



Written Statement for a Hearing on
**Comprehensive Immigration Reform in 2009:
Can We Do It and How?**

Testimony Submitted to:
U.S. Senate Subcommittee on Immigration, Refugees, and Border Security

Submitted by:
Clarissa Martinez De Castro
Director of Immigration and National Campaigns
National Council of La Raza

National Council of La Raza
Raul Yzaguirre Building
1126 16th Street, NW
Washington, DC 20036

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INTRODUCTION

The National Council of La Raza (NCLR)—the largest national Hispanic civil rights and advocacy organization in the United States—works to improve opportunities for Hispanic Americans.* Through its network of nearly 300 affiliated community-based organizations (CBOs), NCLR reaches millions of Hispanics each year in 41 states, Puerto Rico, and the District of Columbia. To achieve its mission, NCLR conducts applied research, policy analysis, and advocacy, providing a Latino perspective in five key areas—assets/ investments, civil rights/immigration, education, employment and economic status, and health. In addition, it provides capacity-building assistance to its Affiliates who work at the state and local level to advance opportunities for individuals and families. Founded in 1968, NCLR is a private, nonprofit, nonpartisan, tax-exempt organization headquartered in Washington, DC. NCLR serves all Hispanic subgroups in all regions of the country and has operations in Atlanta, Chicago, Los Angeles, New York, Phoenix, Sacramento, San Antonio, and San Juan, Puerto Rico.

NCLR has a long history in the immigration debate. Our work on this issue is focused on ensuring that we have an immigration system that functions in the best interest of the nation. Immigration in the United States should be orderly and legal, promote economic growth, sustain our families, and be implemented in a way consistent with our nation's values. After more than two decades of neglect, our immigration system, far from achieving those goals, creates conditions that contradict or trample those values. The effects of our failed system have made the need for policy solutions urgent. The consequences of unabated toxic rhetoric around the issue have made progress a moral imperative. And the engagement and message from voters in recent elections have shown that real solutions on immigration are smart politics. This alignment indicates that the time for comprehensive immigration reform is now, and action can prove an important tool on our path to economic recovery. NCLR, our Affiliates, and our many coalition partners are committed to working with Congress to reform U.S. immigration laws in a way that promotes order, fairness, and above all, legality.

IMPACT OF INACTION ON LATINO COMMUNITY

Of the country's 45.5 million Latinos, about 39% are foreign-born, and a significant portion of Latinos live in families with mixed immigration status, making immigration policy an important issue for this community. In addition to an overhaul of the nation's immigration system that would deal effectively and humanely with undocumented immigrants, family reunification, worker protections, immigrant integration, and future flows, Latinos are also interested in forward movement on this issue because of its impact on civil rights.

Failure to reform the nation's immigration system has led to piecemeal state and local measures that are often detrimental to the well-being and safety of Hispanic communities. These measures, combined with the toxic nature of the immigration debate, are contributing to an environment of intolerance against immigrants, regardless of immigration status, and against

* The terms "Hispanic" and "Latino" are used interchangeably by the U.S. Census Bureau and throughout this document to refer to persons of Mexican, Puerto Rican, Cuban, Central and South American, Dominican, Spanish, and other Hispanic descent; they may be of any race.

Latinos, who are often erroneously assumed to be all immigrants. Coinciding with the rise in vitriol in the immigration debate, the FBI has documented a nearly 40% increase in hate crimes targeting Latinos in the last four years, and the Southern Poverty Law Center (SPLC) attributes the 47% rise in hate groups between 2000 and 2007 almost completely to the manipulation of anti-immigrant rhetoric. This rise in intolerance has resulted in tragic consequences for the Latino community, horrifyingly exemplified more recently by the brutal, fatal beatings of Luis Ramirez, Jose Osvaldo Sucuzhañay, and Marcelo Lucero for “walking while being Latino.”

