Immigration Reform:
Comprehensive Solutions for Complex Problems

Conferencia de Seguridad Hemisférica:
Una Visión Mesoamericana y Caribeña

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I. Introduction
In January 2004 after over 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 paper outlines the current immigration system, explains why the current system is inadequate and needs to be fixed, and lays out NCLR’s principles for comprehensive immigration reform.

II. The Current Legal Immigration System
In order 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 current legal immigration system. 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. The fact is that the current system is highly regulated and selective.

There are two general categories of foreign nationals admitted to the U.S. — immigrants and nonimmigrants. Immigrants are foreign nationals who come to the U.S. to live legally and permanently—legal permanent residents (LPRs, also known as “green card holders”). Nonimmigrants are admitted for a specific purpose and for a temporary period of time. Nonimmigrants include tourists, foreign students, diplomats, exchange visitors, and temporary workers. Only certain categories of nonimmigrants may adjust their status to legal permanent residency; most nonimmigrants do not have the opportunity to adjust.

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 the 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-twentieth century U.S. permanent immigration policy has been based on three general ideas: humanitarian relief, employment-based immigration, and family-based immigration. In addition, a small number of visas are allocated for the purpose of maintaining diversity in U.S. immigrant communities.

A. Humanitarian relief
Each year the U.S. provides protection in the U.S. 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 seven 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.

B. Employment-based immigration

Current U.S. immigration law allows people who have skills and talents needed in the U.S. to be admitted to the U.S. 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 nonimmigrants who come to the U.S. on temporary work visas are usually sponsored by a U.S. employer based on 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 get 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:

<table>
<thead>
<tr>
<th>Employment-Based Preference System</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>1&lt;sup&gt;st&lt;/sup&gt; preference</strong></td>
</tr>
<tr>
<td><strong>2&lt;sup&gt;nd&lt;/sup&gt;</strong></td>
</tr>
</tbody>
</table>
C. 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. Family-based immigrants are admitted to the U.S. either as immediate relatives of U.S. citizens or through the family preference system.

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

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

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.

There are a limited number of visas available every year under the family preference system. Currently, these visas are allocated as follows:

<table>
<thead>
<tr>
<th>Preference</th>
<th>Description</th>
<th>Limit</th>
</tr>
</thead>
<tbody>
<tr>
<td>1st</td>
<td>Persons of exceptional abilities in the sciences, art, or business</td>
<td>Worldwide limit, plus any visas left over from the 1st preference</td>
</tr>
<tr>
<td>2nd</td>
<td>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,” who are not temporary or seasonal. “Other workers” are limited to 5,000 visas per year.</td>
<td>40,000 (28.6% of worldwide limit, plus any visas left over from the 1st and 2nd preferences)</td>
</tr>
<tr>
<td>3rd</td>
<td>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,” who are not temporary or seasonal. “Other workers” are limited to 5,000 visas per year.</td>
<td>40,000 (28.6% of worldwide limit, plus any visas left over from the 1st and 2nd preferences)</td>
</tr>
<tr>
<td>4th</td>
<td>Certain special immigrants, including ministers, religious workers, former U.S. government employees, and others.</td>
<td>10,000 (7.1% of worldwide limit)</td>
</tr>
<tr>
<td>5th</td>
<td>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.</td>
<td>10,000 (7.1% of worldwide limit)</td>
</tr>
<tr>
<td>U.S. Citizen</td>
<td>Spouses and unmarried minor children, parents of adult USC</td>
<td>N/A</td>
</tr>
<tr>
<td>-------------</td>
<td>-----------------------------------------------------------</td>
<td>-----</td>
</tr>
<tr>
<td>U.S. Citizen</td>
<td>Unmarried adult children</td>
<td>1</td>
</tr>
<tr>
<td>LPR</td>
<td>Spouses and minor children</td>
<td>2A</td>
</tr>
<tr>
<td>LPR</td>
<td>Unmarried adult children</td>
<td>2B</td>
</tr>
<tr>
<td>U.S. Citizen</td>
<td>Married adult children</td>
<td>3</td>
</tr>
<tr>
<td>U.S. Citizen</td>
<td>Brothers and sisters</td>
<td>4</td>
</tr>
</tbody>
</table>

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

D. 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 working experience 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, the fact is that it is not in tune with current economic or social realities. Because employers continue to hire undocumented labor, because there are few legal channels for needed workers to come to the U.S., and because the system separates close family members for long periods of time, the system actually encourages immigrants to come without visas.

The current legal immigration system is insufficient. 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 don’t 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 face visa backlogs reaching ten years. 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. 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. The product of this imbalance is a significant population of undocumented immigrants who live and work in the United States 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 9.3 million undocumented immigrants living in the U.S.\textsuperscript{2} Unauthorized urban workers, a subset of the total undocumented population, number approximately six million, or 5% of all U.S. workers.\textsuperscript{3} Nearly all
undocumented men are in the labor force (96%) – exceeding the labor-force participation rate of legal immigrants or U.S. citizens. While updated figures based on new estimates of the number of undocumented immigrants are not available, in 2001 an estimated 620,000 undocumented workers worked 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. 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. Much of this money is the taxes paid by undocumented immigrants using false SSNs. Furthermore, many undocumented immigrants file tax returns using Individual Taxpayer Identification Numbers (ITINs). Over a 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.”

**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 twofold. First, each year the U.S. Citizenship and Immigration Services (USCIS) 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 a long time processing applications, adding additional years to the long waiting times. The convergence of these two backlogs means that more and more family members are waiting an extremely long time to receive their visas. A January 2004 General Accounting Office report claims that 6.2 million applications for immigration benefits are pending as of September 2003 – a 59% increase in the last two years. 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 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, 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 FY 2003. 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.

