legal residents, they must continue working, pay taxes, and learn English. It would be grossly unfair to say that once they have done all of those things to earn a place in America, our government will simply take the Social Security contributions that they have made over the decades.

This proposal says: “You worked for me for 20 years, but you know what, your paperwork wasn’t in order, so I’m not going to pay you what I owe you. You can just start fresh and get paid starting tomorrow.” That’s not consistent with our values as Americans, and it is not the kind of system that we want for our country. We need laws that are practical and consistent with our national values of hard work, fairness, and opportunity.

Official English. Contrary to common myths, Latino immigrants do learn English. According to the 2000 Census, of the people who report speaking Spanish at home, 72% report speaking English “well” or “very well.” This proportion for speakers of Asian languages is more than 77%. The research on the second and third generations consistently shows adherence to the three-generation pattern that immigrants have followed for more than a century. For example, a recent report on language assimilation by the Lewis Mumford Center for Comparative Urban and Regional Research at Albany found that the second generation is largely bilingual; 92% of Hispanics speak English “well” as do 96% of the Asians, though most also speak another language at home. By the third generation, the pattern is English monolingualism. The study also finds that even recent high immigration levels have not changed the pattern. Today’s immigrants are adopting English as fast as – or faster than – previous cohorts.

Immigrant adults want to learn English, but have few opportunities to do so. According to the Center for Adult English Language Acquisition, almost half of the 1.2 million adults in federally

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.

funded adult education programs are there to learn English. Perhaps more telling, waiting lists for classroom slots are often so long that some immigrants wait months or years before getting a space. Studies by the National Center for Education Statistics suggest a pool of three million or more adults who are interested in English as a second language (ESL) classes but not enrolled for a variety of reasons, especially the fact that they are oversubscribed.

The bill passed by the Senate in 2006 and the bill being debated in the Senate this week contain provisions making English the official language of the United States. The current Senate bill also requires immigrants in the legalization process to know English to receive a conditional Z visa. While we strongly believe that immigrant integration must be a critical element of the U.S.'s overall immigration policy, declaring English as the official language and simply requiring English knowledge will do little to actually assist immigrants in making the transition to English. An effective integration policy would provide sufficient resources and sufficient opportunities for immigrants to learn English.

“DREAM Act” and “AgJOBS.” We strongly support inclusion of the “DREAM Act” (S. 774, H.R. 1275) and “Agricultural Job Opportunity, Benefits, and Security Act” (“AgJOBS” S. 340, H.R. 371) legislation in a comprehensive immigration reform proposal. These bills enjoy strong bipartisan support and are necessary to be fully inclusive of the student and farmworker populations.

“Triggers” Both the “STRIVE Act” and the current Senate proposal include immigration enforcement “triggers” that must be met before a legalization program or worker visa system can be put into place. These triggers include hiring increased numbers of Border Patrol agents, construction of fencing and/or other physical barriers along the southern border, securing additional detention space, and implementing the EEVS. We believe that these additional enforcement tools will do little to reduce the flow of undocumented immigrants into the U.S., just as years of “enforcement only” policies have not resolved the problem. An earned legalization program coupled with a new worker visa program and family immigration backlog reductions will relieve much of the pressure along the border and provide a comprehensive solution to the immigration problem. It is also important that the triggers not be used to indefinitely delay implementation of the other elements of comprehensive immigration reform.

Conclusion

It is clear 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 essential to our country's well-being. In 2007 we have an historic opportunity to fundamentally and comprehensively reform our nation's immigration system and create a well-functioning legal immigration system that serves our economic needs. I thank the subcommittee for this opportunity to testify, and I look forward to working with you throughout the remainder of the legislative process to ensure that effective, workable immigration reform is enacted.