The harsh tone of the immigration debate galvanized Latino voters in the 2008 election, who turned out in record numbers and supported candidates favoring comprehensive immigration reform over candidates who engaged in anti-immigrant rhetoric. As election results and polling demonstrate, the country as a whole is in a more pragmatic place on this issue than Congress seems to realize. In 2008, reform-minded candidates won 20 out of 22 battleground races against opponents supporting deportation-only or restrictionist approaches, and 66% of voters in swing districts supported an approach that will result in undocumented immigrants becoming legal, tax-paying workers within the system.¹

A WORSENING STATUS QUO

The nation’s immigration system is in urgent need of reform that restores dignity and the rule of law and rejects a deteriorating status quo that does neither. NCLR believes that the United States can and should enforce its immigration laws. As with any set of laws, the nation should enforce them wisely and well. This requires an examination of the costs and benefits of particular enforcement strategies to ensure that the priorities and tactics we choose do not undercut other important laws, values, and goals. A true return to legality calls for a systemic overhaul that addresses problems exacerbated by over two decades of neglect, including:

- A burgeoning undocumented population whose status makes it easier to prey upon and harder to integrate into American society
- Unscrupulous employers ready to exploit undocumented workers to the disadvantage of all workers and good employers
- Obstructed legal channels that keep families apart and legal workers out, as well as foster a black market and smuggling rings
- Hard-line, high-cost enforcement strategies that do little to curb immigration but terrorize communities and decrease national security
- A costly and ineffective patchwork of state and local laws that do little to address these problems but introduce greater chaos into an already broken system

Half-measures will not work. In fact, failure to enact comprehensive immigration reform has left behind a lopsided and ineffective federal system of enforcement that attacks the symptoms but not the problem.

As we have seen in recent years, trying to solve the problems of our broken immigration system through a deportation-only approach does not work. The strategy of using raids and local law enforcement agencies to round up, detain, and deport the undocumented population has been costly and ineffective. There has been a significant increase in interior immigration

enforcement operations by the Department of Homeland Security in the form of large-scale worksite raids as well as raids on homes throughout the country. In 2007, according to U.S. Immigration and Customs Enforcement (ICE), more than 4,900 arrests were made in connection with worksite enforcement investigations, representing a 45-fold increase in criminal worksite arrests compared to fiscal year 2001.² In 2008, ICE conducted a five-state sweep of Pilgrim's Pride poultry plants, and one year ago this month, it raided Agriprocessors, Inc., a kosher meatpacking plant in Postville, Iowa, a raid which ICE has called the largest in history. While the stated goal of the worksite and home raids has been to focus on unscrupulous employers and the "worst of the worst" in the undocumented population, the agency has not maintained that focus. The results have led to racial profiling and rounding up anyone who may be undocumented in order to increase the numbers of immigrants in detention.³ Instead of looking for solutions to our outdated, ineffective immigration system, resources have been allocated toward the expansion of SWAT-like teams that have descended on the homes of families who are suspected of being undocumented. In the ICE Fugitive Operations Program, ICE agents have not focused on immigrants who have criminal convictions, as intended by the program; instead, 73% of the immigrants apprehended from 2003 to 2008 had no criminal convictions.⁴

In addition to worksite and home raids, the rapid proliferation of agreements between local law enforcement agencies and the federal government to enforce complex immigration laws has led to further civil rights violations. U.S. citizens and legal immigrants are being racially profiled because of agreements between the federal government and local law enforcement agencies that allow police officers to question the immigration status of community members. As of March 2009, there are 67 law enforcement entities in 23 states that have signed memoranda of agreement (MOAs) with ICE as part of the 287(g) program.⁵ Reports by the government and nongovernmental organizations alike have found numerous problems with these agreements.