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


**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 FY 2004. The Border Patrol has also increased technological resources, such as sensors, fences, cameras, and aircraft. However, the number of undocumented immigrants 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 undocumented immigrants apprehended fell dramatically. 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 because they want to work 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. As a result, 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 2000, 311 undocumented immigrants died while crossing the U.S.-Mexico border; in 2001 the figure rose to 491. In 2002, the number of deaths dropped to 371. However, 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. The U.S. Border
Patrol reports that nearly 2,000 people have died since 1998 while crossing the U.S.-Mexico border.

**Smugglers are profiting from increased border enforcement.** Because of the increased risks associated with crossing the border, many unauthorized immigrants cannot survive the trip alone and must 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. According to Doug Mossier, spokesperson for the Border Patrol’s El Paso Sector, coyotes charge between $100 and $500 to cross people from Ciudad Juárez, Mexico to El Paso, Texas. A move from the interior of Mexico into the U.S. costs $1,500 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. The Border Patrol approximates that at least 20 networks of coyotes are active in the Ciudad Juárez region. 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.” 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. 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 Associate Press 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. 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. 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 the U.S. average, the fatalities occurred across the country: Mexicans died 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.  

**When unscrupulous employers hire vulnerable, exploitable, undocumented workers, wages and labor conditions for all workers suffer.** Undocumented immigrants are extremely vulnerable, have few labor protections, and are often afraid to come forward and assert the rights they have. When one sector of workers accepts low wages and poor working conditions and is fearful to report safety hazards, labor law violations, or to participate in labor organizing campaigns, all workers suffer. This situation was made worse by a recent Supreme Court decision. In March 2002, the Supreme Court issued a decision that 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. By denying a remedy to one group of workers, the *Hoffman* decision undermines the status of all workers and strengthens employers’ incentive to hire unauthorized workers because they can fire these employees when they engage in any activity deemed unfit without suffering any legal ramifications. The *Hoffman* decision hurts all American workers because it lowers wages, reduces 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 crimes that they have witnessed or been a victim of to the police 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, 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. In some areas of the country, criminals have exploited this fear and have targeted immigrants for crime. In Durham, North Carolina, 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. 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.
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. 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. 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. 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. 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 in the U.S. 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. The permanent bar applies to anyone who was ever ordered removed, leaves the U.S., and then returns or attempts to return unlawfully. 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 expired) 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 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.

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 with 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 decide who enters the country rather than the U.S. government. This situation is not good for the country. Immigration reforms that bring people out from the shadows, correctly identify all people, and make immigration take place through legal channels would be beneficial to 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. The status quo is unacceptable, and the problem will continue to worsen unless comprehensive reforms are initiated immediately. Under the current 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 this broken system.

IV. 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 better benefit the U.S. economy, American families, and national security. NCLR has developed principles for a three-pillared comprehensive immigration reform package:

A. 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 have 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 the legalization. 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,” meaning that the DHS could concentrate on finding the “needles,” including terrorists, smugglers, traffickers, and unscrupulous employers.

B. 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, 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, in which wages are comparable to U.S. temporary worker wages. It would be insufficient and, indeed, catastrophic for U.S. workers if the
only requirement is that employers will observe all federal, state, and local laws regarding wages. Should a foreign worker program be enacted without a more stringent wage requirement, U.S. workers will see their wages and benefits reduced as foreign workers come in 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 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.** To the extent that foreign workers have different and lesser rights at the workplace than U.S. domestic workers, unscrupulous, and even honest, employers will seek to lower their employee costs by relying on foreign workers rather than U.S. domestic workers. If the cost differential of hiring a foreign worker versus hiring a U.S. domestic worker is minimal or nonexistent, employers will not have an incentive to hire foreign workers unless there is a real labor shortage. 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 choosing to return to their country of origin, but others would 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 spouse 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 cannot remain separated.

### C. Reduce 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: enforcement and international economic development.

**Immigration enforcement must be conducted strategically.** Even a successful temporary worker structure would not eliminate the need to conduct immigration enforcement at U.S. borders and 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 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) has taught us anything, it is that even the toughest laws, vigorously enforced, are no match for the 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. 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.

**V. Conclusion**

It is clear that immigration reform is necessary and timely. However, while President Bush has presented an immigration proposal, and several members of Congress have introduced immigration reform packages, it is unlikely that immigration reform legislation will move this year. The bills that were introduced in 2003-2004 will serve as marker bills for the debate that is likely to continue for several years. National security concerns, economic factors, and public opinion will be key factors in this debate, and given the makeup of Congress, bipartisan agreement will be fundamental, meaning that the debate is likely to intensify in the near future. However, in the meantime, President Bush and Congress can pass two bills which currently have broad bipartisan support in both Houses of Congress: the AgJOBS bill, a product of negotiations between growers and farmworkers which legalizes undocumented farmworkers and revamps the H-2A visa program; and the DREAM Act, which would help immigrant students to attend college. These two bills offer immediate opportunities for the President and Congress to move beyond rhetoric and improve the lives of immigrants.
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 seven percent 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.


3 Ibid.

4 Ibid.


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.


11 Ibid.


13 Saenz, Cesar Cruz, El Diario (Ciudad Juárez, Mexico), September 4, 2003.

14 Beyond Smoke and Mirrors, op.cit.

15 Ibid.


17 Ibid.

18 Ibid.


23 “Immigration Application Fees,” op. cit.

24 Ibid.


27 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.