

CENTER FOR HUMAN RIGHTS AND CONSTITUTIONAL LAW

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November 8, 2006

To: Community-based organizations, coalitions, inter-faith and religious groups, unions, border groups, elected officials, and others interested in immigration reform

Fm: Peter Schey, President, Center for Human Rights & Constitutional Law

Re: Proposal for Comprehensive Immigration Reform In Light of the Midterm Election Results

As the principal legal organization that has represented hundreds of thousands of immigrants in court cases seeking legalization under the Immigration Reform and Control Act of 1986 (IRCA), and having provided technical and drafting assistance to the Congress when it addressed IRCA in 1986 and again when it drafted the LIFE Act in 2000, and based upon guidance provided by CBOs and legal services providers nationwide, we urge all institutions concerned with immigration reform to consider the following recommendations.

The last comprehensive immigration reform that took place in 1986 followed several years of serious study of the highly complex issues that make up migration and the U.S. response. Before the IRCA was drafted, the Select Commission on Immigration and Refugee Policy heard from a range of academics, local elected officials, CBOs, business groups, religious groups, unions, etc. *before* it crafted recommendations for a law that combined a balance of enforcement with legalization opportunities, and protections for particularly vulnerable immigrants.

The IRCA legalized at least half the undocumented population in 1986 (and could have legalized far more if properly implemented), and for the first time initiated employer sanctions.

Most experts agree that the large undocumented community some 20 years after IRCA results because (1) there is no rational relationship whatsoever between the number of visas issued and the U.S. demand for skilled and unskilled labor, and (2) the drive for family unity is more powerful than statutory bars that preclude millions of families from reuniting legally.

Need for a select commission to study migration -- Regardless of the causes of the current migration crisis, there obviously has been no effort undertaken by the Congress or the President to study through a broad-based prominent commission with staff and resources the complex issues underlying migration policy.

In the absence of serious study and hearings, and in the election-year political climate, the House and Senate bills passed in 2005-06 were both ill-conceived and fatally flawed (despite the positive intentions of many elected officials including Senators McCain and Kennedy). The House bill would have turned all migrants into felons, driving them deeper underground and dramatically increasing the opportunity to exploit them, a result hardly helpful to U.S. workers or communities. The Senate bill may have legalized about 3-4 million immigrants, but left the majority and all future flows in a *permanent* undocumented status by blocking legalization for any migrant who used another

person's name to work. This approach would quickly increase the size of the undocumented population. The Senate bill also made illegal entry a "continuing crime," turning all undocumented migrants into criminals, though not felons.

Questions that need answers in order to formulate a rational immigration policy -- As opposed to rushing into a new set of proposals, we recommend that elected officials, CBOs, and all others concerned with immigration policy consider supporting a select commission appointed by Congress to study the fundamental questions that must be addressed before comprehensive immigration reform can take shape. Non-government groups may also form committees and commissions to study migration issues and develop policy recommendations. Among other fundamental issues that must be understood before any rational policy can be formulated are the following –

- (1) What are the current economic, social, and political conditions giving rise to migration from identifiable major sending communities, and to what extent and how (if at all) may these specific conditions be addressed?
- (2) How may the role played by the U.S. demand for migrant labor be addressed in a manner that reduces undocumented migration and protects U.S. workers?
- (3) How has implementation of NAFTA impacted migration and may NAFTA provisions be reinterpreted or renegotiated to reduce undocumented migration? What are the benefits or adverse consequences of recognizing the U.S. border relationship with Mexico in formulating a unilateral or a bi-national policy?
- (4) To what extent do present visa numbers and per country quotas drive up undocumented migration, and what are the benefits or adverse consequences of modifying visa allocations to realistically reflect family reunification and labor market demand? What is the best method to measure the demand so that policy decisions can be made regarding how much of the realistic demand to meet?
- (5) What are the benefits or potential adverse consequences of promptly granting lawful permanent resident status to several hundred thousand Central American refugees languishing in an assortment of temporary federal programs for several decades?
- (6) What is a reasonable estimate of the number of undocumented migrants residing permanently in the U.S., and what types of programs would legalize different numbers of migrants in this population? What impact (economic, social, etc.) would the U.S. likely experience if different percentages of this population were legalized?
- (7) What are the results of 20 years of border militarization and criminalization, what has been the impact on migrant flows, the safety and security of border communities, the environment, the human rights of migrants, and the national security?
- (8) To what extent are existing major provisions in the federal immigration law having adverse or positive impacts on immigration control and increasing or decreasing the size of the undocumented population?

Until these questions are carefully considered, and answers obtained and understood, comprehensive immigration reform may do about as well as U.S. policy in Iraq.

Study and educate the public now, legislate tomorrow -- The 2008 Presidential election started today. Immigration reform could easily again fall victim to the politics of fear given the damage done to public opinion by the year-long anti-immigrant campaign waged by the extreme right starting with the Sensenbrenner bill in December 2005. We doubt that the negative stereotypes popularized by this year's political campaign will quickly dissipate from the public mind. The best approach to comprehensive immigration reform may be during 2007-08 to study the important issues that must be analyzed before reform can be structured, and engage in public education regarding immigrants and what they offer the country, with the goal of considering and passing comprehensive legislation after the 2008 election.

Shorter-range policy changes -- In the interim, there are several shorter-range administrative and legislative changes that could be considered and addressed, including, to mention only a few examples, passage of the Dream Act, reintroduction of 245i relief, state-side processing or pre-approval of 3 and 10-year bar waivers (if not possibly repealing the bars entirely), decreasing visa processing and security check times, resurrecting judicial review for immigrants stripped from the courts in 1996, issuance of U visa application forms for immigrant victims of violent crimes (still not done six years after Congress passed the U visa law), use of the military along the border, etc.

"March today, vote tomorrow" -- Also, in the interim, organizations can give substance to the slogan, "march today, vote tomorrow." All concerned institutions and groups could maximize their efforts to naturalize eligible immigrants, register new citizens to vote, and provide tools for new citizens to integrate into the political process. To the extent that the Administration slows down naturalization applications preventing large numbers of people from voting in 2008, we will work with unions and others starting in 2007 to challenge such delays in the federal courts. We also wish to work collaboratively with others to devise a protocol that makes the process of applying for naturalization as quick and efficient as possible.

This work may result in an election in 2008 in which candidates seriously concerned with migration policy and its economic, social, human, and political consequences, are elected to office making the passage of comprehensive immigration reform more likely than in the present environment.

Should legislation be formulated before the 2008 election, which is very possible, interested groups will obviously engage in the process and assess their support of or opposition to whatever proposals emerge.

In summary, we recommend a program to (1) educate the Congress, the NGOs, and the public about the complex issues involved in formulating comprehensive immigration policy, a process we believe will take two years, (2) at the same time organize naturalization and voter registration campaigns, (3) vote for candidates who support rational immigration reform in 2008, and (4) work with Congress to draft and enact comprehensive immigration reform after the 2008 election. This is a longer-term plan than we and many others would prefer, but a solid foundation for legislation, public education, a decrease in the present level of anti-immigrant sentiment, and an environment in which Presidential politics are not involved, may be the conditions needed for comprehensive reform that is both in the national interest and protects the human rights of migrants.