As a result of the raids and the indiscriminate rounding up of immigrants (and, in some cases, U.S. citizens), the numbers of people who are in detention facilities has grown tremendously in recent years. As many as 30,000 immigrants are held in detention centers every day, which is a three-fold increase in the number of immigrant detainees from a decade ago.⁶ By the end of 2009, the U.S. government will hold more than 440,000 people in immigration custody in approximately 400 facilities at an annual cost of more than \$1.7 billion.⁷ Immigrants are detained in a variety of facilities ranging from detention centers operated by ICE or private contractors to county jails under contract with ICE. Conditions in detention centers have come under fire after multiple news reports and investigations outlined the substandard conditions that led to the death of more than 80 immigrants in ICE custody since 2002.⁸ In one case, an immigrant from El Salvador was detained for 11 months and denied medical care. He was released from detention after being diagnosed with terminal cancer. He subsequently died at the age of 36. The federal government has admitted medical negligence in a lawsuit that his family is pursuing.⁹ Cases such as this underscore the need for scrutiny of the standards in detention facilities.

Upon examination, it becomes evident that the government's tactics of rounding up undocumented immigrants through raids and with local law enforcement cooperation have high costs that far outweigh the benefits. While Congress has increased the resources for

enforcement efforts, it must ensure that there is oversight of enforcement resources and that the priorities are not lost.

The zeal with which federal and local law enforcement agencies have applied enforcement policies has violated the rights and civil liberties of many in various communities, including legal residents and U.S. citizens. Latinos specifically have been racially profiled, arrested without warrant, detained without counsel, and in some cases even deported out of the country despite being legally present. These concerns over racial profiling and abuse of authority are not new for Latinos. In 1993, a report documented that U.S. citizens, as well as Hispanic immigrants, have been harassed by immigration authorities.¹⁰ More recently, a publication by the Southern Poverty Law Center reported that nearly 50% of respondents to their survey of Latinos in the South knew someone who had been treated unfairly by the police.¹¹ In one case, a worker who was traveling to Mexico with his earned wages was stopped by a police officer in Alabama “for failure to maintain a marked lane.” Even though the worker was not arrested or charged with any crime, the officer confiscated his savings and wages of nearly \$20,000, “claiming it was drug money.”¹² Such policy is an abrogation of civil rights, common decency, and human dignity. This is not the way to resolve the problems in our immigration system.

One of the primary concerns with the 287(g) program has been the blatant use of racial profiling, which affects all Latinos. There have been many news stories and investigative reports, as well as pending lawsuits, which suggest that law enforcement officers who are part of the 287(g) program are using race or Latino appearance to make stops and arrests for minor offenses.¹³ In Tennessee, where racial profiling data collection is mandated, and where there are two MOAs in place, a study of arrest data shows that the number of arrests of Latino defendants driving without a license in Davidson County more than doubled after the implementation of the 287(g) program.¹⁴ Alarming, jurisdictions that have been found to engage or have been accused of engaging in racial profiling have signed or are in the process of entering into 287(g) agreements. In communities like Rogers, Arkansas, community groups and immigrants’ advocates have strongly opposed the 287(g) agreement because the city was sued for unlawfully targeting Latino motorists for stops, searches, and investigations in 2001. When the City of Rogers applied for 287(g) authority to enforce immigration law, it was still under federal court supervision pursuant to the lawsuit.¹⁵

Another cost of the tactics that we have seen in recent years is the impact on families. One of the fundamental values we uphold in this country is the importance of family unity. Our broken immigration system has resulted in the degradation of this American value. Nationwide, there are approximately four million U.S. citizen children who have at least one undocumented parent¹⁶ and policies that target their parents have grave effects on these children. A report released by the Urban Institute and commissioned by NCLR in 2007 found that for every two immigrants apprehended in an immigration enforcement operation, one child is left behind.¹⁷ The impact of these operations on children, the most vulnerable group in our society, is significant and long-lasting. In the status quo, these children are victims of a system that disrupts their lives and forces them to bear the distress of being torn apart from their parents and loved ones. In one case, a U.S.-born citizen, Paul, who had been married to his wife, Teresa, since June 2005, is now raising their three-year-old daughter on his own as he waits to find out if his wife will be allowed to reenter the country. At 6:00 a.m. on a mid-

November day in 2008, ICE agents pounded on the family's door and took his pregnant wife from their home. A month later, she was deported to Argentina. Paul remains in the U.S. with their daughter while he awaits news from their attorney. The couple was in the process of adjusting Teresa's immigration status.¹⁸ This is only one of many stories of families who are forced apart.

In addition to tearing apart families living in the United States, our outdated immigration system also separates families through its untenable backlogs. In the family immigration system, U.S. citizens and legal permanent residents may file applications for close relatives to join them in the United States. The applications are first processed by the U.S. Citizenship and Immigration Service and, upon approval, are sent overseas for further processing. While the applications are in process, the loved ones of U.S. citizens and legal permanent residents wait for an appointment at the U.S. Consulate's office abroad. Currently, there are three Latin American countries on the State Department's list of top ten countries with the highest number of waiting-list applicants.^{*} Mexico alone has nearly one million applicants currently on the waiting list.[†] In the case of one of our family immigration categories, spouses have remained separated from each other for more than a decade. We have neglected the legal avenues that were created to uphold our ideal of keeping families united. These practices chip away at the principle of family unity that has been a part of our immigration policies and strike the very core of our fundamental moral and civic values as a nation.

Not only have failed deportation-only tactics raised concerns about the protection of civil rights, they also threaten the safety of communities throughout the country, evidenced by the chilling effect these agreements have on the relationships between local law enforcement officials and the communities they are responsible for protecting. In fact, local law enforcement agencies have spoken out against the 287(g) program because it goes against their efforts to build strong relationships in their communities, thus hindering their ability to earn the trust of community members.¹⁹ Impacted communities are less likely to report crimes or come forward as witnesses as a result of the wedge that has been driven between police and residents.

Yet we shoulder all of these costs for a system that does not work. From 1990 to 2006, the United States witnessed a large increase in the number of undocumented immigrants entering the country.²⁰ Over the past decade, billions of dollars have been spent on detention and deportation efforts without making a dent in the problem. The immigration enforcement agencies within the Department of Homeland Security have seen their budgets skyrocket while the number of undocumented immigrants in the United States has grown. The annual budget of the U.S. Border Patrol has increased 332% and the number of Border Patrol agents has increased 276% since fiscal year 1993. Still, the undocumented population has increased three-fold.²¹ We cannot solve the problems of our immigration system through expensive deportation-only strategies. The current undocumented population is estimated to be approximately 12 million people. If the United States is deporting approximately 250,000 immigrants per year, it would take about 40 years to deport our way out of this situation.

^{*} Mexico, the Dominican Republic, and El Salvador are numbers one, three, and nine, respectively. U.S. Department of State, Immigrant Waiting List, 2009.

[†] Mexico has 961,744 registrants on the waiting list. Ibid.

LATINOS AND THE ELECTORATE AS A WHOLE WANT TO SEE SOLUTIONS

The American people have demonstrated in numerous national polls and multiple election cycles that they want to see a solution to the problem of our broken immigration system. They want to see “a comprehensive approach that secures the border, cracks down on employers who hire illegal immigrants, and requires all illegal immigrants to register and meet certain requirements to become legal” over an enforcement-only approach that doesn’t offer a real solution.²²

Congress and the administration need to restore the rule of law and enact an immigration system that works for the good of the country. A true return to legality calls for a systemic overhaul that addresses the problems exacerbated by more than two decades of neglect. Given the complex nature of the problems in our immigration system, it is clear that this issue cannot be resolved in a piecemeal fashion. To be effective and achieve a solution that serves the national interest, reform must include measures that bring order to our borders, protect workers, and bring the undocumented out of the shadows.

A part of comprehensive immigration reform includes the ability to secure our borders. From 2001 to 2008, the Bush administration spent billions of dollars to build barriers and increase the number of border patrol agents and other enforcement controls. Border security must be enacted in a fiscally responsible and efficient manner. This requires border enforcement policies that focus on the criminal elements and are developed in collaboration with communities on both sides of the border. Attention must be paid to the ports of entry to ensure that there are sufficient inspectors working in a safe and efficient environment in order to complete screening and inspections of visitors.

Comprehensive immigration reform will restore order by getting approximately 12 million undocumented people in our country to come forward, obtain legal status, learn English, and assume the rights and responsibilities of citizenship. Enforcement agencies need to follow the mandate of their programs and seek out those who have been convicted of committing violent crimes. Comprehensive immigration reform will allow immigrants who have been working, paying taxes, and learning English—and who can pass background checks—to become a part of the formal economy and work “on the books,” therefore contributing more to the tax rolls and making it more difficult for corrupt employers to cheat them and, consequently, all Americans.

We recognize that people of goodwill differ on how to address the question of a “future flow” of potential workers from abroad. Indeed, NCLR itself feels somewhat conflicted because both sides of the argument bring legitimate perspectives to bear. On the one hand, we sympathize with those who have correctly noted the tendency of temporary worker programs to restrict workers’ rights. They also correctly note that many legal immigrants who enter via the family reunification system also work.

On the other hand, it’s hard to disagree with those who point out that virtually every credible, long-term economic projection strongly suggests that once our economy recovers, we will continue to need some number of workers from abroad to maximize economic growth. We

also believe that U.S. citizens and legal immigrants wishing to reunite with family members abroad should be permitted to do so lawfully in a reasonable period of time.

Clearly, our future immigration policy must balance these competing interests, and NCLR believes an appropriate balance is possible. Specifically, NCLR supports:

- Increased family-based immigration, which includes reducing backlogs that have made it virtually impossible for all but the closest relatives of U.S. citizens to immigrate lawfully to the United States
- A rational, needs-based process to link the future flow of employment-based visas to independent assessments of U.S. labor market needs
- Full labor rights and protections for employment-based workers, accompanied by vigorous enforcement to ensure that any future flow program does not undercut wages and working conditions of domestic workers

Some of our critics have confused our opposition to ineffective, counterproductive, and harmful enforcement efforts as tantamount to opposition to any form of enforcement. Permit me to disabuse them of that notion in this testimony. For the record, NCLR supports the right of the United States, as a sovereign nation, to control its borders. Furthermore, we believe it is in the interest of the Hispanic community, both substantively and politically, for our country to implement an enforcement system that is fair, effective, and humane. We do not believe any of those adjectives could be used to describe the status quo.

Specifically, we believe that any effective enforcement system must be nondiscriminatory, must actually reduce the undocumented population in the U.S. as well as deter future unlawful entries, and must be implemented in a manner consistent with our highest ideals as a nation. We believe comprehensive immigration reform is the only way to achieve such a system, as described below.

First, by adjusting the status of the bulk of the undocumented population in the U.S., and by increasing avenues for lawful entry, we can ensure that the proverbial “front door” to our country remains open; among other benefits, this will allow us to concentrate enforcement resources on closing the “back door” to illegal entries. In a society as free and open as ours, finding lawbreakers has been compared to finding a “needle in a haystack.” Our previous policy of increasing legal immigration backlogs and growing the “criminalization” of civil immigration offenses has been, in effect, creating more stacks of “hay,” making it harder to find the “needles,” even with greater resources. In this context, creating a path to permanent residence and eventual citizenship for the undocumented who pay taxes, learn English, and pass background checks is an essential part of any enforcement strategy. Simply put, these policies make the “haystack” smaller and more manageable.

Second, we must recognize that there is no single strategy that will eliminate all forms of unauthorized entry and presence. Even effective elimination of all unauthorized entries, for example, would not affect the estimated 40% of the undocumented population that entered with lawful visas and then overstayed. Similarly, even a perfect employment verification system would not address those who entered the country for purposes other than employment. Thus,

NCLR believes any effective enforcement system must consist of a series of “layers” of enforcement, none of which may in and of itself be 100% successful, but taken together would provide both an effective deterrent and swift and efficient punishment to those who break the law in the future.

The first layer involves smart border enforcement, which provides a reasonable deterrent against unlawful entry of individuals, drugs, and human traffickers without adversely affecting the lawful flow of goods and commerce. It would require more efficient resources and infrastructure developments on ports of entry, allowing well-trained enforcement officers to focus on smugglers and traffickers. It would also require increased deployment of technology and greater cooperation with Mexico to reduce the southern flow of arms and the northern flow of drugs and traffickers.

The second layer should focus on labor law enforcement to deter and punish unscrupulous employers from hiring and exploiting a vulnerable, undocumented labor force. Such a policy would have the salutary additional effect of improving wages, working conditions, and worker safety for the entire low-wage domestic workforce.

The third and probably most important layer is an effective, nondiscriminatory worker verification system. Immigration experts have long recognized that the U.S. labor market is the single strongest incentive for unauthorized migration to the United States. But as this committee knows, the existing systems offer the worst of both worlds—they permit widespread hiring of unauthorized workers while subjecting many lawful workers to intentional or inadvertent discrimination. Surely we can do better. NCLR supports the investment of sufficient resources to reduce error rates to reasonable levels and permit maximum access of lawful workers to mechanisms that document their employment status. Moreover, because we recognize that any system will produce some errors, we must insist on effective nondiscrimination provisions and swift redress mechanisms. I would also note that the vast majority of Latinos of my acquaintance want a verification system that permits them to demonstrate—and prospective employers to confirm—their authorization to work in the U.S. It is not the concept but the execution that raises concerns for most Hispanic Americans.

The fourth layer of enforcement should focus on employers that engage in a pattern and practice of recruiting and hiring unauthorized workers. Any efficient law enforcement effort should target the “big fish,” yet in recent years it has been individual workers, rather than employers, that have borne the full brunt of immigration enforcement. Part of this involves a simple change of focus, and in this respect we are cautiously optimistic that Secretary Napolitano’s recent announcement may reflect a more balanced strategy. But this may also require policy changes, including, for example, addressing loopholes in labor laws that permit employers to evade responsibility by labeling workers as “independent contractors.”

Finally, we agree with the overwhelming majority of local law enforcement personnel that immigration should be a federal responsibility. Our own assessment, confirmed by independent reviews by the Government Accountability Office, a number of federal courts, and others, is that state and local enforcement has produced little enforcement benefit but resulted in widespread violations of the rights of citizens and lawful permanent residents. One possible

exception involves agreements by state and local law enforcement to assess the immigration status of violent criminals, which seems to us a sensible way of reducing the burden on local governments while remaining focused on serious offenders.

Taken together, NCLR believes that these five layers of enforcement would substantially reduce the current population of those who live outside the scope and protection of the law; maintain a credible deterrent at the border; crack down on unscrupulous employers for violations of labor and immigration law; establish an accurate and reliable employer verification system to reduce the scope of unlawful employment; and ensure the swift identification and disposition of violent criminals who have also violated immigration laws.

Federal leadership is required to address the inconsistencies of current policies and ensure that our treatment of immigrants is aligned with America's best values and traditions. Congress and the administration can, and must, achieve comprehensive immigration reform this year because reform will demonstrate that America is true to its best values, not its worst instincts. How lawmakers resolve the immigration debate will say much about who we are as a country and as human beings.

The American people have made it clear that they are interested in solutions to our country's difficult problems. Numerous polls and election results over multiple election cycles have demonstrated that Americans support a realistic solution that is tough but comprehensive, as opposed to half-measures that only focus on deportation. The status quo is unacceptable. We look forward to working with members of the subcommittee, as well as other members of Congress and the administration, to achieve comprehensive immigration reform this year.

ENDNOTES

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